

<p>1 Tuesday, 18 December 2018 2 (10.30 am) 3 Proceedings 4 THE CORONER: Yes, Mr Skelton, I think I would like to begin 5 with the question of disclosure and the disclosure 6 process. 7 Submissions by COUNSEL TO THE INQUESTS re disclosure 8 MR SKELTON: Yes, Sir. Dealing with that issue first, the 9 written submissions of Ms Williams and Ms Patrick argue 10 that the procedure adopted by the Coroner's legal team, 11 your team, in respect of disclosure has been improper in 12 the sense that it has not been conducted transparently; 13 we, your legal team, have acquiesced to informal 14 applications to withhold evidence on the grounds of 15 public interest immunity; you have not exercised 16 sufficient oversight over your team's work, and that the 17 families Ms Williams and Ms Patrick represent have not 18 been given the opportunity to make submissions to you 19 about these matters. 20 We, your counsel, greatly regret that such 21 submissions have been made. First, because the 22 criticisms that they articulate are, in our view, 23 without foundation for reasons that I'm going to go on 24 to explain; second, because it appears to be indicative 25 of a profound distrust of you and your legal team by</p> <p style="text-align: center;">Page 1</p>	<p>1 documents and identifying those that are relevant, we 2 repeatedly return to the document holders to refine 3 searches, make focused follow-up questions or clarify 4 why particular documents may, for example, be incomplete 5 or missing. 6 All of the organisations to whom we have made 7 requests have responded appropriately. In other words, 8 there is no basis for criticising the degree of effort 9 and cooperation that we have received. 10 The overriding purpose of that first stage is to 11 catch and sift all potentially relevant evidence with 12 a view to identifying the evidence that is relevant. 13 The second stage of the process is to disclosure that 14 relevant evidence to the interested persons for use in 15 the Inquest. 16 Pausing there, it should be noticed and recognised 17 that Rule 13 of the Coroners Inquest Rules 2013 18 stipulates that only documents that you, the coroner, 19 consider to be relevant are required to be disclosed to 20 interested persons and then only upon their request. 21 But in practice, as is conventional in complex inquests 22 of this kind, we have sought to disclose all such 23 relevant documents where possible on a rolling basis 24 without the need for any requests to be made. We have 25 also disclosed a substantial volume of material that is</p> <p style="text-align: center;">Page 3</p>
<p>1 those particular families, a distrust which we had not 2 expected, or wanted, and which has, it appears, arisen 3 without warning or discussion in the context of what we 4 had considered to be, and still consider to be, a good 5 working professional relationship between us and all 6 interested persons. 7 I hope, Sir, it will assist if I explain how we have 8 gone about our disclosure work so that there is absolute 9 clarity in respect of that. The starting point is that 10 the procedural responsibility of your legal team, acting 11 on your instructions and with your lawful authority 12 pursuant to the principles identified in the 13 Worcestershire case and in the Chief Coroner's Law Sheet 14 number 3, is to request, review and disclose any and all 15 evidence which is relevant to the Inquest. 16 And by relevant evidence, to be clear, I mean 17 evidence which bears upon the issues which you have 18 ruled are within the scope of the Inquest. 19 During the first stage of our work, the request and 20 review stage, the context of relevant is construed 21 broadly to include all potentially relevant evidence. 22 In other words, the net is cast widely. The searches 23 that we request are intentionally extensive to ensure 24 that relevant documents are not missed. They are also 25 iterative in that while reviewing the resulting</p> <p style="text-align: center;">Page 2</p>	<p>1 not relevant, even though there is no requirement on us 2 to do so, and we have done so to facilitate 3 understanding of the investigations carried out by your 4 team, which again in a complex inquest such as this is 5 appropriate in order that they can understand and see 6 the investigative materials gathered over many decades. 7 We recognise that some interested persons are 8 anxious to know as much as possible about the events 9 that occurred in Birmingham, even if some of that 10 knowledge does not assist in understanding how the 11 victims of the bombings in fact died. However, as 12 everyone is aware, the Inquest engages issues of 13 national security and the actions or omissions of the 14 State in relation to a terrorist attack. Inevitably, 15 then, a significant proportion of the relevant documents 16 that the Coroner's legal team -- we -- have reviewed for 17 relevance, we have identified to be sensitive, in the 18 sense that they contain information that is confidential 19 for one reason for another. 20 Those sensitivities may be obvious to us or they may 21 be brought to our attention by the document holders or 22 other persons with an interest in the documents. In 23 such circumstances, we are obliged to go through the 24 following process: first, we must assess whether not 25 just the document but the sensitive material within it</p> <p style="text-align: center;">Page 4</p>

<p>1 is relevant. If it is not, then there is no compelling                  2 reason for that sensitive material to be disclosed other                  3 than a relatively weak argument that disclosure would                  4 assist comprehension of the overall documents or                  5 minimise suspicion that relevant information has been                  6 deliberately or accidentally hidden.</p> <p>7 In these circumstances, we may press for disclosure                  8 which may result in the redaction being removed, if, for                  9 example, the passage of time has taken away the original                  10 basis for the confidentiality; or it may not result in                  11 it being removed, in which case the document will be                  12 disclosed but with the irrelevant but sensitive                  13 information redacted. And I emphasise "the irrelevant                  14 information" redacted.</p> <p>15 If the sensitive material is relevant, then                  16 different considerations must apply. First,                  17 a discussion must take place with the document holder or                  18 the relevant stakeholder to ascertain the nature of the                  19 sensitivity and whether there is any mechanism for                  20 overcoming it: for example, by summarising or what is                  21 known as gisting the information without compromising                  22 its sensitivity; or, less frequently, seeking permission                  23 for it to be reviewed by interested persons on                  24 a confidential basis, thereby preserving its                  25 sensitivity, or protecting that sensitivity.</p> <p style="text-align: center;">Page 5</p>	<p>1 a balancing exercise between competing public interests.                  2 I won't explain that again.</p> <p>3 THE CORONER: But it does involve a public hearing at which                  4 interested persons may make submissions?</p> <p>5 MR SKELTON: It does. And will ordinarily also involve                  6 a private hearing if required in which the sensitive                  7 material has been spoken about hopefully by the                  8 advocates who are responsible for that material and by                  9 me on your behalf and indeed on the public's behalf                  10 advocating a different view if necessary.</p> <p>11 THE CORONER: And then I would carry out the balancing                  12 exercise weighing up the competing interests?</p> <p>13 MR SKELTON: You would. The public interest in open justice                  14 and facilitation of effective participation in the                  15 inquest process and whatever public interest is being                  16 advanced to you by the document stakeholder that needs                  17 to be protected, whether or not it is policing                  18 practices, the nature of an informant's evidence and                  19 so on.</p> <p>20 We have also, in light of the previous submissions                  21 made to you at the last PIR, taken on additional legal                  22 resources -- a solicitor and a junior barrister --                  23 specifically to assist with the provision of                  24 explanations to interested persons as to the reasons for                  25 retaining redactions in the documents we are disclosing.</p> <p style="text-align: center;">Page 7</p>
<p>1 If that does not prove possible then your team have                  2 no choice but to advise you that they have identified --                  3 or we have identified -- a relevant document or part of                  4 document that falls to be disclosed. In these                  5 circumstances, you, Sir, will ordinarily want to review                  6 the document yourself, if you have not already done so,                  7 to satisfy yourself that it is in fact relevant.</p> <p>8 If it is not relevant, then the question of                  9 disclosure will fall away. And I say "it" in the                  10 loosest sense, in that "it" or the sensitive part of it                  11 is not relevant, then disclosure of the document or that                  12 part will fall away, even though we, as your advisers,                  13 may previously have formed a different view.</p> <p>14 The reason for that is obvious. This is an                  15 inquisitorial process in which you dictate and instruct                  16 us to act on your behalf when it comes to disclosure.</p> <p>17 If it is relevant, if you take the view that it is                  18 relevant, then you have no choice but to direct that the                  19 document holder or stakeholder make a formal application                  20 to withhold the document or part of it.</p> <p>21 At the last hearing, upon your request, I outlined                  22 the process by which that application -- a public                  23 interest immunity application, for example, or an                  24 application to preserve an Article 2 right to life --                  25 works and how it is essentially resolved by way of</p> <p style="text-align: center;">Page 6</p>	<p>1 That is an ongoing process which has already started.                  2 Again, that is being done in the interests of                  3 transparency and with a view to assisting the families                  4 in their understanding of the documents.</p> <p>5 THE CORONER: But there is, if I understand the process                  6 correctly, which I hope I do, there is nothing in any                  7 redaction that I have considered to be relevant                  8 evidence?</p> <p>9 MR SKELTON: That is correct, insofar as where that                  10 situation has arisen, a summary or gist has been                  11 produced.</p> <p>12 THE CORONER: Yes.</p> <p>13 MR SKELTON: You will have seen that West Midlands Police,                  14 and indeed the Government, have referred to material by                  15 way of summary or gist in form of a statement or gist,                  16 but that is correct.</p> <p>17 THE CORONER: Had I considered something which is now                  18 redacted to be relevant and therefore disclosable, it                  19 would either have been disclosed in full, unredacted, or                  20 there would have been a public interest immunity                  21 application by the holder of that document?</p> <p>22 MR SKELTON: Correct. You would have been obliged and                  23 insisted upon such an application being made and then                  24 you would have adjudicated upon it in the ordinary way.</p> <p>25 THE CORONER: And there has been no such application in this</p> <p style="text-align: center;">Page 8</p>

<p>1 case?                  2 MR SKELTON: Correct. Either because the sensitive                  3 information is irrelevant or because such relevance as                  4 it has has been provided to the interested persons by                  5 way of gist or summary.                  6 THE CORONER: Yes. And the question of relevance -- I know                  7 you referred to it briefly but I think it is important                  8 just to note -- under the disclosure provisions in the                  9 Rules at Rule 13, "Disclosure of documents at the                  10 request of an interested person" -- and I'm concerned                  11 with whether they request it or not, I will provide it                  12 under this Rule -- where an interested person asks for                  13 disclosure of a document held by the coroner, the                  14 coroner must provide any of the following: post-mortem                  15 examination report; any other report that has been                  16 provided to the coroner during the course of the                  17 investigation, which might be an expert report for                  18 example, or a police report; where available, the                  19 recording of any inquest hearing held in public; and,                  20 (d), any other document which the coroner considers                  21 relevant to the inquest.                  22 MR SKELTON: Yes.                  23 THE CORONER: So that is the bottom line of my duty to                  24 disclose, in the first place, any material that                  25 I consider to be relevant.</p> <p style="text-align: center;">Page 9</p>	<p>1 relevant evidence which I hope has all been disclosed --                  2 that maybe 2,000 pages of documents, maybe 3,000, maybe                  3 4,000 -- but there has been certainly another 20,000                  4 whereby I have voluntarily disclosed but did not have to                  5 disclose evidence which is not --                  6 MR SKELTON: Correct. And again that process is ongoing.                  7 THE CORONER: Yes.                  8 MR SKELTON: To be clear, you and your team cannot privately                  9 agree to withhold relevant evidence from use in the                  10 Inquest. None of us can do so even in circumstances                  11 where it may be said that the public interest arguments                  12 in favour of non-disclosure are on the face of it                  13 overwhelming. Even then, the process that I have                  14 identified -- and about which you have asked me -- that                  15 process must be followed and insofar as possible                  16 followed openly and transparently.                  17 Not to do so, to be absolutely clear, would be                  18 unlawful and unethical in the sense that we would be                  19 failing in our public duty as your legal team to ensure                  20 that the interests of the families and others are heeded                  21 and protected throughout the inquest process and indeed                  22 the principle of open justice.                  23 So I hope this explanation has been sufficient to                  24 dispel any accusation that we have acted or would ever                  25 act improperly in the way that Ms Williams and</p> <p style="text-align: center;">Page 11</p>
<p>1 MR SKELTON: Yes.                  2 THE CORONER: And it goes on to say, at Rule 15                  3 "Restrictions on disclosure": the coroner may refuse to                  4 provide a document, or a copy of a document, where there                  5 is a statutory or legal prohibition; consent of any                  6 author or copyright owner cannot reasonably be obtained;                  7 the request is unreasonable; the document relates to                  8 contemplated or commenced criminal proceedings; or the                  9 coroner considers the document irrelevant to the                  10 investigation."                  11 So the test, both ways, is whether I consider the                  12 material to be relevant.                  13 MR SKELTON: Yes.                  14 THE CORONER: In which case, if there is a request or                  15 I decide that a request is not necessary, I will                  16 disclose it.                  17 MR SKELTON: Yes. Relevance is the gateway by which all the                  18 documents get determined to be disclosed --                  19 THE CORONER: Not potentially relevant, but relevant.                  20 MR SKELTON: Correct. Potentially relevant is only the                  21 process by which we garner in and review information in                  22 order to winnow out the relevant evidence and with your                  23 authority disclose that evidence.                  24 THE CORONER: I am really just partly summarising what you                  25 have been saying, but in addition to the disclosure of</p> <p style="text-align: center;">Page 10</p>	<p>1 Ms Patrick have stated in their written submissions.                  2 I would of course be happy to provide any clarification                  3 of these issues either openly or privately to them or                  4 any other interested person should it be required.                  5 THE CORONER: It does seem to me that this process has                  6 already been explained in correspondence.                  7 MR SKELTON: I had hoped it had.                  8 THE CORONER: And indeed very recent emails as to whether or                  9 not there have been PII applications by anybody in                  10 relation to any material, which there have not been.                  11 MR SKELTON: Correct. The reason they have not been is                  12 because no relevant information has been withheld.                  13 THE CORONER: Yes. Has any of Ms Williams's team recently                  14 contacted you to say, "It seems to me that something                  15 improper has been going on here, would you like to help                  16 about that?"                  17 MR SKELTON: Not until the written submissions so far as I'm                  18 aware.                  19 THE CORONER: No.                  20 Yes, thank you.                  21 MR SKELTON: Sir, just three further matters if I may.                  22 First of all, I do need to clarify work that has                  23 been done in respect of what is known as the Joint                  24 Intelligence Committee, and the Northern Ireland Current                  25 Intelligence Group and Daily Intelligence Summaries and</p> <p style="text-align: center;">Page 12</p>

<p>1 Fortnightly Intelligence Assessments, which are 2 documents which, I know some of the interested persons, 3 have particular interested in. 4 Just to clarify the process, in September 2017 your 5 team made a request of the Government to search for 6 minutes of the meetings of the Joint Intelligence 7 Committee, which is a Cabinet Office committee, and the 8 Ireland Current Intelligence Committee Group for 9 a period covering a month before and a month after the 10 bombings of 21 November 1974. A request was also made 11 for intelligence briefings from the same period. 12 That request is set out at paragraph 13 of the 13 witness statement of Ms Oakley on behalf of GLD dated 14 5 December this year. 15 THE CORONER: Which paragraph? 16 MR SKELTON: Paragraph 13. 17 The Government were unable to locate a complete set 18 of the minutes of the Joint Intelligence Committee or 19 the Current Intelligence Group for the requested period, 20 as Ms Oakley has set out. This note that I am about to 21 explain sets out the documents relevant to these 22 requests that the team have reviewed following the 23 searches. In other words, the documents that have been 24 located and we have seen. 25 First of all, your team has reviewed a document</p> <p style="text-align: center;">Page 13</p>	<p>1 was made before makes it clear that that group met 2 regularly. 3 Turning to the Daily Intelligence Summaries and 4 Fortnightly Intelligence Assessments, again we have seen 5 a complete set of the Daily Intelligence Summaries and 6 the Fortnightly Intelligence Assessments prepared in 7 respect of Northern Ireland affairs for a month before 8 and a month after the bombings and are confident from 9 the internal researching of these documents that this is 10 a complete set. 11 In summary then, none of the material seen in these 12 documents was assessed to be relevant to this Inquest. 13 In particular, there was nothing in the documents that, 14 first, confirmed or suggested that any State agency had 15 or had received advance notice of the Birmingham pub 16 bombings; or, secondly, confirmed or suggested that any 17 State agency covered up information regarding the pub 18 bombings. On that basis those documents do not fall for 19 disclosure for reasons I have previously explained. 20 The second and important issue so far as disclosure 21 is concerned, and one which bears upon the question of 22 agent/informant is that we have conducted an exhaustive 23 exercise and search for evidence that may bear on that 24 issue to which we will come in due course. Having found 25 no relevant evidence, in our view that aspect of your</p> <p style="text-align: center;">Page 15</p>
<p>1 dating from May 1974 in which it was proposed that the 2 Joint Intelligence Committee should have regular reviews 3 of affairs relating to Northern Ireland at about monthly 4 intervals. Other documents in the same file suggest 5 that regular reviews of affairs in Northern Ireland were 6 subsequently introduced and were held every two months. 7 The basis for saying this is that the file contains 8 minutes of JIC discussions on Northern Ireland affairs 9 held on 21 November 1974 and 23 January 1975, and then 10 minutes on this topic from March 1975, May 1975 and July 11 1975. 12 From the existence of these documents, we have 13 concluded that they might have seen, or we have might 14 have seen, all of the JIC minutes concerning 15 Northern Ireland affairs from the period requested. 16 However, it is not possible to state this definitively 17 on the material provided for review. 18 Turning to the Northern Ireland Current Intelligence 19 Group, the Government have located one document 20 concerning this group, this being a report of a meeting 21 held on 26 November 1974, and this is the only such 22 document that we have reviewed. We have concluded that 23 we have not seen all of the material from this group 24 from the period requested. The basis for saying this is 25 that the same document from May 1974 to which reference</p> <p style="text-align: center;">Page 14</p>	<p>1 investigation has been properly and lawfully conducted. 2 I will go into the detail of that as and when that issue 3 arises. 4 The result of that, as I would like to indicate 5 clearly from the outset, is that there is in our view no 6 credible evidence to support the view that the UK State, 7 through an agent or informant, colluded in any way in 8 the Birmingham bombings. In our view it is therefore 9 unnecessary for you to continue any investigation of 10 those issues with a view to reviewing or disclosing 11 further documentary evidence or adducing documentary or 12 witness evidence at the Inquest itself. The negative 13 has already been proven. 14 However, given the importance of this inquest to the 15 families, you will want to give careful consideration to 16 any requests that they advance to you today or on 17 another occasion to call some witness evidence on this 18 issue in order to allay unjustified suspicion of 19 deliberate wrongdoing. This would amount to an exercise 20 of practical justice, as the case of Lepage has 21 indicated may be appropriate in certain cases, rather 22 than strictly the fulfilment of your legal duty. But 23 I would emphasise that is a matter of discretion and not 24 obligation. 25 Finally, in the submissions of Ms Patrick and</p> <p style="text-align: center;">Page 16</p>

<p>1 Ms Williams, the question of whether a public inquiry 2 may be appropriate arises. I will just deal with this 3 briefly on the understanding that it is not, at this 4 stage at least as I understand it, being pressed firmly. 5 As I have explained, we have endeavoured to ensure 6 that any relevant sensitive evidence has been disclosed 7 to all of the interested persons or that a gist of that 8 evidence or relevant components of that evidence has 9 been provided. 10 Inquests of course, unlike public inquiries, must be 11 conducted in public. Therefore, were the situation to 12 arise following an application process, a PI application 13 process, that you were to rule that relevant sensitive 14 evidence should be withheld from use in the inquest, 15 then you would need to go on to consider whether, in the 16 absence of that evidence, you remained able to fulfil 17 your statutory obligation to investigate how the victims 18 of the bombings died. It is of course not possible in 19 the abstract to say what the outcome of such 20 consideration might be and you would no doubt want to 21 listen carefully to submissions from your own counsel 22 and from those who are in the room today before making 23 such a decision. 24 It may be possible, and lawful, for you to complete 25 the inquest in the absence of such evidence. Such</p> <p style="text-align: center;">Page 17</p>	<p>1 as -- I hope you have already appreciated but in light 2 of what Mr Skelton has said, I want to emphasise it -- 3 it is of course not a question of distrust. In fact 4 quite the reverse: the thrust of our submissions is that 5 there should be a greater judicial role for yourself 6 than has taken place so far, for reasons that I will 7 come on to elaborate, because of the balance that needs 8 to be struck in our submission between claims that 9 material should not be disclosed because it is 10 sensitive, and competing considerations that the public 11 interest points towards disclosure. 12 That is a judicial task, to evaluate that balance, 13 and we would like, Sir -- as I say for reasons that 14 I will elaborate -- for you to do rather more of that in 15 relation to this inquest. 16 I don't want to take matters out of turn, I will 17 come back to that, but I wanted to emphasise at the 18 beginning that it is most certainly not a matter of 19 trust; it is a question of process. 20 Listening to my learned friend Mr Skelton's 21 submissions, it appears that he and his team take 22 a different view of the applicable process to the view 23 that we take, and obviously it will be a matter for you, 24 Sir, as to which you consider appropriate, and I will 25 take you very shortly to those relevant authorities.</p> <p style="text-align: center;">Page 19</p>
<p>1 a course occurred during the course of the inquests into 2 the 7/7 London Bombings in which the coroner was Lady 3 Justice Hallett; or it may not be possible for you to do 4 so as occurred during the course of the inquest into the 5 death of Alexander Litvinyenko, in which the coroner, 6 Sir Robert Owen, ultimately requested that the 7 Government convert the inquest into a public inquiry. 8 In the latter circumstances, you would need to 9 consider carefully whether to write to the 10 Home Secretary to request that he order a public 11 inquiry; it of course not being within your powers to 12 direct that such an inquiry take place. 13 But, just to be absolutely clear, there is no 14 justification in our view for such a request to be made 15 at the present time given what I have previously said 16 about the disclosure process. 17 Sir, that is all I propose to say in respect of 18 disclosure at present, unless I can assist you further. 19 THE CORONER: Yes. Thank you. 20 Submissions by MS WILLIAMS re disclosure 21 MS WILLIAMS: Good morning, Sir. I did agree in advance of 22 the start today that I would go first on this issue, 23 rather than my learned friend Mr Morgan. 24 THE CORONER: I agree. 25 MS WILLIAMS: May I say, at the outset, it is of course</p> <p style="text-align: center;">Page 18</p>	<p>1 Before doing so, Sir, I'm sure you will recognise -- 2 and you may think it hardly even needs saying -- that 3 this is a inquest that bereaved families have waited 4 a very long time for, where there are very serious 5 concerns about potentially grave matters that have been 6 the subject of long-standing conjecture and rumour and 7 where there was such a serious loss of life. It is of 8 course tremendously important in those circumstances to 9 those we represent -- and I venture to suggest the other 10 bereaved families as well -- that there is a proper and 11 transparent process for disclosure that can be clearly 12 understood. I hope it will be understood that the 13 submissions we make are made in that context and with 14 that imperative very much underlying them. 15 Sir, it seems respectfully to me a helpful place to 16 start to identify in relation to sensitivity in 17 materials what we say the proper process should be. 18 I am going to come on subsequently, Sir, to the question 19 of redaction that has taken place in this particular 20 exercise. 21 THE CORONER: Yes. If you can identify how you say the 22 process should be different from what Mr Skelton, and 23 I think I, have endorsed so far it should be, that will 24 be helpful. 25 MS WILLIAMS: I will do so. The easiest way to do that,</p> <p style="text-align: center;">Page 20</p>

<p>1 Sir, is if I can take you first to a small bundle of 2 authorities that I have a copy of. 3 THE CORONER: Yes. 4 MS WILLIAMS: If I can take you first to the Al Rawi case 5 which is at tab 2, because there is a helpful summary of 6 the PII process by Lord Clarke in that case, 7 paragraph 140 onwards. 8 If you have the appeal cases report it is at 9 page 605. 10 THE CORONER: Yes. 11 MS WILLIAMS: You will see there is a subheading "PII 12 principles". While the totality of paragraphs 140 to 13 146 is relevant, the stages are neatly encapsulated in 14 our submission at page 145. If I can ask you to go to 15 that, please, Sir. 16 THE CORONER: You do accept that the test of relevance comes 17 first? 18 MS WILLIAMS: Yes, of course, Sir. 19 THE CORONER: Yes. 20 MS WILLIAMS: Paragraph 145: 21 "I would accept the submission made by Ms Rose that 22 the following principles correctly state the approach to 23 PII as it stood until now. 24 "1. The claim for PII must be supported by 25 a certificate signed by the appropriate minister.</p> <p style="text-align: center;">Page 21</p>	<p>1 THE CORONER: -- that must be read into that. 2 MS WILLIAMS: Of course, yes. Sir, I'm quite happy for 3 there to be, as it were, inserted before the first stage 4 listed here that the document must be relevant, because 5 obviously it doesn't fall for disclosure but I think in 6 a sense that is encompassed here within stage 2, because 7 in the context of a civil claim it refers to a document 8 that would otherwise be disclosable under the disclosure 9 rules in the Civil Procedure Rules. 10 THE CORONER: (v) reads: 11 "Even where a complete document cannot be disclosed 12 ..." 13 MS WILLIAMS: "...it may be possible to produce relevant 14 extracts or to summarise the relevant effect of the 15 material." 16 The latter in other words being the gisting -- 17 THE CORONER: Yes. 18 MS WILLIAMS: "6. If the public interest in withholding the 19 evidence does not outweigh the public interest in the 20 administration of justice, the document must be 21 disclosed, unless the party who has possession of the 22 document concedes the issue to which it relates." 23 So, Sir, our submission is that if the document is 24 relevant -- and I'm going to come back to relevance in 25 the context of this inquest -- but if the document is</p> <p style="text-align: center;">Page 23</p>
<p>1 ...(Reading to the words)... 2 "2. Disclosure of documents which ought otherwise 3 to be disclosed under the Civil Procedure Rules may only 4 be refused if the court concludes that the public 5 interest which demands that the evidence be withheld 6 outweighs the public interest and the administration the 7 justice." 8 Stage 3 says the Court may inspect the documents. 9 Stage 4: 10 "In making its decision, the Court should consider 11 what safeguards maybe imposed to permit the disclosure 12 of the material. These might include, for example, 13 holding part of the hearing in camera, requiring express 14 undertakings of confidentiality from those to whom 15 documents are disclosed, restricting the number of 16 copies of a document that could be taken or the 17 circumstances in which documents could be inspected, or 18 requiring a unique numbering of any copy of a sensitive 19 document. 20 "5. Even where a complete document cannot be 21 disclosed, it may be possible to produce relevant 22 extracts or to summarise ..." 23 THE CORONER: So "even where a complete document", that is 24 a complete document containing relevant material -- 25 MS WILLIAMS: Yes.</p> <p style="text-align: center;">Page 22</p>	<p>1 relevant -- which we accept, Sir, in the context of an 2 inquest is a matter for you -- then you, the coroner, 3 conduct the balancing exercise that is referred to at 4 stage 2, namely assessing whether the public interest 5 comes down on the side of withholding the material or 6 disclosing it. 7 If, and only if, you take the view that the public 8 interest balance indicates that the full document cannot 9 be disclosed, does one get into the territory of 10 redaction or gisting, as is contemplated at stage 5. 11 THE CORONER: Yes. 12 MS WILLIAMS: That is an important -- 13 THE CORONER: But that is no different to what Mr Skelton 14 said, is it? 15 MS WILLIAMS: Respectfully Sir, it does appear to be. Both 16 in terms of how you described it and in terms of, best 17 as we can tell, what happened in practice. Because what 18 appears to have happened, as he said this morning, is 19 that where a body from whom documents have been sought 20 says that a document or a part of a document is 21 sensitive, he said "we [that is CLT] must assess if the 22 sensitive material is relevant, if it is not, no reason 23 to disclose." 24 Fair enough -- 25 THE CORONER: I don't think he said that in quite those</p> <p style="text-align: center;">Page 24</p>

6 (Pages 21 to 24)

1 terms.  
 2 MS WILLIAMS: No, I have written down a shorthand. But we  
 3 are all agreed that if it is not relevant there is no  
 4 need to disclose it.  
 5 THE CORONER: Yes.  
 6 MS WILLIAMS: He went on to say: if the sensitive material  
 7 is relevant then his team would have a discussion with  
 8 the document holder to understand the sensitivity and  
 9 then whether that can be overcome by gisting, or other  
 10 steps.  
 11 THE CORONER: Yes.  
 12 MS WILLIAMS: Then he went on to say if that didn't work  
 13 then the matter would be referred to yourself.  
 14 That, Sir, we respectfully suggest is where the  
 15 error lies in the process adopted. It gives an undue  
 16 prominence to the claim of sensitivity made by the State  
 17 body in question. Because Mr Skelton and his team take  
 18 as their starting point the claim of sensitivity that  
 19 has been made, and then discuss whether the objection of  
 20 the particular State body can be met by steps that will  
 21 have the effect of restricting disclosure, such as, as  
 22 I say, redaction or gisting.  
 23 That stage should not arise until you, the judge or  
 24 coroner in the process, has decided where the public  
 25 interest balance lies, because in making the public

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1 interest balance, you, the coroner, may decide that the  
 2 material should be disclosed.  
 3 THE CORONER: So where does (v) say that the judge has to  
 4 consider the public interest balancing test?  
 5 MS WILLIAMS: That comes in at (ii), Sir. That is my point:  
 6 it should come in several stages before one gets to  
 7 gisting.  
 8 THE CORONER: That's if there is a PII hearing.  
 9 MS WILLIAMS: Yes. But if the document is relevant -- the  
 10 stage, Sir, we say is if the document is relevant there  
 11 should be a claim of PII and a PII hearing.  
 12 THE CORONER: But there has been no document in which any  
 13 document holder has been invited to make such an  
 14 application.  
 15 MS WILLIAMS: But that is because, Sir, of the informal  
 16 process that has taken place instead as a substitute.  
 17 You, Sir, asked Mr Skelton whether there was any --  
 18 THE CORONER: No, no, surely the process is that I consider  
 19 whether a document is material, is relevant. If it is  
 20 relevant, then I must seek to disclose it.  
 21 MS WILLIAMS: Yes.  
 22 THE CORONER: It is only at that stage that the document  
 23 holder will be invited to consider making a PII  
 24 application.  
 25 MS WILLIAMS: Indeed, Sir. Not from here.

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1 THE CORONER: But that has not happened.  
 2 MS WILLIAMS: Because --  
 3 THE CORONER: There has been no document which I have seen  
 4 or I have been informed of by my legal team, which has  
 5 been relevant and which has required a PII hearing to  
 6 take place because I have not felt able to disclose it.  
 7 MS WILLIAMS: But, Sir, you have not been troubled in that  
 8 way. Not because claims of sensitivity have not been  
 9 made, but when they have been made, your team has  
 10 addressed them in informal discussions with the relevant  
 11 State body and, for example, in relation to gisting an  
 12 agreed form of words --  
 13 THE CORONER: Well, they have reviewed the document to see  
 14 whether it is relevant.  
 15 If it is not relevant and I am informed it is not  
 16 relevant and I accept that from the detail which I have  
 17 seen for myself and I am informed about, then there is  
 18 no need for a PII process, informal or formal. There  
 19 shouldn't be an informal PII process, and I have not  
 20 conducted one.  
 21 MS WILLIAMS: Mr Skelton, Sir, himself said in answering  
 22 your question a few minutes ago when you asked him  
 23 whether it was the case that there were relevant  
 24 documents that had not been disclosed, he said there  
 25 hadn't but qualified that by reference to the process of

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1 gisting. It is, in our submission, clear that gisting  
 2 has taken place as a substitute for the disclosure of  
 3 relevant documents.  
 4 State bodies also have been permitted without, it  
 5 appears, consideration by you, Sir, and without an  
 6 opportunity for the other IPs to make submissions, to  
 7 rely on neither confirm nor deny which is a species of  
 8 PII.  
 9 THE CORONER: That has not concealed anything that is  
 10 relevant.  
 11 MS WILLIAMS: Sir, I had hoped to deal with the law first  
 12 and then come on to the documents, but I can see that  
 13 you are troubled, so I will park the law and deal with  
 14 that point.  
 15 THE CORONER: I am trying to understand your submission.  
 16 MS WILLIAMS: Sir, I do want to come back to the law.  
 17 THE CORONER: Yes. Do you want to stay with Al Rawi?  
 18 MS WILLIAMS: I want to try to convince you, Sir, that there  
 19 is relevant material that we have not seen or at least  
 20 we have good cause to be concerned that there is  
 21 relevant material we have not seen.  
 22 THE CORONER: Yes.  
 23 MS WILLIAMS: Obviously if we can be reassured that that is  
 24 not the case, all well and good.  
 25 THE CORONER: I would say full stop -- or rather I will put

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<p>1 the full stop at the end of the sentence -- that there                  2 has been no relevant material which has not been                  3 disclosed.                  4 MS WILLIAMS: We give some examples -- I will give some                  5 more -- at paragraph 50 of our written submissions.                  6 Sorry, 32.                  7 THE CORONER: 32.                  8 MS WILLIAMS: I will deal with some of the less fiddly                  9 examples now.                  10 THE CORONER: Yes.                  11 MS WILLIAMS: The first example we give there is in relation                  12 to Operation Castor's reports which are -- particularly                  13 the James Kelly report is -- subject to extensive                  14 redactions. Some -- not all, I accept -- but some of                  15 those redactions are said to be, by way of the text                  16 written on it, not relevant or sensitive.                  17 THE CORONER: Yes.                  18 MS WILLIAMS: They do not simply say "not relevant".                  19 THE CORONER: Yes.                  20 MS WILLIAMS: If they were not relevant, they would say not                  21 relevant.                  22 THE CORONER: But the point is that they are not relevant.                  23 It seems to me that term is perfectly clear. It is                  24 a very familiar expression, not relevant and sensitive.                  25 In the first place, it is not a relevant document</p> <p style="text-align: center;">Page 29</p>	<p>1 submissions for this hearing.                  2 THE CORONER: Fair enough. That is a fair point.                  3 MS WILLIAMS: I have referred at subparagraph (e) of this                  4 paragraph to NCND -- neither confirm nor deny -- being                  5 clarified in those Operation Castor reports in relation                  6 to both Mr Kelly and Mr Littlejohn.                  7 THE CORONER: Yes.                  8 MS WILLIAMS: We will be developing our submissions in                  9 relation to the agent/informants topic in due course,                  10 but at least on the face of it, it seems to us for the                  11 reasons canvassed in that context, that it would be                  12 highly relevant to know whether one or both of those                  13 individuals were informants and if so informants or                  14 agents of whom. It goes both to the forewarning topic                  15 and to the potential involvement of agents or informants                  16 in the bombing.                  17 THE CORONER: I can assure you that there is no relevant                  18 evidence in relation to those two issues. Otherwise it                  19 would have been disclosed or there would have been a PII                  20 hearing. But there is no relevant evidence.                  21 It is quite difficult to prove a negative, of                  22 course, and disclosing a negative is even more                  23 difficult.                  24 MS WILLIAMS: It is, Sir. But if I can take you by way of                  25 example -- it is just one example, I'm conscious of the</p> <p style="text-align: center;">Page 31</p>
<p>1 and therefore you are not required to the disclosure.                  2 But I do disclose it on the voluntary basis and give you                  3 as much as I can. But some of that is sensitive. It                  4 may be personal data, it may be data which protects                  5 somebody who is at risk of harm, but it is sensitive.                  6 So the document in the first place is not relevant, it                  7 has been assessed and reviewed, if not reviewed by me,                  8 and you have had that on the basis of voluntary                  9 disclosure but there are redactions because some of it                  10 is sensitive.                  11 What is the difficulty with that?                  12 MS WILLIAMS: On the face of it, it says not relevant or                  13 sensitive.                  14 THE CORONER: It doesn't. I do not see the word "or"; I see                  15 oblique.                  16 MS WILLIAMS: Oblique normally signifies "or" --                  17 THE CORONER: Well, it doesn't mean that.                  18 MS WILLIAMS: It is useful to have clarified that, then,                  19 Sir.                  20 THE CORONER: You could have asked Mr Skelton that months                  21 ago.                  22 MS WILLIAMS: We could not, Sir, because the Operation                  23 Castor's documents were only disclosed along with                  24 a flood of many other materials in the very short time                  25 we have had to consider those materials and make the</p> <p style="text-align: center;">Page 30</p>	<p>1 time, I don't want to take up lots of time --                  2 THE CORONER: You are being very helpful, Ms Williams. You                  3 must excuse my interjections --                  4 MS WILLIAMS: No, it is very helpful to know your line of                  5 thought, Sir.                  6 But if one goes to the Operation Castor's report in                  7 relation to Mr Littlejohn, which I think is tab 11 of                  8 the documents bundle we have for this hearing.                  9 THE CORONER: Yes. And I would like to come back to your                  10 paragraph 32 if I may.                  11 MS WILLIAMS: Yes, I'm intending to. If I may just find                  12 a reference.                  13 THE CORONER: Please do.                  14 MS WILLIAMS: Page 15 of the report, Sir, I do apologise for                  15 the delay.                  16 THE CORONER: Not at all.                  17 MS WILLIAMS: This is about the extent to which                  18 Mr Littlejohn did or did not have a relationship with                  19 Special Branch in 1972, which of course may then have a                  20 forward significance for events of 1974.                  21 THE CORONER: That is public knowledge.                  22 MR MORGAN: Yes.                  23 THE CORONER: I think the Ministry of Defence put out                  24 a press statement.                  25 MS WILLIAMS: Be that as it may, Sir, if you look at the</p> <p style="text-align: center;">Page 32</p>



<p>1 last paragraph on that page before the redactions --                  2 THE CORONER: Yes.                  3 MS WILLIAMS: -- it says in terms:                  4 "There are documents in Littlejohn's Criminal                  5 Records Office file which show that Special Branch has                  6 an interest in Littlejohn."                  7 And then redactions, redactions, redactions. On the                  8 face of it, that might be relevant material.                  9 THE CORONER: It might be.                  10 MS WILLIAMS: It might be.                  11 THE CORONER: It has been considered and it is not.                  12 MS WILLIAMS: Equally, page 21, Sir.                  13 THE CORONER: I can tell you, these things have been looked                  14 at and reviewed very carefully.                  15 21?                  16 MS WILLIAMS: Sorry, 17. Again, it is just another example,                  17 Sir, but it is the reference to the first paragraph                  18 under the heading 3.2, "Police Surveillance Operations".                  19 Second sentence:                  20 "The records show that on the evening of 21 November                  21 1974, an active manhunt was underway for Littlejohn                  22 involving police ..."                  23 Et cetera, et cetera.                  24 THE CORONER: He was on the run having escaped from a prison                  25 in Dublin.</p> <p style="text-align: center;">Page 33</p>	<p>1 that cannot be disclosed publicly without damage to                  2 national security."                  3 At least on the face of it, that gives the                  4 impression that there are documents which have been                  5 withheld on national security grounds, albeit that is                  6 not then spelt out in her witness statement, which                  7 itself then is a further cause of --                  8 THE CORONER: The witness statement is saying that all                  9 potentially relevant evidence has been reviewed and she                  10 believes that the coroner has not found any relevant                  11 evidence.                  12 MS WILLIAMS: Yes. But even with that, Sir, if one goes to                  13 her witness statement -- I think it is tab 19 in the                  14 bundle, page 4 -- you will see there is a heading on                  15 page 4 "Searches conducted", towards the top of the                  16 page.                  17 Then you will see at (b):                  18 "STI's request of 21 July 2017 regarding named                  19 individuals. Searches were carried out by Cabinet                  20 Office, Northern Ireland Office, Home Office, MI5 and                  21 SIS. In addition, the Foreign and Commonwealth Office                  22 found potentially relevant documentation in the course                  23 of other searches which is being provided to CTI for                  24 review."                  25 Of course I accept that ultimately the test is</p> <p style="text-align: center;">Page 35</p>
<p>1 MS WILLIAMS: No doubt I will be corrected if I'm wrong, but                  2 we don't understand we have had all that documentation,                  3 again we would say relevant to the question of what                  4 Mr Littlejohn was up to and what was known about it on                  5 21 November 1974.                  6 THE CORONER: Yes.                  7 MS WILLIAMS: Coming back to our paragraph 32 --                  8 THE CORONER: Yes. What about (b)?                  9 MS WILLIAMS: Yes, the reference to the terminology used by                  10 Ms Oakley.                  11 THE CORONER: Yes.                  12 MS WILLIAMS: We had cited that -- it may be the quickest                  13 way to look at it -- at paragraph 10 of our submission.                  14 So you go back to page 4, Ms Oakley's covering letter                  15 with her statement says the following. You will see we                  16 set it out in the indented paragraph there. For the                  17 cross-reference, it is the letter at tab 21 of your                  18 document bundle.                  19 She said:                  20 "The enclosed statement provides as much detail                  21 about the searches and their results as it is possible                  22 to disclose publicly without causing damage to national                  23 security.                  24 "You and CTI are already aware of all information                  25 about the searches and results including any information</p> <p style="text-align: center;">Page 34</p>	<p>1 relevant not potentially relevant, but when one sees                  2 that in a statement without any further explanation, and                  3 coupled with the covering letter that refers to                  4 documents that have been withheld on the grounds of                  5 national security, then it is perhaps not surprising                  6 that concerns are raised that it appears that matters                  7 are being withheld in effect on PII grounds.                  8 THE CORONER: Are you suggesting that that suggests material                  9 has been withheld that is relevant?                  10 MS WILLIAMS: That is what it suggests, Sir, yes, in our                  11 submission.                  12 THE CORONER: That is your submission?                  13 MS WILLIAMS: Yes.                  14 THE CORONER: I need to write that down.                  15 Thank you.                  16 MS WILLIAMS: If we then turn to subparagraph (f) in our                  17 paragraph 32 --                  18 THE CORONER: Yes.                  19 MS WILLIAMS: We use the example of the gist concerning                  20 James Kelly that was received relatively recently. That                  21 is to be found at tab 8 of the documents bundle.                  22 Sorry, the James Kelly one is tab 13.                  23 THE CORONER: Yes.                  24 MS WILLIAMS: The first three paragraphs are referring to                  25 the earlier gist which I will return to more broadly</p> <p style="text-align: center;">Page 36</p>

<p>1 about agent/informants, but paragraph 4 onwards deals                  2 with this new gist relating to James Kelly and what are                  3 said to be misidentification issues.                  4 THE CORONER: Yes.                  5 MS WILLIAMS: Firstly then, Sir, paragraph 4, STI's request                  6 is summarised. Then it says at paragraph 5 this:                  7 "West Midlands Police provided a further response to                  8 STI, again together with referenced supporting                  9 documentation. STI has requested that West Midlands                  10 Police review this second quantity of material to                  11 consider sensitivities within it and whether or in what                  12 form the material could be shared with interested                  13 parties."                  14 THE CORONER: Yes. That is irrelevant material which has                  15 been disclosed on the voluntary basis, so far as it can.                  16 MS WILLIAMS: If I can just continue, Sir?                  17 THE CORONER: Yes.                  18 MS WILLIAMS: The document then says:                  19 "Much of the material relating to the Kelly                  20 misidentification issues is sensitive and West Midlands                  21 Police would resist disclosure of it."                  22 THE CORONER: Yes.                  23 MS WILLIAMS: "It is considered the material would require                  24 such heavy redaction as to make the content                  25 unintelligible to the reader, and in order to maximise</p> <p style="text-align: center;">Page 37</p>	<p>1 to whether the C document -- an intelligence log created                  2 in 1974 -- in fact names James Kelly as a senior figure                  3 within the Birmingham IRA. Well, it does name James                  4 Kelly, but whether in fact it was intended to name James                  5 Gavin.                  6 As we have said in our submissions in a different                  7 paragraph, it is in fact particularly concerning that                  8 gisting without enabling us to see the underlying                  9 documents is used where the gist is not only a summary                  10 of a particular set of documents but seeks to draw                  11 a conclusion and inference from those documents, namely                  12 the inference being that the reference to James Kelly                  13 was in fact intended to be James Gavin. And a situation                  14 where plainly not all the information points one way,                  15 because paragraph 7 identifies a piece of information                  16 that tends to point the other way as to whether the                  17 reference was intended to be to James Gavin or not.                  18 We can make no independent evaluation of that. We                  19 can make no submissions on that without seeing the                  20 documents themselves. It is, in our submission,                  21 a highly unsatisfactory process that we only have                  22 a 1.5-page gist to go on in relation to a potentially                  23 important topic at this inquest and at a stage where we                  24 are asked to make submissions as to whether this is                  25 a topic that should or should not be within scope.</p> <p style="text-align: center;">Page 39</p>
<p>1 assistance to interested parties a gist has been                  2 prepared to summarise the relevant points."                  3 Which are then summarised. The essence of it is the                  4 reference to James Kelly, in what has become known as                  5 the C document, is thought to have in fact intended to                  6 be a reference to James Gavin. That is the long and the                  7 short of it.                  8 THE CORONER: That is intended to be helpful. You may not                  9 consider it to be helpful. You are submitting that it                  10 is concealing something, but there is nothing there of                  11 relevance which is being concealed.                  12 What may be redacted or not entered into the gist is                  13 irrelevant material which is provided on the voluntary                  14 basis, but some of which is sensitive for a variety of                  15 reasons. Is that not a proper process?                  16 MS WILLIAMS: Sir, we submit -- and obviously the                  17 submissions are to an extent interlocking and                  18 overlapping although obviously we are coming on to this                  19 in more detail later -- but we submit that the role                  20 played by James Kelly is a relevant topic for this                  21 inquest. If it is a relevant topic for this inquest or                  22 indeed to enable us to make relevant submissions on                  23 whether or not it is a relevant topic for this inquest,                  24 it would be relevant for us to see the documents upon                  25 which this gist is based, because they relate directly</p> <p style="text-align: center;">Page 38</p>	<p>1 If we are right that this is a relevant topic, it is                  2 plain that West Midlands Police has documentation which                  3 relates to this topic because it says so in terms in                  4 this gist.                  5 Similarly the gist even more recently disclosed --                  6 we were not able to address this in our written                  7 submissions because it was only disclosed at                  8 approximately the time, or a few minutes before written                  9 submissions were due to be lodged with your team on                  10 13 December, is the gist relating to the Talk of the                  11 Town which is to be found at tab 8 of the document.                  12 THE CORONER: Yes.                  13 MS WILLIAMS: Again, the first few paragraphs summarise the                  14 request made by STI to West Midlands Police. The third                  15 paragraph says:                  16 "West Midlands Police duly prepared a response which                  17 has been supplied to STI together with referenced                  18 supporting documentation. The request also detailed the                  19 resultant report and supporting material be considered                  20 for proposed redactions regarding any sensitivities with                  21 a view to onward disclosure to all IPs. ...(Reading to                  22 the words)... Much of the material relating to this is                  23 sensitive and West Midlands Police would resist                  24 disclosure of it. It is considered the material would                  25 require such heavy redactions as to make the contents</p> <p style="text-align: center;">Page 40</p>

<p>1 unintelligible and in order to maximise assistance to                  2 interested parties a gist has been prepared and agreed                  3 to summarise the relevant position."                  4 Sir, as you will be aware, the potential                  5 significance of the Talk of the Town topic is                  6 encapsulated in paragraph 4 over the page, insofar as                  7 there is some material to indicate that a report was                  8 made to Queens Road Police Station on the morning of 21                  9 November 1974.                  10 THE CORONER: Yes. It is a forewarning topic.                  11 MS WILLIAMS: It is a forewarning point.                  12 THE CORONER: Yes.                  13 MS WILLIAMS: Again, Sir, on the face of it, we would say                  14 relevant. Certainly in particular at least relevant at                  15 this stage to enable us to make submissions about scope;                  16 although in fact as I understand it we may not need to                  17 say very much about scope because the way Mr Skelton's                  18 team's submissions are worded, it appears that they                  19 accept that this topic is or may be within scope.                  20 If the topic is within scope, then plainly the                  21 documents that relate to it, in our submission, are ones                  22 that are relevant. Therefore, in effect, what is                  23 happening here is that a gist is being used in                  24 substitution for the disclosure of relevant documents.                  25 So, again, coming back to Lord Clarke's summary,</p> <p style="text-align: center;">Page 41</p>	<p>1 relevant. Not relevant either to scope or to the                  2 substantive inquest.                  3 That of course, I stress again, is not in any way to                  4 doubt the good faith of anyone involved in this process.                  5 THE CORONER: You include me, do you, in that process?                  6 MS WILLIAMS: As I said at the beginning, Sir, we would like                  7 to include you rather more in that process.                  8 THE CORONER: Yes. I mean good faith. You are not doubting                  9 my good faith?                  10 MS WILLIAMS: Absolutely not. I believe I began by                  11 emphasising that, Sir, but I am very happy to reiterate                  12 it.                  13 Perhaps it is not for me to speculate, perhaps it is                  14 not relevant, but it does seem perhaps a convenient                  15 process has been adopted at times, rather than one which                  16 has ensured maximum transparency and understanding on                  17 the part of the families' ability to see as much                  18 material as is possible.                  19 Sir, if I can, before going on to the other factual                  20 points made --                  21 THE CORONER: No. Those were helpful illustrations because                  22 they are different.                  23 MS WILLIAMS: Before leaving that topic, may I just make one                  24 other observation. Again, I hope it will be taken in                  25 the spirit in which it is intended but there is</p> <p style="text-align: center;">Page 43</p>
<p>1 stage 5 has been arrived at without any judicial                  2 consideration of where the balance lies between                  3 withholding the documents on the grounds of public                  4 interest or disclosing the documents on the grounds of                  5 openness and public interest, which we say is a key                  6 stage that should have taken place.                  7 The reasons for it are obvious, Sir. Judicial                  8 oversight with a clear test to be applied is the best                  9 safeguard against these matters being dealt with in an                  10 informal way, the best safeguard to show that the tests                  11 have been appropriately applied and the best means of                  12 ensuring transparency and confidence of all involved in                  13 this inquest in the process.                  14 Potentially, as we have alluded to in our                  15 submissions and you kindly have referred to, Sir, if                  16 there is an informal PII process, it may -- doesn't                  17 always but it may -- lead to an opportunity for the IPs                  18 and those representing them to make submissions in                  19 relation to the particular documents, which obviously is                  20 a stage which we don't have where this kind of gisting                  21 takes place.                  22 Those are some examples. There are others, but,                  23 Sir, we simply do not, I am afraid, accept that in all                  24 instances everything where there have been redactions or                  25 gisting or NCND has been applied is material that is not</p> <p style="text-align: center;">Page 42</p>	<p>1 a further allied particular concern where a number of                  2 the examples we have given relate to not just any State                  3 body but to West Midlands Police who are the body who of                  4 course have been the subject -- or officers of that                  5 body -- have been the subject of considerable conjecture                  6 and concern over the years. Plainly, on any view,                  7 officers and past officers of that body are people whose                  8 conduct may come under criticism in relation to the                  9 forewarning topic and/or the agent/informer topic. So                  10 it is particularly important in relation to documents                  11 held by that body that a very clear, fair and                  12 transparent process is adopted and one in which you,                  13 Sir, have maximum judicial oversight.                  14 THE CORONER: Yes.                  15 MS WILLIAMS: Perhaps actually the logical place to go next                  16 is to paragraph 50 of our skeleton. I appreciate you                  17 were less than enthused by our NCND example, Sir, but we                  18 have used that as an example of the kind of competing                  19 considerations that may arise in the public interest,                  20 but those sorts of considerations are relevant as well,                  21 not just to the use of NCND but to claims of sensitivity                  22 in relation to documents and gisting.                  23 We make the point that those who we are concerned to                  24 find out about, or to the extent to which they were                  25 informers or agents of a State body and in particular</p> <p style="text-align: center;">Page 44</p>

<p>1 West Midlands Police, those individuals are dead. There                  2 is no question of the application of NCND or other                  3 public interest principles in order to protect them,                  4 which is the most commonly advanced reason.                  5 THE CORONER: There are others.                  6 MS WILLIAMS: Of course there are, Sir, but that is one we                  7 can dispose of quite rapidly.                  8 THE CORONER: Yes.                  9 MS WILLIAMS: We also make the point that the events                  10 happened such a long time ago that this is not, on the                  11 face of it at least, a situation where one would expect                  12 that there are concerns about particular methodology                  13 being disclosed, which is another frequently aired                  14 concern.                  15 THE CORONER: Yes.                  16 MS WILLIAMS: Thirdly, and you made this point in relation                  17 to Mr Littlejohn, Sir: there has already been                  18 a considerable amount of material in the public domain.                  19 THE CORONER: Yes. Much generated by Mr Littlejohn.                  20 MS WILLIAMS: Yes, of course.                  21 And fourthly and perhaps obviously, but it is                  22 important, it was a point your team made in                  23 correspondence with Ms Oakley and no doubt with other                  24 bodies from whom they sought disclosure, this is an                  25 inquest investigating an extremely grave and important</p> <p style="text-align: center;">Page 45</p>	<p>1 public interest immunity.                  2 THE CORONER: Thank you.                  3 MS WILLIAMS: It may be said in relation to public interest                  4 immunity this is simply another reiteration of the same                  5 points, but we rely on it because it is detailed and                  6 careful review of all the relevant authorities in the                  7 area.                  8 THE CORONER: Yes. He does begin with relevance in                  9 paragraph 72. It is his first point.                  10 MS WILLIAMS: Indeed, Sir. I have already, I hope, conceded                  11 on a number of occasions now that relevance is the first                  12 consideration. We have not suggested otherwise.                  13 THE CORONER: Yes.                  14 MS WILLIAMS: He refers to the Al Rawi articulation of the                  15 principles by Lord Clarke. Then he says below that:                  16 "Immunity from disclosure is an exception when the                  17 public interest in withholding evidence outweighs the                  18 public interest in the due administration of justice."                  19 He then sets out the various stages in a similar                  20 order. They are not numbered but you will see again, if                  21 you turn over the page, that the question of whether an                  22 acceptable gisting of information can be supplied is                  23 a stage that arises after the judge has weighed the                  24 public interest balance --                  25 THE CORONER: Is that in 73?</p> <p style="text-align: center;">Page 47</p>
<p>1 topic.                  2 Just to, as it were, join the dots, we also rely on                  3 the principles of open justice which we have addressed                  4 earlier in our submissions. If I can give you the                  5 reference --                  6 THE CORONER: Give me the paragraphs.                  7 MS WILLIAMS: Paragraphs 22 and 23.                  8 So I appreciate that what is said against us is that                  9 there has not been a withholding of relevant documents,                  10 and I have sought to meet that point. But we do also                  11 make the point, Sir, that if sensitivity has been                  12 claimed over relevant documents then there plainly are                  13 arguments, competing public interest arguments, to be                  14 advanced and to be evaluated in the context of this                  15 inquest.                  16 Returning back to the law, briefly, but just really                  17 to give you the relevant references to the material,                  18 I have effectively taken you to the most important parts                  19 of Al Rawi.                  20 THE CORONER: Yes.                  21 MS WILLIAMS: But if I could also take you to the ruling of                  22 the late Sir Christopher Pitchford in relation to the                  23 Undercover Policing Inquiry at tab 4.                  24 THE CORONER: You have summarised it.                  25 MS WILLIAMS: We have. Paragraph 72 onwards deals with</p> <p style="text-align: center;">Page 46</p>	<p>1 MS WILLIAMS: Yes. And decided whether it comes down in                  2 favour of non-disclosure. Of course, if it comes down                  3 in favour of disclosure then there is no need to gist or                  4 to withhold any of the material.                  5 So effectively we say what has happened here is                  6 a cart before the horse process --                  7 THE CORONER: Yes.                  8 MS WILLIAMS: -- in relation to relevant documents.                  9 THE CORONER: Yes.                  10 MS WILLIAMS: Sir, so far as NCND is concerned, that is                  11 dealt with in detail from paragraph 116 onwards.                  12 At 116 --                  13 THE CORONER: Yes.                  14 MS WILLIAMS: -- the point is made that NCND does not have                  15 a life of its own, it is simply a statement of a refusal                  16 to make a statement one way or the other on public                  17 interest grounds:                  18 "A public interest claim must be justified and if                  19 challenged requires a judicial decision as to whether it                  20 should prevail over any competing public interest in                  21 disclosure."                  22 After that general statement, the paragraphs that we                  23 particularly draw your attention to, Sir, without taking                  24 you laboriously through them all now, is paragraphs 124                  25 to 145, where there is a review in particular of cases</p> <p style="text-align: center;">Page 48</p>

<p>1 and instances where the relevant court or tribunal held 2 that the public interest in disclosure outweighed the 3 claimed NCND. 4 They are, of course, all examples on their own 5 facts. We would not suggest otherwise. But they do 6 underscore that it is balancing process to be undertaken 7 on a case to case basis. It is not the situation, as 8 for example was asserted in the witness statement by 9 Mr McGuinness circulated by your team a few days ago by 10 way, it was said, of explaining -- 11 THE CORONER: Yes, I didn't think that was hugely helpful. 12 MS WILLIAMS: You have the point there then, Sir. It is 13 a balancing process. 14 That is all I need say about the law. We do rely on 15 those further paragraphs in Sir Christopher Pitchford's 16 ruling. I don't need to take you through them 17 specifically now. 18 THE CORONER: Yes. 19 MS WILLIAMS: I have partly dealt with this anyway, but may 20 I briefly deal with the point made by my learned friend 21 Mr Skelton and to an extent by yourself as well, Sir, 22 that we are raising all this rather late in the day. 23 You will appreciate that the Operation Castor's 24 material has come in the last few weeks. The gisting 25 that I have expressed concern about has literally come</p> <p style="text-align: center;">Page 49</p>	<p>1 October -- it was anticipated then that there would be 2 a PIR about PII, and we had thought we would be 3 ventilating such matters then. 4 Sir, perhaps I can just refer you to the passage in 5 our submissions without taking up a great deal of time 6 on it, but in relation to the original gist from West 7 Midlands Police relating to agents and informers, we 8 dealt with that at paragraph 43. 9 THE CORONER: Yes. 10 MS WILLIAMS: I am conscious of time, Sir, but before I sit 11 down -- and subject of course to anything else I can 12 assist with -- may I also emphasise that there were twin 13 concerns that we expressed. 14 The first concern is the one that I have been 15 dealing with thus far and endeavouring to respond to the 16 points made by Mr Skelton. The second concern related 17 to the redactions process that has been adopted so far. 18 THE CORONER: Yes. 19 MS WILLIAMS: There are some references in other paragraphs, 20 but in essence our concerns are to be found at 21 paragraphs 34 to 36. 22 THE CORONER: Of? 23 MS WILLIAMS: Of our written submissions. 24 THE CORONER: Yes. 25 MS WILLIAMS: There are in essence six points if I can just</p> <p style="text-align: center;">Page 51</p>
<p>1 in the last few days, in a situation where we were 2 already part the way through drafting submissions, given 3 the deadline for submitting them. 4 It is, in our submission, unfair -- or would be 5 unfair -- to criticise us in these circumstances where 6 we have rightly or wrongly, that will be a matter for 7 you, Sir, but we have in our submission politely and 8 appropriately set out our concerns so that they can be 9 addressed in the course of a document that we were 10 already inevitably in the process of writing, and it 11 seemed to us to be the right way to raise it. 12 It can be raised clearly and transparently and 13 either it will be accepted that there is force in our 14 concerns or you can, Sir, make clear that they are 15 unfounded. In our submission, that was by way far the 16 better way to do it than simply by having some informal 17 conversation with your team. 18 So in our respectful submission, whether or not it 19 is the same course that everyone else would have taken, 20 it is a perfectly reasonable course to have taken. 21 Indeed, to set out our concerns in detail in writing was 22 of course to express them but also intended to be 23 helpful so that there would be a clear record of them. 24 It will, of course, be appreciated, until quite 25 recently -- and in particular at the last PIR in late</p> <p style="text-align: center;">Page 50</p>	<p>1 articulate them very quickly but without going to the 2 examples there. 3 THE CORONER: Yes. 4 MS WILLIAMS: Firstly, in paragraph 34: some disclosed 5 documents, and therefore presumably disclosed because 6 they are thought to be relevant, are redacted so 7 extensively it is impossible to analyse them in any 8 meaningful way at all. We have given three examples in 9 paragraph 34, albeit there are a significant number of 10 others. 11 Secondly, there are quite a lot of instances over 12 the tranches of documentary disclosure where there 13 simply are redactions with no explanations given. They 14 don't all bear "not relevant/sensitive"; or indeed we 15 have just seen very recently in relation to tranche 44, 16 which is the most recent tranche disclosed on 5 17 December -- I think it is the most recent tranche -- the 18 adoption of a key with seven reasons given, but there is 19 no equivalent to that in relation to any of the earlier 20 43 tranches, so it is unclear in a lot of instances why 21 redactions have been made. Some of them are said to be 22 on the grounds of sensitivity where reasons are given. 23 Fourthly, and we make this point in paragraph 35 24 under the example -- I won't take up time going through 25 it but it is, in our submission, a pertinent example --</p> <p style="text-align: center;">Page 52</p>

<p>1 redactions are not applied consistently even in relation 2 to information that might be thought to be at the heart 3 of topics currently under consideration. 4 That in turn, when we see redactions applied 5 inconsistently, leads to our fifth concern expressed at 6 the bottom of paragraph 35 that sensitivity has been 7 applied too readily as a basis for redaction. 8 Then, sixthly, we make the point in paragraph 36 9 that whilst ciphers -- so calling someone witness B or 10 witness O as the case may be -- have been employed in 11 some instances; in other instances they simply have not 12 been for reasons that are unclear to us. It would have 13 been very helpful if they had been, because then one can 14 at least trace through whether a particular document 15 refers to the same person even whether they are only 16 called witness AA, or however they are denoted, as 17 another document. 18 Those in essence, Sir, are the six concerns that we 19 have raised. They do inhibit our ability to make full 20 submissions on scope, albeit we have endeavoured to do 21 so in the documents and will endeavour today to assist 22 as much as possible in relation to those matters. 23 In relation to this second topic that relates to 24 disclosure, if it is said it should have been raised 25 earlier, the short answer is it was raised at the last</p> <p style="text-align: center;">Page 53</p>	<p>1 we were not calling for a public inquiry at this stage; 2 we were simply saying the position was unclear. 3 THE CORONER: You do refer to it. 4 MS WILLIAMS: Simply in that context. 5 THE CORONER: I think he was simply making submissions 6 en passant. 7 MS WILLIAMS: I understand. 8 THE CORONER: Thank you very much, Ms Williams. 9 MR SKELTON: Sir, for the sake of the stenographer, I may 10 suggest a short break. 11 THE CORONER: If she would like it, then she will have it. 12 But it will be short. It will be ten minutes. 13 (11.53 am) 14 (A short break) 15 (12.03 pm) 16 Submissions by MR MORGAN on behalf of the families 17 represented by KRW LAW re disclosure 18 THE CORONER: Yes, Mr Morgan. 19 MR MORGAN: Yes, Sir. As you may be aware, I will be 20 addressing you on behalf of the families in the Inquest 21 represented by KRW. 22 THE CORONER: Are you from KRW or instructed by them? 23 MR MORGAN: I am instructed by KRW. 24 In summary, Sir, on behalf of the families we would 25 invite the Coroner to give consideration to</p> <p style="text-align: center;">Page 55</p>
<p>1 PIR by both counsel teams for the families. 2 I understand -- it is in the transcript -- it was said 3 by Mr Skelton on that occasion that efforts would be 4 made to provide explanations of the basis for 5 redactions. We have cited part of the passage at the 6 end of our citation in our paragraph 5 of our 7 submission. 8 Whilst we don't underestimate the scale of the task 9 that your team has, albeit that of course may be reason 10 in itself to reconsider the timetable -- a topic no 11 doubt we will be coming on to later -- but it is not the 12 case in many instances so far that the basis upon which 13 redactions have been made has been explained despite 14 requests having been made to that effect. 15 Sir, Mr Skelton also made a number of points about, 16 or summarised the situation, in relation to whether the 17 agent/informer position should be in scope. But since 18 that is a separate agenda topic, I take it I should 19 address you on that in due course. 20 THE CORONER: I think that would be more helpful. 21 MS WILLIAMS: May I just check with my team whether there is 22 anything else? 23 Ms Patrick just reminds me that in relation to the 24 third of the discrete points that Mr Skelton made at the 25 end of his submissions, for the avoidance of any doubt</p> <p style="text-align: center;">Page 54</p>	<p>1 a retimetabling of the Inquest. 2 THE CORONER: Yes. Is this linked with disclosure? 3 MR MORGAN: Well -- 4 THE CORONER: In a sense, I know these things are 5 interlinked -- 6 MR MORGAN: Yes. 7 THE CORONER: -- and Ms William made the submission towards 8 the end of her submissions that all of the matters which 9 she had raised inhibit her ability and her team's 10 ability to make submissions as to scope, so there is, 11 obviously, some link. 12 But I would quite like to slightly compartmentalise 13 disclosure, then forewarning and then agent and 14 informant, and then see where we are at the end of that 15 in relation to timetabling. Is that convenient to you? 16 MR MORGAN: Yes, Sir. 17 The two issues are inextricably linked, we say, and 18 they impact on each other in terms of managing the 19 practical process. But I will come back to that, Sir, 20 in due course, if I may be permitted to address you on 21 that. 22 THE CORONER: Yes. 23 MR MORGAN: The context as to where we are now is, in 24 outline, there is, one, uncertainty on the part of the 25 families as to the application and usage of PII</p> <p style="text-align: center;">Page 56</p>

<p>1 procedures in relation to discovery, specifically as to                  2 the operation of the process for identifying relevance                  3 in relation to specific documents; the usage of the                  4 gisting process; the operation of what in one place is                  5 referred to as provisional redactions, implying,                  6 therefore, that this is to some degree a temporary                  7 process or classification; and provision and review of                  8 documentation in general, that will also include the use                  9 of labelling of inserts and the use of ciphers for                  10 specific individuals and witnesses.                  11 Second, there is a lack of clarity and understanding                  12 on the part of the families, and to be frank their legal                  13 representatives, as to how the PII process has been                  14 arrived at, specifically based on what we understand                  15 this morning, which is that there is no PII process as                  16 such. That lack of understanding applies to the                  17 insertion, motivation behind and usage of redaction of                  18 documentation in the discovery process.                  19 So the first matter that we would invite                  20 clarification on -- and I think we received it this                  21 morning to some extent -- is our understanding is that                  22 there is no PII process. That comes as a surprise, Sir,                  23 because we had understood that this had previously been                  24 listed to be addressed at a PIR in November.                  25 We don't understand why that PIR did not take place,</p> <p style="text-align: center;">Page 57</p>	<p>1 procedures that have been gone through and some of the                  2 outcomes and conclusions drawn on the issue of PII. We                  3 are very grateful for that provision of summary                  4 information, but respectfully, Sir, we would like to                  5 understand in more detail the issue of PII.                  6 If the families are to have confidence in the                  7 process of the inquest and the outcomes, this is                  8 a pivotal point. Without discovery -- without all the                  9 documentation -- the Coroner and the jury are put in                  10 a compromised position. They can't deal with the issues                  11 in the way in which their responsibilities require, and                  12 by definition the process is compromised.                  13 For that reason, we say that we need to take steps                  14 at this time, now that we have a significant body of                  15 documentation, and we hope we have foreseeability on the                  16 further documentation to come, that all steps are taken                  17 and seen to be taken so that there is no omission of                  18 relevant documentation or relevant information within                  19 such documentation.                  20 Because -- and this is my understanding and I am                  21 subject to correction on this -- because I am only                  22 really understanding or beginning to understand the PII,                  23 the application of the PI process in this inquest this                  24 morning, I wonder if this is an issue that would benefit                  25 from further written clarification and further written</p> <p style="text-align: center;">Page 59</p>
<p>1 and we did not understand specific reasons as to why it                  2 was no longer necessary to deal with PII on that                  3 occasion. We respectfully invite full clarification                  4 from you, Sir, as to the context for those issues and                  5 the position on PII.                  6 In our view, it appears that a PII application                  7 appears necessary at this time. There are views and                  8 doubts -- and I deliberately categorise them                  9 separately -- as to the process in which certain                  10 documentation has been dealt with. I must emphasise                  11 that the thrust of my submissions today is a focus on                  12 the procedure.                  13 We have tens of thousands of pages of documentation.                  14 It is accepted, I think on all sides, that the process                  15 of identification of documentation, classification of                  16 documentation and consideration of such documentation is                  17 a complex and demanding task, but it will be accepted                  18 that the process of discovery is absolutely fundamental                  19 to several aspects of the operation of this inquest and                  20 there has to be understanding, clarity and transparency                  21 that the volume, complexity and provision of                  22 documentation has been dealt with in the manner                  23 required, particularly for an inquest that raises issues                  24 which are frankly of the very highest consideration.                  25 We are learning this morning about some of the</p> <p style="text-align: center;">Page 58</p>	<p>1 submissions from the interested parties.                  2 In that respect, I would invite you, Sir, to grant                  3 us the ability to address you in writing on the PII                  4 issue based on the information that we have understood                  5 this morning. It may be this can be done relatively                  6 expeditiously and we could deal with it on 17 January to                  7 avoid any delay. It is clear that the jurisprudence and                  8 rules in this area are not straightforward and, as ever,                  9 applying rules to factual circumstances by individuals                  10 on the ground can be challenging, and I think we need                  11 clarity on this central point.                  12 As has been put already, the decision as to PII is                  13 of course ultimately a matter for you, Sir -- a point                  14 made clear by the Supreme Court in Al Rawi -- but we                  15 need to have confidence, frankly, that the entirety of                  16 the legal process has been gone through to ensure that                  17 no inadvertent errors as to identification,                  18 classification, redaction or gisting has taken place.                  19 Specifically, the issues that we would present as                  20 being ones that require addressing are, as I have                  21 stated: number 1, the context for what we understood,                  22 rightly or wrongly, the issue of PII to be dealt with at                  23 a PIR in November was not pursued.                  24 Second, we wish to understand the general process                  25 and procedures in the context of PII in this inquest.</p> <p style="text-align: center;">Page 60</p>

<p>1 Third, we would like to understand the meaning 2 behind and the process for the provisional redactions of 3 elements of documentation and, of course, the 4 justification of such approach. 5 If we are to understand and use the discovery in the 6 way that is intended, we need to have clarity on the 7 provisional redaction process and also the reasons for 8 those redactions. Ms Williams has already referred to 9 this, but in places we have inserts in the normal way, 10 as one would expect, but increasingly we are now coming 11 across documentation that does not provide those 12 explanatory inserts. 13 This undermines the legal representatives' ability 14 to put all this information together and pull it 15 together into a narrative for the jury. Clearly, given 16 the volume of documentation in this case, the complexity 17 of documentation, making our submissions be understood 18 by the jury is a point of fundamental importance: we 19 need to take them through the chronology, take them 20 through the narrative and help them understand how this 21 all falls together. Inherently there are challenges in 22 that process given the passage of time and the 23 underlying issues, but we feel that the approach taken 24 to some of the documentation undermines our ability to 25 do that effectively.</p> <p style="text-align: center;">Page 61</p>	<p>1 interested in are the issues -- the Holy Trinity -- of 2 forewarning, informant/agent, and was the process of 3 investigation compromised? 4 I, of course, leave to one side the issue of 5 perpetrators, Sir. 6 Now those considerations -- 7 THE CORONER: I heard silently that it was on your list. 8 MR MORGAN: Yes. Those concerns are touched upon by the 9 specific issue of PII. These are the priorities for the 10 families that we represent, and they and we believe that 11 this specific information and the information that would 12 likely be touched upon by the PII processes are 13 absolutely fundamental to the outcome of this inquest. 14 There are many issues that would have to be 15 addressed, but the men and women that we speak with say 16 this is what they are most interested in. That's why 17 transparency, clarity, and confidence in that process is 18 of paramount importance. 19 If, through the normal complexities of this type of 20 process, we drift through this and start the inquest 21 without these issues being properly addressed, there is 22 a concern that this will have a fatal impact upon the 23 consideration of specific issues of importance to the 24 families. 25 Turning now to the issue of the volume and</p> <p style="text-align: center;">Page 63</p>
<p>1 Sir, the point being in short if the jury, the 2 families and the public are to understand really what is 3 going on, we need more work. Because at the moment it 4 is proving to be a challenging process for the legal 5 representatives because of the way in which we say -- 6 and I say this without any intention of being pointed, 7 it is the general process of discovery and the inherent 8 challenges of that -- in general because of the volume, 9 complexity, the nature of the documentation, but also 10 because of this process of provisional redactions. We 11 are not getting the inserts that we feel should be 12 applied, the use of ciphers, sometimes what appears to 13 be the inconsistent use of ciphers. 14 Then the fourth point is the general application of 15 NCND, which I would suggest comes under the subset of 16 PII because it does not occupy any separate, if I may 17 put it, legal jurisdiction, but is thematically linked 18 to the concerns and priorities prompted by the PII. 19 In short, the families and those representing them 20 don't accept that the PII process has been pursued and 21 completed as we expected. This is absolutely 22 fundamental, because while the coroner has rightfully 23 a wide scope of inquiry here, and needs to touch upon, 24 if I may say so, the whole chronology of events before, 25 during and after the bombings, what our clients are most</p> <p style="text-align: center;">Page 62</p>	<p>1 complexity, Sir, of the discovery. I admit this may 2 have some overlapping relevance. I don't have 3 a definitive confirmation as to the number of pages of 4 discovery we have. There are differing reports: some 5 say over 20,000, some say in the region of 40,000, but 6 it is clear that given the volume -- 7 THE CORONER: I have not heard 40,000. I have heard in 8 excess of 22,000. 9 MR MORGAN: I am grateful. 10 Clearly given the volume of information, the 11 complexity of the information, the usage of redaction, 12 provisional redaction, ciphers, the non-complete way in 13 which inserts have been used, this adds to the 14 difficulty of understanding the evidence. 15 This is an issue for, I think, all the parties. It 16 is something that this inquest and the jury are going to 17 have to get to grips with. It is important because the 18 families have modestly-sized legal teams and without 19 a proper examination and consideration of the 20 documentation, and where perhaps some of that 21 documentation may lead, the process of the inquest will 22 be undermined. 23 In short, the point is are we having an effective 24 discovery process? I acknowledge that the process is 25 a challenging one. It is a significant burden that is</p> <p style="text-align: center;">Page 64</p>



<p>1 placed on individuals who have to cope with this and                  2 have to make decisions. But we feel that we need to                  3 stop and take stock of this process now to make sure it                  4 is being pursued in the way the context of this inquest                  5 requires it to be.                  6 Those points apply, Sir, also to the anticipated                  7 discovery. We understand that we are going to receive                  8 7,000 pages in addition to what has already been                  9 discovered.                  10 THE CORONER: I don't think that is correct.                  11 MR MORGAN: It may be I have misunderstood that.                  12 THE CORONER: We will come to the numbers. I don't think it                  13 is 7,000 pages.                  14 MR MORGAN: I said "several". I may have misunderstood                  15 that.                  16 THE CORONER: Right.                  17 MR MORGAN: I think the point being whatever comes next --                  18 and we anticipate and hope that information will come                  19 next --                  20 THE CORONER: Yes.                  21 MR MORGAN: -- the existing challenges will remain.                  22 So what we ask for is we have the optimum process at                  23 this time and not later to deal with all of the                  24 discovery and the issues that the discovery generates in                  25 a proper way, and particularly one befitting the</p> <p style="text-align: center;">Page 65</p>	<p>1 satisfactorily address those challenges.                  2 I don't think anyone can be surprised that it takes                  3 an extended period of time to identify, provide,                  4 consider and classify the documentation. We are not                  5 surprised that information has to be provided on an                  6 ongoing basis, and that is almost inevitably                  7 a consequence of a inquest of this nature.                  8 What it does, though, is it creates a burden for                  9 those that represent the families to fully understand                  10 that information so it can be presented to the inquest                  11 and the jury in a way that addresses the central issues                  12 in this inquest for the families.                  13 Moving on, Sir, to the next subtopic which is                  14 omissions in discovery.                  15 THE CORONER: This is not in your written submissions?                  16 MR MORGAN: It is not.                  17 THE CORONER: This is fresh?                  18 MR MORGAN: This is fresh.                  19 THE CORONER: Yes. All of this is fresh?                  20 MR MORGAN: Yes. The submissions focusing on the issues of                  21 forewarning and the agent/informer issue.                  22 THE CORONER: Yes.                  23 MR MORGAN: Sir, there are concerns that the task which this                  24 inquest has been given will be hampered or undermined by                  25 the omission of provision of specific categories of</p> <p style="text-align: center;">Page 67</p>
<p>1 seriousness of the theme and the specific issues arising                  2 in this inquest.                  3 In short, the document review process has been                  4 ongoing without cessation on our side for an extended                  5 period of time, but further significant work is required                  6 because of the volume, the complexity, the nature of the                  7 documents; but also because of this issue which has been                  8 ventilated this morning, of steps taken to identify                  9 documents' relevance, issues that we believe need to be                  10 addressed now on the procedure -- and I am sure we will                  11 get clarity on that -- but we need to all understand and                  12 be satisfied that the rules have been applied properly                  13 and that there has been no inadvertent premature                  14 filtering of information, and that all steps -- and by                  15 that I mean the provision of documentation from State                  16 agencies, the review of information once it is handed                  17 over to the Coroner's legal team, the consideration and                  18 then, Sir, your understanding and oversight of that                  19 process -- that all needs to be satisfied.                  20 Clearly this is complex, time-consuming work. But                  21 it filters into the whole validity and integrity of the                  22 process which is demanded by the inquest. I will come                  23 back in more detail to our point that in light of all of                  24 these issues the families we represent and their legal                  25 representatives feel they need more time to</p> <p style="text-align: center;">Page 66</p>	<p>1 documentation and specific documentation.                  2 It may be that it will be more helpful to you that                  3 I should prepare written submissions on the specifics so                  4 that these issues can be considered fully. However, at                  5 this time we would say there are perhaps seven                  6 categories of documentation or seven specific examples                  7 of documentation that we would have expected to have                  8 seen and we believe are necessary to the work of the                  9 inquest.                  10 Number 1. I have only raised this issue this morning                  11 with Mr Skelton, but I have raised the issue of the                  12 disclosure of the documentation relating to the                  13 Merseyside Police work, and in particular information in                  14 relation to the so-called bomb factory located there.                  15 THE CORONER: That is in your submissions.                  16 MR MORGAN: That is mentioned, yes.                  17 THE CORONER: Yes, it is. What you call the "Liverpool                  18 connection".                  19 MR MORGAN: Correct.                  20 THE CORONER: Yes.                  21 MR MORGAN: That is at paragraphs 60 onwards, Sir.                  22 THE CORONER: Yes.                  23 MR MORGAN: Page 18 onwards.                  24 THE CORONER: Yes, thank you.                  25 MR MORGAN: Specifically, we would like confirmation that</p> <p style="text-align: center;">Page 68</p>

<p>1 the Coroner's legal team have obtained, or are in the                  2 process of obtaining, the stated microfiche records that                  3 the Merseyside Police have in their possession.                  4 Second, this relates to the original Special Branch                  5 documentation that applied at the relevant time. This                  6 is referred to at paragraph 29 of the submissions and                  7 later at paragraph 40, Sir: examples being contact                  8 sheets with sources, agents, informers in and around                  9 Birmingham at the relevant time.                  10 Third, what I may refer to as the Kenneth Littlejohn                  11 papers, to include the Littlejohn Ministry of Defence                  12 papers.                  13 THE CORONER: You refer in your submissions to the                  14 briefcase.                  15 MR MORGAN: Yes.                  16 THE CORONER: The papers in the briefcase.                  17 MR MORGAN: Yes.                  18 THE CORONER: At 50?                  19 MR MORGAN: Yes.                  20 THE CORONER: Are you asking for those?                  21 MR MORGAN: Yes.                  22 THE CORONER: I think you have had them.                  23 MR MORGAN: I will note that point.                  24 We are specifically referring to the Kenneth                  25 Littlejohn Ministry of Defence papers.</p> <p style="text-align: center;">Page 69</p>	<p>1 minutes. What one may refer to as the Cabinet papers --                  2 THE CORONER: The two missing folders.                  3 MR MORGAN: Yes, for the period October to December 1974.                  4 Given the nature of the families' focus in this                  5 issue, which I referred to as that Trinity of concerns                  6 earlier -- was there forewarning, was there an agent                  7 involved before or after, and was the investigation into                  8 those that were responsible for the atrocity compromised                  9 in some way -- we believe that those papers may provide                  10 clarity on those central issues.                  11 THE CORONER: What do you suggest I do?                  12 MR MORGAN: Well, I understand the limitations -- the                  13 practical limitations -- that you are under in this                  14 context, but it goes to the confidence that the families                  15 have in the process.                  16 I understand the limitations but inevitably this                  17 does nothing to quell the rumour which abounds in this                  18 matter that there were higher authorities or higher                  19 agencies above the West Midlands Police who had                  20 information at some point relating to the Birmingham Pub                  21 Bombings in 1974.                  22 THE CORONER: Yes, I do understand that, and that's                  23 a well-made point. It may be that counsel can help                  24 a little bit more about that in due course. But I think                  25 the evidence is that those folders obviously have not</p> <p style="text-align: center;">Page 71</p>
<p>1 THE CORONER: What Ministry of Defence papers?                  2 MR MORGAN: This is referred to at paragraph 26. You will                  3 see there -- this is the top of page 9, Sir --                  4 THE CORONER: The two referred in the Alan Hill book.                  5 MR MORGAN: Yes.                  6 THE CORONER: Are those two in the National Archive?                  7 MR SKELTON: I understand from Mr Hill, who has been to the                  8 National Archive, that they are referred to and                  9 catalogued, but they are in fact retained by the                  10 original department which would be the MOD --                  11 THE CORONER: Yes.                  12 MR SKELTON: -- or the Cabinet Office, who may have ultimate                  13 control over historical papers. But I can clarify that,                  14 if necessary, in writing.                  15 THE CORONER: Yes. And they have been reviewed, have they                  16 not?                  17 MR SKELTON: Yes, Sir.                  18 THE CORONER: For relevance?                  19 MR SKELTON: Yes.                  20 THE CORONER: And whatever is relevant, as I previously                  21 indicated, will have been disclosed.                  22 Yes, thank you.                  23 MR MORGAN: Sir, the fourth point relates to an issue of                  24 heightened concern for the families. That is the two                  25 folders relating to the Joint Intelligence Committee</p> <p style="text-align: center;">Page 70</p>	<p>1 been reviewed because they are not there to be reviewed,                  2 and that they were missing by 2008 -- that's the                  3 evidence at the moment -- and that they relate to                  4 Northern Ireland.                  5 MR MORGAN: Yes.                  6 THE CORONER: That's the evidence at the moment.                  7 MR MORGAN: I wonder if it would help, in terms of                  8 addressing the families' concerns, if we can have                  9 greater clarification and greater disclosure of whatever                  10 is known -- and I acknowledge this may be limited -- but                  11 whatever is known about where the documents were, how                  12 they believe they may have got lost, who was responsible                  13 for safeguarding them, and are other documents lost                  14 around this time?                  15 So do we have the minutes for January to September                  16 1974? Do we have the minutes for January 1975?                  17 THE CORONER: Sorry to interrupt you, Mr Morgan.                  18 Mr Hill, can you help a little bit more about that,                  19 or is that something you could put in writing? I know                  20 we have looked closely at that gap.                  21 MR HILL: We have. We have been informed that there is                  22 material missing. We have been informed of that by HMG,                  23 and the details about it are contained in Ms Oakley's                  24 statement.                  25 THE CORONER: Yes.</p> <p style="text-align: center;">Page 72</p>

<p>1 MR HILL: That is what we have been informed and that has 2 been shared with the interested persons. 3 We have tried to look at various other files which 4 may or may not contain this kind of information. As 5 Mr Skelton said earlier, we had some success in finding 6 some documentation and we have given the parameters of 7 that in Mr Skelton's earlier comments. 8 THE CORONER: Yes, and we could put that in writing. 9 MR HILL: We could put that in writing. 10 THE CORONER: Specifically focused as a separate category, 11 as Mr Morgan puts it, on the two missing folders. 12 MR HILL: We can put what we have seen and indeed what we 13 think we have not seen. 14 THE CORONER: Yes. 15 MR HILL: What we, as your counsel, can't do is provide any 16 further explanation as to how that material was lost and 17 what efforts have been made to find it. That would be 18 a matter for Ms Leek and her clients. 19 Does that assist, Sir? 20 THE CORONER: Yes, thank you. 21 MR MORGAN: Sir, as would be apparent to you, we acknowledge 22 the perhaps quite severe limitations the Coroner's legal 23 team are under in obtaining documentation, but also 24 explanations from individuals that probably had no role 25 whatsoever in managing the documentation. But if steps</p> <p style="text-align: center;">Page 73</p>	<p>1 say, give ourselves something of an out to say "we think 2 we have done all that we can, but of course there may be 3 something", and I think we just need more of an 4 equivocal position on that from the PSNI, given how 5 central to all of this the RUC, as they were at that 6 time, would have been in respect of the activities of 7 the Provisional IRA, provision of information to and 8 from Belfast, the interaction of Special Branch in 9 England with Northern Ireland. 10 Clearly that is a crucial link -- 11 THE CORONER: Yes, but limited to the issues which have been 12 identified. 13 MR MORGAN: Correct. 14 THE CORONER: Yes. 15 MR MORGAN: So I think we can, perhaps, if I may put 16 respectfully, do better on that point. 17 THE CORONER: Six? 18 MR MORGAN: The Talk of the Town informant information. 19 This is referred to at paragraph 60 of our submissions, 20 page 18, Sir. 21 THE CORONER: Thank you. 22 MR MORGAN: I don't want to repeat the points. 23 THE CORONER: No, I have read that. 24 MR MORGAN: Our submissions there. I think you will see 25 that.</p> <p style="text-align: center;">Page 75</p>
<p>1 could be taken to obtain whatever explanation could 2 be -- 3 THE CORONER: Yes. 4 MR MORGAN: -- I think for a number of reasons it would help 5 this process. 6 It may be that we get lucky and the process of 7 considering that may generate some documentation or 8 lines of inquiry, because, clearly, if the families 9 believe there are answers in those papers about what 10 happened in November 1974, if they were to be partially 11 or fully located it takes away one area of concern. 12 THE CORONER: I understand. I am sure everything will be 13 done that can be. 14 MR MORGAN: Yes. You may consider it to be one of the 15 central issues in this inquest. 16 So we have mentioned the folders. I think I will 17 move on, and I hope we can get some clarification on 18 that process. 19 THE CORONER: Yes. Number 5? 20 MR MORGAN: Number 5 is what I may put politely is the 21 equivocal position put in writing by the PSNI that they 22 have made all appropriate searches for relevant 23 documentation. 24 Inevitably in drafting these documents, 25 individuals -- and I say lawyers -- will always want to,</p> <p style="text-align: center;">Page 74</p>	<p>1 Seven, the John Ware disclosure regarding the 2 so-called young planter. This touches upon the point 3 generated by Mr Squire's documentation. Clearly that 4 going to issues of concern that documentation was 5 altered or somehow manipulated after the event to 6 potentially protect an agent, informer, or otherwise 7 knowledge of the events of November 1974. 8 Sir, I suggest that all the aforementioned 9 information is central to the investigation and clearly 10 comes within the relevance of what we are being asked to 11 do. 12 Moving on to the issue of scope, Sir, it is 13 respectfully submitted that in this particular inquest, 14 these particular issues and the themes that they 15 inevitably focus on, that the issues of forewarning and 16 agent/informer can only be ultimately determined by the 17 specifics of discovery. 18 This is an evidence and documentary process, and the 19 Coroner and jury will follow the documentation where, at 20 that time, they feel their inquiry takes them. For that 21 reason, we believe that the process of scope 22 specifically on forewarning and agent/informer is 23 ongoing, and that no definitive position on the scope of 24 those two central points should be determined until we 25 have seen all of the discovery.</p> <p style="text-align: center;">Page 76</p>

<p>1 Sir, I have spoken to the families that KRW                  2 represents this morning and they have expressed in the                  3 strongest terms that they feel this issue of scope needs                  4 to be left broad until we have all of the discovery.                  5 Clearly one document could open a further line of                  6 inquiry or a further line of questioning which could                  7 have fundamental relevance for the central issues before                  8 this inquest. They feel that, rightly or wrongly, they                  9 haven't got all the documentation. They feel at some                  10 point, and it could have been in 1974 or some point                  11 thereafter, there was a filtering or extraction or                  12 weeding of documentation for whatever purposes -- they                  13 maybe to do with national security, the perception of                  14 State agencies including the police, specifically                  15 Special Branch, other agencies of national security --                  16 they feel they don't have the full picture, and they                  17 feel that to base scope on incomplete written records                  18 from 44 years ago undermines the effectiveness of the                  19 inquest process.                  20 We acknowledge the difficulty here. We acknowledge                  21 that there are gaps, and reference has been made today                  22 to proving a negative and I see the validity and the                  23 term of logic in that point. But the point which the                  24 families have, and they have communicated to us this                  25 morning, is do not prematurely make decisions on scope</p> <p style="text-align: center;">Page 77</p>	<p>1 We accept that that arises due to the passage of                  2 time. However, without everything being done to                  3 identify that all relevant documents have been                  4 discovered and disclosed, we will not have the                  5 confidence in the process which the families are hoping                  6 to achieve.                  7 The documentary process is the foundation on which                  8 their confidence in this inquest, the process and also                  9 the outcomes, rests. Because of ongoing issues as to                  10 disclosure, we feel there should be no decisions made on                  11 scope at this time. When we know the detail and meaning                  12 of discovery, we will know where we should stand on                  13 scope.                  14 THE CORONER: You mean no decisions to rule anything out of                  15 scope?                  16 MR MORGAN: Yes.                  17 THE CORONER: You don't mind if they are ruled in?                  18 MR MORGAN: No.                  19 THE CORONER: No.                  20 MR MORGAN: And I would respectfully put that I believe                  21 that, Sir, you should be cautious at this time in making                  22 a preliminary decision on two of the biggest issues in                  23 the inquest, which are forewarning and the agent issue.                  24 I think it is potentially dangerous to do so at this                  25 stage, having not seen or considered all of the</p> <p style="text-align: center;">Page 79</p>
<p>1 that will unnecessarily cut down on the lines of inquiry                  2 which can be pursued at the inquest. And I see the                  3 basic validity in that process, if only, as I have said,                  4 so that they feel that these issues, forewarning and                  5 agents, have been ventilated and properly considered.                  6 Then it will be a matter for yourself, Sir, and the                  7 jury to consider and decide upon that at the relevant                  8 time when we have reviewed and considered all the                  9 discovery, not partial elements of it, and considered                  10 more fully this issue of PII which I am sure will be                  11 addressed and concluded before long.                  12 We feel that to do otherwise at this time would                  13 amount to a funnelling of issues and investigation in                  14 a way that we don't have to. We don't have to make this                  15 decision at this time.                  16 Sir, it is our view -- and I anticipate that this                  17 view will be shared -- that disclosure is the golden                  18 thread that runs through this whole inquest procedure.                  19 This inquest, unlike more modern inquests, is inherently                  20 hampered in terms of the field of the inquiry and the                  21 detail because of the passage of time.                  22 We have witnesses that can't be located. We have                  23 witnesses that have passed away. We have the loss of                  24 documents, the Cabinet papers. All these processes                  25 operate to undermine the effectiveness of this process.</p> <p style="text-align: center;">Page 78</p>	<p>1 discovery, because that would amount to a premature, and                  2 we say unnecessary, decision at this time.                  3 In order to expedite the process, Sir, if you were                  4 so minded, we would have no objection to submitting                  5 written submissions --                  6 THE CORONER: We have just had written submissions which                  7 cover much of what you are saying.                  8 MR MORGAN: Yes, yes. But once we have seen all the                  9 information, then we can produce an addendum paper or                  10 whatever way you wish to structure that on the issues of                  11 scope as to forewarning --                  12 THE CORONER: The process of inquiry is always open on                  13 a continuing basis in any inquest.                  14 MR MORGAN: I think that is one way in which we could                  15 perhaps deal with that issue without generating delay or                  16 any other --                  17 THE CORONER: That is always the position with any inquest.                  18 I am sure I have said it in my ruling of July 2017, that                  19 if something arises afresh unexpectedly, or even                  20 expectedly, then of course that will be taken into                  21 account in terms of evidence, in terms of disclosure, in                  22 terms of being relevant to an issue or not, in terms of                  23 whether even if it is relevant it should be called as                  24 evidence or not, that process, which is a continuing                  25 process for every inquest and for every coroner in every</p> <p style="text-align: center;">Page 80</p>

<p>1 inquest.                  2 MR MORGAN: That is noted, thank you, Sir.                  3 THE CORONER: Do you have anything else? I am slightly                  4 mindful of the time.                  5 MR MORGAN: Yes, I am very conscious of the timing.                  6 In terms of the forewarning and agent and informer                  7 issue --                  8 THE CORONER: Yes, we will come to that separately, if                  9 I may.                  10 MR MORGAN: Yes.                  11 THE CORONER: If that is convenient for you.                  12 MR MORGAN: Absolutely, absolutely.                  13 I think to pull the disclosure issue together --                  14 THE CORONER: Yes.                  15 MR MORGAN: -- we, as a legal team and the families which we                  16 represent, we do not shy away from the challenges which                  17 all the parties and individuals dealing with the                  18 discovery process face. But we cannot get away from the                  19 point that the fundamental -- and as I have said                  20 foundational issue of discovery -- is potentially                  21 undermining the effectiveness of what you, Sir, and the                  22 jury will be asked to deal with next year.                  23 That's why we are asking now that we take stock on                  24 the process and approach to ensure that everyone                  25 understands that we have gone through the demanding and</p> <p style="text-align: center;">Page 81</p>	<p>1 notwithstanding the inherent limitations in the process.                  2 So on that basis, I would invite the Coroner, to the                  3 extent possible, to take some time to address the                  4 specifics of the discovery in the way we have outlined                  5 this morning.                  6 THE CORONER: Yes, thank you. Thank you very much.                  7 Mr Johnson?                  8 MR JOHNSON: Sir, yes.                  9 THE CORONER: How long will you be?                  10 MR JOHNSON: I will either be one minute or ten minutes.                  11 I wanted to be ten minutes.                  12 THE CORONER: All right. Do you want to start?                  13 MR JOHNSON: Certainly.                  14 THE CORONER: Or shall we just adjourn until 2 o'clock?                  15 MR JOHNSON: Entirely a matter for you, Sir.                  16 THE CORONER: I think we will adjourn until 2 o'clock.                  17 (1.01 pm)                  18 (The short adjournment)                  19 (2.00 pm)                  20 Submissions by MR JOHNSON re disclosure                  21 MR JOHNSON: Sir, as you know, I represent West Midlands                  22 Police.                  23 We agree with the submissions which have been                  24 advanced by your Counsel, Mr Skelton. The question of                  25 public interest immunity only arises if somebody wishes</p> <p style="text-align: center;">Page 83</p>
<p>1 complex processes which are in place. Clearly the                  2 families have waited 44 years for an investigation,                  3 answers, and to have their concerns heard and addressed,                  4 and we would say that now we need to take time to get                  5 this absolutely right. We need to feel -- the families                  6 need to feel -- that everything is being done in the way                  7 it should be.                  8 They are genuinely appreciative of all the work that                  9 has been done to date, because they realise now the                  10 scope, the volume of work. But the families we                  11 represent and the public at large must be afforded the                  12 opportunity to have appropriate confidence in the                  13 discovery and wider inquest process. Without the                  14 discovery process, inevitably there will be difficulties                  15 in pursuing and dealing with the issues arising next                  16 year.                  17 As I have stated already, this is a matter where                  18 rumour and suspicion abound in several respects. From                  19 a public confidence perspective, I think everyone is                  20 incentivised to do what we can to address specific and                  21 generalised concerns about State agencies before, during                  22 and after the events of November 1974, and I think there                  23 is a benefit to all parties in there being a specific                  24 and general understanding that every stone has been                  25 turned over, and we have done everything we can</p> <p style="text-align: center;">Page 82</p>	<p>1 to avoid having to disclose material which the judge, or                  2 here coroner, considers relevant.                  3 In that event, PII is the process by which the                  4 Coroner determines in their independent judgment whether                  5 to allow relevant material to be withheld from                  6 interested persons. That has not arisen in these                  7 inquests. You have determined what is relevant, we have                  8 disclosed to you what is relevant and you have disclosed                  9 to interested persons what is relevant. We have not                  10 sought to withhold anything that you have determined to                  11 be relevant, so we have not sought to withhold anything                  12 on grounds of PII, and we have therefore not needed to                  13 ask you to make a PII ruling.                  14 That's the long and the short of it, and that's the                  15 one minute version of my submissions.                  16 Sir, as to disclosure, these were two of the worst                  17 atrocities ever to take place in this country. We                  18 entirely agree with Mr Morgan that you should turn over                  19 every stone, as he put it, in the discharge of your                  20 functions. That is exactly what you have done and are                  21 continuing to do. You and your predecessor have, over                  22 almost three years, made numerous and extensive requests                  23 of West Midlands Police and I know other State bodies to                  24 harvest and disclose material to you.                  25 Those requests have not been limited to relevant</p> <p style="text-align: center;">Page 84</p>

<p>1 material. You, and before you Ms Hunt, have applied                  2 a very wide approach to potential relevance. We, for                  3 our part, have interpreted all of your requests for                  4 disclosure very widely. Where any question of                  5 interpretation has arisen, we have sought to take a wide                  6 approach and have explained that approach in our                  7 detailed responses.</p> <p>8 A good example is the forewarning issue, as it has                  9 become known. The material we have provided has given                  10 rise to, I think, 11 potential topics that are on the                  11 agenda for today at some point, a number of which, we                  12 submit, very clearly could not on any view amount to                  13 forewarning; but we have disclosed all of the material                  14 to you nonetheless and you, in turn, have disclosed the                  15 material to interested persons. That enables                  16 submissions to be made as to scope, even though in the                  17 event some of the material is not of any actual                  18 relevance to any of the issues in the inquests.</p> <p>19 We have provided very lengthy submissions setting                  20 out detailed summaries of the investigations that have                  21 taken place and the information that has been obtained.</p> <p>22 In short, West Midlands Police has very fully                  23 responded to the requests that you and Ms Hunt have made                  24 over, as I say, a long period of time. All of that has                  25 been done in a completely transparent manner.</p> <p style="text-align: center;">Page 85</p>	<p>1 immunity. That would be quite improper as Mr Skelton                  2 explained.</p> <p>3 There has been no informal process between West                  4 Midlands Police and your legal team. All disclosure                  5 requests have been put in writing. Our response is in                  6 writing and everything has been subject to your                  7 supervision. Indeed, Counsel to the Inquiry I hope will                  8 forgive me for saying that pretty much everything they                  9 say to us is prefaced with a caveat that everything is                  10 subject to your review on relevance.</p> <p>11 The process, as I say, has been completely                  12 transparent and as far as we are concerned completely                  13 clear and has been explained in writing, including in                  14 correspondence from the Solicitor to the Inquest.</p> <p>15 At the last pre-inquest review at the end of                  16 October, you directed West Midlands Police to make                  17 certain further disclosure. You made it clear that if                  18 we wished to withhold anything that you considered to be                  19 relevant, we would need to make a PII application, and                  20 you listed at that hearing a hearing at which any PII                  21 application would be made.</p> <p>22 I would need to check the transcript -- I am afraid                  23 I have not done so -- but I think I said at that hearing                  24 that you had given us a great deal of work to do, we                  25 were concerned about the timescale but we would seek to</p> <p style="text-align: center;">Page 87</p>
<p>1 There have been a number of public hearings at which                  2 interested persons have indicated what they consider                  3 should be disclosed, and following which written                  4 disclosure directions have been made. There have been                  5 no private hearings. Everything has been open to all                  6 interested persons and the press and indeed the public.</p> <p>7 The various submissions we have provided in response                  8 to disclosure requests have been provided and                  9 distributed to interested persons, albeit sometimes in                  10 redacted or gisted form. There has been the                  11 dissemination by you and your team of a vast amount of                  12 material, including a large amount of material that we                  13 would say is irrelevant, but we don't complain about                  14 that at all, precisely because it aids transparency and                  15 enables interested persons very fully to participate in                  16 the inquests.</p> <p>17 We have disclosed everything to you. You, in turn,                  18 have disclosed to interested persons everything that                  19 you, as the independent and impartial judge or coroner,                  20 assisted by an independent legal team have considered to                  21 be relevant. You have not withheld anything on grounds                  22 of public interest immunity.</p> <p>23 There is no question of your counsel team or your                  24 legal team more widely having agreed to withhold                  25 information from IPs on grounds of public interest</p> <p style="text-align: center;">Page 86</p>	<p>1 disclose everything that was relevant and if at all                  2 possible avoid the need to engage in a PII process.</p> <p>3 In the event, the PII hearing did not take place.                  4 That was precisely because we had disclosed everything                  5 you considered to be relevant as well as a great deal of                  6 material that is not, on analysis, relevant. There is                  7 no question, we submit, of you, as the Coroner, having                  8 to do more PII, as Ms Williams put it. You can't do PII                  9 unless or until someone seeks to withhold a relevant                  10 document, and that has not happened.</p> <p>11 Complaints were made about gists. A gist is                  12 a summary of a document or collection of documents. On                  13 each occasion when we have provided a gist, all of the                  14 underlying material has been provided to the inquests,                  15 and you, as the independent Coroner, are in the position                  16 to make rulings on relevance and to require disclosure                  17 of anything that is relevant, subject to PII.</p> <p>18 But gisting is a mechanism that is intended to be                  19 helpful, precisely to allow interested persons to engage                  20 in this process, and to make submissions on relevance                  21 and scope and matters of that nature. It gives them                  22 more information than they would otherwise have so that                  23 they can fully take part in the inquests.</p> <p>24 Of course gisting conceals certain material -- not                  25 from you, but from any wider dissemination -- that is</p> <p style="text-align: center;">Page 88</p>

<p>1 the intention. But the material that is being concealed                  2 is irrelevant. If it were relevant then it would                  3 either have to be disclosed or we would have to make                  4 a PII application. It would, we submit, be quite                  5 inappropriate and contrary to principle to go through                  6 a PII process when gisting material that is irrelevant                  7 or has not been determined as being relevant. That                  8 would be to put the cart before the horse.                  9 The first stage is relevance, but in order to allow                  10 IPs fully to participate in the process, you may direct                  11 that material that has not passed the relevance                  12 threshold be disclosed or gisted to IPs so that they can                  13 make submissions.                  14 As I say, in respect of each of the specific points                  15 where there has been an element of gisting or redaction,                  16 everything has been provided to you so you can form your                  17 own independent judgment.                  18 Ms Williams and Mr Morgan made submissions about                  19 some individual documents. My general submission is                  20 that in respect of each document we have disclosed,                  21 you have been able to form your own view and they have                  22 not demonstrated that that view is wrong or is to be                  23 impugned.                  24 So, for example, in relation to the Castor's report                  25 that Ms Williams took you to, you have seen the full</p> <p style="text-align: center;">Page 89</p>	<p>1 to be made.                  2 It will, though, be necessary -- and it may not be                  3 possible to do this today -- to decide exactly how and                  4 what material is put before the jury on that topic. The                  5 particular witness at the heart of the topic has died.                  6 The witness's name is currently redacted. You will, at                  7 some point, need to determine issues of anonymity and                  8 that will, in due course, feed in potentially to                  9 questions of disclosure. But there is no basis for                  10 impugning the process of disclosure which has generally                  11 been adopted up to now.                  12 THE CORONER: So in relation to the Talk of the Town topic                  13 as an item for consideration, and as one of the 11 given                  14 the forewarning issue heading --                  15 MR JOHNSON: Yes.                  16 THE CORONER: -- if I decide that is a topic or item of                  17 forewarning that should go before the jury, there will                  18 then be a question of what precisely is the evidence                  19 which should support it?                  20 MR JOHNSON: Yes.                  21 THE CORONER: Or relate to it?                  22 MR JOHNSON: Yes.                  23 THE CORONER: It may support it, or it may also undermine                  24 it, or it could do.                  25 MR JOHNSON: Yes.</p> <p style="text-align: center;">Page 91</p>
<p>1 report. Of course I can understand the concern of                  2 somebody who has not seen the full report when they see                  3 black markings that there might be something relevant                  4 that underlies those markings. But at some level,                  5 IPs have to trust the process. They have an independent                  6 judge, they have an independent legal team assisting the                  7 judge, all of whom can see the material and form a view                  8 on relevance. In my submission nothing that has been                  9 said shows that that view is mistaken.                  10 There is a discrete or separate issue in relation to                  11 the Talk of the Town topic. In the submissions advanced                  12 by Counsel to the Inquests, they say that a gist was                  13 being prepared. At the time of making their submissions                  14 they had not seen the gist, as is obvious from the                  15 language they used, and I am afraid we were at fault for                  16 some delay in providing that and I apologise for that                  17 delay.                  18 The gist we have provided in relation to Talk of the                  19 Town enables all parties to make submissions as to                  20 whether this issue should be dealt with before the jury.                  21 Counsel to the Inquests submits, as I understand it,                  22 that it should be dealt with before the jury.                  23 I understand other IPs say the same. We don't resist                  24 that, and the gist has therefore served its purpose. It                  25 enables that debate to be made and for a ruling on scope</p> <p style="text-align: center;">Page 90</p>	<p>1 THE CORONER: So that decision then has to be made and it                  2 could be at that stage that West Midlands Police say                  3 "you wish to disclose that but we will claim public                  4 interest immunity about that particular document", or                  5 something of that kind?                  6 MR JOHNSON: It could be. I would hope that we would avoid                  7 that.                  8 THE CORONER: Yes.                  9 MR JOHNSON: Because I would hope that everything you                  10 determine to be relevant would be disclosed.                  11 THE CORONER: Yes. But I might reconsider that evidence                  12 afresh, as one does when one comes to review material                  13 and review it again and review it later in the light of                  14 other events and so on.                  15 MR JOHNSON: Sir, absolutely. You made it very clear                  16 earlier on this morning that this was an ongoing                  17 process: issues can emerge and issues can disappear and                  18 you will keep an open mind. The fact that you have                  19 hitherto determined that something is irrelevant and can                  20 be withheld is not a final ruling for all time. It can                  21 be reconsidered at any point.                  22 THE CORONER: Yes.                  23 MR JOHNSON: And the Talk of the Town is an issue.                  24 As I say, there is a particular issue relating to                  25 the witness's identity. That is a discrete matter that</p> <p style="text-align: center;">Page 92</p>

<p>1 can be addressed.</p> <p>2 Our submission is likely to be that the witness's</p> <p>3 precise identity is not of any real relevance but that</p> <p>4 will be a matter you will determine in due course.</p> <p>5 THE CORONER: Yes.</p> <p>6 MR JOHNSON: Mr Morgan, I think, raised seven issues of</p> <p>7 disclosure. Only two of those I understood to relate</p> <p>8 directly to West Midlands Police: one was the Talk of</p> <p>9 the Town point I have just dealt with; and the second</p> <p>10 was a request for disclosure of contact sheets with</p> <p>11 sources, agents and informers in and around Birmingham</p> <p>12 at the relevant time.</p> <p>13 Sir, in relation to that, I say firstly that this</p> <p>14 whole process shows that participants are able to make</p> <p>15 disclosure requests and you can deal with them. But in</p> <p>16 relation to that particular request, I agree that such</p> <p>17 material would be highly relevant and would have to be</p> <p>18 disclosed if, but only if, those documents contained any</p> <p>19 basis whatsoever for thinking that the State or any part</p> <p>20 of the State had advance knowledge of the bombings or</p> <p>21 colluded in the bombings in any way.</p> <p>22 In that event, subject to PII, the material would</p> <p>23 plainly be relevant and would have to be disclosed. But</p> <p>24 we have confirmed that there is no such documentation,</p> <p>25 see page 251 of the bundle. Underlying that</p> <p style="text-align: center;">Page 93</p>	<p>1 Submissions by MS LEEK re disclosure</p> <p>2 MS LEEK: Very briefly, Sir.</p> <p>3 Sir, as you know, I represent Her Majesty's</p> <p>4 Government and our position is set out in our</p> <p>5 submissions and in the statement of Ms Oakley, at</p> <p>6 page 471.</p> <p>7 May I just expand very briefly upon what has been</p> <p>8 said in the submissions and explain part of what is said</p> <p>9 in the statement in response to submissions that have</p> <p>10 been made by Ms Williams?</p> <p>11 Ms Oakley, in her covering letter said this:</p> <p>12 "The enclosed statement provides as much detail</p> <p>13 about the searches and their results as it is possible</p> <p>14 to disclose publicly without causing damage to national</p> <p>15 security."</p> <p>16 That statement has been questioned by Ms Williams.</p> <p>17 May I start by saying that the search terms were wide in</p> <p>18 both time and in subject matter, and were agreed and</p> <p>19 discussed with your counsel. When we say "as much</p> <p>20 detail about the searches as it is possible to disclose</p> <p>21 publicly", what is meant is that we have not, for</p> <p>22 example, stated the names of the databases upon which</p> <p>23 material is held; we have not, for example, stated</p> <p>24 precisely how that material is stored or how it is</p> <p>25 searched; we have not given the names of electronic</p> <p style="text-align: center;">Page 95</p>
<p>1 confirmation is a long process of disclosure requests by</p> <p>2 you and your team, provision of material by West</p> <p>3 Midlands Police to your team, and review of that</p> <p>4 material by your team. If you had considered that there</p> <p>5 was anything of that nature in the material, anything to</p> <p>6 show that there was a relationship with an informant or</p> <p>7 source or agent, however you put it, that shows that the</p> <p>8 State had or may have had advance knowledge or may have</p> <p>9 colluded, then you would, of course, have ruled that</p> <p>10 that was relevant and we would, of course, have had to</p> <p>11 disclose it, subject to the question of public interest</p> <p>12 immunity.</p> <p>13 So in those circumstances I'm not going to make any</p> <p>14 submissions about PII or NCND, neither confirm nor deny,</p> <p>15 jurisprudence, because we have not reached that stage.</p> <p>16 There has been no PII application, I hope there will not</p> <p>17 be a PII application, and it is therefore not necessary</p> <p>18 to engage in that. But I do just make it clear that</p> <p>19 I should not be taken as accepting the general</p> <p>20 submissions that have been made about the PII and NCND</p> <p>21 process.</p> <p>22 Sir, unless I can assist further, those are the</p> <p>23 submissions we wish to make on disclosure.</p> <p>24 THE CORONER: Thank you very much.</p> <p>25 Ms Leek, do you wish to say anything?</p> <p style="text-align: center;">Page 94</p>	<p>1 search systems nor the names of departments within</p> <p>2 agencies.</p> <p>3 Sir, there is nothing relevant or material which has</p> <p>4 not been stated. The searches are carried out in</p> <p>5 different ways across different departments and</p> <p>6 agencies. The methodology has been explained in</p> <p>7 Ms Oakley's statement and further detail of the</p> <p>8 methodology has been provided to your legal team.</p> <p>9 With regard to the results, there was no material</p> <p>10 which my clients, Ms Oakley or I considered was actually</p> <p>11 relevant. There were a very few documents which we</p> <p>12 considered your legal team ought to see, because they</p> <p>13 were potentially relevant and because you ought to</p> <p>14 satisfy yourself as to whether or not they were actually</p> <p>15 relevant.</p> <p>16 As we understand it, your team and you reviewed them</p> <p>17 and did not consider them to be relevant. Since they</p> <p>18 have not been determined to be relevant, there is no</p> <p>19 need to give any further detail about them. The process</p> <p>20 that was undertaken, as we understand it, was the same</p> <p>21 for Her Majesty's Government as it was in relation to</p> <p>22 West Midlands Police and which has already been</p> <p>23 articulated by Mr Johnson.</p> <p>24 With regard to public interest immunity, in case it</p> <p>25 is not yet clear, since there is no material which</p> <p style="text-align: center;">Page 96</p>



<p>1 you have considered relevant to the scope of the 2 inquests as currently defined, there has not had to be 3 any PII application, nor has there had to be any gisting 4 of material so far as Her Majesty's Government is 5 concerned. There is simply no relevant material that 6 has been identified. 7 With regard to paragraphs 30 and 37 of Ms Williams's 8 submissions, there has been no application for 9 withholding documentation by Her Majesty's Government on 10 the grounds of public interest immunity. You have made 11 decisions on disclosure based upon relevance. Had you 12 determined that any material was relevant, it may have 13 been necessary to have made applications for public 14 interest immunity. That has not arisen. 15 The process has been that following the initial 16 searches that were undertaken further requests based on 17 the material that was identified were made by your 18 team -- through you by your team -- further searches 19 were undertaken, anything potentially relevant was seen 20 by your team and/or seen by you. There has been no need 21 for any PII application. 22 Sir, may I just refer briefly to the missing 23 folders? 24 Sir, you have asked us through your team about those 25 folders and our clients have conducted searches. Those</p> <p style="text-align: center;">Page 97</p>	<p>1 folders also covered. 2 THE CORONER: Yes. 3 MS LEEK: Sir, it would also be surprising if there were 4 anything in those folders that were not to be found 5 elsewhere within the disclosure that has been provided 6 from other departments and agencies. 7 Sir, you and your team have determined -- or rather 8 you have determined -- that there is nothing of 9 relevance in the disclosure that has been given from 10 those other departments and agencies and which has been 11 followed up and analysed. 12 Sir, unless I can assist you further? 13 THE CORONER: Thank you. 14 Submissions in reply by COUNSEL TO THE INQUESTS re 15 disclosure 16 MR SKELTON: Sir, briefly -- 17 THE CORONER: Yes. 18 MR SKELTON: -- in response, bearing in mind the time. 19 The process of PII. I don't intend to respond in 20 detail to it. I hope what I said was clear in my 21 initial submissions about the process we have adopted. 22 I don't accept that the process we adopted is in any way 23 improper nor do I accept, as Ms Williams said, that the 24 process is as fixed and immutable as she claimed it to 25 be.</p> <p style="text-align: center;">Page 99</p>
<p>1 folders have not been found. As stated earlier by your 2 counsel, those folders contain assessments in relation 3 to Northern Ireland. They do not contain the JIC 4 minutes. Your team have seen the JIC minutes that they 5 requested and nothing of relevance has been identified 6 in those JIC minutes. 7 Sir, insofar as the disclosure process has not been 8 clear, my clients would be happy to provide further 9 information as to the searches that have been undertaken 10 should you consider it necessary for us to do so. 11 THE CORONER: Are you saying that the JIC minutes are 12 necessarily fuller than the two folders? 13 MS LEEK: Sir, we have not seen the content of the folders 14 so it is difficult to say. 15 THE CORONER: Or that type of folder? I don't want to ask 16 you questions which are difficult, but are you able to 17 help on that? 18 MS LEEK: It would be surprising if there were material in 19 those folders that was not contained or reflected in the 20 JIC minutes. Sir, your team have seen the minutes as 21 requested. 22 THE CORONER: Yes, I think I have too. 23 MS LEEK: Sir, as I understand it, there was no missing 24 material from within the minutes which covered the 25 relevant time period in relation to which the two</p> <p style="text-align: center;">Page 98</p>	<p>1 The process is an iterative one, just like ordinary 2 disclosure, and a practical one in that it requires 3 dialogue, negotiations, discussions and communications 4 to further understanding and to isolate points of 5 dispute. 6 The process we have adopted is to seek to disclose 7 all relevant material and that is the process which 8 I would advocate has been successfully concluded over 9 the last few weeks. As Mr Johnson says, we have never 10 reached a point where we have not been able to disclose 11 relevant information. However in respect of the Talk of 12 the Town gist, so-called, or summary, it still remains 13 the case that if that were to be within scope, subject 14 to your ruling, that further discussions would be had 15 based on submissions from the interested persons as to 16 whether underlying materials that fed into that gist or 17 summary would themselves become relevant or contain 18 relevant material that should be disclosed. 19 That is precisely the process that should be adopted 20 during this exercise in respect of any material over 21 which a gist is produced or any material is withheld. 22 A dialogue can take place between the IPs and ourselves 23 which we hope to resolve in negotiations, and if those 24 can't be resolved on your behalf, then it becomes 25 an application process if necessary.</p> <p style="text-align: center;">Page 100</p>

<p>1 So far as the redactions are concerned, redactions                  2 are always provisional because the inquest process is                  3 ongoing and subject to review right until the moment                  4 that you, Sir, sign your final forms and the inquest                  5 concludes.                  6 Circumstances do change during inquests which may                  7 alter the basis for a redaction being claimed.                  8 Sensitivities fall away or arise. And therefore we have                  9 termed them "provisional redactions" simply because they                  10 may, possibly, be withdrawn at some point, although for                  11 the most part that is unlikely.                  12 So far as all recent redactions are concerned, the                  13 vast majority of those relate to sensitive documents in                  14 which explanations have also been provided. As                  15 I outlined in my initial submissions, so far as the                  16 historical redactions are concerned -- those that are                  17 not part of the recent batch of disclosure -- we have                  18 listened to the concerns of the interested persons,                  19 particularly the families, and are endeavouring to catch                  20 up on ourselves in providing information about the basis                  21 for those redactions.                  22 In the majority of cases, there are obvious data                  23 protection reasons. For example, the protection of                  24 addresses, which don't really require explanation, but                  25 there may be some instances where that explanation is</p> <p style="text-align: center;">Page 101</p>	<p>1 agent/informant topic and the forewarning topic, from                  2 counsel and they include detailed footnotes really                  3 identifying the pathway that we have trodden through the                  4 disclosure process. Likewise, of course, we have                  5 disclosed reports from West Midlands Police and six                  6 submissions from them which do a very similar exercise.                  7 They provide a pathway through the evidence as it has                  8 been disclosed.                  9 I don't think I need to say too much more about the                  10 process going forward, save that insofar as we can                  11 provide any form of assistance and clarification about                  12 either categories of public interest immunity -- sorry,                  13 categories of sensitivity or redaction or individual                  14 issues of redaction, we will endeavour to do so, and                  15 endeavour to do so directly with whichever interested                  16 person is concerned.                  17 So those, Sir, are my submissions in response to                  18 those that have already been made on that issue.                  19 THE CORONER: Yes.                  20 MR SKELTON: With your leave, may I turn to the next issue                  21 on the agenda today, and that's the topic of                  22 forewarning?                  23 THE CORONER: Yes. Let me just shuffle my notes.                  24 Submissions by COUNSEL TO THE INQUESTS on the issue of                  25 forewarning.</p> <p style="text-align: center;">Page 103</p>
<p>1 required.                  2 Throughout that process as always we have adopted,                  3 as it were, an open door policy. We have invited the                  4 interested persons to contact us through the Solicitor                  5 to the Inquiry, or indeed directly through counsel, if                  6 there are any questions about specific redactions, and                  7 this has happened on a handful of occasions.                  8 It is inevitable, of course, that this process is                  9 imperfect. Documents come from different sources.                  10 Different redactions are applied and sometimes in                  11 slightly different ways. We are mindful of that,                  12 particularly over a number of documents where one is                  13 looking at 26 or so thousand documents, as we have done                  14 in this case.                  15 Again, we are happy to correct, happy to discuss and                  16 will remain so going forward --                  17 THE CORONER: So a specific redaction can be reconsidered?                  18 MR SKELTON: It can be reconsidered, yes, either by                  19 application or by us or indeed by the stakeholder or                  20 document holder themselves.                  21 So far as the general disclosure process is                  22 concerned, I don't need to say much more than we have of                  23 course provided regular updates about what we have been                  24 doing, which have come from Mr Suter, including detailed                  25 notes and submissions on specific topics, such as the</p> <p style="text-align: center;">Page 102</p>	<p>1 MR SKELTON: Sir, I think happily there is a degree of                  2 consensus about the topics to be addressed within the                  3 issue of forewarning --                  4 THE CORONER: Yes.                  5 MR SKELTON: -- which you have previously ruled is within                  6 the scope.                  7 So really now we are talking about the witness                  8 evidence which will be adduced at the forthcoming                  9 inquest. I am afraid I must invite you to grasp the                  10 nettle on that in due course, because if the inquests                  11 are to proceed decisions must be taken, bearing in mind                  12 the infirmity and age of the witnesses and so on.                  13 THE CORONER: No, that nettle must be grasped soon.                  14 MR SKELTON: I am not going to address you today in detail                  15 on specific witnesses that are due to be called --                  16 THE CORONER: No. I think, particularly in view of the time                  17 and the way we are proceeding, that if we look at one to                  18 11 and see where there is dispute between anybody, then                  19 I will consider what the submissions are and I will make                  20 a ruling on that in due course in writing. Then perhaps                  21 those items which I rule are in, as opposed to out,                  22 should then be considered by you and by others in terms                  23 of precisely what evidence --                  24 MR SKELTON: Yes.                  25 THE CORONER: Is that a sensible process?</p> <p style="text-align: center;">Page 104</p>

<p>1 MR SKELTON: It is, Sir. So far as we are concerned, there 2 are not many serious disputes within that list. 3 THE CORONER: No. 4 MR SKELTON: There are only really two that I have 5 identified as really matters that I can address you on 6 from the off to clarify matters which may assist all of 7 those who have an interest in these issues. 8 One of those is issue 8: disclosure to the assistant 9 governor in respect of Martin Foran. 10 THE CORONER: Yes. 11 MR SKELTON: In that regard, we are committed to disclosing 12 the underlying documents which relate to that issue, and 13 which will provide details of Mr Foran's convictions and 14 indeed his whereabouts on 21 November 1974, which may be 15 a pertinent issue to whether or not that issue can be 16 progress within the inquest itself. 17 THE CORONER: Yes. Sorry to interrupt you, but just maybe 18 taking this shortly, I think KRW Law are asking for 19 underlying documents so they could make further 20 submissions if necessary on 8, 10, Cecil Lewis, and 11, 21 Police Constable Fleetwood. 22 MR SKELTON: And all those issues are in hand and they will 23 get such disclosure. That's the very short answer. 24 THE CORONER: All right. So 1 to 5, I think there is 25 agreement between, in your submission -- Ms Williams and</p> <p style="text-align: center;">Page 105</p>	<p>1 MS WILLIAMS: Yes, is number 7. 2 THE CORONER: I was coming to that last, because that seemed 3 to me central to -- 4 MS WILLIAMS: I didn't want to have counted wrongly and 5 mislead you. 6 THE CORONER: I think that seems to be central to the 7 afternoon's debate for what it is worth. 8 So I think 8, 9, 10 and 11 are as I have summarised. 9 So that leaves 7, John Tonkinson and his daughter, in 10 the first instance at least. 11 Ms Williams, you submit that that is relevant? 12 MS WILLIAMS: We do, Sir, yes. 13 THE CORONER: Mr Morgan, you submit that that is relevant 14 for KRW Law. 15 MR MORGAN: Yes, Sir. 16 THE CORONER: Mr Skelton, you have suggested that it is not 17 relevant and WMP have said likewise. 18 MR SKELTON: Correct. I was intending to develop my 19 submissions briefly on Mr Tonkinson in respect of the 20 agent/informant issues since I think it probably ought 21 to be recategorised as such. 22 THE CORONER: Yes. It is possibly forewarning as well. The 23 two overlap quite often. 24 MR SKELTON: They do. They do. 25 THE CORONER: Yes. What would you like to say, then?</p> <p style="text-align: center;">Page 107</p>
<p>1 Mr Morgan -- in relation to KRW Law and West Midlands 2 Police say in relation to 1 to 5, although there may be 3 reasons for not considering them, if interested persons 4 do consider them, then there will be no objection to 5 that. Have I surmised that correctly? 6 MS WILLIAMS: Yes. 7 MR JOHNSON: Yes. 8 THE CORONER: Thank you. So can I very shortly say -- if 9 I agree that is and I will consider that -- but at the 10 moment there is a strong groundswell of submission in 11 relation to 1, 2, 3, 4 and 5? Yes. 12 Then, 6, the journalist at Birmingham Elmdon 13 Airport, who may or may not have got on a plane, 14 depending on what evidence you read. I don't think 15 anybody has suggested that that is helpful, relevant 16 evidence. All right. 17 8, 9, 10 and 11. 8, 9 and 11, KRW Law and Mr Morgan 18 are going to reconsider, or consider, in the light of 19 further disclosure. I think nobody otherwise suggests 20 that 8, 10 and 11, and indeed 9, should be relevant. 21 MS WILLIAMS: Sir, I am afraid I don't have the numbers in 22 front of me. I'm rapidly trying to count. 23 But the one that you will appreciate from our 24 submissions is an issue -- 25 THE CORONER: Yes, number 7?</p> <p style="text-align: center;">Page 106</p>	<p>1 MR SKELTON: May I introduce the agent/informant topic, if 2 that is appropriate, because I think it is necessary to 3 say some contextual remarks before one comes on to the 4 individual topics. 5 By way of introduction, all of the interested 6 persons will be aware that West Midlands Police have 7 provided a formal reassurance to you, the Coroner, in 8 the form of a gist that they have no information that, 9 one, they had advance knowledge of or were involved or 10 colluded in the bombings, whether through an 11 agent/informant or anyone else, with of course the 12 exception of the information that has been disclosed to 13 you and forms the subject matter of the forewarning 14 topic. 15 Two, that any other State entity had any advance 16 knowledge of or was involved in or otherwise colluded in 17 the bombings. 18 Three, the response to or investigation of the 19 bombings was wrongfully compromised in order to protect 20 an agent or informant. 21 Sir, with your instruction and authority, we, your 22 team, have undertaken our own exhaustive independent 23 investigation of the information in the possession of 24 West Midlands Police, and indeed others, that may bear 25 upon the issues that are caught by that reassurance. We</p> <p style="text-align: center;">Page 108</p>

<p>1 have seen no evidence that would undermine or otherwise                  2 form the basis for challenging it, and that is                  3 important.                  4 So far as the Government Legal Department is                  5 concerned, they have also provided a formal assurance,                  6 this time in the form of a witness statement from                  7 a lawyer from the Government Legal Department, that the                  8 Home Office, the Foreign and Commonwealth Office, the                  9 Ministry of Defence, the Northern Ireland Office, the                  10 Cabinet Office, the Security Service and the Secret                  11 Intelligence Service are not in possession of nor aware                  12 of any evidence that confirms or suggests that any State                  13 agency had, or had received advance notification of the                  14 Birmingham pub bombings. They are also not in                  15 possession of or aware of any evidence that confirms or                  16 suggests that any State agency covered up information                  17 regarding the Birmingham pub bombings to protect an                  18 agent or informant.                  19 Insofar as the GLD witness is aware from the results                  20 of the searches that have been carried out by those                  21 departments and agencies, the Government is not aware of                  22 or in possession of any information to indicate that                  23 there was any advance knowledge of the bombings or that                  24 any information regarding the bombings was covered up to                  25 protect an agent or informant.</p> <p style="text-align: center;">Page 109</p>	<p>1 in any capacity. That is so notwithstanding that it has                  2 been openly suggested, based in some cases on openly                  3 available evidence, that those men may have acted as                  4 such at one time or another.                  5 The question then arises should you require West                  6 Midlands Police and the Government to make a formal PI                  7 application in respect of those men and any others that                  8 may be caught by the assurance given. For the reasons                  9 I have explained, the answer to that must be no.                  10 In light of the two assurances given by West                  11 Midlands Police and HM Government, taken critically                  12 together with the independent work of your legal team to                  13 understand and test those assurances, the issue of                  14 whether or not they were agents or informants is simply                  15 not relevant to the inquests.                  16 The reason for that is simple. Whatever the status                  17 of the men -- in other words, whatever the nature of the                  18 relationship they may or may not have had with any State                  19 agency -- as the assurances made clear, there is no                  20 evidence to suggest that anyone, including them,                  21 provided any advance information about the bombings to                  22 any police or other State entity, and there is no                  23 evidence to suggest that any information regarding the                  24 bombings was covered up to protect anyone, including                  25 them, at any time.</p> <p style="text-align: center;">Page 111</p>
<p>1 In summary, she has seen nothing to indicate any                  2 involvement on the part of the Government or any other                  3 State agency in the planning or commission of the                  4 Birmingham pub bombings or any attempt to cover up                  5 information about the bombings.                  6 Again, Sir, we, your legal team, have undertaken our                  7 own exhaustive, independent investigation of the                  8 information, potentially relevant information, in the                  9 possession of the Government, including those agencies                  10 and departments, that may bear upon the issues caught by                  11 the reassurance given by the witness. Again, we have                  12 seen no evidence that would undermine or otherwise form                  13 a basis for challenging that assurance.                  14 What, then, is the effect of these assurances? So                  15 far as the agent/informant issue is concerned, the two                  16 assurances given by West Midlands Police and the                  17 Government collectively are deliberately drafted in                  18 general terms. That is because they take the view, as                  19 they are entitled to do, that it is not in the public                  20 interest to confirm or deny whether any particular                  21 individual persons are or are not agents or informants.                  22 In the context of this inquest, West Midlands Police                  23 and the Government have neither confirmed nor denied                  24 that, for example, Kenneth Littlejohn, James Kelly or                  25 any other persons were agents or informants of the State</p> <p style="text-align: center;">Page 110</p>	<p>1 If such evidence had existed, then insofar as it                  2 related to one or more of the men, or indeed any person                  3 at all, then we, your counsel, would now be inviting you                  4 to direct that West Midlands Police or the Government                  5 openly clarify the status of those persons and openly                  6 disclose the relevant evidence for use in the inquests.                  7 Or if they were unwilling to do so, or unable to do so                  8 for legal reasons, to make a formal PII application.                  9 But for the reasons I have given, there is no proper                  10 basis for such a direction. Even if West Midlands                  11 Police or the Government were to make a PII application                  12 voluntarily, that application could not properly be                  13 contested as the test for relevance, which is the                  14 precursor as I have previous explained to any balancing                  15 exercise, has not been met.                  16 Sir, that is the background to the agent/informant                  17 issue. It informs, in our submission, the whole issue                  18 when it comes to looking at individual sub-issues within                  19 it.                  20 May I now address you on the issues themselves? The                  21 agent/informant issue or topic has been defined in the                  22 following terms, and I am referring to your ruling of                  23 last year.                  24 THE CORONER: Yes.                  25 MR SKELTON: "Whether West Midlands Police or any other</p> <p style="text-align: center;">Page 112</p>

<p>1 State agency were engaged in concealing the actions of 2 agents or informants who were responsible for the 3 bombings or whether there was other State involvement or 4 collusion to enable the bombings on 21 November to take 5 place." 6 As I have said, we have undertaken extensive 7 investigation of this topic. The steps we have taken 8 are set out in a 20-page note on that issue dated 30 9 October, and, of course, in our submissions for the 10 purpose of this hearing. I do not intend to repeat the 11 detail of them here. 12 THE CORONER: What is the date again? 13 MR SKELTON: 30 October, and in our submissions for this 14 PIR. 15 I don't intend to repeat the detail here. It has 16 been provided in written form in order to assist all of 17 the interested persons and provide them with a clear, 18 comprehensive and transparent account of the searches 19 that have been undertaken and the disclosure that has 20 been made. It can be seen that among the organisations 21 who have been asked to provide and conduct services are 22 all of those that I precisely listed in addition to the 23 Metropolitan Police, which I don't think I previously 24 mentioned on the list that I referred to a short while 25 ago.</p> <p style="text-align: center;">Page 113</p>	<p>1 inquests. 2 As we have identified in our note and in our 3 submissions, there have been rumours and suggestions 4 over the years of involvement of two particular men in 5 the bombings, who it sometimes has been suggested were 6 agents or informants, and those two men were 7 Kenneth Littlejohn and James Kelly. I will come on to 8 refer to them in detail in a moment. 9 Notwithstanding what is said in the gist, we have in 10 our submissions gone through an extensive exercise of 11 looking at potentially relevant evidence. We have 12 identified evidence that may have been of potential 13 relevance in respect of both Mr Littlejohn and Mr Kelly, 14 but there is no direct credible evidence that we say 15 needs to be followed up by way of investigation. I'm 16 not going to go into the detail of the evidence that we 17 have looked at -- that is set out in our written 18 submissions -- but I will give the following summary in 19 respect of the two men. 20 So far as Mr Littlejohn is concerned, the suggestion 21 that Mr Littlejohn was involved in the bombings is 22 longstanding. It seems to have its origins in the 23 following factors. First, Mr Littlejohn was a convicted 24 bank robber who was on the run at the time of the 25 bombings. Secondly, he was present in Birmingham on</p> <p style="text-align: center;">Page 115</p>
<p>1 In respect of each of those organisations, your 2 legal team have attended their offices and inspected 3 documents identified as being of potential interest to 4 the inquests. We have also posed questions in respect 5 of individuals who may have relevant evidence to give. 6 These include Kieron Conway, who has said that he was 7 the Director of Intelligence of the Provisional IRA at 8 the time of the bombings; Chris Mullin, the journalist 9 and MP who has researched the Birmingham bombings 10 extensively; His Honour (formerly) Judge John Maxwell, 11 who was part of the prosecution team in the trial of 12 James Kelly in 1975; Paul Cleeland and Witness Y, 13 concerning allegations made about Kenneth Littlejohn, 14 various former WMP officers involved with intelligence 15 matters; Ed Moloney, a journalist and author who oversaw 16 an oral history project on the Troubles; and lastly the 17 chief constable leading the Operation Kenova into the 18 activities of the alleged State agent codenamed 19 Stakeknife. 20 Disclosure statements or gists have been provided by 21 or on behalf of the organisations I have previously 22 referred to. In short, as I have indicated in the gist, 23 there is nothing in those documents, in those gists, to 24 indicate that there is any evidential basis for 25 continuing investigation of these issues at the</p> <p style="text-align: center;">Page 114</p>	<p>1 21 November 1974, and you have already heard about the 2 police manhunt that was on to try and catch him. 3 Thirdly, he was subsequently arrested at the house 4 of Thomas Watt, who was a witness for the prosecution at 5 the trial of the Birmingham Six. Lastly, Mr Littlejohn 6 himself has claimed that he infiltrated the IRA in 7 Ireland on behalf of British Intelligence in the early 8 1970s. 9 Two matters fall to be considered in light of that. 10 First, was Mr Littlejohn involved with the bombings? 11 Second, if so, was he acting on behalf of or with the 12 knowledge of or encouragement of the State? Logically 13 these questions fall to be considered in that order. 14 Mr Littlejohn is of course dead, and it follows that 15 he can't be subject to criminal investigation or 16 proceedings. Now it is important that these inquests 17 treat him and all other persons fairly. His family is 18 not represented but it is part of the role of your legal 19 team, of your counsel, to help you to ensure that 20 justice is done to all in this inquest. 21 The material that Mr Littlejohn may have been 22 involved in the bombings can be summarised in the 23 following way. 24 First, the evidence of Paul Cleeland and I would 25 refer you to paragraphs 47 to 54 of our written</p> <p style="text-align: center;">Page 116</p>

<p>1 submissions in this regard. In summary, Mr Cleeland's                  2 evidence is that at some point in the 1980s he had                  3 a conversation with Mr Littlejohn, and an IRA prisoner                  4 known to us as Witness Y, at a time when they were all                  5 inmates in HMP Gartree. In that conversation,                  6 Mr Littlejohn is said to have admitted that "he that had                  7 planted the bombs in Birmingham on the orders of British                  8 Intelligence."                  9 So far as your counsel, we, are concerned, there are                  10 a considerable number of difficulties with Mr Cleeland's                  11 account in this regard. In particular, Witness Y was                  12 himself was interviewed by the Solicitor to the                  13 Inquests. He had no memory of the conversation taking                  14 place. He thought he would remember if it had happened.                  15 He said that politically he would like to be able to                  16 tell the inquests that there was some British                  17 involvement in the bombings, but the truth was the truth                  18 and he was 99.9 per cent sure he did not have the                  19 conversation in question.                  20 Secondly, research has been undertaken by your legal                  21 team which shows that Mr Cleeland, Witness Y and                  22 Mr Littlejohn were never in fact in HMP Gartree at the                  23 same time during the 1980s.                  24 Thirdly, Mr Cleeland's account involved him first                  25 coming across Mr Littlejohn when they were working</p> <p style="text-align: center;">Page 117</p>	<p>1 with the learned Coroner's position on Mr Cleeland. We                  2 take that to mean agreement with our submissions to you,                  3 which we note are just submissions for you to consider                  4 and of course not decisions. You will make your own                  5 decision in due course based on all the submissions you                  6 receive.                  7 Jackson Canter in their submissions state that they                  8 do not rest on the proposition that Mr Cleeland is                  9 a credible witness and they would have no objection to                  10 him being called, but they don't advocate actively that                  11 he is called.                  12 It follows, in summary, that we propose that he is                  13 not called and KRW are in agreement with our position                  14 and Jackson Canter do not advocate a different course.                  15 The second tranche of evidence in respect of                  16 Mr Littlejohn is the evidence of the anonymous call.                  17 That we deal with at paragraphs 55 to 57 of our written                  18 submissions.                  19 In summary again, on 22 November 1974, an anonymous                  20 caller to Digbeth Police Station claimed that he, that                  21 is Littlejohn, "knows and assisted in the bombs last                  22 night". The caller gave some other detail including                  23 referring to a police operation in a particular road in                  24 Birmingham that had taken place the night before with                  25 the intention of finding Mr Littlejohn to which</p> <p style="text-align: center;">Page 119</p>
<p>1 together on assassinating paramilitaries in                  2 Northern Ireland in 1968, and the leading book on death                  3 in the Troubles, Lost Lives, records no such killings at                  4 that time.                  5 Fifthly, there are other inconsistencies --                  6 important inconsistencies -- in Mr Cleeland's account,                  7 and between his account and the known history of the                  8 Troubles which is set out again in our submissions at                  9 paragraphs 53 to 54.                  10 Sixthly, Mr Cleeland's prison file records a number                  11 of seemingly improbable claims that are attributed to                  12 him, including the suggestion that the Falklands War was                  13 engineered to prevent his case being publicised. There                  14 are other matters in his prison record set out in the                  15 documents seen by interested persons that I will not                  16 refer to in open court but which raise further doubts                  17 about his reliability as a witness.                  18 Our conclusion, as we have set out in detail, is                  19 that Mr Cleeland is not a witness who should be called                  20 to give evidence in light of the fundamental problems of                  21 credibility that I have outlined and which are outlined                  22 in our written submissions. These are not matters that                  23 can be overlooked and nor can they be resolved by his                  24 giving oral evidence.                  25 KRW Law stated in their submissions that they agree</p> <p style="text-align: center;">Page 118</p>	<p>1 reference has already been made. He was, as you will                  2 recall, on the run from an Irish prison at the time.                  3 There was such an operation in that road and it did                  4 fail to capture Mr Littlejohn, who was in a different                  5 house to the one being observed, but this suggests that                  6 the caller had some knowledge of Mr Littlejohn's                  7 movements and the police operation. The note was marked                  8 to be passed to Detective Sergeant Roy Bunn, who was                  9 tasked with finding Mr Littlejohn. Mr Bunn and his team                  10 did, a few weeks later, arrest Mr Littlejohn, but we,                  11 your team, have not seen any material suggesting that                  12 Mr Littlejohn was asked about the bombing.                  13 At present, the information amounts only to                  14 anonymous hearsay evidence and on its own we don't                  15 consider that it would merit being adduced before the                  16 jury, particularly given the lack of supporting evidence                  17 of Mr Littlejohn's involvement in the bombings and the                  18 weight of evidence that would suggest that he was not                  19 involved.                  20 However, we have recently learned that Mr Bunn is                  21 alive and the Solicitor to the Inquest has made contact                  22 with him. On that basis, we reserve our position on                  23 this matter and will provide further updates about                  24 efforts to obtain evidence from him as and when we have                  25 something to say on that matter.</p> <p style="text-align: center;">Page 120</p>

<p>1 Thirdly, in respect of Mr Littlejohn, there is the 2 book written by Alan Hill. We deal with that at 3 paragraph 58 of our submissions. I will take this 4 shortly as no interested persons seem to rely on 5 Mr Hill's draft book on the Birmingham bombings. He, of 6 course, claimed that a photograph showed Mr Littlejohn 7 at the scene of the bombings and made other claims about 8 his involvement in the attack. The solicitor to the 9 Inquests has interviewed -- or have interviewed -- 10 a retired ambulance attendant, who has happily 11 identified himself as the person that Mr Hill previously 12 claimed was Mr Littlejohn, and on that basis we don't 13 consider that material from Mr Hill's book should be put 14 before the jury. Again, we don't understand anyone else 15 to disagree with that.</p> <p>16 Fourthly, the theory put forward by the families 17 represented by Jackson Canter. In Ms Williams's 18 submissions she argues that there is evidence that 19 Mr Littlejohn was involved in the bombings from the 20 following witnesses. I am now referring to paragraph 67 21 and following of her written submissions.</p> <p>22 First, Johanna Tonkinson. She was the daughter of 23 the former West Midlands Police Chief Superintendent 24 John Tonkinson, who gave a statement in 2016. She said 25 that her father had told her that on the night of the</p> <p style="text-align: center;">Page 121</p>	<p>1 the individual had been lost.</p> <p>2 Ms Williams also relies on several other factors 3 that she considers amount to a constellation of 4 suspicious circumstances. These are the Special Branch 5 interest in Mr Littlejohn in 1972 and Mr Littlejohn's 6 own claims of involvement with British Intelligence in 7 that year; the fact that he was in Birmingham; the fact 8 that he was not arrested until December 1972, even 9 though he was, for at least part of the time, with 10 Thomas Watt, or at least in his house; the involvement 11 other officers from the bomb squad in the hunt for Mr 12 Littlejohn; suggested inconsistencies in whether those 13 involved in the so-called surveillance of Mr Littlejohn 14 were static or mobile.</p> <p>15 Ms Williams's submissions suggest that Ms Tonkinson 16 and Mr Howles's evidence be explored, presumably by 17 calling them and adducing the other evidence of the 18 supposedly suspicious circumstances. That, as we 19 understand it, also appears to be the submission of the 20 KRW families.</p> <p>21 We note that Mr Tonkinson's evidence was the subject 22 of investigation by West Midlands Police, as set out at 23 paragraphs 223 to 284 of their sixth submission to the 24 senior coroner -- 25 THE CORONER: Say that again?</p> <p style="text-align: center;">Page 123</p>
<p>1 bombings he had heard radio transmissions of officers 2 tailing the bombers but they had lost them. He was also 3 said to have said that some "higher power" prevented the 4 bombers from being arrested.</p> <p>5 Ms Tonkinson does not suggest that her father 6 thought Kenneth Littlejohn was involved or responsible 7 for the bombings. In fact, she stated explicitly that 8 her father was convinced that the Birmingham 6 were 9 guilty.</p> <p>10 Secondly, John Tonkinson himself. As I understand 11 it, he's now deceased. He gave an account to West 12 Midlands Police in 1992 in which he said that on 13 21 November 1974, he overheard radio messages which 14 indicated that a surveillance operation was going on and 15 that whoever was being followed was lost. He thought 16 this would have been a terrorism-related operation but 17 he didn't expressly relate it to the bombings that 18 night, nor did he mention anyone intervening to prevent 19 an arrest in any way, nor, critically, did he mention 20 Kenneth Littlejohn himself.</p> <p>21 Thirdly, Police Constable Adrian Howles. He gave an 22 account in 2016 of hearing radio messages concerning 23 a surveillance operation relating to a "Littlejohn" on 24 the afternoon and evening of 21 November. He recalled 25 that at some point he heard messages to the effect that</p> <p style="text-align: center;">Page 122</p>	<p>1 MR SKELTON: West Midlands Police investigated this issue. 2 THE CORONER: Yes. 3 MR SKELTON: In detail. It is in paragraphs 203 to 284 of 4 their sixth submission to the senior coroner, your 5 predecessor. 6 THE CORONER: Yes. 7 MR SKELTON: Leaving aside Mr Howles to whom I have 8 referred, there is no further evidence that they 9 identified that supports her account of her father's 10 recollection.</p> <p>11 We do not consider that this thesis is particularly 12 strong evidence of Mr Littlejohn's involvement in the 13 bombings. It relies on two hearsay accounts given more 14 than 40 years after the events being combined to provide 15 circumstantial evidence that (a) a man called Littlejohn 16 was being followed and was lost; and (b) that a retired 17 chief superintendent thought the bombers were being 18 followed and were lost. In other words, two matters put 19 together which were not put together at the time.</p> <p>20 There is in contrast much material that weighs 21 against Mr Littlejohn's involvement in the bombings, not 22 least the absence of any documentary evidence or any 23 credible account that directly identifies him as 24 a perpetrator, despite numerous and extensive 25 investigations by West Midlands Police.</p> <p style="text-align: center;">Page 124</p>

<p>1 It is unclear, it is suggested, that Mr Littlejohn                  2 managed to infiltrate the Birmingham IRA, how he                  3 achieved this given his high public profile at the time.                  4 The interested persons do not address why the                  5 British State would have chosen to use Mr Littlejohn,                  6 a man who had publicly claimed to be working for them in                  7 the past, for such a sensitive operation. Nor does it                  8 explain why Mr Littlejohn would have been the subject of                  9 surveillance if he was also involved in a clandestine                  10 bomb attack on innocent civilians in Birmingham.                  11 That said, you may feel that this evidence should be                  12 aired to ensure public scrutiny. If that were to be                  13 your decision, considerable thought would have to be                  14 given to which witnesses could be called or should be                  15 called; which other evidence should be adduced,                  16 including evidence that points away from Mr Littlejohn's                  17 involvement in the bombings; how that evidence should be                  18 adduced; and, lastly, whether calling such evidence                  19 requires further consideration be given to the second                  20 limb of the question we posed about Mr Littlejohn,                  21 namely what evidence can and should be adduced about his                  22 claimed involvement with the Ministry of Defence and the                  23 Intelligence agencies in the early 1970s.                  24 THE CORONER: When you say that you may feel that this                  25 evidence should be aired, are you talking about the</p> <p style="text-align: center;">Page 125</p>	<p>1 by one of the Birmingham 6, John Walker. Mr Kelly was                  2 charged with offences relating to the possession of                  3 explosive materials and conspiracy to cause explosions,                  4 and was tried, as is well-known, alongside the                  5 Birmingham 6, together with Michael Sheehan and Mick                  6 Murray.                  7 His defence rested on a claim that he had sought to                  8 infiltrate the IRA in Birmingham and was intending to                  9 contact police to become an informant. He was convicted                  10 of possession but cleared of the conspiracy charges, and                  11 was sentenced to twelve months in prison, being released                  12 in August 1975 in light of time served on remand.                  13 There have been suggestions that Mr Kelly was, in                  14 fact, an agent/informant or agent provocateur, whose                  15 actions are in some way connected with the bombings.                  16 Previously those suggestions seemed to stem from the                  17 relatively short sentence that he received following his                  18 conviction, however that argument, as far as we are                  19 aware, no longer seems to be advanced.                  20 We have disclosed the transcripts of the trial,                  21 including the plea and mitigation for Mr Kelly and the                  22 judge's sentencing remarks. In short, he was sentenced                  23 on the basis that he had engaged in what was termed                  24 "well-intentioned foolishness".                  25 We have also disclosed a detailed statement provided</p> <p style="text-align: center;">Page 127</p>
<p>1 Tonkinson and daughter evidence?                  2 MR SKELTON: Yes.                  3 THE CORONER: As a starting point?                  4 MR SKELTON: Yes. And only that.                  5 THE CORONER: Yes.                  6 MR SKELTON: As you will see from our submissions, we take                  7 the view that it is appropriate not to air that                  8 evidence, because we don't consider it reaches the                  9 necessary evidential standard.                  10 THE CORONER: Yes.                  11 MR SKELTON: But if, exercising your discretion, you take                  12 a different view, then considerations arise as to how                  13 far one would have to look at that issue. It could be                  14 circumscribed relatively narrowly or it may lead down                  15 further pathways.                  16 That ties in, Sir, with the question of practical                  17 justice which I adverted to in my opening submissions on                  18 the question of disclosure. In other words, you may not                  19 have a strict legal duty to look at something but you                  20 may, in your discretion, decide to do so in order, for                  21 example, to allay public suspicion.                  22 THE CORONER: Yes.                  23 MR SKELTON: May I turn lastly to James Kelly?                  24 James Kelly was arrested on 29 November 1974                  25 following information provided to West Midlands Police</p> <p style="text-align: center;">Page 126</p>	<p>1 to us by His Honour Mr Maxwell, who was then part of the                  2 prosecution team at the trial. In short, his evidence                  3 suggests that the prosecution did not believe Mr Kelly                  4 and made no concessions when it came to prosecuting him.                  5 We have not identified any evidence suggesting                  6 Mr Kelly was involved in the bombings on 21 November                  7 1974 while acting as an agent or informant of the State,                  8 and there is, in our view, nothing that could be adduced                  9 by way of evidence before the jury if this issue were to                  10 be included.                  11 Ms Williams submits that the evidence related to                  12 Mr Kelly should not simply be dismissed without                  13 consideration at the inquests. However, she makes no                  14 proposals as to which witnesses should be called or how                  15 or what evidence could be adduced.                  16 She also submits that because so much material                  17 relating to Mr Kelly has been redacted, she is limited                  18 in what she can say about him. Although as I have                  19 previously indicated, all relevant material has been                  20 unearthed and uncovered and disclosed.                  21 We note the redacted material has been assessed as                  22 irrelevant. I won't address you on that again, having                  23 addressed you previously on it. It can't, in our view,                  24 support any submission that Mr Kelly was involved in the                  25 Birmingham bombings as an agent or informant. Had that</p> <p style="text-align: center;">Page 128</p>



<p>1        been the case, we would have been obliged to either 2        enter the PII process or disclose the material. 3        THE CORONER: Does that go so far as to say not involved in 4        the bombings while acting as agent or informant of the 5        State or in any other capacity? 6        MR SKELTON: So far as his status at the time, so far as it 7        relates to the agent/informant issue. 8        THE CORONER: Yes. 9        MR SKELTON: In other words, providing information in 10       advance of the bombings or somehow protected after the 11       bombings had taken place. 12       THE CORONER: Yes. 13       MR SKELTON: All that one has to go publicly is what was 14       aired at his trial of course, which I have already 15       explained. 16       THE CORONER: Yes. 17       MR SKELTON: KRW submit that the two issues are important. 18       Firstly, was James Kelly working as a paid informer 19       prior to the tipping off by John Walker to Detective 20       Superintendent Crawford; and was another individual, who 21       I won't name, working as a paid informer? 22       The only evidence presented in favour of the former 23       is that one police officer said that he searched 24       Mr Kelly's home on the evening of 21 November, which is 25       some time before Mr Walker gave information about him to</p> <p style="text-align: center;">Page 129</p>	<p>1        Police officer, who had interviewed C. Mr Squires said 2        that this man was asked if he knew who planted the bombs 3        on 21 November, and replied by saying that he had no 4        idea as he was not in Birmingham during that period. 5        Mr Squires also said that the man did not indicate 6        that he had previously given information to or worked 7        for the police or any other British State agency prior 8        to 21 November. Nor did Mr Squires receive information 9        from any other source that the man had been an agent or 10       informant prior to 21 November 1974. 11       In light of this evidence, we don't consider that 12       the information contained in the C document, or in fact 13       the existence of the C document, provides any 14       information that is of relevance to the agent/informant 15       or forewarning topics. 16       We, of course, understand why the C document is of 17       interest to the families and why they wish to see the 18       information contained in it. However, that is not 19       information that is relevant to the matters which are 20       within the scope of the inquests, because it does not 21       assist in answering, in the proper jurisdiction of the 22       Coroner's court, how the 21 victims of the bombings 23       died. 24       So those, Sir, are my submissions, I think, on the 25       principal issues that have arisen in respect of the</p> <p style="text-align: center;">Page 131</p>
<p>1        the police. But KRW failed to note that the same police 2        officer later said that he had been wrong on this point, 3        that he had in fact searched the house of Patrick Hill 4        rather than the other person. 5        So no evidence in summary is presented in support of 6        the allegation made in respect of the other individual, 7        so we repeat there is no evidential basis for pursuing 8        that allegation in respect of him, and we don't propose 9        that any evidence be called about the unevidenced 10       rumours of his involvement in the bombings. 11       May I turn then to the C document which has been 12       alluded to already by Ms Williams? That, to be clear, 13       is a document provided to Granada TV that recounts 14       information provided to the police by an informant whose 15       name has been redacted and replaced with the letter C. 16       In his book, Mr Mullin gave his view that the interviews 17       with C took place at the end of 1975. 18       Neither the C document nor associated materials that 19       we have seen provide evidence of the existence of 20       an agent/informant within the Birmingham IRA prior to 21       21 November 1974 who was involved in the bombings that 22       night, which is a critical conclusion so far as this 23       issue is concerned. 24       The Solicitor to the Inquest has obtained 25       a statement from William Squires, a former West Midlands</p> <p style="text-align: center;">Page 130</p>	<p>1        agent/informant topic. I may, with your leave, address 2        you very briefly on Professor Mark McGovern, or it may 3        be that I will await what others say. 4        THE CORONER: Yes. I think we will wait. 5        MR SKELTON: I am conscious the stenographer may need 6        a break at some point. 7        (3.13 pm) 8        (A short break) 9        10       (3.25 pm) 11       Submissions by MS WILLIAMS re forewarning 12       MS WILLIAMS: Sir, with the agreement of Mr Morgan if I may 13       go first again. 14       THE CORONER: Yes. 15       MS WILLIAMS: First of all, general observations about scope 16       which pertain to the general issues you are asked to 17       consider at this stage. If I can refer to paragraph 58 18       onwards in our written submissions. Paragraph 58 which 19       is on page 17. 20       We make a point in paragraph 58 which we in essence 21       pick up on again when we come to the agent/informer 22       topic. We pick up on it in paragraphs 62 to 64. The 23       point, in short, is this: that in the submissions made 24       by CTL, the point is made that there can be instances 25       where the allaying of unjustified suspicion of</p> <p style="text-align: center;">Page 132</p>

<p>1 deliberate wrongdoing can have taken place before the 2 commencement of the inquest and before evidence is 3 adduced at the inquest. In essence, what we say in 4 those paragraphs is whilst we accept as a matter of 5 theory that can happen on occasions, we do not accept in 6 relation to the agent/informer topics or the material 7 relating to Mr Tonkinson that we are at that stage. 8 Partly, we say, because of the issues around 9 disclosure that we have already alluded to this morning, 10 but even, Sir, if you are against us on those matters, 11 this is a situation where limited material is available 12 on these matters for our clients to consider, or to 13 consider in conjunction with us. It is a situation 14 where there have been extensive redactions in the 15 material that has been disclosed, and there are -- and 16 I will seek to identify them when I turn to the 17 specifics -- unanswered questions. 18 So to put it shortly, Sir, we say that this is not 19 a situation where it can be said with confidence that 20 a topic that might otherwise have come within the scope 21 of the inquest does not do so because suspicion has 22 already been dispelled. We say those submissions 23 remain. 24 Sir, that is my first general point. My second 25 general point is one that we have covered in</p> <p style="text-align: center;">Page 133</p>	<p>1 setting them out now but we do rely on them. 2 The fourth point I make, before I turn to the 3 specifics of Mr Littlejohn and Mr Kelly, is Mr Skelton 4 referred in his oral submissions again to the gisting 5 process and the fact that it has been said via the gist 6 that there is no information to indicate involvement of 7 an agent or informant. 8 Perhaps we could just briefly, Sir, look at the 9 terms of the West Midlands Police gist on this topic, 10 which is tab 10 in the documents bundle. The gist, as 11 Mr Skelton has already alluded to, says that West 12 Midlands Police confirms it has no information that West 13 Midlands Police had advance knowledge of or was involved 14 or colluded in bombings through an agent, informant or 15 anyone else. 16 There is potentially, in our submission, a deal of 17 difference between a document which provides directly 18 information to that effect and material, whether it be 19 documentary or via witnesses, that can be explored 20 through the process of the inquest, and which may lead 21 to a train of inquiry and further questions. Of 22 course -- and we readily accept this, Sir -- you will be 23 astute not simply to allow wholly speculative inquiries, 24 of course there has to be a dividing line somewhere, but 25 essentially this gist, as we understand it, it is saying</p> <p style="text-align: center;">Page 135</p>
<p>1 paragraph 64, particularly in the second half of 64, 2 because there is mention in the submissions of your 3 legal team and also, I think, in Mr Johnson's 4 submissions, about the Galbraith plus test. We make the 5 point that the Galbraith plus test is aimed essentially 6 at the Coroner's role in reviewing the evidence after it 7 has been heard and determining that no issues are left 8 to the jury where the evidence is not sufficient to 9 support particular conclusions. Caution, in our 10 submission, should be exercised in seeking to apply 11 a Galbraith plus approach at this stage and therefore 12 seeking to rule out, at this stage, evidence which may 13 or may not be credible. 14 Ultimately, we say it is for the jury to decide if 15 the evidence is credible, and also if it has at least at 16 this stage the potential to be credible, then under 17 questioning of the relevant witnesses at the inquest, it 18 has the potential to become more or less credible. 19 Therefore it is after the evidence has been heard that 20 the Galbraith plus test is appropriately applied, rather 21 than some kind of additional filter at this stage. 22 Sir, the third general point we make are the points 23 that we set out in paragraph 64 of our submissions, 24 which in essence are responses to various points made in 25 CTT's submission. I am not going to take up time</p> <p style="text-align: center;">Page 134</p>	<p>1 that there have not been documents found that contain 2 information to the effect there set out. That doesn't 3 mean to say that matters might come to light as a result 4 of a process of questioning and raising the sort of 5 questions that I will come on to by way of example in 6 relation to Mr Littlejohn, raising those at the inquest. 7 Secondly, Sir, on the subject of gisting, we made 8 this point in our written submissions so I will not 9 labour it, but can we just note as well that in relation 10 to C, we had highlighted the word "wrongfully" in 11 paragraph C. 12 THE CORONER: That is not the best, most felicitous 13 expression. 14 MS WILLIAMS: No, one can see why that gives the suggestion 15 that there were documents suggesting it was done, but 16 done properly -- 17 THE CORONER: Yes, so you are really asking for further and 18 better particulars -- 19 MS WILLIAMS: Yes, further clarification. But absent that 20 at the moment, we have concerns, Sir. 21 THE CORONER: Yes. 22 MS WILLIAMS: So those are the points we make about the 23 gist. 24 THE CORONER: That is in your written submissions. 25 MS WILLIAMS: It is, paragraph 43 for your cross-reference,</p> <p style="text-align: center;">Page 136</p>

<p>1 Sir.                  2 THE CORONER: Thank you.                  3 MS WILLIAMS: Turning then specifically to the position in                  4 relation to Mr Littlejohn, and I will deal with the                  5 Tonkinson position, if I can call it that, if I may,                  6 during the course of, as there is an interface.                  7 THE CORONER: Yes.                  8 MS WILLIAMS: We have dealt with the position of                  9 Mr Littlejohn from paragraph 66 onwards.                  10 In paragraph 67, in a series of subparagraphs, we                  11 highlight a number of matters which we respectfully                  12 submit are worthy of further inquiry at the very least,                  13 and in relation to which it cannot be said at this stage                  14 that the suspicion of his involvement, the long standing                  15 suspicion that Mr Skelton has already referred to, can                  16 be regarded as dispelled.                  17 (a) NCND we have already debated this morning. (b)                  18 the long standing rumours I have already referred to.                  19 (c) we touched on this morning but the fact that                  20 Mr Littlejohn appears to have attracted the interest of                  21 Special Branch in 1972. (d) he was known to be in                  22 Birmingham on the night of the bombing. (e) although he                  23 escaped from Mountjoy prison in March 1974 and he was in                  24 Birmingham for a period of time including, it appears,                  25 giving interviews to the media before 21 November 1974.</p> <p style="text-align: center;">Page 137</p>	<p>1 Howells. It is still noted in our subparagraph (f),                  2 who, as indeed John Tonkinson himself describes doing,                  3 overheard a police surveillance operation on his police                  4 radio in which someone, who he says in terms he believes                  5 was Mr Littlejohn, was being followed and he was lost                  6 sight of in the Digbeth area around 1800 to 1830 hours.                  7 Interestingly, Mr Howles goes on to say in his                  8 statement that overhearing about this surveillance                  9 operation on the radio was not something he ever                  10 discussed with John Tonkinson so, on the face of it, we                  11 have two independent sources of information, one being                  12 John and Johanna Tonkinson and the other being Adrian                  13 Howles and they both refer in similar terms to                  14 a surveillance operation, being heard over the radio, to                  15 somebody who was being followed and being lost by the                  16 authorities.                  17 Ms Tonkinson then has the additional information                  18 that she had understood from her father it was the                  19 bombers. Mr Howles says it was Mr Littlejohn who was                  20 lost, his understanding from what he heard. So if one                  21 puts those two pieces of information together -- and                  22 they are plainly referring to the same surveillance                  23 operation that was overheard over the radio if one looks                  24 at the details and the timing and so forth -- then there                  25 is potentially, if one puts the two of them together,</p> <p style="text-align: center;">Page 139</p>
<p>1 As far as we are aware, the reasons why he was not                  2 arrested as an escapee at an earlier stage are                  3 unexplained. So that is an example of an unexplained                  4 question: was it because he had some kind of                  5 relationship with police or other state body?                  6 Then, in (f), we say there is evidence indicating --                  7 well, it has been accepted by Mr Skelton that there is                  8 evidence that Mr Littlejohn was under police                  9 surveillance during the day of the bombings, 21 November                  10 1974. Why was he under surveillance that day? That is                  11 an unanswered question. If he simply was someone who                  12 had attracted the interest of the authorities as an                  13 escaped convict, he could simply have been arrested.                  14 Then we come to the Tonkinson evidence so if I may                  15 I will deal with that at this point. The significance                  16 in particular -- or potential significance I should say,                  17 Sir -- is as follows. On the one hand you have the                  18 account of Ms Johanna Tonkinson, the former chief                  19 superintendent, John Tonkinson's, daughter that                  20 Mr Skelton has already summarised, namely that she says                  21 her father told her that he overheard radio                  22 transmissions on the early evening of 21 November 1974                  23 tailing the bomb planters but they were lost before they                  24 could be arrested. You also have, as we have noted in                  25 the same subparagraph, the statement of Police Constable</p> <p style="text-align: center;">Page 138</p>	<p>1 a conclusion to be drawn that the person who was lost                  2 was Mr Littlejohn and that person was one of the                  3 bombers.                  4 Now, I readily accept that that is one conclusion of                  5 a number that could be drawn. But it cannot, in our                  6 submission, be said at this stage that that suspicion                  7 has been dispelled. In particular, it would, in our                  8 submission, be entirely appropriate for both                  9 Ms Tonkinson and former Police Constable Howles, if he's                  10 still alive, to give evidence at the inquest. It may                  11 turn out that in fact there is no correlation between                  12 the two and there is a perfectly innocent explanation,                  13 but on the face of it, there is a potential correlation                  14 there between Ms Tonkinson saying it was the bomber, or                  15 a bomber or bomb planters, who was lost and Mr Howles                  16 saying it was Mr Littlejohn who was lost.                  17 So that, in our submission, is on the face of it                  18 potentially highly material information and it goes both                  19 potentially to forewarning, if it be the case that                  20 Mr Littlejohn was being the subject of a surveillance                  21 operation at that stage, and potentially goes to the                  22 agent/informant issue if his relationship with the                  23 police or security service was of such a nature, which                  24 you already have our submissions on this morning. We                  25 say it is in fact highly material.</p> <p style="text-align: center;">Page 140</p>

<p>1 So there are a whole host of unanswered questions in                  2 relation to that. In relation to our subparagraph (g)                  3 we make the point -- drawing this information from the                  4 Operation Castor's report and I'm looking at the first                  5 three lines of (g) -- why is it that reference is made                  6 to officers from the bomb squad being involved in the                  7 surveillance of Mr Littlejohn? We have no explanation                  8 for that.</p> <p>9 In relation to our subparagraph (h) and (i), I'm not                  10 going through all the details but there are some                  11 statements of police officers which we have set out                  12 there which in fact may suggest a different inference is                  13 to be drawn, namely that there were two surveillance                  14 operations going on in Birmingham that day, one                  15 involving Mr Littlejohn and one as yet unexplained.                  16 I believe that is a point that the KRW submissions make                  17 as well, that there is some evidence suggesting there                  18 were two police surveillance operations going on.</p> <p>19 But we simply don't know at this stage. Was there                  20 one operation that is being referred to in this various                  21 material and if so, was Mr Littlejohn the subject of it,                  22 or somebody else the subject of it, or were there these                  23 two operations and if so, was Mr Littlejohn the subject                  24 of one of them and who was the subject and what was the                  25 purpose of the second one involving, it appears, either</p> <p style="text-align: center;">Page 141</p>	<p>1 reasons that I will come on to and I believe he's one of                  2 the officers who was also involved in the surveillance                  3 that I have already referred to. The fact that he's                  4 been traced, I take it that on the face of it, and                  5 obviously subject to any potential health issues, he is                  6 available as a witness for the inquest and therefore                  7 provides someone else who could be asked about these                  8 important issues.</p> <p>9 We go on to say in (j):                  10 "However, and surprisingly, there is no reference to                  11 this message, the anonymous message, in any of the                  12 police statements made in respect of the Birmingham                  13 bombings."                  14 Apparently -- we have taken this from what CTI                  15 say -- West Midlands Police hold no information to                  16 indicate that the two other men, who were mentioned in                  17 the note of the call, were further identified or traced.                  18 That seems rather surprising in itself where information                  19 that on the face of it seems credible, or may be                  20 credible, is provided to police, about such a serious,                  21 serious incident involving such terrible loss of life.</p> <p>22 Then at (k) we say there was an apparently marked                  23 lack of priority accorded to the information which on                  24 the face of it was highly significant. The lack of                  25 documented follow-up itself raises questions as to what</p> <p style="text-align: center;">Page 143</p>
<p>1 the security services or the Serious Crime Squad,                  2 Regional Crime Squad and/or Bomb Squad of the West                  3 Midlands Police.</p> <p>4 Then on top of that -- so it doesn't just come in                  5 isolation, as perhaps my learned friend, Mr Skelton's,                  6 submissions might have suggested -- then on top of that,                  7 we have what we referred to at our paragraph (j), the                  8 day after the bombings the anonymous telephone call                  9 received by police alleging that Mr Littlejohn "knows                  10 and assisted in the bombs last night", made by someone                  11 who happens to have some degree of accurate knowledge at                  12 least, as Mr Skelton has accepted, because he referred                  13 to the fact that Mr Littlejohn was under surveillance on                  14 a particular road the previous day but the police were                  15 watching the wrong house and he slipped away from them                  16 which is an account that finds resonance in that of some                  17 of the police officers.</p> <p>18 So it can't simply be dismissed as, for example, the                  19 information provided by an incredible fantasist or                  20 something of that nature when in fact it is known that                  21 part of the information conveyed in that message is                  22 accurate. As we continue in subparagraph (j), that                  23 record of the anonymous call was passed to DS Bunn who,                  24 we hear today, has now been traced. Plainly, in our                  25 submission, his statement is going to be important for</p> <p style="text-align: center;">Page 142</p>	<p>1 West Midland Police officers' motivation for this may                  2 have been. And indeed Mr Littlejohn, although he                  3 remained in Birmingham, indeed staying at the house of                  4 one Mr Watt, Thomas Watt, with whom police had at least                  5 some kind of association, it would seem, but despite all                  6 that, he was not arrested for another two weeks and, as                  7 we go on to say in that paragraph, when he was arrested                  8 there was no information to suggest that DS Bunn, who                  9 was tasked with dealing with the anonymous message                  10 naming Mr Littlejohn as one who was involved in the                  11 bombings, there is no information to suggest that DS                  12 Bunn ever followed up that allegation with Mr Littlejohn                  13 which, of course, raises profound questions as to why                  14 that was the case, unless it was something which police                  15 or other state agents already had foreknowledge of.</p> <p>16 We described it, Sir, as has already been mentioned,                  17 as a constellation of suspicious circumstances but it is                  18 indeed just that. I have in the time available only                  19 sought to highlight some of the questions that remain                  20 unanswered. As I have already indicated, it may be                  21 ultimately there are answers to these questions. It may                  22 be there are not. It may be that upon questioning, for                  23 example, DS Bunn and Ms Tonkinson or Mr Howles, that                  24 further suspicious circumstances arise. We simply don't                  25 know at this stage but in our respectful submission it</p> <p style="text-align: center;">Page 144</p>

<p>1 cannot be said that suspicion on these important issues 2 has been dispelled. 3 We go on in paragraph 69 through to 71 -- I am not 4 going to deal with it now -- but to deal with a number 5 of other points made by CTI in their written submissions 6 and to some extent repeated or summarised by Mr Skelton 7 today. They are in essence, as we say, all the kind of 8 points which will be ventilated or should be ventilated 9 in evidence in front of a jury. None of them are 10 knock-out points. 11 So for all those reasons, we respectfully submit 12 that the role played by Mr Littlejohn should be within 13 the scope of the inquests. For the same reason I am 14 just going to, if I may, finish dealing with the 15 position in relation to Mr Tonkinson before I come on to 16 Mr Kelly. We dealt with the Tonkinsons and forewarning, 17 as well as in the passages that I have just referred to, 18 at paragraph 101 to 106 of our submissions. Obviously 19 I have already summarised the evidence and why it is 20 important. Insofar as it is said that there is not 21 other evidence that supports or reinforces what 22 Ms Tonkinson says, I have already referred to the 23 evidence of Mr Howles. 24 But in any event are there are various witnesses 25 being called at this inquest where there is not a direct</p> <p style="text-align: center;">Page 145</p>	<p>1 I mean the public interest in disclosure outweighs it. 2 So if it be the case that there is clear information 3 that he only became an informant, whether formally or in 4 some informal capacity, after the date of the bombing, 5 well, let's have that information publicly. Let's 6 dispel that suspicion. But we are not at that stage at 7 the moment and obviously there may be sensitive 8 information to the contrary. 9 Mr Skelton is right to say that we have not 10 positively proposed how the evidence in relation to this 11 sub-topic could be aired at the inquest but in all 12 fairness I think it would be quite hard for us to do so 13 when it is a topic which is currently the subject of so 14 much redaction. In our submission the first question is 15 whether this is a topic which is within scope and then 16 one comes on to the way in which the matter could be 17 considered in evidence thereafter. 18 Sir, I'm conscious of the time. I am not going to 19 take up time going through the points we have set out in 20 paragraph 77 of our submissions but those are some of 21 the points that we say give rise to unanswered questions 22 in relation to Mr Kelly's role. 23 I am just asked to remind you, Sir, that we raised 24 a point as well about the person who has become known as 25 the "young planter". It is set out in paragraphs 78 to</p> <p style="text-align: center;">Page 147</p>
<p>1 documentary support, not least because of the huge 2 passage of time and the unavailability of so much 3 material. So the sheer fact that there may not be 4 a particular document in existence that corroborates 5 what she says is not, in our submission, where it is 6 evidence that touches on such an important issue, of 7 such concern to the families, is not a reason in itself 8 not to call her. Insofar as CTI say in their 9 submissions, or suggest in their submissions, that there 10 may be credibility issues over her account, preeminently 11 those are matters to be explored in her evidence. 12 So, that's probably all I need to say in relation to 13 that. In relation to Mr Kelly, we have dealt with his 14 position rather more briefly at paragraph 73 onwards in 15 our submissions. 73 through to 77. Plainly we don't 16 know a great deal, but there is material certainly 17 suggestive -- as we have indicated there, I will not 18 take up time going through it in detail -- but there is 19 material indicating that or suggesting that at some 20 point Mr Kelly was a provider of information to West 21 Midlands Police. If that only occurred after the date 22 of the bombing, surely so much the better, if that could 23 be openly clarified in evidence. You already have our 24 submissions from this morning as to why there is no need 25 for NCND to apply to Mr Kelly. When I say "no need",</p> <p style="text-align: center;">Page 146</p>	<p>1 80 in our submissions but I just mention it now while we 2 are on the topic of agent/informants. Subject to that, 3 Sir, unless I can assist you further. 4 THE CORONER: Thank you very much. 5 Submissions by MR MORGAN re forewarning 6 MR MORGAN: Thank you, Sir. 7 The inquest has received our 24-page written 8 submission on what are the inevitably overlapping issues 9 of forewarning and the agent/informant issue and I think 10 we addressed the issues with some specificity with in 11 those written submissions. 12 THE CORONER: Yes. 13 MR MORGAN: Given the time where we are today and what 14 remains to be done, and in light of our written 15 submissions, and what Ms Williams has already addressed 16 you on, and I think there is a fairly significant 17 overlap in Ms Williams' submissions, both written and 18 oral and ours, I don't intend to duplicate those points. 19 I think you have the points, Sir. 20 THE CORONER: Yes. 21 MR MORGAN: So, all I would seek to address you on, very 22 briefly, is a general point in this context, which is, 23 I suppose, the overarching point about inquests and 24 inquests of some vintage and particularly where they 25 touch upon issues of loss of life and acts of violence</p> <p style="text-align: center;">Page 148</p>

<p>1 and alleged involvement of the security forces.                  2 Mr Skelton rightfully referred to the concept of                  3 practical justice. This is a point, I think, that                  4 really resonates in this case when one departs from the                  5 professional individuals and speaks with the families of                  6 those that lost their life. Their understanding of this                  7 concept of practical justice -- although they may not                  8 use that label -- is that all possible lines of inquiry                  9 are pursued by you, Sir, and the jury, and at the                  10 appropriate time, you, Sir, and the jury, can consider                  11 the issue, if only to address and then dismiss rumour                  12 and suspicion.                  13 At that time, when all the discovery is released,                  14 when all the discovery is understood, when the matters                  15 have been ventilated, perhaps with more clarity as to                  16 the issues that present to the inquest, only at that                  17 point are we in a position to safely say "We don't                  18 believe that this is credible". I would say,                  19 respectfully, Sir, that performing that role is of                  20 benefit to a number of the interested parties, both                  21 personal and professional, not just the victims but also                  22 the other professional, Governmental agencies whose acts                  23 and omissions are subject to these points that have been                  24 made over an extended period of time.                  25 So I think that specific point has validity when one</p> <p style="text-align: center;">Page 149</p>	<p>1 specific context of this inquest to suspend one's                  2 understandable scepticism as to what may or may not have                  3 been the role of the state before, during and after the                  4 Birmingham pub bombings.                  5 We must, I would respectfully suggest, as                  6 professionals, as legal professionals, we need to                  7 suspend such scepticism and also see what would normally                  8 be the evidential thresholds in context, the context                  9 being the passage of time -- 44 years -- the nature of                  10 collusion, where individuals or potentially state                  11 agencies could be incentivised not to retain and in the                  12 future disclose documentation, perhaps because they feel                  13 the disclosure of such would undermine the standing and                  14 operation of those agencies.                  15 For those reasons, Sir, I would say that as                  16 overarching point, where we have a potential line of                  17 inquiry, where we have an evidential point, where we                  18 have a witness, I think there should be a flexibility                  19 and willingness to pursue lines of inquiry until such                  20 point that you feel that you can usefully and properly                  21 take a view on that and everyone else can understand                  22 that and at that point, certainly the families that we                  23 represent, can see very clearly that you, Sir, and the                  24 jury, have had an opportunity to look at these issues in                  25 a little bit more detail and give them the weight that</p> <p style="text-align: center;">Page 151</p>
<p>1 considers the passage of time that we have seen. But                  2 also, perhaps more importantly, the nature of collusion,                  3 or in this case the alleged collusion, Sir.                  4 The nature of collusion is by its nature, both at                  5 the time of acts and afterwards, secretive and, without                  6 meaning to be trite, not usually subject to a paper                  7 trail or something that can be audited many decades                  8 after the event. To the blunt, it is the nature of the                  9 beast.                  10 If I may say so, understanding collusion is                  11 something that takes some time to get one's head around,                  12 because in certain contexts we are only now learning how                  13 it actually operated and I use collusion in the broadest                  14 sense. It can be simply knowledge, knowledge of an                  15 event, where one doesn't take -- when I say "one" I mean                  16 the state agency, one does not take steps because one                  17 does not want to prejudice one's agent, prejudice the                  18 future flow of information, prejudice the lives and                  19 safety of others in the future.                  20 So the nature of collusion is secretive and not                  21 subject to the type of evidence that one normally sees                  22 in courts, particularly when one has the high level of                  23 loss of life which we had in November 1974. So it is                  24 for that reason, Sir, we believe it to be practically                  25 important and perhaps practically necessary in the</p> <p style="text-align: center;">Page 150</p>	<p>1 whatever information or evidence we have would support                  2 such.                  3 That consideration process will be done by you, Sir,                  4 and the jury, the families of victims and also the                  5 general public, and I made this point before but I see                  6 utility in that process: for those families that we                  7 represent, in a way, after such passage of time, their                  8 expectations are not heightened in certain respects, but                  9 what we can do is rule out certain fears, worries,                  10 suspicions or points of anger that this inquest can                  11 perform that role usefully.                  12 So on that basis we would say that in our 24 pages                  13 that we have put before you on the constellation of                  14 issues that we have presented and others have addressed                  15 you on today; Littlejohn, Kelly, Gavin, Watt, Walker,                  16 the Liverpool connection, we believe that our points                  17 cross the threshold for it to be considered fairly.                  18 Unless there is anything, further, Sir.                  19 THE CORONER: No, thank you very much.                  20 Mr Johnson?                  21 Submissions by MR JOHNSON re forewarning                  22 MR JOHNSON: Sir, very briefly, if I may. We respectfully                  23 agree with Mr Morgan that you should pursue lines of                  24 inquiry up to a point that you can take a view on the                  25 relevant matters. That is exactly what you have done</p> <p style="text-align: center;">Page 152</p>

<p>1 over the two or three years that we have been providing                  2 disclosure to you on this topic so that you can take                  3 a view.                  4 We respectfully agree with Mr Skelton that the                  5 upshot of that is that there is nothing, nothing, to                  6 indicate that there is any evidential basis for pursuing                  7 the agent/informant issue any further and it should                  8 therefore be ruled out of scope.                  9 Picking out of individual pieces of material and                  10 putting them together and saying that they give rise to                  11 suspicion is not, in our submission, a substitute for                  12 evidence that can properly be put before a jury. Of                  13 course, if anything arises -- and the inquiry is yet to                  14 see Mr Bunn, for example -- that can be reconsidered.                  15 As has been observed more than once today, this is                  16 an ongoing process and ruling something out now does not                  17 prevent it being reconsidered later but as matters                  18 stand, after a pretty exhaustive and exhausting                  19 disclosure exercise, there is simply no evidence that                  20 could properly be put before a jury.                  21 Of course I accept that you have a discretion to                  22 adduce material in order to allay rumour and suspicion.                  23 We submit that that can properly be done -- well, it has                  24 properly been done -- firstly by this public hearing                  25 where Mr Skelton has very clearly set out the problems</p> <p style="text-align: center;">Page 153</p>	<p>1 Might be read to be limited to documents that                  2 specifically say that we had advanced knowledge and it                  3 might leave out of account other material that might                  4 allow a case to be made that we did have advance                  5 knowledge of the bombings.                  6 Two points about that, if I may, very briefly.                  7 First, the word "information" was deliberately chosen so                  8 as not to be limited to documents. We were trying to                  9 encompass everything. So it was supposed to be                  10 expansive rather than restrictive.                  11 But, secondly, the point I made earlier: that this                  12 gist does not stand in isolation. What lies beneath it                  13 is the very detailed investigation, firstly that West                  14 Midlands Police has carried out, but more importantly                  15 that you and your team have independently carried out.                  16 If there was anything at all that suggested that we                  17 might have had advance knowledge of the bombings and                  18 so on, then, of course, it would have fallen for                  19 disclosure and that has happened, for example, in                  20 respect of the 11 topics that we discussed a little                  21 while ago.                  22 The second point Ms Williams makes concerns the word                  23 "wrongfully". She rather demonstrates the folly of                  24 using adverbs when you don't need to because I can                  25 understand why she says what she does.</p> <p style="text-align: center;">Page 155</p>
<p>1 with the conspiracy theories and why there is no proper                  2 evidential basis to support them, and, if anything                  3 further is required, there could be publication on your                  4 website of the various written submissions that have                  5 been provided that deal with this issue in considerable                  6 detail.                  7 As I said, of course we recognise you have                  8 a discretion. We submit rumour and suspicion can be                  9 allayed in that way. We submit that you should not                  10 exercise your discretion by way of adducing material                  11 that has no proper evidential foundation, it is quite                  12 difficult for a jury to comprehend because of its                  13 diffuse nature, and which would obviously give rise to                  14 real practical difficulties.                  15 Ms Williams is, of course, absolutely right that the                  16 Galbraith test, or the Galbraith plus test, ultimately                  17 falls to be applied at the conclusion of the evidence                  18 before the case goes to a jury in the Crown Court or,                  19 indeed, in the Coroner's court. But where there is no                  20 material that is capable of satisfying the test, then                  21 I submit you shouldn't embark on that process.                  22 Ms Williams raised two points about our gist. One                  23 is that the reference to information, where we say:                  24 "West Midlands Police confirms it has no information                  25 that ..."</p> <p style="text-align: center;">Page 154</p>	<p>1 THE CORONER: Do we delete the word "wrongfully"?                  2 MR JOHNSON: I think you can probably just delete the word                  3 "wrongfully". I probably need to formally take                  4 instructions before I can confirm that, but, yes, to all                  5 intents and purposes you can delete the word                  6 "wrongfully". It certainly was not intended to convey                  7 -- it was not intended to qualify what follows, it was                  8 probably intended to explain what follows, namely                  9 a recognition that it would obviously be wrong to                  10 compromise an investigation in that way. But I hope                  11 that clarifies that.                  12 Ms Williams says, in relation, I think, to Mr Kelly,                  13 that if there was clear information that, for example,                  14 he became an informant after the bombings in 1975,                  15 I think you said, then that could and should be                  16 disclosed. We respectfully disagree. We submit that                  17 evidence as to information given by somebody after the                  18 bombings is by definition irrelevant to the question of                  19 whether the bombings could have been prevented.                  20 What is relevant is, subject to the clarification                  21 I have given, what is in the gist, namely that there                  22 is -- and I am now gisting my gist -- that there is                  23 nothing to suggest that West Midlands had any advance                  24 knowledge, whether from an informant or from any other                  25 source. That is what is relevant. Whether particular</p> <p style="text-align: center;">Page 156</p>

<p>1 people did or did not become informants in the years                  2 following the bombings is, we submit, nothing to the                  3 point.                  4 Sir, unless I can assist further, that is all                  5 I wanted to say on the agent/informant issue.                  6 THE CORONER: Yes, thank you.                  7 Ms Leek?                  8 MS LEEK: No, thank you, Sir.                  9 THE CORONER: Professor McGovern?                  10 Submissions by MR SKELTON re Professor McGovern                  11 MR SKELTON: Sir, may I briefly just deal with a couple of                  12 points before I come on to Professor McGovern.                  13 THE CORONER: Yes, certainly.                  14 MR SKELTON: First of all, submissions to the media.                  15 I, through solicitors to the inquest, will arrange for                  16 these to be given to the media. There may be some small                  17 changes made because some information came out in                  18 inadvertently from some of the interested persons but                  19 that will be corrected but they will have them, and                  20 rightly so, because we, the various advocates, have                  21 referred to them in detail at various points during our                  22 submissions.                  23 THE CORONER: Yes, I am not saying to the press that these                  24 are legal submissions and therefore they should not be                  25 reported until the end of the inquest hearings, as one</p> <p style="text-align: center;">Page 157</p>	<p>1 conclusions on them, based on the limited evidence --                  2 40 years on -- that is now available.                  3 I hope that assists, notwithstanding that we                  4 recognise the force of the points that he makes.                  5 Turning then if I may -- and lastly, I think -- to                  6 Professor McGovern. He, to explain, is an academic who                  7 is instructed by KRW Law and Jackson Cantor to provide                  8 a report about the use of agents and informants in the                  9 troubles. That report was provided to you in October.                  10 THE CORONER: Yes, I have read it.                  11 MR SKELTON: It based, I think it is fair to say, on                  12 secondary materials, not the documents that have been                  13 put forward and disclosed within the context of this                  14 inquest and provided to interested persons.                  15 We make no criticism of Professor McGovern's                  16 expertise or, indeed, of the report that he has                  17 provided. However, we do not see how it would help the                  18 jury.                  19 The question of whether an agent or an informant was                  20 involved in the bombings is a question of fact and not                  21 a question requiring expert, academic opinion.                  22 It has been suggested that his report is helpful in                  23 providing valuable context and as an important textual                  24 example of the use of state agents. Again, with                  25 respect, we don't see how that assists you or would</p> <p style="text-align: center;">Page 159</p>
<p>1 does sometimes in proceedings, but obviously one has to                  2 take a bit of care about what is said in advance of                  3 a jury inquest, even though the jury will not be called                  4 for a month or two.                  5 Yes.                  6 MR SKELTON: Secondly, and briefly if I may, Mr Morgan                  7 mentioned the question of collusion.                  8 We accept the force of his point that collusion                  9 doesn't need to leave a paper trail, it, by definition,                  10 exists in the shadows. We have undertaken                  11 a comprehensive exercise to probe and tug at the various                  12 loose ends in the evidence that we have found to see                  13 where they take us with a view to seeing if there has                  14 been any form of collusive activity by reference to the                  15 agent/informant issue and we have some sympathy with the                  16 submissions made by Mr Morgan in respect of practical                  17 justice and the importance to the families of seeing                  18 that these issues are aired publicly.                  19 It is not easy, of course, to say in practice what                  20 then should be adduced before the jury but what we have                  21 done is provided details of submissions trying to show                  22 that insofar as we are able, many of the points that                  23 have been raised don't in fact go anywhere evidentially.                  24 In other words, they cannot be put before the jury                  25 because the jury cannot come to any meaningful</p> <p style="text-align: center;">Page 158</p>	<p>1 assist the jury. The fact that agents or informants                  2 were used in other places at other times makes it                  3 neither more nor less likely that an agent or informant                  4 was involved specifically in the context of the                  5 Birmingham bombings.                  6 Further, we note that were Professor McGovern to be                  7 called, he would inevitably be asked about allegations                  8 that other individuals or agents or informants and were                  9 involved in particular incidents or operations. Such                  10 evidence is likely to be highly contentious and may draw                  11 the inquest into exploring satellite issues which are                  12 ultimately of no relevance to the deaths of the 21                  13 individuals in Birmingham.                  14 For these reasons, in summary, we don't accept that                  15 he would be able to provide useful evidence to the jury.                  16 THE CORONER: Yes, thank you.                  17 MR SKELTON: Thank you.                  18 Submissions by MS WILLIAMS re Professor McGovern                  19 MS WILLIAMS: Sir, very briefly in relation to Professor                  20 McGovern. We have dealt with this topic at paragraphs                  21 81 to 85 of our submissions.                  22 THE CORONER: Yes.                  23 MS WILLIAMS: I really have very little of value to add to                  24 that.                  25 THE CORONER: Yes.</p> <p style="text-align: center;">Page 160</p>



<p>1 MS WILLIAMS: In particular, at paragraph 85(a) and indeed                  2 (b), we have explained the value, respectfully, as we                  3 see it, to the jury of providing this contextual                  4 information, if you accept that the agent/informer issue                  5 is within scope.                  6 Whilst we fully accept that CTL will approach the                  7 topic of whether an agent/informant was involved and if                  8 so, in what capacity and what significance there lies in                  9 that, we do not know whether or not the jury would do                  10 so. There may be people on the jury who would just                  11 think it is utterly fanciful that an agent or informer                  12 could be involved. That is why, as we explained in                  13 paragraph 85(a), that this is important material.                  14 Insofar as there is a concern about satellite issues                  15 being explored and therefore providing an irrelevant                  16 distraction to the jury, obviously, Sir, you can lay                  17 down very clearly the parameters of such evidence as                  18 Professor McGovern will give. Indeed, we have already                  19 foreshadowed that in our submissions, indicating that we                  20 would anticipate -- this is at paragraph 82 -- that his                  21 evidence could be given significantly more briefly than                  22 his report and we would be very happy for further                  23 discussions on that topic to take place if you were                  24 agreeable in principle.                  25 THE CORONER: It is a very readable report.</p> <p style="text-align: center;">Page 161</p>	<p>1 members might find this whole notion fanciful. If you                  2 have not been exposed to the ongoing narrative as to how                  3 agents are run in paramilitary organisations, and how                  4 they often get run over extended periods of time, if                  5 I may say, run on a long term basis to acquire                  6 information and also to exert a degree of control rather                  7 than to, in the short term, protect members of the                  8 public from harm or death, one needs to see that context                  9 to understand some of the issues and some of the points                  10 and submissions being made.                  11 I think that would be very useful for members of the                  12 jury to understand that, particularly if they are not                  13 familiar with the central issue as to how commonly the                  14 police and the security forces ran agents in                  15 paramilitary organisations over extended periods of                  16 time.                  17 I think the point has been made already that if                  18 there is straying into contentious areas, Sir, you are                  19 well equipped to deal with that and I think we should                  20 wait and see if that occurs and it could be managed. I                  21 would simply say, Sir, that you have discretion in this                  22 respect and at the moment this report, we believe, in an                  23 informed way, goes to one or perhaps two of the issues                  24 currently in scope. For that reason, I suspect that                  25 there is a real possibility that this report would be of</p> <p style="text-align: center;">Page 163</p>
<p>1 MS WILLIAMS: Sorry?                  2 THE CORONER: It is a very readable report.                  3 MS WILLIAMS: Yes, he clearly has great deal of expertise in                  4 the area and as Mr Skelton has said, there is no                  5 criticism whatsoever of the content of his report, he's                  6 plainly, (a) an appropriate expert in that area and (b)                  7 has conducted a careful and analytical and, on the face                  8 of it, fair review of the material.                  9 But, Sir, beyond that, I would simply be repeating                  10 what we have in writing so I don't seek to say further.                  11 THE CORONER: Thank you very much.                  12 I think, Mr Morgan, your submissions say pretty much                  13 the same thing.                  14 Submissions by MR MORGAN re Professor McGovern                  15 MR MORGAN: Yes, Sir, that is correct. You will see at                  16 paragraphs 47 to 50 of our written submission we deal                  17 with this point.                  18 THE CORONER: Yes.                  19 MR MORGAN: I am duplicating what Ms Williams says to an                  20 extent so I will keep it extremely brief. I suspect                  21 that the jury would benefit from an accessible, informed                  22 and what we say is measured attempt to explain the                  23 prevalence, operation and dynamics of agents in                  24 organisations which were central to this inquest.                  25 Ms Williams refers to the fact that some jury</p> <p style="text-align: center;">Page 162</p>	<p>1 use to members of the jury in understanding some of the                  2 points that are going to be made.                  3 THE CORONER: Thank you.                  4 On all of those issues, I will take time to consider                  5 my ruling, which I will provide in writing. I was going                  6 to say seven days but I think something else is                  7 happening in seven days. It has come faster than                  8 I expected.                  9 So I'm not quite sure when that will be but it will                  10 be as soon as possible.                  11 Timetable? Do you have submissions? Do you wish to                  12 delay the commencement of the inquests?                  13 Submissions by MR MORGAN re timetable                  14 MR MORGAN: If I could address you on that briefly, Sir?                  15 THE CORONER: Yes.                  16 MR MORGAN: I think in summary, on behalf of the families                  17 represented by KRW, we would invite you, Sir, to                  18 re-timetable the inquest.                  19 We say this is rendered necessary by discovery                  20 issues that have arisen and I don't mean a criticism of                  21 anyone. When I say the discovery issues, I refer to the                  22 volume, complexity issues of redaction, but also the                  23 ability of the legal representatives of the families to                  24 deal with discovery in the proper manner; read,                  25 consider, take advice, pursue inquiries and seek</p> <p style="text-align: center;">Page 164</p>

<p>1 instructions from our clients.                  2 For that reason, we believe that there is a real                  3 danger that if we were to start the substantive inquest                  4 on 11 February, we would not be in a position at that                  5 time, because of the nature of the discovery, to deal                  6 with all the issues.                  7 What we would then have is breaks to deal with such.                  8 We may have legal submissions. Given the anticipation                  9 of this matter in many ports, we would rather want to                  10 deal with it at a time when all the parties felt they                  11 were able to pursue all the issues to the greatest                  12 extent possible and as is required by the seriousness of                  13 this inquest.                  14 Having time to consider everything, look at                  15 everything, and, of course, Sir, most of us are seeing                  16 a lot of this information for the first time. I don't                  17 say in terms of the specific disclosures take place very                  18 recently but it takes time for, in the case of the                  19 families we represent, ten families to consider what is                  20 disclosed and have the opportunity to reflect upon it                  21 and to put their points to their legal representatives,                  22 it may then become necessary for us to ventilate                  23 specific issues on disclosure to the Coroner's legal                  24 team and that is an important point, because what we                  25 don't want, given the volume of the documentation and</p> <p style="text-align: center;">Page 165</p>	<p>1 that this is not ideal and we don't shy away from the                  2 potential disruption that altering the timetable or the                  3 specifics of the timetable may generate but it is our                  4 professional view that some adjustment and                  5 re-timetabling at this time is now rendered necessary if                  6 we are to deal with the issues in the way that they                  7 deserve. That is a somewhat obvious point, but I think                  8 it is pertinent that the families have been waiting                  9 44 years and they feel, and their representatives                  10 feel -- these are families that we represent -- that we                  11 should take a little bit more time to get this right and                  12 we believe we can get it right but we need more time.                  13 The families are appreciative of all the work that has                  14 gone on so far as in terms of the work of the Coroner,                  15 and your legal team, Sir, but we feel that if we have                  16 a little bit more time, we can assist you and the jury                  17 when that time comes. For that reason, we would invite                  18 you it to afford us some further time in that respect.                  19 The further time needed, Sir, is obviously dependent                  20 upon outstanding issues as to disclosure.                  21 THE CORONER: You are not going to say what you mean by                  22 "some further time"?                  23 MR MORGAN: Well, it is dependent on how much more                  24 disclosure is provided. If we get 2,000 additional                  25 documents, we can work through that as quickly as we</p> <p style="text-align: center;">Page 167</p>
<p>1 the complexity of it, the impending holidays, for us to                  2 be in late January asking for further disclosure or                  3 further clarification on points which then jeopardise                  4 the substantive beginning of the inquest on 11 February.                  5 It is a matter for you, Sir, but we would suggest                  6 gently that 17 January can be retained and can be                  7 retained usefully. It may be that 11 February and the                  8 consequential days that week can also be retained and                  9 used usefully, but we respectfully say that beginning                  10 the process with the jury on that date is overly                  11 ambitious if we are going to deal with all the issues in                  12 the way that the seriousness of this issue demands.                  13 At the risk of repeating myself, there have been                  14 other issues which have been raised today about PII,                  15 redactions, volume, complexity, new information, the                  16 need for us to consider the PII issue in light of what                  17 we have been told today. We need to explain this to the                  18 families, we need to take instructions, I think we need                  19 to reflect on that from a legal perspective. There are                  20 a number of, I think, timetabling issues that have to be                  21 addressed and for all those reasons, we would invite                  22 you, Sir, to retain the window beginning 11 February.                  23 Work can usefully be done but not in relation to                  24 engaging the jury directly, we would say, Sir.                  25 I have to say that we are all cognisant of the fact</p> <p style="text-align: center;">Page 166</p>	<p>1 can, but it is dependent on the nature and significance                  2 of those documents.                  3 THE CORONER: Shall I tell you one thing which really                  4 concerns me: I am not unsympathetic to your position,                  5 and the position of your clients but I am worried, since                  6 these are events of 44 years ago, that the witnesses who                  7 are still alive -- most of them are not -- are often in                  8 pretty poor shape. A not unimportant witness, witness                  9 B, died last year. He cannot be asked questions to                  10 improve his account or contradict his account because                  11 he's no longer with us and I'm worried that the delay                  12 could impact upon those who are not well, and who are                  13 elderly, and who may not survive and that we are losing                  14 witnesses.                  15 That's why I ask you really what you are asking for.                  16 It would be more helpful if you said.                  17 MR MORGAN: Yes. Your concerns are entirely valid and of                  18 course they go to the usefulness and effectiveness of                  19 this inquest which is what we are all focused on.                  20 As I have said, dependent on further discovery                  21 provided over the Christmas and New Year period, we will                  22 know more about timing. If I were to speculate now in                  23 terms of perhaps the beginning of the jury element of                  24 the inquest, I would suggest something like three to                  25 four weeks, after 11 February.</p> <p style="text-align: center;">Page 168</p>

<p>1 THE CORONER: Ms Williams? Where are you on this?                  2 Submissions by MS WILLIAMS re timetable                  3 MS WILLIAMS: Sir, we don't have anything to add to what we                  4 said at a couple of places in our submissions, for                  5 example, at 116 towards the end.                  6 THE CORONER: Yes.                  7 MS WILLIAMS: We do have some concerns about the realism,                  8 I think may have been the word we used, of the current                  9 timetable which is compressed. On the other hand, we                  10 recognise that the extent to which it may or may not be                  11 unrealistically compressed may depend upon a number of                  12 the decisions that you make in your rulings, Sir, if                  13 I can put it that way.                  14 THE CORONER: Yes.                  15 MS WILLIAMS: So we are not positively saying to you "this                  16 is a situation in which we feel strongly there should be                  17 a delayed start", but we would say, Sir, we would like                  18 you to bear in mind the realism of the current start                  19 date once you have considered the various matters aired                  20 today and once you have made decisions on them. So that                  21 may seem a slightly odd position but that is genuinely                  22 the position that we take at the moment.                  23 THE CORONER: I entirely understand. So let's think                  24 about it in terms of the most expansive approach.                  25 MS WILLIAMS: Yes.</p> <p style="text-align: center;">Page 169</p>	<p>1 given in our submissions, some further examples to your                  2 team, they are aware of the general concerns, it is                  3 really, quite frankly, not a good use of if our time to                  4 spend weeks going through all the documents, identifying                  5 all of those where the reason for redactions is not very                  6 clear. But that really is a matter for your team, Sir,                  7 as to how long it would take to be more informative,                  8 particularly in relation to the earlier documents as to                  9 reasons for redaction and such other processes of                  10 review.                  11 In terms of other witnesses, it seems, from what we                  12 have been told thus far, that most of the witnesses we                  13 have been debating, as to whether they should be called,                  14 whether they are witnesses to topics that come within                  15 scope, statements are available. DS Bunn is an                  16 exception but one doesn't get the impression today that                  17 there are a whole host of further individuals out there                  18 that need to be proofed. So that, whether or not, you                  19 take the more expansive approach to scope in light of                  20 the submissions that you have made today, Sir, perhaps                  21 on that the face of it should not of itself make a huge                  22 difference on the start date.                  23 Mr Morgan, of course, has already referred to the                  24 question of disclosure. Obviously it is not disclosing                  25 number of pages but it is how likely they are to be</p> <p style="text-align: center;">Page 171</p>
<p>1 THE CORONER: What would you say then?                  2 MS WILLIAMS: The most expansive approach, which didn't seem                  3 perhaps the most likely but would be one which did                  4 involve some kind of PII process, on the basis that                  5 gisting, for example, has taken place in relation to                  6 relevant documents, if that were the case, then on the                  7 face of it, it would be necessary to have a hearing                  8 dealing with that matter --                  9 THE CORONER: Yes.                  10 MS WILLIAMS: -- and time for us to make submissions and                  11 then potentially further disclosure thereafter. That                  12 probably would involve a process that would involve the                  13 start date of the inquest being put back, perhaps to the                  14 extent referred to by my learned friend Mr Morgan.                  15 If, on the other hand, Sir, you take the view                  16 that -- I suppose also it depends what view is taken                  17 about redactions and what can be done. I appreciate                  18 an invitation was given earlier for IPs to raise                  19 particular redactions with your legal team and of course                  20 we appreciate the spirit in which that is done, but the                  21 reality is when we are already -- to use                  22 a colloquialism -- up against it to review the amount of                  23 material that we have to review, take instructions on                  24 and prepare for, the current start date, whilst we would                  25 certainly happily, no doubt, give some examples, we have</p> <p style="text-align: center;">Page 170</p>	<p>1 significant and whether they are relevant to topics that                  2 are likely to arise during the early part of the                  3 inquest. I am sorry that is a slightly vague answer but                  4 there are a number of imponderables at this stage.                  5 THE CORONER: No, I understand. Does anybody else want to                  6 say anything at this stage?                  7 Mr Johnson?                  8 Submissions by MR JOHNSON re timetable                  9 MR JOHNSON: We are very sympathetic to the position of                  10 other interested persons and the amount of work they                  11 have to do, but we will just fit in with what you                  12 direct.                  13 THE CORONER: Thank you.                  14 Submissions by MR SKELTON re timetable                  15 MR SKELTON: To some extent I'm going to say the same as                  16 Mr Johnson. Your team will be ready. We can proceed.                  17 We recognise the timing is tight and we also recognise                  18 that particularly from the family's perspective they                  19 have issues both of resourcing and also they have not                  20 had the lead in time that we have had to look at the                  21 documents. There are further documents to be disclosed.                  22 We think about 2,500 will be coming over the next few                  23 weeks -- pages, I am sorry, not documents. An important                  24 distinction. That is a fairly significant amount but it                  25 is, we assert, doable.</p> <p style="text-align: center;">Page 172</p>

<p>1 If there were to be an adjournment, likewise we would                  2 advocate a relatively short postponement of the start,                  3 a matter of a few weeks, along the lines of what                  4 Mr Morgan identified, rather than a matter of months.                  5 THE CORONER: Yes.                  6 MR SKELTON: It seems to us that there is not, as it stands,                  7 justification for pushing the inquests back                  8 significantly beyond Easter at all and we would hope to                  9 complete before Easter, whenever we started.                  10 THE CORONER: Yes, there are some practical considerations                  11 of course.                  12 MR SKELTON: There are.                  13 THE CORONER: 300 juror summonses have been sent out for                  14 them to attend on February the 11th but that is not the                  15 overriding consideration.                  16 MR SKELTON: It is not, Sir. I would not advocate or                  17 counsel starting and then stopping.                  18 THE CORONER: No, I would not do that.                  19 MR SKELTON: If one were to start, one wants to start                  20 properly with the jury empanelled and then to progress                  21 rapidly through the evidence.                  22 THE CORONER: Yes.                  23 Mr Morgan, what would you say to something of                  24 a compromise but which does allow some more time. I am                  25 very reluctant to delay what has been previously delayed</p> <p style="text-align: center;">Page 173</p>	<p>1 10.30 to give people time to discuss beforehand.                  2 Thank you.                  3 (4.35 pm)                  4 (The hearing adjourned until 10.00 am,                  5 Thursday, 17 January 2019)                  6                  7 Proceedings .....1                  8 Submissions by COUNSEL TO THE INQUESTS re .....1                  9 disclosure                  10 Submissions by MS WILLIAMS re disclosure .....18                  11 Submissions by MR MORGAN on behalf of the .....55                  12 families represented by KRW LAW re                  13 disclosure                  14 Submissions by MR JOHNSON re disclosure .....83                  15 Submissions by MS LEEK re disclosure .....95                  16 Submissions in reply by COUNSEL TO THE .....99                  17 INQUESTS re disclosure                  18                  19 Submissions by COUNSEL TO THE INQUESTS on ...103                  20 the issue of forewarning.                  21 Submissions by MS WILLIAMS re .....132                  22 forewarning                  23 Submissions by MR MORGAN re forewarning .....148                  24                  25 Submissions by MR JOHNSON re .....152                  forewarning                  Submissions by MR SKELTON re Professor .....157                  McGovern                  Submissions by MS WILLIAMS re .....160                  Professor McGovern                  Submissions by MR MORGAN re .....162                  Professor McGovern</p> <p style="text-align: center;">Page 175</p>
<p>1 for all sorts of reasons but if you were to have an                  2 extra two weeks?                  3 MR MORGAN: We can work with that, Sir. We appreciate the                  4 flexibility that has been shown and we realise this may                  5 cause certain inconvenience which is regrettable.                  6 THE CORONER: Yes.                  7 MR MORGAN: So we do appreciate that. I think two weeks is                  8 something we can work with and we can assume that it                  9 will progress on that date but we will keep you informed                  10 as to any unforeseen issues arising --                  11 THE CORONER: Yes, I am sure you will. As KRW Law always                  12 have, if I may say so.                  13 MR MORGAN: I am much obliged.                  14 THE CORONER: So, then, the start date is put back for the                  15 inquests and the swearing of the jury from 11 February                  16 2019 until 25 February, Monday the 25th, which should                  17 mean, looking at the timetable as a whole, although                  18 there is no guarantee of this, that the inquest should                  19 be concluded by Easter and not interrupted by the Easter                  20 break.                  21 Anything else anybody?                  22 Thank you all very much for your submissions and                  23 everyone's attendance, for which I am grateful. The                  24 next hearing will be on 17 January 2019 at -- I will say                  25 10 o'clock, although sometimes we do not start until</p> <p style="text-align: center;">Page 174</p>	<p>1                  2 Submissions by ..169                  3 MS WILLIAMS re timetable                  4 Submissions by MR JOHNSON re .....172                  timetable                  5                  6 Submissions by MR SKELTON re timetable .....172                  7                  8                  9                  10                  11                  12                  13                  14                  15                  16                  17                  18                  19                  20                  21                  22                  23                  24                  25</p> <p style="text-align: center;">Page 176</p>

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