

Monday, 19 January 2009

1

2 (10.00 am)

3

Housekeeping matters

4 THE CHAIRMAN: First, before I ask Mr Elias to say anything,

5 this is our second directions hearing. The agenda is

6 not very long but it contains some important matters.

7 I confidently expect that we may be finished by

8 lunchtime but if we need to go on further than that, so

9 be it. I do not want you to feel in any sense that you

10 have been rushed.

11 Now I am going to ask Mr Elias, counsel to

12 the Inquiry, to introduce the various items on the

13 agenda. Mr Elias.

14 MR ELIAS: Thank you, sir. May I first of all indicate that

15 I do not propose again to introduce my learned friends

16 who appear for the various parties. I think there are

17 no new representatives here today.

18 Just one or two items of housekeeping before we get

19 on to the agenda proper. It will be remembered that

20 it is necessary to press the red button on your

21 microphone console in order to speak. If you forget to

22 do so, it should be dealt with by those in the back room

23 but it would be helpful if you could switch it off and

24 on as you get up to speak, please. LiveNote is running

25 today although it may not be working entirely in terms

1 of being able to be marked and so on, as it will be when
2 the full hearings take place but I am asked by
3 the secretariat, by Mr Lee Hughes in particular, to
4 invite you to leave your email address today with
5 the secretariat, should you wish to have the perfected
6 copy of LiveNote sent to you by email at the end of the
7 day.

8 There will, in due course, be LiveNote training for
9 parties who may require it. That will obviously be
10 nearer the oral hearings and I understand from Mr Hughes
11 that parties will get a letter within the next week,
12 indicating details of that, along with details of some
13 of the other matters that I am going to outline if
14 I may, sir, this morning.

15 Moving to the agenda, item 1 is simply to note that
16 the ruling which you gave following the directions
17 hearing 1 has, of course, been circulated, together with
18 the undertakings which were given in relation to that.
19 We would simply like to say this, so that the parties
20 understand it, that ruling was, in fact, ready to go out
21 to the parties some time before the Christmas break but
22 as perhaps will be understood, negotiations with
23 the various government departments took time and I am in
24 no sense critical of them.

25 That was an inevitability but as a result of that

1 and the obtaining of the undertakings in the form in
2 which they were ultimately given, that of course took
3 time and the ruling could not then be circulated until
4 after the Christmas break.

5 Sir, item 2 deals with representation and we have
6 been having ongoing discussion with the parties and
7 particularly with the Treasury Solicitor in relation to
8 representation and I think it is right that I should
9 simply say at this stage those discussions and
10 the matters that are being dealt with in relation to
11 representation are progressing, we understand,
12 satisfactorily.

13 Unless anyone else wishes to raise any point on
14 that, I do not propose to take that matter any further
15 today, other than to say this, so that the parties
16 understand it.

17 We understand, sir, that you may be minded in
18 the course of the next few weeks, to begin the process
19 of formally designating core participants and nominating
20 their legal representatives.

21 THE CHAIRMAN: That is correct. And I am pleased to hear
22 that progress is being made. It is much better that
23 progress is made in that way, by cooperation between the
24 parties, than by any other, more draconian methods.

25 MR ELIAS: I am grateful, sir. Then may we move on to

1 agenda item 3, evidence gathering and so on.

2 Here I seek to report progress and to touch upon
3 timetabling. If I may, I will say a few words about
4 the gathering of documentary evidence by the Inquiry,
5 its redaction and its disclosure to the core
6 participants.

7 Starting with evidence gathering, the Inquiry has
8 requested evidence from quite a number of sources,
9 including but not limited to the Cabinet Office and
10 the solicitors for the detainees. However, the Inquiry
11 is likely to obtain the overwhelming majority of its
12 documentary evidence from the Ministry of Defence.

13 The MoD has already provided the Inquiry with
14 materials from the court martial and the Royal Military
15 Police investigation which preceded it.

16 These court martial and investigation materials are
17 voluminous. They consist of about a thousand pages of
18 witness statements which were used during the court
19 martial hearings which we have been referring to as
20 bundle A; about 20 lever-arch files of documents which
21 were exhibited to those statements, bundle B; several
22 further bundles of documents referred to during the
23 court martial proceedings as either the members' bundle
24 and the defence bundles and finally, about 60 lever-arch
25 files of witness statements and other documents gathered

1 during the Royal Military Police investigation which
2 were not used during the court martial itself. We have
3 referred to those as bundle D.

4 Additionally, of course, the transcript of the court
5 martial proceedings is itself a substantial piece of
6 documentary evidence. That transcript runs to something
7 like 8,000 pages.

8 Also of note is the fact that the Inquiry has made
9 detailed disclosure requests for further documents to
10 both the Ministry of Defence and the Cabinet Office.
11 These will lead to a further substantial body of
12 documents which already have started to flow to
13 the Inquiry before Christmas and will be coming in
14 increasing volume in coming weeks.

15 May I say a word about the process of dealing with
16 these documents once received by the Inquiry team. Once
17 a document is provided to the Inquiry, it needs to go
18 through the following process before it may be disclosed
19 to the core participants.

20 Firstly, the Inquiry team assesses its relevance.
21 Documents which have no conceivable relevance to
22 the Inquiry's issues are logged, but being irrelevant,
23 are not passed to the core participants.

24 Secondly, those documents that pass the relevant
25 threshold are scanned into the Inquiry's database of

1 evidence, unless they have a security marking that makes
2 this inappropriate at that time.

3 Thirdly, the disclosing party -- and it is usually
4 the Ministry of Defence -- is asked to mark the document
5 with any provisional redactions. This is done in
6 accordance with the Inquiry's published production
7 protocol and the Inquiry sets priorities for the order
8 in which this redaction exercise needs to be done.

9 Fourthly, the Inquiry team then redacts
10 the document, both for MoD's provisional redactions and
11 to redact irrelevant personal information from
12 the document; again, all in accordance with
13 the published protocol.

14 Fifthly, these redactions are then rechecked and
15 only then can the document be disclosed to core
16 participants in its provisionally redacted form.

17 In due time, of course, there may or may not be
18 a dispute about whether the redaction should stand, and
19 the production protocol describes the process for
20 resolving such disputes.

21 The position at the present time: firstly, let me
22 say that the Inquiry team is acutely conscious of the
23 fact that all relevant documents need to be disclosed to
24 core participants as soon as reasonably practicable.
25 Equally, it must be recognised that the processes I have

1 described mean that inevitably, final disclosure takes
2 some time. That said, as is apparent from what has
3 already happened, we are operating and shall go on
4 operating a programme of rolling disclosure, as and when
5 documentation has been appropriately cleared.

6 In particular, the Inquiry has been making and will
7 continue to make very great demands of the Ministry of
8 Defence. There is an enormous quantity of material
9 which the MoD needs to consider for the purpose of
10 making redactions before it may be disclosed to other
11 core participants. The Inquiry is very grateful for
12 the MoD's help in this regard. We understand that
13 the MoD dedicates considerable resources to
14 the redaction task in order to ensure that it can be
15 completed in good time.

16 The Ministry has so far redacted two tranches of the
17 court martial materials. The Inquiry disclosed these to
18 the core participants in December. They consisted of
19 various witness statements taken from bundle D. These
20 tranches were prioritised from bundle D because we knew
21 that neither the Treasury Solicitors nor the detainees'
22 lawyers had previously seen any of bundle D.

23 Moving to the timetable then: it follows, I think
24 from what I have said, that the Inquiry is largely
25 dependent upon the MoD's pace of consideration of

1 redaction issues, in relation to whether or not it can
2 keep its proposed timetable. We know that the Ministry
3 appreciates this and is doing what it can to expedite
4 the process further. We are also well aware of the fact
5 that particularly in the case of more significant
6 witnesses, it may well not be appropriate for statements
7 to be finalised before all relevant documents have been
8 disclosed.

9 However, it is inevitable that documents will
10 continue to come to the Inquiry over time and so there
11 is unlikely to be a point in the short or medium-term
12 when the Inquiry could say that there will be no more
13 documents. We are hopeful, therefore, that in relation
14 to some witnesses, perhaps of lesser importance or whose
15 evidence may be restricted to a specific aspect of the
16 Inquiry's remit, that a considerable amount of progress
17 can be made on witness statements before all documents
18 have been disclosed, particularly where all those
19 believed relevant to the witness's evidence have been
20 disclosed.

21 In relation to the most significant witnesses, and
22 those whose evidence ranges more broadly, the Inquiry
23 will await the stage when the overwhelming majority of
24 expected documents have been disclosed to the core
25 participants. The Inquiry will also be sensitive to

1 issues of fairness to a witness, if a further document
2 is provided to a witness at a later stage.

3 All of this will doubtless be a matter for request
4 and discussion, but we do hope in the interests of
5 progressing as fast as we reasonably can, we can count
6 on the continued cooperation of core participants as
7 hitherto.

8 So that the core participants know where we are
9 at present and what they may expect, may I say this: the
10 Inquiry has asked the Ministry of Defence to prioritise
11 redaction of a further four tranches of material: first,
12 further witness statements from bundle D; secondly,
13 certain materials from bundles B and D; thirdly, some of
14 the key military orders relevant to the Inquiry's remit;
15 and finally, bundle A, the witness statements which were
16 used during the court martial.

17 We understand that these materials will have been
18 redacted by MoD by the end of February, some of them
19 earlier, and our aim is to have distributed this
20 priority material in tranches through that month and to
21 have completed it by Easter. Thereafter, the Inquiry
22 will continue providing the evidence to the core
23 participants in tranches.

24 Inevitably, further evidence will be provided to
25 the Inquiry from time to time but our aim is that all of

1 the evidence which is already in the possession of
2 the Inquiry be disclosed to the core participants as
3 soon as possible and, if the Ministry of Defence meets
4 its proposed redaction targets for bundles B and D,
5 namely by early March, by no later than the end of
6 April.

7 It will be apparent from what I have said that
8 setting precise timescales is very difficult at this
9 time. Hence we are unable, with certainty, to advise
10 a start date for the Inquiry proper, save to say that,
11 as already advised, it can't be before the late spring.
12 We are very much aware of the need for parties to be
13 kept as fully informed as possible and we undertake to
14 let the parties know a precise start date and timetable
15 as soon as the picture becomes clear enough to do so.

16 THE CHAIRMAN: Thank you very much. You are going to deal
17 with the form of disclosure, is that right?

18 MR ELIAS: May I do that.

19 The form of disclosure of documents: we propose to
20 provide to the core participants, essentially, this.
21 The Inquiry proposes to provide each legal team with its
22 own electronic evidence database. When completed, each
23 team's database will contain an identical set of all
24 evidence disclosed by the Inquiry. It will be
25 accessible over the internet to a set number of licence

1 users per team, via a secure log-in. It will facilitate
2 very sophisticated searches and more importantly,
3 electronic marking and organisation of the documents.
4 The databases should prove a powerful and valuable tool
5 for core participants to organise and analyse all of the
6 evidence.

7 Training and a capped amount of support will be
8 provided and funded by the Inquiry. The databases and
9 training facilities can be put in place in the very near
10 future and this is something that Mr Hughes proposes to
11 touch upon in the letter that he sends out in the next
12 week.

13 We hope and believe that receiving the database of
14 evidence in this way will significantly speed up
15 the process of analysis and in the longer term, provide
16 time savings for the parties and for the Inquiry.

17 In addition to the databases, the Inquiry will
18 provide the legal teams with an electronic back-up of
19 the document, with CDs, containing all of the disclosed
20 materials. This will ensure that even if there are any
21 technical problems with the databases, the core
22 participants will still have all of the evidence
23 available to them.

24 These arrangements go very far indeed beyond
25 conventional disclosure in hard copy. The Inquiry is,

1 we think unusually for enquiries of this kind, sharing
2 with the core participants the same software as is at
3 the Inquiry's own disposal for searching, marking and
4 organising documents. The intention is that this will
5 help all the legal teams.

6 The quid pro quo or should I say one of them, is
7 that in terms of complying with witness statement
8 requests, we expect parties to be able to coordinate the
9 relevant documentation speedily and thus keep to
10 the Inquiry's timetable for the production and filing of
11 witness statements.

12 Sir, I have not said anything this morning about
13 disclosure of documents to the public. Let me simply
14 say this very briefly. As everyone knows, I think, the
15 perfected transcript of any day's open proceedings will
16 be placed on the website, usually within hours of its
17 conclusion and the Inquiry will, of course, take steps
18 to publish all relevant evidence, using its website for
19 that purpose. I shall not say more than that in this
20 regard today.

21 Sir, that is a brief summary. I am sorry we can't
22 be more specific, particularly on the timing but I hope
23 everybody understands the processes that we have to go
24 through before we can come to a firmer conclusion as to
25 the appropriate start date.

1 THE CHAIRMAN: Yes. Thank you, Mr Elias. Does anybody want
2 to make a comment on that? I shall take silence as
3 meaning that you don't.

4 I should like to emphasise something that Mr Elias
5 has said. The disclosure, by way of what I understand
6 it, is called Concordance, is as he has said, very
7 sophisticated. It does require training but it does, as
8 I understand it, speed up the process of analysing
9 the documents and it is for that reason, expensive as
10 it is, we have decided that it is right that you should
11 have it, but as Mr Elias has said and I make clear, it
12 comes on conditions that you do please use it as much as
13 you can and efficiently, so that we can speed up the
14 whole process.

15 That is the reason you are being given it.
16 Otherwise, the documents would have simply been given to
17 you as one tranche of documents. It should make your
18 life a great deal more easy and for that purpose, make
19 ours as well.

20 Yes. Now that, I think, completes what you want to
21 say about this. Is that right, Mr Elias?

22 MR ELIAS: It does, sir. We now move on to agenda item 4
23 and Mr Moss will deal with that.

24 THE CHAIRMAN: Yes, this is the item of most substance, and
25 I will ask Mr Moss to introduce it.

1 Discussion re ANONYMITY

2 MR MOSS: Thank you, sir.

3 Can I make clear at the outset, that as with
4 a number of other areas, the Inquiry team continues to
5 receive a good deal of cooperation over anonymity
6 matters and we appreciate that there is an increasing
7 number of competing demands on the core participants, as
8 indeed there is on the Inquiry itself.

9 For today's hearing, sir, the Inquiry has received
10 generic legal arguments from all of those who represent
11 individual witnesses and who have expressed an interest
12 in making anonymity applications. The generic legal
13 test to be applied to such applications is therefore
14 a matter on which you have asked for legal argument
15 today.

16 The Inquiry is not, today, dealing with public
17 interest applications that the Ministry of Defence may
18 need to make in respect of a small number of military
19 witnesses. Such public interest considerations might
20 also feature in some individual applications from
21 the Treasury Solicitors' team or from Kingsley Napley
22 but they are not on the agenda for today.

23 The Inquiry also has for consideration today,
24 the full application on behalf of seven of
25 the detainees, each of whom seeks restriction orders

1 granting them anonymity in the Inquiry's public hearings
2 and other protective measures.

3 I should emphasise that all of the core
4 participants, sir, have received the detainees'
5 application and its supporting material in full.
6 However, the application makes clear that there are
7 details included in the application that can't be aired
8 in public because to do so would defeat the very purpose
9 of the application.

10 It follows that I and my learned friends will
11 therefore need to be very careful not to use in this
12 open session this morning, any of the names of those
13 detainees at this stage, nor to refer to the detail of
14 the argument in support of the individual applications.
15 If it is necessary to descend into any aspect of
16 the individual applications, the Inquiry will need to
17 sit in private to hear that part of the argument.

18 So it is my submission that the Inquiry obviously
19 has the power to do that under section 19(1) of the 2005
20 Act, by making a restriction order just in respect of
21 that part of today's hearing. However, in the light of
22 the limited written replies to the detainees'
23 applications, the expectation is that this will not
24 prove to be necessary this morning.

25 Before I turn to the generic legal test on

1 anonymity, I should raise three preliminary matters.

2 The first is to note and explain the importance for
3 the Inquiry of determining anonymity issues promptly.

4 All the indications are that anonymity applications
5 will only be made by a minority of the Inquiry's
6 witnesses but, sir, even if the numbers are small, if
7 restriction orders are to be made, then there is still
8 a considerable amount of work involved in making and
9 then checking the redactions in all the documents that
10 may be displayed publicly during the Inquiry's hearings.

11 It is obviously far more time and cost effective for
12 the Inquiry to do this once for all the documents, than
13 to have to check the documents time and again, each time
14 a restriction order is made on behalf of an individual
15 anonymity applicant.

16 All of the Inquiry's documents would need to be
17 checked for the names of all successful anonymity
18 applicants. IT is of some, but limited assistance, in
19 this task. There are always handwritten documents which
20 cannot be electronically searched and there are
21 limitations to any word recognition software run, even
22 on word processed documents.

23 Bearing all of that in mind, the potential for
24 anonymity applications to have a knock-on effect on the
25 start date for the Inquiry, is very clear. There are

1 other reasons for urgency too.

2 As recent weeks have shown, uncertainty over the
3 position on anonymity also affects the Inquiry in terms
4 of its ability to circulate witness lists. In addition,
5 the sooner at least some anonymity applications are
6 decided, the sooner the Inquiry's rulings on them may
7 give guidance to legal representatives, that might help
8 to resolve the issues for remaining potential
9 applicants.

10 Sir, for all those reasons, the Inquiry has been
11 pressing for every effort to be made for anonymity
12 applications to be made as soon as possible.

13 Secondly, I should indicate what the Inquiry has
14 decided in terms of an amended timetable for individual
15 applications by military witnesses, in place of the
16 original deadline which was 9 January of this year.

17 As regards those represented by Mr Patel's team for
18 the Treasury Solicitor, he has indicated that of some
19 86 clients, 16 have now raised anonymity concerns and
20 there are 10 from whom instructions or final
21 instructions are still being sought.

22 A much increased 61 of his clients are content for
23 their names to appear on the witness list provided to
24 the other core participants. The Inquiry team
25 recognises that Mr Patel has the largest client group

1 and, arguably, has the most work to do. In response to
2 a request for an extension of time, the Inquiry has
3 asked for all individual applications from Mr Patel's
4 existing client group to be made as soon as possible and
5 in any event, by no later than 30 January this year, but
6 with an expectation that a fair proportion will be
7 received before then.

8 For their part, Kingsley Napley have indicated that
9 they act, now, for eight clients and they have also
10 asked for an extension of time. Some of the names on
11 their client list appear to the Inquiry team to be those
12 in respect of whom the Treasury Solicitor has already
13 indicated that there were no anonymity concerns. Be
14 that as it may, the deadline for all eight of these
15 potential witnesses will also be 30 January but
16 the Inquiry team feels it could not support the grant of
17 any further extension, in view of the relatively small
18 numbers involved.

19 As regards the Ministry of Defence, the vast
20 majority of the other witnesses on the Inquiry's
21 provisional witness list, about 80 in number, are
22 military witnesses, falling into categories of those who
23 have not yet been traced, those who have been traced and
24 written to but have not responded and a smaller number
25 who have been contacted and who have indicated that they

1 do not wish to have legal representation at this stage.

2 MoD has indicated to the Inquiry that in just over
3 a single handful of cases, there may be public interest
4 applications to be made on behalf of some of these
5 witnesses. The Inquiry would wish to receive those
6 applications by 30 January as well or, if not, a clear
7 explanation of the steps which have been taken and
8 an indication of when the application will be capable of
9 being made.

10 The open part of any applications from the Treasury
11 Solicitor from Kingsley Napley or from the Ministry of
12 Defence, will obviously be circulated to the core
13 participants for comments in writing but sir, you may
14 wish to hear representations from those present as to
15 whether an oral hearing of such applications would be
16 necessary or whether the decisions may be taken on the
17 basis of today's discussion of the applicable legal
18 test, together with the written applications and written
19 responses.

20 Third, as regards the Inquiry's provisional witness
21 list, this has been given to the Treasury Solicitor's
22 team and the Ministry of Defence, to enable them to deal
23 with anonymity applications and also to assist in
24 the arrangements that need to be made about
25 representation.

1 None of the court martial soldiers' teams have seen
2 the full list and the detainees' representatives have
3 not seen the full list either.

4 Before Christmas, the Inquiry was able to send
5 a very much truncated version of that list to the core
6 participants other than MoD and the Treasury Solicitor.
7 So as you know, the Inquiry's general approach is that
8 core participants should receive material at the same
9 time, unless there is a good reason to do otherwise.

10 As more documents come to be disclosed in the coming
11 weeks, it will be becoming increasingly desirable that
12 the detainees' legal representatives and the
13 representatives of the Court Martial 7 should have
14 access to a much fuller version, if not the complete
15 version of the Inquiry's provisional witness list. We
16 are continuing to work to achieve that with both
17 the Treasury Solicitor's team and with the Ministry of
18 Defence, but the current situation is less than ideal.

19 THE CHAIRMAN: If you pause there for a moment, Mr Moss, and
20 allow me to say this: I quite understand the Ministry of
21 Defence and the Treasury Solicitors' reticence about
22 this matter and their need for caution. It is obviously
23 a sensitive issue for them. Having said that,
24 I understand it only involves a comparatively small
25 number of people and that the names have already gone to

1 other parties and at this stage, we are really talking
2 about the public domain, of which there is no question
3 of the names going to them.

4 Many of the names, as I understand it, have already
5 been disclosed to the court martial members and
6 the transcripts of the court martial proceedings, of
7 course, have all been disclosed. They are also in other
8 materials. So, perhaps I might urge the Ministry of
9 Defence and the Treasury Solicitor for their part, to
10 exercise some realism in relation to this matter and see
11 if we can progress it as soon as possible.

12 I will obviously give you an opportunity of
13 responding to that in a moment, Mr Garnham.

14 MR MOSS: Thank you, sir. With apologies for those rather
15 lengthy preliminary comments, I turn to the legal test
16 to be applied.

17 Sir, there are a number of teams making or likely to
18 make anonymity applications but on the basis of
19 the written submissions that the Inquiry has received,
20 there are no core participants who are actively opposing
21 those applications today.

22 The fact that the applications are not opposed,
23 obviously does not mean in inquisitorial proceedings
24 that they should automatically be granted. To the
25 extent that my submissions may appear to flow more

1 against than with the submissions of Mr Garnham or
2 Miss Hetherington, I do so only because
3 the countervailing considerations do need to be
4 considered.

5 All of the core participants appear agreed that
6 the leading authority is the case of in Re Officer L and
7 others.

8 At paragraph 29, Lord Carswell in that case, set out
9 a single test that can be applied to determine anonymity
10 applications. Lord Carswell explains that:

11 "The exercise to be carried out by the tribunal
12 faced with the request for anonymity should be
13 the application of the common law test, with an
14 excursion, if the facts require it, into the territory
15 of article 2. Such an excursion would only be necessary
16 if the tribunal found that, viewed objectively, a risk
17 to the witness's life would be created or materially
18 increased if they gave evidence without anonymity.

19 "If so, it should decide whether that increased risk
20 would amount to a real and immediate risk to life. If
21 it would, then the tribunal would ordinarily have little
22 difficulty in determining that it would be reasonable in
23 all the circumstances, to give the witnesses a degree of
24 anonymity. That would then conclude the exercise but
25 that anonymity would be required by article 2 and it

1 would be unnecessary for the tribunal to give further
2 consideration to the matter. If there would not be
3 a real and immediate threat to the witness's life, then
4 article 2 would drop out of consideration and
5 the tribunal would continue to decide the matter as one
6 governed by common law principles.

7 "In coming to that decision, the existence of
8 subjective fears can be taken into account on the basis
9 which I have earlier discussed; see paragraph 22. For
10 the same reasons as those which I have set out in
11 paragraph 20 however, I would not regard it as essential
12 in every case to commence consideration of the issue by
13 seeking to identify such subjective fears."

14 So, that is the test to be applied. In applying
15 that test, the starting point must be that the Inquiry
16 would ordinarily wish for witnesses to give evidence in
17 public, unscreened and in their own names. That default
18 position provides the most openness in what is, of
19 course, a public inquiry into a matter of clear public
20 concern. There is, in other words, a clear public
21 interest in maintaining the openness of the Inquiry.

22 This importance of the openness of the Inquiry's
23 proceedings may be thought to be most significant in
24 the case of applicants for anonymity whose conduct is
25 likely to be scrutinised and called into question during

1 the Inquiry's proceedings. The public interest in
2 openness of the Inquiry is reflected in the 2005 Act
3 itself. Under section 18(1), the Inquiry has a duty,
4 subject of course, to restrictions imposed under
5 section 19, to take such steps as are reasonable:

6 "to secure members of the public (including
7 reporters) are able.

8 "(a) to attend the Inquiry or to see and hear
9 a simultaneous transmission of proceedings at
10 the Inquiry.

11 "(b) to obtain or to view a record of evidence and
12 documents given, produced or provided to the Inquiry or
13 the Inquiry panel."

14 Likewise, under section 19(4) on restriction orders
15 and restriction notices, one of the matters that has to
16 be considered in determining any restriction order is
17 "the extent to which any restriction on attendance,
18 disclosure or publication might inhibit the allaying of
19 public concern".

20 I would suggest in my submissions, therefore, that
21 the Inquiry will wish to be particularly concerned to
22 distinguish between, on the one hand, those who have
23 genuine fears, whether or not they are objectively
24 justified in relation to personal security, their future
25 operational effectiveness or intrusion into their

1 private or family or professional lives, from, on the
2 other hand, those whose fears may lie more in
3 a reticence to answer in public to the circumstances of
4 the infliction of death and injuries with which this
5 Inquiry is particularly concerned.

6 In suggesting that distinction and its importance,
7 I must, however, stress that the Inquiry has not as yet
8 received any individual applications from a military
9 witness so those comments are not a reflection and
10 should not be taken to be a reflection or any criticism
11 of any application that has been made. Having said all
12 of that, clearly the legitimate interest in the openness
13 of the Inquiry is not the only factor which is in play.

14 First, it has to be recognised that the granting of
15 anonymity in terms of a name not being used during
16 the public hearings is, in fact, only a limited inroad
17 into the openness of the Inquiry. The evidence would
18 still be given in public and unless screening is also
19 sought, the witness would still be seen giving his or
20 her evidence. Second, it is plain that procedural
21 issues that involve a risk to the life of the Inquiry's
22 witnesses, call for the most anxious scrutiny.

23 If authority for that is needed, it was clearly
24 stated in paragraph 8 of the judgment of the Master of
25 the Rolls in the venue decision regarding the Bloody

1 Sunday Inquiry and then repeated in paragraph 22 of
2 Lord Carswell's speech in *Officer L*.

3 Third, it is not without significance that the 2005
4 Act itself, like the 1921 Act before it, makes specific
5 provision for restrictions on disclosure. Under
6 section 19(4)(b), the Inquiry is bound to consider any
7 risk of harm or damage that could be avoided or reduced
8 by making any such restriction.

9 The Inquiries Act itself, therefore, recognised
10 the justification in some cases, on restrictions on
11 the openness of a public inquiry.

12 Turning to that part of Lord Carswell's test that
13 requires consideration of the Inquiry's article 2
14 duties; sir, I would not seek to take issue with what is
15 said by the various applicants, save that what is not,
16 perhaps, brought out in their written submissions is
17 that Lord Carswell made clear that the article 2
18 criterion of real and immediate risk, is and should be
19 one that is not readily satisfied. In other words,
20 the threshold is high.

21 Sir, while these cases are inevitably very fact
22 sensitive, the fact that the article 2 threshold is
23 a high one, can in my submission, be seen from the facts
24 of the case of *Osman* itself, a case in which the
25 European Court of Human Rights found that the article 2

1 threshold had not been reached.

2 As to the common law test, the submissions of
3 Mr Garnham assert that the common law test is that set
4 out by Lord Woolf in the second of the Bloody Sunday
5 anonymity decisions. In summary, this is that once
6 there is established to be objectively justified grounds
7 to fear an increased risk to life, then there needs to
8 be a compelling justification for naming any military
9 witnesses.

10 The question that arises is whether that test and
11 approach has survived the decision of the House of Lords
12 in the case of Re Officer L. Mr Garnham maintains that
13 compelling justification is part of the common law test,
14 wherever the objective list is increased, while Mr Singh
15 and Miss Hetherington dispute this. Sir, it is right
16 that in paragraphs 22, 26 and 29 in the case of
17 Officer L, there is no reference to a requirement for
18 compelling justification.

19 Equally, however, Lord Carswell did say in
20 paragraph 29 that if and when article 2 drops out of the
21 picture, the decision is to be governed by "the common
22 law principles".

23 It may be argued that the common law principles here
24 include the approach of Lord Woolf in the second
25 Bloody Sunday anonymity case, ex parte A.

1 It may also be relevant that Re Officer L was, on
2 the factual findings of the Hamill Inquiry, a case where
3 there was no objectively verified increase in the risk.

4 Sir, the Rosemary Nelson Inquiry had to consider
5 this very same point and in its decisions on anonymity,
6 did not expressly adopt the compelling justification
7 test. An MoD judicial review of the Nelson Inquiry's
8 decision included a ground of challenge that the Inquiry
9 had therefore erred in law in not adopting compelling
10 justification as an element in the common law test.

11 At first instance, Weatherup J rejected that
12 challenge in the case of A (Nelson) and found that there
13 is no residual requirement for compelling justification.
14 So there is a clear first instance authority against
15 the proposition being put forward by Mr Garnham.

16 Equally, I make plain that the MoD appealed that
17 decision and the Court of Appeal in Northern Ireland
18 heard that appeal, I believe, in October of last year
19 and judgment is still pending.

20 Mr Barr, for the MoD, has helpfully provided
21 the skeleton argument of his clients that was used in
22 the hearing before the Northern Ireland Court of Appeal.

23 Sir, in these circumstances, there is obviously some
24 uncertainty about the nature of the balancing exercise
25 at common law and whether or not it contains

1 a preordained element requiring compelling
2 justification, in cases where the risk has been
3 increased. That is a matter on which you may wish to
4 hear submissions from Mr Garnham, from Miss Hetherington
5 and from Mr Barr.

6 THE CHAIRMAN: Yes.

7 MR MOSS: Sir, I would only add that while this particular
8 debate is of interest, it might be doubted whether in
9 most cases, the distinction would or should make
10 a practical difference to the outcome. If one takes the
11 approach of Lord Diplock in the case of Fernandez, of
12 "applying, untrammelled by semantics, principles of
13 common sense and common humanity" and if a materially
14 increased risk to life is established on one side of the
15 balancing exercise, it might be thought to be common
16 sense that the counterveiling considerations would need
17 to be correspondingly strong in order to outweigh it and
18 that could be said to apply, whether or not "compelling
19 justification is 'preordained'" as part of
20 the definition of the common law test.

21 Sir, I turn, then, from the general test to be
22 applied to one feature in the assessment of the
23 objective risk. This is the extent to which names have
24 already entered the public domain.

25 This is a factor in the detainees' application and

1 it may well be a factor in some individual applications
2 that may be made by military witnesses.

3 Counsel to the Inquiry do not urge the view that has
4 sometimes been taken, that if a name has ever entered
5 the public domain, then that must be an end to any
6 anonymity application. Instead, we suggest that it is
7 one factor amongst a number of others that needs to be
8 considered, albeit one that will always require careful
9 analysis.

10 At one end of the spectrum, where a name is
11 extremely well known and well publicised, it may be that
12 anonymity would effectively serve no purpose in reducing
13 risk and in such cases, it would often be that an
14 anonymity application would be bound to fail, but short
15 of that, the extent to which a name has entered the
16 public domain should, we suggest, be seen simply as part
17 of the factual matrix that needs to be objectively
18 assessed to determine whether there would be an increase
19 to the risk to a witness if he or she were named
20 publicly in the Inquiry.

21 Sir, as Mr Garnham's submissions make clear,
22 personal safety may not be the only grounds for
23 anonymity applications by his clients. There may be
24 cases relying on article 8, an interference with
25 the private or the professional lives of military

1 applicants. In this context, the Inquiry has made clear
2 that it will regard as irrelevant, information within
3 documents that comprises personal information such as
4 telephone numbers, dates of birth and home addresses.
5 Unless particular circumstances exist which make such
6 information of relevance to the Inquiry, the Inquiry's
7 procedure is that it will redact such material from
8 documents supplied prior to disclosure, to the core
9 participants and to the public.

10 Another area of suggested sensitivity, at least for
11 some witnesses, is their current military role. On that
12 issue the Inquiry has made clear that unless a witness
13 has made clear that his current post is relevant to
14 module 4 of the Inquiry, then it will generally regard
15 a witness's current post as irrelevant and if it is
16 sensitive, there would be no need for it to be
17 disclosed.

18 Both Mr Garnham and Miss Hetherington in their
19 written submissions, accept that the assessment of
20 article 8 and article 10 rights should follow
21 the approach set out in the case of *In Re S*.
22 I respectfully agree. I would only add that in both
23 paragraphs 18 and paragraph 28 of that case, Lord Steyn
24 the strength of the rule that the press may report
25 everything that takes place -- in that case, it was in

1 a criminal court -- but also that the interests in
2 a democratic society in ensuring a free press, weighs
3 heavily in the balance in deciding whether any
4 curtailment of the freedom bears a reasonable
5 relationship to the purpose of curtailment.

6 It follows that on issues of press freedom,
7 the media would no doubt urge on the Inquiry, both
8 the public interest in open press reporting of the
9 Inquiry's proceedings and also the most careful
10 consideration of the extent to which the names of
11 anonymity applicants or other information in relation to
12 them, have already been made public and may already have
13 been reported.

14 Turning to the individual applications made by seven
15 of the detainees, the protection that they seek is that
16 their names be replaced by ciphers in materials to be
17 used during the Inquiry's public hearings. They also
18 seek to prevent disclosure by the Inquiry of their
19 addresses, occupation, their image or other information
20 that would tend to lead to their identification.

21 They seek corresponding reporting restrictions in
22 respect of these matters. The application is a detailed
23 one for which we are grateful, which all of the core
24 participants have had the opportunity to consider.

25 You will no doubt need to consider the forceful

1 submissions made as to the risk to these detainees as
2 detailed in the application but consider also the extent
3 to which their names have already entered the public
4 domain, at least to some extent.

5 The only other observation I would wish to make on
6 the detainees' application is the possible need for an
7 interim order to be made today, in order to protect the
8 position of the applicants, pending any substantive
9 ruling.

10 In that regard, sir, you might think there is force
11 in the submissions that have been made by
12 Kingsley Napley and others, that paragraph 3 of the
13 draft order is too narrow because it would not permit
14 the Inquiry to show relevant material to witnesses, as
15 opposed to core participants. In that regard,
16 the wording, I would suggest, for paragraph 3 of the
17 order, by way of an interim order, would be as follows:

18 "This order does not prohibit any disclosure or
19 publication to those persons designated as core
20 participants within the Inquiry proceedings (or those
21 who are otherwise required by the Inquiry to give
22 evidence) and their legal representatives. But such
23 persons shall not further disclose to any third party,
24 material falling within paragraph 2 above."

25 Sir, there are two final points I need to raise.

1 Firstly, as regards all anonymity applications, I would
2 suggest that no order made in respect of an application
3 can be a final order. The detainees' applications and,
4 one suspects, any applications made by any military
5 witnesses, will be based on the premise that granting
6 the protective measures sought will not interfere with
7 the fundamental purpose of the Inquiry which is to get
8 at the truth of what happened.

9 I have no reason at all to doubt that that is the
10 correct assessment on the facts as currently known to
11 the Inquiry team. However, circumstances may change and
12 if a restriction order becomes an impediment to
13 the Inquiry's task, then it must always be open to
14 the Inquiry to revisit any grant of anonymity.

15 Second and finally, sir, the Inquiry is taking steps
16 to identify and locate the interpreters who were
17 involved at Battle Group Main. They fall into a slightly
18 different category of witness. There may well be
19 anonymity issues and a need for other protective
20 measures arising in respect of them and, sir, it will be
21 necessary to address those at a later stage.

22 THE CHAIRMAN: Thank you very much, Mr Moss.

23 The way I wish to deal with this is to take
24 the generic legal test first, hear submissions about
25 that and then to go on to deal with the applications of

1 the detainees which are before me today.

2 So I think, probably, the best way of dealing with
3 that is, Miss Hetherington, if you start. You can take
4 it that I have read the whole of your submissions and
5 I hope I am tolerably familiar with some of the
6 authorities that you have referred me to.

7 As I see it, there is not a great deal of difference
8 between all counsel, including counsel to the Inquiry,
9 save perhaps for the compelling test point.

10 Submissions by MISS HETHERINGTON

11 MISS HETHERINGTON: Yes, sir, absolutely. With that in
12 mind, I do not wish to repeat what I said in writing,
13 just to highlight a few points.

14 Firstly, dealing with the article 2 test, you will
15 have seen in the parties' submissions that it is common
16 ground that the approach is the same in this context for
17 the positive obligations under article 3 of
18 the Convention, as well as article 2.

19 It may be helpful to note that that has been
20 confirmed recently by the House of Lords in the case of
21 E v Chief Constable of The Royal Ulster Constabulary.

22 So, therefore, the test for both article 2 and
23 article 3 is, firstly, whether the failure to grant
24 measures to protect anonymity will increase the risk to
25 life or the risk to freedom from torture and cruel,

1 inhuman or degrading treatment. Secondly, if there is
2 an increased risk, whether that risk amounts to a real
3 and immediate risk and thirdly, if that threshold is
4 crossed, what measures are all that can be reasonably
5 expected for the public authority to take; in this case,
6 the Inquiry.

7 THE CHAIRMAN: And it would seem from the authorities that
8 the threshold is a high one.

9 MISS HETHERINGTON: Sir, yes. I would ask you to note that
10 although, of course, we accept that Lord Carswell in
11 Officer L commented that the threshold was a high one
12 and not readily satisfied, in the case of Van Colle,
13 a subsequent House of Lords case, both Lord Bingham and
14 Lord Hope noted that that was simply a comment on the
15 test and not any gloss or qualification of it. So it
16 does not itself form part of the legal test.

17 And Lord Bingham, in particular, noted that in
18 Osman, the European Court of Human Rights expressly
19 rejected the submission that in the policing context,
20 the failure to perceive a risk had to amount to gross
21 negligence; ie the risk does not have to be so high and
22 so obvious that it would be grossly negligent not to
23 appreciate it.

24 THE CHAIRMAN: Yes. I hear what you say about that. If you
25 look at what Lord Carswell said, he makes it absolutely

1 plain that it is a high threshold.

2 MISS HETHERINGTON: Sir, yes, and the subsequent
3 observations in Van Colle don't doubt that it is, they
4 simply say that that is not part of the legal test.

5 THE CHAIRMAN: All right. Yes.

6 MISS HETHERINGTON: Another matter in terms of the test for
7 risk raised in the submissions on behalf of the Treasury
8 Solicitor, is whether there is a subtle difference
9 between the article 2 or article 3 test as to whether
10 there is a risk and asking whether or not a witness has
11 reasonable grounds for his or her fear.

12 Sir, we accept that the article 2 test is whether
13 there would be a materially increased risk that passed
14 the threshold and that in Officer L, Lord Carswell says
15 this is not dependent upon the subjective concerns of
16 the applicant but upon the reality of the existence of
17 the risk. However, he goes on to say that the test for
18 the reality of the risk is whether or not it's
19 objectively well founded, ie, whether there are
20 reasonable grounds for appreciating a risk.

21 And in this connection, the difference between that
22 test and asking whether the witness has reasonable
23 grounds for fear of such a risk is really a difference
24 of approach rather than a difference of substance, in
25 that under article 2 and article 3, the tribunal itself

1 asks whether the risk is objectively well founded and
2 whether the tribunal finds reasonable grounds for the
3 risk, rather than whether the witness has reasonable
4 grounds for the risk.

5 But of course, if "reasonable grounds" is judged
6 objectively, it is very difficult to see how the result
7 of the test could be different in either case.

8 Dealing lastly with the final stage of the test,
9 what measures could be reasonably expected of the
10 authority, having appreciated a risk which crosses
11 the real and immediate threshold? As Lord Carswell
12 explains in *Officer L*, the concept of reasonableness
13 brings into consideration the feasibility of
14 the precautions and their cost and the resources
15 available. At paragraph 13 of our written submissions,
16 we submit that the concept did not include the balancing
17 of wider public interest considerations, such as public
18 confidence in the Inquiry.

19 It is right to note that in the case I mentioned
20 earlier, *E v Chief Constable of The Royal Ulster*
21 *Constabulary* and also in an even more recent case in
22 the House of Lords called *Savage*, their Lordships have
23 accepted that even where the real and immediate risk
24 threshold has been crossed, there may be some balancing
25 of the rights of others in considering what measures are

1 reasonable to alleviate the risk. We would, however,
2 note that in both of those cases the rights were of
3 a rather different order than the more nebulous
4 considerations such as public interest or public
5 confidence in the Inquiry.

6 The case of E was a case involving the police
7 reaction to loyalist protesters along the school route
8 of Catholic school girls and the countervailing
9 interests taken into account by the police were
10 the rights of others within the area to be free from
11 serious harm or even death, whereas in Savage, a case
12 involving a psychiatric patient who absconded from
13 hospital and committed suicide, the countervailing
14 interests were the liberty and autonomy rights of
15 the patient herself and those who were in the hospital
16 with her.

17 And we say that those fundamental and identifiable,
18 individual rights are distinct from the more general
19 concepts of the public interest.

20 Otherwise, in our submission, it is difficult to see
21 how the test for article 2 and article 3 is really
22 different to that for the common law and yet in
23 Officer L, Lord Carswell clearly mandates an excursion
24 from the common law when article 2 or article 3 are
25 engaged.

1 THE CHAIRMAN: He clearly envisages that the two tests are
2 different.

3 MISS HETHERINGTON: Yes, exactly, sir. In any event,
4 we would submit that even if such border matters could
5 be considered as a matter of principle, as a matter of
6 practicality, it is difficult to see how they could ever
7 trump the need to protect against the real and immediate
8 risk to life or freedom from torture, those being the
9 most fundamental rights protected by the law, certainly
10 in the context of public inquiries and anonymity
11 measures, as opposed to, perhaps, measures in the course
12 of policing operations.

13 It is difficult to envisage a case in which
14 the article 2 or article 3 threshold would be crossed
15 and yet no form of anonymity would be afforded and
16 certainly, I am unaware of any such incidents.

17 THE CHAIRMAN: Yes.

18

19 MISS HETHERINGTON: As regards article 8 and article 10,
20 the balance of considerations there --

21 THE CHAIRMAN: In a moment, when we come to your
22 applications, I am going to ask you whether it really
23 adds anything to your case, but we need not deal with it
24 now.

25 MS HETHERINGTON: Sir, certainly, I am happy to deal with

1 that in the context of the individual applications. On
2 the law, I have nothing to add to the comments that
3 we have made in writing.

4 In terms of the common law test, obviously this is
5 the one point of departure between the submissions of
6 the victims and the submissions of the Treasury
7 Solicitor and the MoD. I appreciate that I am in
8 the slightly unusual position of submitting that the
9 common law test for refusing anonymity is, perhaps, less
10 stringent than that urged by the Treasury Solicitor and
11 the MoD, when my clients are, in fact, applying for
12 anonymity.

13 Having said that --

14 THE CHAIRMAN: If it is right, that is why you are
15 submitting it.

16 MISS HETHERINGTON: We have set out our reading of the law
17 in our response to the written submissions of the
18 Treasury Solicitor. I do not propose to say more than
19 that, unless you wish me to, other than that we would
20 echo the submissions made by Mr Moss that even if
21 compelling justification is not part of the legal test
22 as we suggest, it will in practice, be likely to be
23 required as a matter of fact wherever there are
24 witnesses who fear for their lives and have reasonable
25 grounds for that fear, save perhaps where the fear is of

1 an extremely small and distant risk and therefore
2 we agree with Mr Moss that a debate on the law is likely
3 to be a diversion that is unlikely to fundamentally
4 impact on the outcome of any individual application.

5 THE CHAIRMAN: Yes.

6 MISS HETHERINGTON: In terms of two other points to raise
7 which arise both under the Human Rights Act and under
8 the common law, firstly the question of matters being in
9 the public domain.

10 Again, we agree with the comments made by Mr Moss,
11 the extent --

12 THE CHAIRMAN: It is not fatal to your application, you say?

13 MISS HETHERINGTON: Exactly, sir. It may be relevant to an
14 increase in risk from further publication but if,
15 despite the fact that there may be some reference in
16 the public domain, there is still a material increase in
17 risk, then that risk should be approached in the same
18 manner as any other risk and without the public domain
19 question then coming back in as some sort of barrier to
20 the grant of anonymity at the balancing stage.

21 Tied to this is the second point I would emphasise
22 which relates to the possibility of any future breaches
23 of any order you might make, rather than previous
24 publicity.

25 It has been common, I think since the Venables and

1 Thompson case, for reporting restrictions to be made
2 against the whole world. We appreciate that this leads
3 to potential problems of enforcement outside England and
4 Wales but as can be seen from Venables and Thompson and
5 subsequent cases, that does not mean that the order
6 should not be made. Rather, it is recognised that even
7 if there may be some limited leakage of information in
8 breach of the order, that does not make the order
9 worthless because there is a difference in terms of
10 the risks created from a limited circulation of
11 information in certain media and much more widespread
12 coverage. Certainly under article 2 and article 3,
13 we would submit that it is not necessary to show that
14 measures will definitely be effective and it is
15 sufficient to engage the state's responsibility that
16 they would have a real prospect of litigating the harm.

17 Again, in Venables v Thompson at paragraph 1.5,
18 it was expressly recognised by the court that
19 the reporting restrictions they made might not be fully
20 effective to protect from acts outside England and Wales
21 but that the injunctions would protect against that
22 wider circulation and, therefore, ought to be granted.

23 THE CHAIRMAN: Yes.

24 MISS HETHERINGTON: Sir, that is all I wish to say on the
25 generic legal test.

1 THE CHAIRMAN: Thank you.

2 Now, I think the next person I ought to hear from is

3 Mr Garnham.

4 Submissions by MR GARNHAM

5 MR GARNHAM: Yes, thank you sir. Two preliminary matters,

6 if I may.

7 First of all, sir, we take on board your comments

8 about the need for realism in making anonymity

9 applications.

10 THE CHAIRMAN: I think as far as that is concerned, it is

11 probably best that you take that up informally with

12 Mr Elias and Mr Moss.

13 MR GARNHAM: I propose, sir, to say no more than this:

14 we will take it on board and it will be reflected in

15 the advice we give but ultimately, we act on

16 instructions from our clients.

17 THE CHAIRMAN: Yes, I understand.

18 MR GARNHAM: A second preliminary matter, sir, submissions

19 on individual applications are to be made by 30 January:

20 we would submit that it is likely to be necessary for

21 the Inquiry to timetable a short opportunity for oral

22 submissions in relation to that.

23 THE CHAIRMAN: I was going to ask about that.

24 MR GARNHAM: You asked whether that was likely and we think

25 it is.

1 THE CHAIRMAN: Do you think you will need oral submissions
2 on that?

3 MR GARNHAM: Sir, yes.

4 THE CHAIRMAN: In that event, have you come armed with dates
5 when it can take place?

6 MR GARNHAM: We have.

7 THE CHAIRMAN: Because I am very keen, for reasons which you
8 will understand, to get this matter dealt with as soon
9 as possible.

10 MR GARNHAM: I have come armed with dates and --

11 THE CHAIRMAN: You can talk to Mr Elias about it?

12 MR GARNHAM: Yes.

13 THE CHAIRMAN: Yes.

14 MR GARNHAM: Sir, as to the generic submissions, you have
15 our written observations. We stand by those.

16 We note that they are supported by Mr Barr for
17 the MoD and by Kingsley Napley and adopted by those
18 representing Corporal Crowcroft, Sergeant Stacey and
19 Private Fallon. Save in one important respect to which
20 I will return in a moment, they are broadly consistent
21 with those made by Mr Singh and Miss Hetherington.

22 Although I am conscious of the fact, sir, that
23 the Inquiry as an inquisitorial body will determine this
24 matter for itself, I doubt, sir, if you will be assisted
25 by my repeating what is in those written submissions.

1 I know you will have regard to them and will read them
2 in due course.

3 THE CHAIRMAN: I have certainly read them.

4 MR GARNHAM: The one real legal issue that stands between
5 Miss Hetherington and myself, and possibly or
6 potentially between us and Inquiry counsel, is the test
7 at common law as regards anonymity.

8 THE CHAIRMAN: The compelling justification point?

9 MR GARNHAM: Yes, sir. I say straightaway that my learned
10 friend Miss Hetherington and Mr Singh have correctly
11 pointed out that our submissions have mixed up
12 the references.

13 THE CHAIRMAN: That is not completely fatal to your
14 submissions.

15 MR GARNHAM: I am grateful for that indication. I would
16 have struggled had it been, but if I can correct it in
17 this way, sir?

18 The quotation at paragraph 12 of our written
19 submissions is from paragraph 68(5) of Lord Woolf's
20 judgment in R v Lord Saville ex parte A, not the Widgery
21 Soldiers case.

22 As regards the application of article 2 and, for
23 that matter, article 3, Miss Hetherington and I agree
24 that the test is whether there is a real and immediate
25 risk to life or to serious bodily injury within

1 the meaning of article 3.

2 Mr Moss commented a few moments ago about
3 Lord Carswell's observation that it was a high test.
4 Miss Hetherington has replied to the effect of saying
5 that that observation has not changed the test. With
6 respect, Miss Hetherington is entirely right about that.
7 The adjectival description of that test by Lord Carswell
8 in Officer L we submit was no more than that,
9 a description. It did not add a fresh element to the
10 test.

11 It follows that if a party were to show that there
12 is a real and immediate threat, that would be an end of
13 the matter. There would not be a need to go on and ask
14 whether this case additionally satisfied a high test.

15 As regards the common law test, we submit that
16 the proper test does indeed require there to be
17 a compelling justification for refusing anonymity
18 measures if the witness's fears are based on reasonable
19 grounds. Miss Hetherington in her written submissions
20 suggests that that does not apply and instead, a simple
21 balancing test is applicable.

22 We would make two points in support of
23 the application of the compelling justification test in
24 these circumstances and I say that simply to amplify
25 what is already in our written observations. The first

1 point, sir, as I think Mr Moss acknowledges,
2 the Officer L case does not either expressly or
3 impliedly overrule the Court of Appeal's decision
4 in ex parte A and accordingly, ex parte A remains good
5 law. The relevant paragraph in ex parte A is 68.5.
6 The words used by Lord Woolf were:

7 "The right approach here, once it is accepted that
8 the fears of the soldiers are based on reasonable
9 grounds, should be to ask: is there a compelling
10 justification for naming the soldiers, the evidence
11 being that this would increase the risk."

12 THE CHAIRMAN: It is odd though, since Lord Carswell was
13 reviewing the whole matter, that there is no mention of
14 that at all.

15 MR GARNHAM: Precisely so, sir.

16 THE CHAIRMAN: Since he was propounding what he suggested
17 was a helpful test combining the two, it is odd, if he
18 was not overruling that or he thought that there was
19 something in it, that he did not mention it.

20 MR GARNHAM: If I may, sir, I will address that in these
21 submissions because that is the central point.

22 THE CHAIRMAN: Please do.

23 MR GARNHAM: Ex parte A is referred to in paragraph 22 of
24 Lord Carswell's speech but in a manner, we would submit,
25 that is indicative of assent, not dissent, from that

1 case.

2 THE CHAIRMAN: Which paragraph is it?

3 MR GARNHAM: Paragraph 22.

4 THE CHAIRMAN: "The principles which apply to a tribunal's
5 common law duty", that one?

6 MR GARNHAM: Yes.

7 THE CHAIRMAN: And over the page.

8 MR GARNHAM: We would submit that if the House of Lords and
9 particularly Lord Carswell had intended to overrule
10 ex parte A that frankly at that point one might have
11 expected Lord Carswell to say so. It is of note that
12 Lord Woolf who gave the judgment of the court in
13 ex parte A was a member of the judicial committee in
14 Officer L and he agreed with Lord Carswell.

15 THE CHAIRMAN: Yes, he agreed.

16 MR GARNHAM: Frankly, sir, it would be astonishing if he had
17 done so in circumstances where the House of Lords was
18 overruling ex parte A.

19 That, however, would be the effect of the judgment
20 of Mr Justice Weatherup in the Nelson witnesses' case.
21 We say that, with respect, Mr Justice Weatherup is
22 simply wrong about that case.

23 In her written submissions, Miss Hetherington does
24 not put it as baldly as asserting that by a side wind
25 Officer L has overruled ex parte A. Her argument is

1 a more subtle one. She and Mr Singh point out correctly
2 that ex parte A is a pre-Human Rights Act case and that
3 what Lord Woolf was doing there in describing the need
4 to find compelling circumstances was simply reflecting
5 the Smith v the MoD approach to article 2 cases in
6 pre-incorporation days.

7 But we would respectfully submit that Lord Woolf's
8 judgment can't be marginalised in that manner. It is
9 right to say that Lord Woolf refers to ex parte Smith in
10 the course of his analysis. It is paragraph 34, sir.

11 THE CHAIRMAN: Yes.

12 MR GARNHAM: But having noted the effect of ex parte Smith
13 and the way in which that requires the courts to analyse
14 fundamental rights, he turns to what we would submit is
15 the central issue in the case, namely procedural
16 fairness. He did that at paragraph 38. So he is
17 conscious that he is developing, we would submit, two
18 lines of argument: one based on ex parte Smith and
19 the Convention and the second based on procedural
20 fairness.

21 The critical paragraph we would say is paragraph 44
22 if, sir, you have that. 44:

23 "It may well be that in the majority of cases,
24 the decision will be the same whether the approach
25 propounded by Lord Bingham in Smith is adopted, or

1 whether the issue is regarded as one of fairness.
2 However, it is still important to recognise that the
3 decision not to grant anonymity to the soldiers could
4 result in their being treated in a manner which is
5 genuinely unfair; unfair because it requires them to
6 undergo an unnecessary risk."

7 It was, we would submit, if one analyses
8 Lord Woolf's judgment, on that basis, recognising that
9 common law fairness is a freestanding requirement, that
10 Lord Woolf went on to lay down the rule that requires
11 there to be compelling circumstances in paragraph 68.5.
12 We say it is apparent from the passages to which I have
13 just taken you, sir, that the court would have come to
14 the same conclusion on the basis of fairness, even
15 without consideration of the Convention, the approach to
16 the Convention which is mandated by *ex parte Smith*.

17 In other words, one could strip out the powerful
18 Convention-based *Smith* argument and consider just
19 the fairness argument and Lord Woolf would come to
20 the same conclusion. In fact, we say this is reflected
21 in what Lord Carswell said in paragraph 22 of *Officer L*.
22 He said this:

23 "The principles which apply to a tribunal's common
24 law duty of fairness towards the persons whom it
25 proposes to call to give evidence before it are distinct

1 and in some respects different from those which govern
2 a decision made in respect of an article 2 risk."

3 So we would submit that the fact that Re A was
4 a pre-Human Rights Act case does not provide a sound
5 basis for distinguishing it from the present. So
6 submitting so far, I say: Officer L does not
7 overrule ex parte A. Ex parte A cannot be distinguished
8 on the basis that simply it is a pre-Human Rights Act
9 decision.

10 But finally, sir, I would submit this: Officer L and
11 the test for common law fairness propounded by
12 Lord Carswell in that case applies in a case where
13 the risk to life would not be increased by giving
14 evidence. Miss Hetherington and Mr Singh are right to
15 say that in Re Officer L, when Lord Carswell was
16 addressing the common law test as it applied to
17 the facts of that particular case, he did not
18 incorporate a compelling justification element to
19 the test.

20 But we say, sir, frankly that is unsurprising.
21 It had been found as a fact, as Mr Moss acknowledged
22 earlier, that in the Officer L case the risk to
23 witnesses would not be increased if they gave evidence
24 in their own names.

25 That that is right, sir, although I doubt it could

1 be legitimately suggested otherwise, but that it is
2 right emerges from paragraph 16 of Lord Carswell's
3 speech. We respectfully agree that in cases where
4 the risk is not increased at all, the test is a simple
5 balancing exercise. So where there is no increased risk
6 of threat to life, then this Inquiry, like any other
7 inquiry, would carry out a straightforward balancing
8 exercise with no particular preponderance given to one
9 side or the other. But it does not follow, we say, from
10 Officer L, that that will be the case where there is
11 some increased risk, even where that increased risk
12 falls short of a real and immediate threat.

13 The short, point, sir, is this: it was not necessary
14 for the House of Lords in Officer L to consider
15 the position at common law as to whether giving evidence
16 would give rise to some risk to life because on the
17 facts of that case, that point simply did not arise.
18 We submit that once the factual foundation for
19 the decision in Officer L is properly understood, it
20 does nothing to undermine ex parte A and that is why
21 the House of Lords did not need to overrule it.

22 Ex parte A remains good law for cases where there
23 would be some increase in the risk if the witness gave
24 evidence.

25 THE CHAIRMAN: Yes.

1 MR GARNHAM: Those submissions, if they are right, we submit
2 in conclusion would lead to a three-part analysis, three
3 sub-tests, and those are these.

4 Where there is a real and immediate threat,
5 article 2 or, by parity of reasoning and reference to
6 the E v The Chief Constable case, article 3 applies.
7 Real and immediate threat, article 2 and article 3
8 applies. Where there is some increased risk, then
9 compelling justification is required. That
10 is ex parte A. Where there is no increased risk at all
11 of death or serious injury, a simple balancing exercise
12 is to be carried out and that is Officer L.

13 We submit, sir, that that concisely and accurately
14 resolves what is a difference between Officer L and
15 ex parte A, that in truth is more apparent than real.

16 Unless I can help you further on that?

17 THE CHAIRMAN: No. Very helpful. Thank you very much.

18 I am afraid we are going to break off for a moment
19 or two for the shorthand writers who are taking a note
20 of all of this. 25 past 11, ten minutes or just over.

21 We will stick to that.

22 (11.15 am)

23 (A short break)

24 (11.25 am)

25 THE CHAIRMAN: Mr Barr?

1 Submissions by MR BARR

2 MR BARR: Sir, can I address first the question of the
3 witness list and say only this: we look forward in the
4 very near future to working closely with the Inquiry
5 team with a view to expanding the list that can be
6 circulated as quickly as possible.

7 THE CHAIRMAN: I am glad to hear it and I will hold to you
8 it.

9 MR BARR: Secondly, the question of whether the Ministry
10 will require or seek an oral hearing of its
11 applications: I think I can most accurately describe
12 the position as we can't rule it out at this stage and
13 so it would be prudent at least to look into dates to
14 avoid, something which we are doing with the Inquiry
15 team.

16 THE CHAIRMAN: Yes, I see. Well, we will do that and
17 I gather that a date has been selected, namely the 18th.

18 MR ELIAS: Wednesday 18 February has been canvassed with
19 those parties who might be required to be present for
20 oral anonymity applications.

21 As you will see from the agenda, we had proposed
22 provisionally a date for a further directions hearing of
23 25 February. We would be very happy, as the Inquiry
24 team anyway, as it were to amalgamate both and bring
25 them forward to February 18 so that anonymity and any

1 other directions can be dealt with.

2 THE CHAIRMAN: I think that is sensible.

3 As far as the anonymity applications are concerned,
4 to some extent it depends on how many of them there are
5 and the nature of them, because dealing with them on an
6 individual basis might take rather longer than just on
7 the basis that we are dealing with it today.

8 Is that right?

9 MR GARNHAM: Yes, sir. It would.

10 THE CHAIRMAN: We will see, but we will allocate a whole day
11 for it. Thank you, Mr Barr.

12 MR BARR: Sir, my final point is to the legal argument that
13 you have heard today and the test of compelling
14 justification.

15 First of all, I would like to adopt in their
16 entirety my learned friend Mr Garnham's submissions.
17 Secondly, I rely upon but don't repeat my written
18 submissions. I would only add that I apologise that
19 they were submitted slightly late and I would like to
20 thank the Inquiry secretariat for acting so quickly to
21 distribute them in time for today's hearing.

22 Thirdly, the only submission I would like to add to
23 Mr Garnham's is to invite you, sir, to ask this
24 question. Once an applicant for anonymity has
25 established objectively a risk to his life, can it be

1 right that that can be outweighed by considerations
2 which are not compelling? I would submit that when
3 it is looked at in that way, there can be only one
4 sensible answer and the answer is that there must be
5 compelling justification.

6 That is the only submission I would like to add,
7 unless I can assist you further, sir.

8 THE CHAIRMAN: No. Thank you very much.

9 Miss Dobbin?

10 Submissions by MISS DOBBIN

11 MISS DOBBIN: Sir, may I on behalf of the witnesses who are
12 represented by Kingsley Napley respectfully adopt
13 the submissions that have been made by Mr Garnham and
14 may I also endorse the view expressed by Mr Moss as to
15 the need to ensure that the exception to the detainees'
16 application is drafted as widely as possible so as to
17 cover any witness required by this Inquiry.

18 As regards individual applications, our provisional
19 view is that we could make those applications in
20 writing. However, until we hear more --

21 THE CHAIRMAN: You will reserve your position about oral
22 hearing? It is only Mr Garnham who definitely wants an
23 oral hearing?

24 MR GARNHAM: Sir, in truth, mine is no more than
25 to anticipate that we probably will, not to say that

1 it is certain.

2 THE CHAIRMAN: Well, I think probably it's likely to.

3 MISS DOBBIN: That is it.

4 THE CHAIRMAN: Yes. Thank you very much.

5 Now, as I understand it, and I will be corrected if

6 I am wrong about it, none of those whom I am going to

7 describe as the Court Martial 7 are going to seek

8 anonymity. Is that right?

9 MR LANGDALE: That is correct. I speak on behalf of

10 Colonel Mendonca.

11 THE CHAIRMAN: Thank you. No need for all of you to stand up

12 unless you want to. Mr Topolski, I understand that you

13 certainly are not? I think we've had an email to that

14 effect.

15 MR TOPOLSKI: Yes.

16 THE CHAIRMAN: Unless anybody else wants to say openly, no,

17 I assume that none of you are seeking anonymity. Thank

18 you very much indeed.

19 Miss Hetherington, you have a right of reply to

20 those arguments. Do you want to say anything more?

21 MISS HETHERINGTON: Sir, there is nothing more I wish to say

22 on the legal test.

23 THE CHAIRMAN: All right. There we are. That is that

24 aspect of it. Now, you want to go on and deal with your

25 own clients' applications, is that right?

1 Further submissions by MISS HETHERINGTON

2 MISS HETHERINGTON: Yes, sir. Again, I do not propose to
3 say a great deal about the actual applications of
4 the seven applicants --

5 THE CHAIRMAN: If I may say so, you have set them out pretty
6 clearly in your skeleton argument and also in
7 the application itself and I have read all the evidence
8 that supports them.

9 MISS HETHERINGTON: Thank you, sir, I am very grateful for
10 that.

11 Mr Moss has obviously outlined the measures sought
12 by the applicants. I would only make the point that
13 they don't seek screening so that not only would their
14 evidence be given live before the Inquiry but also they
15 would be able to be viewed by all the other parties and
16 the public whilst giving their evidence, although as
17 mentioned in our application, they would seek some
18 assistance in shielding them from the public gaze on
19 their way to and from the Inquiry building.

20 THE CHAIRMAN: I have said I was going to ask you this
21 earlier. Article 2 and 3 go together really, don't
22 they?

23 MISS HETHERINGTON: Yes.

24 THE CHAIRMAN: Does article 8 make any real difference to
25 your case?

1 MISS HETHERINGTON: It is fair so say that the article 8
2 rights of my clients are, in a way, parasitic on
3 article 2 and article 3. The reasons why their private
4 lives will be disrupted is because they will be forced
5 to take increased steps -- as you have seen from
6 the evidence, they have already taken certain steps to
7 protect themselves but they will have to take increased
8 steps to protect their physical safety which will have
9 a serious impact on their ability to live their private
10 and family lives as they see fit.

11 THE CHAIRMAN: Yes, I follow.

12 MISS HETHERINGTON: So it is parasitic on the risk to their
13 lives but it does not necessarily fall away if article 2
14 and article 3 are not engaged because, obviously, their
15 subjective fears alone will mean that they are likely to
16 have to take those steps, even if you were to decide
17 that the risk to their lives or personal safety does not
18 cross the real and immediate threshold.

19 So, were you to find that article 2 or article 3
20 were not engaged, it would still be necessary to
21 consider the position under article 8, because even if
22 the risk is not real and immediate within the article 2
23 and article 3 sense, it will nevertheless lead to my
24 clients having to take steps which will restrict their
25 private and family lives.

1 THE CHAIRMAN: There is one other question I want to ask
2 about. Supposing -- and I have obviously not made my
3 mind up about it at all but supposing I were to accept
4 the submissions that the compelling justification is
5 required in the discretionary, common law -- I say
6 discretionary -- under the common law test, do you say
7 in the case of your clients it makes, again, any real
8 difference?

9 MISS HETHERINGTON: No, sir. Perhaps as I alluded to
10 earlier when talking about the generic legal framework,
11 we submit that there would not be a compelling
12 justification to -- I am going to tie myself in knots
13 here.

14 THE CHAIRMAN: I think you are submitting that you don't
15 need a compelling justification but even if you did, do
16 you say there would be any real difference?

17 MISS HETHERINGTON: We say there would be no difference to
18 the outcome here. As you will have seen from our
19 submissions, sir, we say that even if article 2 and
20 article 3 were to drop away and they were matters to be
21 considered under the general common law test of
22 procedural fairness, where all wider considerations can
23 come into play, the balance would still fall squarely in
24 favour of granting anonymity to the applicant victims.

25 And in that regard, I make the point that no

1 evidence will be held back, either from the Inquiry or
2 indeed from any of the core participants or witnesses
3 who are participating in it. We don't seek anonymity
4 vis a vis them. And the victims will give their
5 evidence live without the benefit of screening, as
6 I have said, such that the public will also be able to
7 see and hear their evidence.

8 THE CHAIRMAN: You say the effect of the order that you are
9 seeking is that the scope of it is comparatively
10 limited?

11 MISS HETHERINGTON: Indeed, the scope of what we are seeking
12 is limited and also, when one looks at the factors on
13 the other side, specifically public interest in
14 the Inquiry and public confidence in the Inquiry's
15 ability to fulfill its functions, we would very much
16 echo what has been said by Mr Moss, which is that it is
17 necessary to consider where public interest lies and
18 that the weight given to that consideration may be
19 heavier in respect of individuals where there is some
20 allegation of wrongdoing against them that the Inquiry
21 is having to investigate.

22 And as we have set out in our written submissions,
23 we submit that what this Inquiry is investigating is
24 what happened to the victims in Battle Group Main
25 between 14 and 16 September 2003 and who was responsible

1 for this, not only in terms of inflicting treatment on
2 the detainees but also in terms of approving this
3 practice, whether through instruction, training, advice,
4 or knowledge of acquiescence and we say that is very
5 much where not only the Inquiry's investigative function
6 lies but also where public concern lies and that it is
7 difficult to see how the precise identity of the victims
8 is relevant to those issues, whereas the identity of
9 the perpetrators and those who collaborated or stood by,
10 may be much more important.

11 It is for that reason that in our written
12 submissions, we caution against drawing analogies with
13 the results of some of the anonymity applications in
14 some of the other public inquiries or in court
15 proceedings where those applying for anonymity have
16 generally been those against whom allegations of
17 wrongdoing have been made and as counsel to the Inquiry
18 in the Robert Hamill Inquiry said, the very people whose
19 actions the Inquiry was designed to illuminate. We say
20 that our clients are not in that position and that that
21 has a relevant impact on the balance to be struck.

22 Finally, we also make the point that in previous
23 inquiries, the applicants have generally been public
24 servants who are granted extraordinary powers for
25 the benefit of the public and must assume a degree of

1 public accountability for their actions. We simply make
2 the point that that is an assumption which the applicant
3 detainees in this case have never had to make.

4 Unless you have any specific questions on
5 the individual applications, I do not propose to say
6 more than that.

7 THE CHAIRMAN: No, thank you very much.

8 MISS HETHERINGTON: Before I finish, on the matter of the
9 interim order --

10 THE CHAIRMAN: Yes, well now, before we get to that, does
11 anybody want to make any submissions in relation to
12 the applications of the detainees? Thank you.

13 Now, the interim order, I shall not give my decision
14 today. It seems to me proper that there be an interim
15 order. Have you had an opportunity to discuss this with
16 Mr Moss?

17 MISS HETHERINGTON: We have. Indeed, we have had some very
18 constructive discussions about the interim order and I
19 would confirm that we take on board the submissions of
20 both the Treasury Solicitor and Kingsley Napley as to
21 the extension of the exemption to those called as
22 witnesses as well as those designated as core
23 participants.

24 THE CHAIRMAN: Is there an agreed final draft?

25 MISS HETHERINGTON: There is a final draft which Mr Moss has

1 which reflects that. It is possible that I have seen
2 it, but can you just hand me a copy, Mr Moss?

3 MR MOSS: Paragraph 3 is as I read it out in the course of
4 my submissions (Handed).

5 THE CHAIRMAN: Well, I am sure I have seen that.

6 Very well, I shall make the order, an interim order
7 now, in the form of what is described as the draft
8 interim order (anonymity) and it will be published as
9 such.

10 MISS HETHERINGTON: Thank you, sir.

11 THE CHAIRMAN: I shall expect it to be complied with.

12 Very well, that deals with, does it not, what is on
13 our list as agenda item 4. Is that right?

14 MR MOSS: Sir, it does.

15 Further submissions by MR MOSS

16 Three brief points, if I may, just finally, in
17 respect of the submissions of my learned friends.

18 First of all, both Miss Hetherington and Mr Garnham
19 make the point that when the article 2 threshold is
20 described as a high test, that that is adjectival and
21 not incorporating a fresh element. Sir, I accept that,
22 but it does, nevertheless, reflect the reality of what
23 the article 2 threshold represents.

24 THE CHAIRMAN: I do not see that it makes any serious
25 difference to describe it as adjectival, frankly. It is

1 real and immediate.

2 MR MOSS: Sir, yes. In addition to Lord Hope and
3 Lord Bingham, you may be assisted by Lord Brown, who had
4 comments to make about the point as well and that's at
5 paragraph 115 of the judgment in the case of Van Colle,
6 in addition to what Lord Hope and Lord Bingham said
7 about it.

8 Secondly, this: Miss Hetherington said that in
9 respect of the article 2 threshold, that if
10 the article 2 threshold was crossed, then public
11 interest arguments could not be used, effectively, to
12 outweigh the risk to the individual applicant.

13 Sir, on that matter, Lord Carswell left the matter
14 open and I would not wish to be taken to agree as
15 a matter of theory, that public interest considerations
16 could never be considered.

17 However, in my respectful submission, it is really
18 not necessary to determine that matter in the context in
19 which it arises for your consideration. That is so
20 because in our context, when what is concerned is
21 the personal security of a witness, if the article 2
22 threshold is crossed and if the Inquiry's work is not
23 impeded by the granting of the protective measures that
24 are sought, it is very hard indeed to see how the public
25 interest in openness could, as a matter of practice,

1 outweigh the personal security considerations when
2 the Inquiry's fundamental task is not being threatened
3 in any way.

4 Thirdly and finally, as far as the common law test
5 is concerned, Mr Garnham made the submission that in
6 the case of *in re Officer L, ex parte A*, which was
7 the second anonymity decision in the Bloody Sunday
8 Inquiry, was not expressly or impliedly overruled at any
9 stage in the decision of Lord Carswell in
10 the House of Lords.

11 Sir, I do not take issue with that at all. I do not
12 say that this is determinative but you may think that
13 it is relevant to look at the way that Lord Carswell
14 addressed the other Bloody Sunday case which was
15 the *Widgery Soldiers* case, in reviewing the previous
16 authorities. The reference is paragraph 20 and it may
17 be relevant because in paragraph 20, Lord Carswell did
18 take issue with what the other Bloody Sunday case had
19 said about the article 2 threshold, in saying that he
20 disagreed with the suggestion in the *Widgery Soldiers*
21 case that when it was the public authority, the Inquiry,
22 that was exposing the person to the risk, that something
23 less than the *Osman* test applied.

24 So, certainly, it is right that when Lord Carswell
25 disagreed with the *Widgery Soldiers* case, he made

1 expressly clear that he did disagree and where he
2 disagreed and it is right that there was no such
3 disagreement with ex parte A and the previous decision
4 of Lord Woolf.

5 THE CHAIRMAN: Thank you very much.

6 MR ELIAS: Sir, that effectively, as far as the agenda is
7 concerned, I think deals with the substantive matters
8 for today.

9 THE CHAIRMAN: The timetable has rather been subsumed into
10 the next hearing for anonymity.

11 Discussion re timetable

12 MR ELIAS: Sir, may I say this about it? If the date now is
13 to be 18 February for the provisional further directions
14 hearings which will include any oral anonymity
15 applications that have to be dealt with, of course
16 we would like to give the parties two weeks' notice that
17 that is to be a firm date. So it would be helpful to
18 have had by 4 February at the latest, an indication that
19 oral hearings are required and also notification of any
20 other matters that any party may wish to bring forward
21 for a further direction.

22 THE CHAIRMAN: Well, I endorse that.

23 Please, gentlemen, 4 February.

24 MR ELIAS: And the March date, sir, was simply set, as you
25 know, again as a very provisional date, in the event

1 that yet a further directions hearing is needed so that
2 that can be diarised and again, we shall give as much
3 notice as we can as to whether that is a date which will
4 be used for that purpose.

5 Finally, agenda item 6, simply agenda'd so that
6 I can say this: there have already been some informal
7 discussions about core participants' opening speeches
8 and a suggestion has been floated, as it were, that
9 their speeches might be very short but they might be
10 accompanied by a written submission which could be put
11 on the website as part of the Inquiry's proceedings and
12 I invite further discussion about that.

13 Those parties who have returned to us have commented
14 in relation to that suggestion, that it seems to be
15 a sound and sensible one but we have not yet heard from
16 all parties.

17 THE CHAIRMAN: No doubt, people will respond.

18 MR ELIAS: Finally this. The warning letters protocol will
19 be distributed this week and as we have done in
20 the past, we will invite any comment as to it and as to
21 its practicability in particular, as soon as possible
22 after its receipt.

23 THE CHAIRMAN: Thank you very much. That then, completes
24 the agenda.

25 Just before we finish, there is one other matter

1 that I would like to mention, a general comment for one
2 and all.

3 Ladies and gentlemen, you have heard both counsel
4 for the Inquiry speak about cooperation by the parties
5 in this Inquiry and I simply want to add my thanks to
6 all of those who have cooperated and you all have.
7 I want to stress the need for cooperation to continue.
8 In my opening statement, I made clear that I wanted
9 the Inquiry to be carried out as expeditiously as
10 possible, always remembering that the procedures must be
11 fair, and I have that matter well in mind.

12 The whole Inquiry team; counsel, solicitor and
13 the paralegal department, the secretary and his
14 secretariat, have been working, I hope you will accept
15 from me, extremely hard in the last months. That is
16 because we have set ourselves tight timetables. A lot
17 of work has been carried out but there is still a lot of
18 work to be done.

19 Now, cooperation of other parties is vital to
20 the progress for the Inquiry and I am determined, as far
21 as I can, to see that the momentum of the Inquiry is
22 kept up and it is for this reason that whilst I thank
23 you all very much for your cooperation up to now, I do
24 urge you to maintain that high standard in the future.

25 You will not be surprised to know that inquiries

1 cost quite a lot of money and in these harsh economic
2 times -- I am told that it is the length of an inquiry
3 which is perhaps the most costly factor -- I am
4 determined to see that we get through this Inquiry, as
5 I said at the outset, as expeditiously as possible.

6 Thank you all very much. If you want to take
7 the opportunity before you depart, of speaking to
8 members of the Inquiry, to counsel in particular, about
9 matters which you would like to raise or about which you
10 have anxieties, now, it seems to me, is a very good
11 opportunity to do so. Thank you all very much indeed.

12 MR ELIAS: Sir, before you rise, one other matter of
13 housekeeping which Mr Hughes has asked me to point out
14 to the parties. I said at the very outset that
15 the transcript can be emailed to parties. The reception
16 desk would happily accept email addresses and
17 the transcript today will go out to those addresses.

18 THE CHAIRMAN: Thank you very much.

19 (11.49 am)

20 (The hearing was adjourned until 10.00 am on
21 Wednesday 18 February, pending confirmation)

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