

Monday 8th June 2009

1

2 (10.00 am)

3

Opening remarks by THE CHAIRMAN

4

THE CHAIRMAN: Good morning, just a few words before I ask

5

Mr Elias to address me. This is our third directions

6

hearing and, barring unforeseen circumstances, it will

7

be the last before the Inquiry opens fully on 13 July.

8

There is not a lot on the agenda, as no doubt you have

9

seen, and I hope most of it, if not all of it, is not

10

controversial. The main purpose for this hearing is to

11

give all of the legal teams and core participants an

12

update on what the Inquiry has been doing and where we

13

have got to. As I said, Mr Elias is going to outline

14

that in a moment.

15

Mind you it is also helpful for all the legal teams

16

to collect together before the main hearing starts

17

because there may be matters that you will want to

18

discuss amongst yourselves, alternatively with counsel

19

to the inquiry. You can raise them formally or

20

informally at what I am told is the margins of the

21

directions hearing.

22

I know that there has been a great deal of formal

23

communication between the legal teams and counsel on all

24

sides up to now and I am very grateful for that. I have

25

always welcomed and encouraged this. I am a great

1 believer in people talking to each other informally to  
2 solve problems and, as I say, I am extremely grateful to  
3 all of you in the past for doing that. I hope that that  
4 will continue. This is another opportunity for you to  
5 talk to counsel to the Inquiry if you wish to do so  
6 informally and also to raise matters before me.

7 I recognise that there is still quite a lot of work  
8 to be done, Mr Elias will go into that in greater  
9 detail.

10 The date for the opening is little more than a month  
11 away, but I want to make first clear that the Inquiry --  
12 once it starts, there will be a reasonably lengthy gap  
13 from the end of July until a period in September when we  
14 will start again, and I want to say that I do not  
15 envisage that the Inquiry will proceed at a leisurely  
16 pace. I shall endeavour to see that once we start we  
17 keep to a reasonably strict timetable.

18 Having said that, we will have regular short breaks  
19 in the hearings. There are a number of reasons for  
20 this. First, it will provide for everyone a period of  
21 time and a short break to catch up and to keep pace.  
22 I think that is highly desirable. Secondly, I have  
23 another public duty which I have to perform. This will  
24 require short breaks at regular intervals so that I can  
25 carry out that public duty. Thirdly, and significantly

1 in my view, there is a heavy burden on the Inquiry team  
2 conducting one of these inquiries. They will need  
3 a respite from the oral hearings from time to time to  
4 prepare for further hearings later on. That is all  
5 I want to say. Mr Elias, now you want to tell us about  
6 what has been going on.

7 Submissions by MR ELIAS

8 MR ELIAS: Thank you sir. May I say that although there is  
9 not, I think, going to be LiveNote on screen today,  
10 there will be a transcript of what I am to say and what  
11 anyone else may say available within about an hour of  
12 this hearing being completed today, so those that do not  
13 wish to do not need to take a detailed note.

14 Sir, may I take with your leave, because I think it  
15 may be helpful, items one to six on the agenda, as it  
16 were, together --

17 THE CHAIRMAN: Yes.

18 MR ELIAS: -- because, inevitably they overlap. I will  
19 split them down, but the impact of one item on the  
20 agenda, as everyone will know, may have significant  
21 impact on other aspects and, therefore, it's perhaps  
22 easier if I explain the position in some detail by  
23 combining all six aspects. Having done that, we would  
24 then invite any core participant to raise with you, sir,  
25 any matter relating to any item on the agenda.

1

2

Submissions re timetable

3

MR ELIAS: I begin then with item number 1, the hearings

4

timetable. As early as we felt able to do so, the

5

Inquiry published its timetable for the commencement of

6

opening statements and the calling of evidence. As you

7

know, we announced those plans early this year. It was

8

undoubtedly an ambitious but achievable target. As we

9

explained at the second directions hearing, it required

10

the timely production and return of large volumes of

11

redacted materials by the Ministry of Defence, and, in

12

addition, the co-operation and assistance of all core

13

participants, particularly in the process of taking and

14

finalising witness statements.

15

It is undoubtedly the case, sir, for reasons which

16

I shall expand upon later, that the disclosure of

17

documents to the core participants has not taken the

18

course which we planned and there've been significant

19

delays in this area. It is therefore right -- and I am

20

pleased to do so -- that I acknowledge that

21

notwithstanding this delay, the co-operation on all

22

sides in the timely production of completed witness

23

statements has been nothing short of outstanding. We

24

are extremely grateful for it.

25

As you, sir, indicated in your opening statement,

1 and have repeated since, an efficient and focused  
2 Inquiry followed by the timely production of your report  
3 best achieves the purposes for which the Inquiry was set  
4 up. Against that background, we do not apologise for  
5 setting quite rigorous targets. Thus it is that the  
6 opening statement of counsel to the inquiry will  
7 commence on July 13 of this year, as previously  
8 indicated. It will take several days and it is not  
9 proposed to circulate it in advance. This is not out of  
10 any desire to conceal, but rather because we should be  
11 delivering the opening against the tightest of time  
12 deadlines.

13 On the Inquiry's current timetable, any written  
14 opening of a core participant is due to be lodged by  
15 Friday 3 July. However, in the light of the delay in  
16 the disclosure timetable, it has been decided it would  
17 be fair and proper to extend the time allowed, and  
18 accordingly, we propose that core participant written  
19 openings should now be lodged with the Inquiry not later  
20 than 4 pm on Friday 7 September. It follows that core  
21 participants will be invited to make oral submissions at  
22 the start of the September hearings just after the  
23 summer break instead of just before it. This, of  
24 course, gives the core participants additional time to  
25 digest disclosed material, but causes relatively minimal

1 disruption to the Inquiry's overall timetable.

2 Any oral openings made in September are to be time  
3 limited as previously indicated. Of course, there is no  
4 requirement for core participants to make any opening  
5 statement, either oral or written. It's not proposed to  
6 circulate core participant opening statements on  
7 receipt, but subject to any redaction issues which may  
8 arise, we anticipate publishing them all on the Inquiry  
9 website, probably when any oral submissions of the core  
10 participants begin in September.

11 A number of core participants have made inquiry as  
12 to the matters which they might seek to address and the  
13 manner of addressing them in opening statements.  
14 Accordingly, with the chairman's approval, we make the  
15 following comments. It should be noted, however, that  
16 nothing which we say in this regard is intended to be  
17 prescriptive; it is guidance as to matters which we  
18 believe may usefully be included in opening submissions  
19 so as to assist you, sir, at this stage.

20 Firstly, since these proceedings are inquisitorial,  
21 core participants should not have a case to put to the  
22 Inquiry, and it is suggested that opening statements are  
23 certainly not the place to be seeking to make out  
24 a detailed factual case in advance of the evidence.

25 Secondly, we do not see the opening statement as

1 being an opportunity to answer any actual or perceived  
2 allegations made by others. Final submissions will be  
3 the appropriate time for that.

4 Thirdly, it may be an opportunity to point up any  
5 aspects or circumstances of the Inquiry which the core  
6 participant wishes to alert the chairman to as he hears  
7 the evidence.

8 Fourthly, brevity. Counsel to the Inquiry proposes  
9 to open the factual elements -- particularly in  
10 module 2 -- in quite considerable detail. We would  
11 respectfully suggest that detailed repetition of these  
12 factual matters will not be helpful, sir, to you.

13 Lastly, in general, the chairman may be helped in  
14 the core participant's opening statements by bullet  
15 point submissions rather than detailed analysis.

16 As regards module 1, we think that all core  
17 participants are aware that this module will be heavy on  
18 documents but light on witnesses. I will come to the  
19 disclosure of module 1 documents in a few moments.  
20 Witness statements for module 1 from four individuals  
21 evidencing how the historic documents have been searched  
22 for are with the Inquiry in draft form. Those witnesses  
23 are represented by Mr Barr. There may not be any need  
24 for them to be called to give oral evidence. If they  
25 are required, that evidence, which we believe will be

1           brief, will follow any opening statements in September  
2           and this may be combined with an update to module 1  
3           documents disclosed. We shall then immediately move on  
4           to module 2.

5           The module 1 documents may reveal a limited number  
6           of what might loosely be described as "potential policy  
7           witnesses", not so much from the 1970s, but more from  
8           the mid-1990s to early 2003. Where appropriate, the  
9           evidence of such witnesses is likely to dovetail with  
10          issues being considered in module 3 and may be heard at  
11          the same time. This latter point may be of particular  
12          relevance to the Treasury Solicitor team in its  
13          planning. We do not envisage calling any individual  
14          oral witnesses in module 1, other than those represented  
15          by Mr Barr. Such further witnesses as may be necessary  
16          are likely to be heard alongside module 3, training and  
17          policy witnesses.

18                           Submissions re redaction and disclosure

19 MR ELIAS: Moving on from timetable to the second agenda  
20          item, which is redaction and disclosure, I would like to  
21          update the core participants about the timetable for  
22          disclosure. In doing so, may I say this: we are very  
23          aware of the fact that core participants will wish to  
24          allocate time and resources to the necessary preparation  
25          work and for that reason I shall go into some detail.

1           At the last directions hearing we described the  
2           process which documents must undergo before they may be  
3           disclosed to core participants. In particular, before  
4           disclosure, the disclosing party -- usually in this  
5           Inquiry the Ministry of Defence -- is generally asked to  
6           mark the documents with any provisional redactions in  
7           accordance with the Inquiry's published production  
8           protocol. I say "generally" because there are certain  
9           situations where documents may be disclosed to specific  
10          persons and for particular purposes without first being  
11          redacted; for example, when it is necessary for  
12          a witness to see a particular document in order to draft  
13          his statement.

14          The Inquiry is therefore dependent upon the MOD  
15          completing this redaction work before it may disclose  
16          documents to core participants. Everyone in this room  
17          will have heard me say that before.

18          The MOD has been working hard at this redaction work  
19          but there has, I regret to say, been some significant  
20          slippage from the timetable we set out at the last  
21          directions hearing for the completion of redaction work  
22          by the MOD. A major part of this slippage -- not the  
23          entire cause -- a major part was caused by the fact that  
24          the first set of redactions provided by the MOD went too  
25          far. This required some going back and forth between

1 the Inquiry and the MOD in order to obtain a much  
2 reduced set of redactions and, consequently, the  
3 disclosure of documents by the Inquiry has also been  
4 delayed.

5 As to the current status of redaction and  
6 disclosure, the documents now obtained by the Inquiry  
7 may be broken down into eight different categories. The  
8 first, court martial materials from the Ministry of  
9 Defence. These consist of bundle A, the witness  
10 statements used during the court martial; bundle B, the  
11 documents exhibited to those statements; bundle D, the  
12 unused materials from the court martial and the court  
13 martial transcript itself.

14 As to a bundle A, that has now been disclosed to all  
15 core participants with the MOD's second version of  
16 provisional redactions. As I have said, the MOD's first  
17 set of redactions for bundle A went too far, as the MOD  
18 itself subsequently acknowledged, and the overly  
19 redacted set was never provided to core participants.  
20 After the version disclosed to core participants, the  
21 second version, even here some of the provisional  
22 redactions have been challenged by the Inquiry and MOD  
23 has conceded that some redactions need not be named.  
24 Therefore, a new version of bundle A will be sent to the  
25 core participants in due course, with a reduced number

1 of redactions, and there may, of course, be further  
2 disputes over the MOD's redactions which would need to  
3 be dealt with in accordance with the Inquiry's redaction  
4 and production protocol, but subject to that proviso all  
5 parties now have copies of bundle A.

6 Bundle B from the court martial, the documents  
7 exhibited to those statements have been disclosed to  
8 core participants only in part. First, the Inquiry has  
9 provided core participants with a core orders bundle.  
10 That is to say, a bundle containing military orders of  
11 central relevance to the inquiry and much of this was  
12 taken from bundle B. Second, the Inquiry asked the  
13 Ministry of Defence to prioritise redactions of  
14 documents from bundle B which originally had  
15 a protective marking of "secret" or "confidential".  
16 Therefore, last week, the Inquiry was able to disclose  
17 the previously secret and confidential materials from  
18 bundle B.

19 As to the remainder of bundle B, the MOD's  
20 provisional redactions reached the inquiry only last  
21 week. Despite this, the Inquiry still intends to  
22 disclose the remainder of bundle B before the opening  
23 address takes place in July. The remainder of bundle B  
24 is likely to consist of 15 or so lever-arch files of  
25 documents.

1           Bundle, D from the court martial, has also been  
2 disclosed in part. Firstly the core participants have  
3 now been provided with all witness statements and  
4 interview transcripts which appear in bundle D. These  
5 were provided in four tranches. Secondly, all previous  
6 secret and confidential materials from bundle D will be  
7 disclosed this week. As to the remainder of bundle D,  
8 the Inquiry received MOD redaction only last week. As  
9 with bundle B, the Inquiry's intention is to disclose  
10 the remainder of bundle D before the opening address  
11 takes place in July.

12           Bundle D totals about 60 or so lever-arch files. So  
13 far, about 20 lever-arch files-worth of bundle D  
14 materials have been disclosed to core participants, so  
15 they should expect a further 40 lever-arch files of  
16 bundle D documents before the July opening.

17           Finally in this regard, as to the court martial  
18 transcripts, the core participants have had the open  
19 part of this for some time. This week the Inquiry will  
20 provide them with the in camera parts provisionally  
21 redacted by the Ministry of Defence.

22           The second of the eight categories relates to  
23 module 1, issue 1 materials from the MOD and Cabinet  
24 Office which are already in the public domain. The MOD  
25 and the Cabinet Office have provided materials relevant

1 to issue 1 in the Inquiry's issue list. Of those  
2 materials, some are in the public domain already,  
3 meaning they do not require redaction prior to  
4 disclosure to core participants.

5 The Inquiry team has relevance-checked all of these  
6 materials, applying a low threshold of relevance, and  
7 they contain approximately 23 lever-arch files of  
8 relevant documents which we intend to disclose to core  
9 participants within the next 48 hours or so.

10 I should emphasise, sir, that the issue 1 materials  
11 are provided with a heavy costs warning. Most of the  
12 core participants' legal teams will not need to read  
13 these materials and I am advised that they should not  
14 expect to receive funding to do so.

15 The third category of materials: issue 1 materials  
16 which are not in the public domain. There is then  
17 a further set of issue 1 materials provided by the  
18 Ministry of Defence which are not in the public domain.  
19 The volume of these documents, the need for them to be  
20 relevance-checked, significant difficulties with the  
21 format in which they were disclosed to the Inquiry and  
22 competing demands on the Ministry's financial redaction  
23 resources all mean that this further element of module 1  
24 material is unlikely to be disclosed before the July  
25 opening.

1           However, where the material contains any key  
2 documents, we will attempt to bring forward their  
3 disclosure. We think these additional materials are  
4 otherwise unlikely significantly to alter the picture of  
5 the historical assessment of the Government reaction to  
6 the use of the five techniques in the early 1970s.

7           The fourth category of documents under this hearing,  
8 issue 2 and 3 materials from the Ministry of Defence.  
9 The Ministry of Defence has provided about ten  
10 lever-arch files of materials relevant to these issues.  
11 The MOD has told the Inquiry it will not be able to  
12 finish redacting these materials until the end of June.  
13 What this means is that the Inquiry will do everything  
14 it possibly can to ensure that the materials are  
15 provided to core participants before the July opening.  
16 This may be achievable, but there is some risk that it  
17 will not be. If practicable, disclosure will be given  
18 on a rolling basis this month.

19           The fifth item under this heading: Cabinet Office  
20 module 3 materials. The Cabinet Office has also  
21 provided the Inquiry with a small amount of material  
22 relevant to module 3. This includes the conclusions of  
23 two cabinet meetings held in May 2004. The Inquiry has  
24 already written to core participants about these. The  
25 Cabinet Office object to their disclosure. It is clear

1 to the Inquiry at the present time that their relevance  
2 is at most marginal. The Inquiry has said that it will  
3 keep their relevance under review.

4 You, sir, have reviewed the materials and indicated  
5 that you are satisfied that non-disclosure of the  
6 conclusions of the two Cabinet meetings at this stage  
7 will not adversely effect any core participant or  
8 witness or lead to any unfairness.

9 The sixth of the eight categories relates to Hansard  
10 exhibits and command papers. The Inquiry has also  
11 collected about one lever-arch file of open source  
12 materials, such as Parliamentary papers, Hansard  
13 extracts and command papers. These will be provided to  
14 core participants along with the issue 1 documents  
15 within the next 48 hours or so.

16 Seventh, other materials. There is then  
17 a collection of documents not falling into any of the  
18 above categories. They have in the main been provided  
19 in response to particular requests by the Inquiry. The  
20 overwhelming majority of these further materials have  
21 been provided by the Ministry of Defence, although some  
22 have been provided by other persons, including, for  
23 example, the detainees. They run to approximately 25  
24 lever-arch files. These materials are yet to be  
25 redacted by the MOD. The Inquiry will continue to

1 receive materials falling into this category in the  
2 future. As to the 25 lever-arch files already received,  
3 the Inquiry expects that, following redaction, they will  
4 be provided to core participants by about mid-August.

5 Finally, the eighth category of documents, the  
6 Inquiry's own witness statements. These are witness  
7 statements taken pursuant to the Inquiry's rule 9  
8 requests. The Inquiry has so far issued over 180 rule 9  
9 requests. Most of these have gone, of course, to  
10 military witnesses. The MOD is therefore being given an  
11 opportunity to make provisional redactions to the  
12 statements on national security grounds before they are  
13 distributed to the other core participants. The  
14 statements should be provided to core participants in  
15 weekly tranches starting next week.

16 The Inquiry expects that by the time of the July  
17 opening, most of the rule 9 requests will have been  
18 answered and that we shall have the overwhelming  
19 majority of all final draft statements in place with  
20 a large number of them finalised and signed. We shall  
21 endeavour to ensure that as many of these as possible  
22 will be disclosed to core participants. By the time the  
23 hearings resume in September, the core participants  
24 should have received more than 90 per cent of the  
25 statements which will have been taken by the Inquiry.

1 It would not be possible to provide 100 per cent of the  
2 statements by this time. Apart from anything else, it  
3 is inevitable, as we see it, that there will be some  
4 continuing need to take new witness statements, even  
5 while the hearings are going on.

6 To summarise, then, redaction and disclosure: the  
7 core participants, sir, have started to receive the  
8 relevant evidence, but there is much more to come. By  
9 the time of the opening in July, core participants  
10 should have received all of the court martial materials  
11 and most of the module 1 materials. This will entail  
12 receipt of about 65 lever-arch files of documents, in  
13 addition to witness statements over the next five weeks,  
14 but it must be borne in mind, as I said a little while  
15 ago, that not all documents will necessarily be relevant  
16 to all parties; for example most soldier witnesses are  
17 unlikely to have any great interest in the issue 1  
18 materials.

19 If I may, I re-emphasise that the Inquiry is  
20 grateful to witnesses for the way in which they have  
21 dealt with the difficulties in getting documents out.  
22 I am pleased to report that, even where they are  
23 awaiting receipt of potentially relevant documents,  
24 witnesses have been willing to provide statements as  
25 best they can.



1 module 1.

2 Bundle C, the maps, plans and photographs bundle.  
3 As well as maps of Iraq, this will contain photographs  
4 of key module 2 locations and photographs of the  
5 detainees and of their injuries. Bundle D will be  
6 a module 2 specific documents bundle. This will consist  
7 of contemporaneous documents from 14th to 16th September  
8 2003, such as radio logs and other documents which  
9 relate specifically to the Operation Salerno detainees,  
10 including the medical records made during their  
11 internment.

12 Bundle E will be an experts' bundle containing any  
13 experts' reports, including medical and forensic  
14 reports.

15 Bundle F will be a bundle for reports and other  
16 investigations. This will contain various reports,  
17 including those written by NGOs and, for example, the  
18 Aitken report. It will also contain reports written by  
19 the SIB about the court martial and any particularly  
20 relevant notes from the investigation preceding the  
21 court martial.

22 Bundle G will be a media bundle containing press and  
23 media material relevant to the inquiry.

24 Bundle H, videos. This will include all relevant  
25 videos, including army training videos, the Schofield

1 video and excerpts from the television news.

2 Bundle I will be training materials.

3 Bundle J, orders, rules of engagement and MOD  
4 guidance. This will be distinct from bundle B -- the  
5 Parliamentary and Government materials bundle -- in that  
6 it will not include historical materials from the 1970s  
7 and will contain top-down instructions and orders. It  
8 will be similar but not identical to the core orders  
9 bundle, which has already been disclosed to core  
10 participants.

11 Bundle K will be another military documents bundle  
12 consisting of any military documents which do not fall  
13 within the orders, the Parliamentary and Government  
14 materials or the module 2 bundles.

15 Bundle L will be a bundle of witness statements;  
16 bundle M, the court martial transcript; and bundle N,  
17 anything which does not fall in any of these previously  
18 bundles under the heading of "Miscellaneous".

19 Sir, the astute here will notice that there is some  
20 overlap between these bundles; for example, there are  
21 training videos which might go into bundle H, the video  
22 bundle, or bundle I, the training materials bundle.  
23 However, materials will not be duplicated in different  
24 bundles. This means that there will be a hierarchy  
25 amongst the different bundles for categorising

1 documents.

2 In the particular example I've given, the videos  
3 bundle will take priority over the training materials  
4 bundle, so the training video will go in the videos  
5 bundle. I need not go into further detail about all of  
6 this now. I simply wanted to give the core participants  
7 a sense, at least, of how the hearing bundles are being  
8 organised.

9 As the Inquiry continues, we shall inevitably  
10 continue to receive new documents even after the  
11 hearings commence, but it will not be possible to  
12 provide final versions of the hearing bundles at this  
13 stage. However, the Inquiry does plan to provide core  
14 participants with a first version of bundles C, D  
15 and L -- that is to say the maps, plans and photographs  
16 bundle, the module 2 documents bundle and the witness  
17 statements bundle prior to the July opening. It plans  
18 to provide core participants with a first version of the  
19 remaining bundles by the end of August. The bundles  
20 will be provided by the Inquiry on CD, in a format  
21 allowing text to be searched electronically.

22 It is intended that calling up documents during the  
23 hearing should be as easy as possible. Documents in the  
24 hearing bundle can be called up by their page number in  
25 the hearing bundles, which is likely to be shorter and

1 easier to remember perhaps than the URNs, but the URNs  
2 can be used as well. Documents which have been  
3 disclosed but are not in the hearing bundles will be  
4 able to be called up by reference to their URNs, but  
5 this may be subject to redaction considerations, and so  
6 it will be particularly important, perhaps vitally  
7 important, that core participants abide by the  
8 requirements to give notice of documents that they may  
9 wish to have put to a witness.

10 THE CHAIRMAN: Could you pause a moment? Perhaps I could  
11 mention that I think you all know that there are going  
12 to be briefing meetings or rehearsals before the opening  
13 for core parties and legal teams so that they can become  
14 familiar, if they are not already familiar, with the IT  
15 and how it all works. Yes. Sorry. Do carry on.

16 MR ELIAS: Thank you.

17 Submissions re ciphering

18 MR ELIAS: May I move on, then, to ciphering, item 4 on our  
19 agenda, and again briefly set out where we are on this.

20 As will be appreciated by everyone, certain names  
21 will need to be ciphered in cases. The following cases  
22 may occur: first, if the chairman makes a full anonymity  
23 order which prevents core participants and their legal  
24 representatives from knowing the name of the person in  
25 question, then the name obviously will be redacted in

1 documents to be disclosed and will generally be replaced  
2 by a cipher.

3 Secondly, if the effect of the chairman's order is  
4 that the name should not be published to the wider  
5 world, but can be known to the core participants and  
6 their representatives, the name will be redacted and  
7 replaced with a cipher for the purposes of displaying  
8 documents during the hearing. In such cases core  
9 participants may already know the identity of the  
10 witness from documents already disclosed, but will be  
11 provided with a key to let them know the individual  
12 represented by the particular cipher.

13 Third, there may be a limited number of cases where  
14 documents contain names of individuals who are not  
15 witnesses and who are of limited relevance. In such  
16 cases, if and only if there is some sensitivity about  
17 the name, the Inquiry may provisionally redact the name  
18 at the request of the Ministry of Defence. I stress  
19 that this is not going to be the procedure for  
20 individuals who are witnesses nor for those the Inquiry  
21 considers to be of immediate relevance. In both of  
22 those categories anonymity applications must be made.

23 Fourthly, if the name of a private individual wholly  
24 unconnected with matter being investigated happens to  
25 appear in a document used during the hearings, the

1 Inquiry may redact the name, but I stress this will be  
2 on a discretionary basis for names that are obviously  
3 irrelevant.

4 Where core participants have adopted their own  
5 ciphers in making applications for anonymity, they will  
6 in due course be replaced by an uniform series of  
7 ciphers which the Inquiry will produce and use in the  
8 documentation. I would ask that core participants from  
9 now on consult with the Inquiry's solicitor before  
10 designating any form of cipher so that that can be taken  
11 on and any further applications for anonymity dealt with  
12 in that way.

13 Submissions re anonymity

14 MR ELIAS: Sir, I move on anonymity and to give an update as  
15 to the position, I do not propose to deal with any  
16 substantive issue at this hearing.

17 The position, essentially, is this: as of last  
18 Friday morning, there had been 22 military applicants  
19 for either full or limited anonymity orders out of  
20 a total of 190 legally represented witnesses. This  
21 doesn't, of course, include the seven detainee  
22 applicants who have applied for anonymity in relation to  
23 these proceedings by means of restriction orders under  
24 section 19(2), restricting public disclosure of their  
25 names, personal details and image.

1           Of the 22 military applications, there are 13 for  
2 full anonymity; that is witnesses who are asking that  
3 their names are not known to the other core participants  
4 and their lawyers and not known to the world at large.  
5 Included within the 22 are ten cases where the MOD has  
6 made a public interest application and, in seven of  
7 these cases, the witnesses concerned have also made  
8 private applications. There are nine applicants for  
9 limited anonymity measures, two of whom have requested  
10 screening from the public and core participants.

11           The first military anonymity applications were  
12 received as long ago as 30 January of this year and,  
13 since that time, further applications have been  
14 submitted to the Inquiry as and when instructions are  
15 finalised. They have been subject to a series of  
16 deadlines with extensions being agreed in some cases  
17 where unavoidable and appropriate.

18           By the close of play today, when responses are due  
19 to the Ministry of Defence's public interest  
20 applications, there should be ten applications ready,  
21 sir, for your determination. Of those that are not yet  
22 ready for a final decision, the procedural steps still  
23 to be completed can be broken down in this way:

24           Firstly, there's a small category of cases where we  
25 are waiting for further information that has been

1 provided in the closed application to be opened up and  
2 provided to the core participants.

3 Second, there are some who have made applications,  
4 either private or public interest, where threat  
5 assessments have been commissioned, but in respect of  
6 whom the Inquiry has yet to receive the threat  
7 assessments.

8 Thirdly, there are some cases which have only  
9 recently been submitted where the threat assessments are  
10 in the course of being commissioned.

11 This process has taken considerably longer than that  
12 initially envisaged for a variety of reasons. Some  
13 witnesses and applicants have been very difficult to  
14 contact. This has meant that teams have experienced  
15 delays in taking full instructions in some cases. This  
16 has led to applications being received long after the  
17 original deadline for their receipt.

18 In addition, the threat assessment process is  
19 a protracted one. The steps that have to be taken must  
20 be followed carefully and consistently in all cases with  
21 all the liaison checking and chasing that this has  
22 entailed. Sir, I mean no criticism of others, but I do  
23 make it clear that it is the fact that the delays  
24 experienced thus far are due to factors entirely beyond  
25 the Inquiry's control.

1           So far I have addressed the 22 applications for  
2           anonymity as of last Friday. I have to add to these the  
3           fact that, at the close of play on Friday, the Inquiry  
4           received six further anonymity applications from those  
5           represented by Kingsley Napley and an application for  
6           further protective measures than had previously been  
7           sought by one of the 22. There was also an indication  
8           that applications may also follow from a handful of  
9           other Kingsley Napley clients.

10           These most recent applications, sir, are based upon  
11           what is described as an increase in the assessed level  
12           of threat from that which was communicated to the  
13           Inquiry and the core participants at the end of last  
14           year. Today is not the time to debate that issue, but  
15           may I make clear, as Kingsley Napley and others are  
16           already aware, that any further anonymity applications  
17           which are being made late, but in reliance upon this  
18           asserted change of circumstances, must be made and  
19           followed through with the utmost expedition. The  
20           Inquiry will be writing to all core participants and to  
21           the applicants about these most recent applications.

22           So that's what I had to say about anonymity. May  
23           I move on to indicate generally the position in relation  
24           to witnesses, numbers, core participants, and so on.

25   THE CHAIRMAN: Yes.

1 Submissions re witness services and core participant issues  
2 MR ELIAS: In a letter dated 19 December of last year, all  
3 the core participants were informed that the Inquiry  
4 had, at that stage, identified 168 potential military  
5 witnesses. In a letter dated 24 February of this year,  
6 all the core participants were informed that the Inquiry  
7 had identified a further 50 potential witnesses. At  
8 that stage the total number of potential witnesses  
9 identified was therefore 218, which did not include the  
10 detainees, any experts, Ministers or civil servants.  
11 The 50 additional names have been provided to the  
12 Ministry of Defence and to Treasury Solicitors.

13 In a letter dated 19 March, all the core  
14 participants were provided with a list of 132 names from  
15 the provisional witness list. Until at least some of  
16 the anonymity applications have been decided, it has not  
17 been appropriate to update the list of 132 names.

18 In addition to those positively identified as  
19 witnesses, the Inquiry has also distributed  
20 approximately 450 questionnaires to others in order to  
21 ascertain whether they are likely to have additional  
22 information or evidence of relevance. To date,  
23 approximately 170 of those questionnaires have been  
24 returned. Where appropriate, those who have responded  
25 with information of interest will be approached to

1 provide witness statements and will be offered  
2 representation in the usual way.

3 May I say a word about witnesses who we were not  
4 initially able to trace? It is important that those on  
5 the Inquiry's provisional witness list, who are likely  
6 to have relevant evidence, should indeed be traced and  
7 provide statements. Where appropriate the Inquiry has  
8 been using a tracing agent to find its witnesses. The  
9 Inquiry tracing agent has hitherto been asked to trace  
10 35 potential witnesses.

11 34 witnesses have been successfully found by the  
12 tracing agent. That means that of those passed to the  
13 tracing agent, only one is still untraced and his  
14 position is being kept under review by the Inquiry. The  
15 tracing agent has personally served rule 9 request  
16 letters on approximately eight of those traced  
17 witnesses. Of the 34 traced witnesses, 13 are now  
18 legally represented. The remainder are still  
19 unrepresented.

20 Two section 21 orders have been served on traced  
21 witnesses who have not appeared willing to provide  
22 statements on a voluntary basis. Sir, perhaps it goes  
23 without saying that of course the Inquiry's provisional  
24 list of witnesses is not closed and it is inevitable  
25 that further witnesses will come to light as others

1 return, for example, statements which speak of those who  
2 may have relevant evidence to give and, indeed, as  
3 further documents are disclosed to the inquiry.

4 I have said a little about rule 9 requests. May  
5 I simply set out this detail? Rule 9 request letters  
6 have been set out in weekly tranches, as I think the  
7 core participants are aware. The first tranche was sent  
8 out in the week commencing 2 March of this year and, to  
9 date, the following rule 9 request letters have been  
10 sent to witnesses identified by the Inquiry. As regards  
11 module 2, 120 rule 9 request letters have been sent and,  
12 as regards module 3, 61 rule 9 request letters have been  
13 sent, making a total of 181. There are, of course, the  
14 four witnesses to whom I've referred relevant to  
15 module 1.

16 To date, the Inquiry has received the figure --  
17 I think maybe one or two out of date as I speak. The  
18 Inquiry has received 43 final signed witness statements,  
19 110 draft witness statements have been received, and as  
20 I have indicated, the four draft witness statements for  
21 module 1.

22 Sir, a word about witness representation, so that  
23 everyone knows the position. I won't repeat the list of  
24 representatives from previous occasions, but I would  
25 wish to give an update to indicate that the Inquiry,

1 after due consideration, has accepted that the conflicts  
2 between military witnesses is such that a further team  
3 of legal representatives is appropriate. Accordingly,  
4 sir, Hill Dickinson's solicitors, who previously  
5 represented only a number of witnesses, will be  
6 representing a number of individual military core  
7 participants and their interests are represented today  
8 by Mr Jason Beer of counsel.

9 With the number of witnesses with which this Inquiry  
10 is involved, the position on representation changes  
11 frequently as more witnesses are identified and are  
12 found the most appropriate team. Setting out the  
13 position generally as we understand it, however, the  
14 Treasury Solicitor currently represents about  
15 159 witnesses, Kingsley Napley currently 16 witnesses,  
16 Hill Dickinson 10 witnesses, Lewis Cherry currently 5.  
17 The remainder of the legal teams act for military  
18 witnesses, which we have hitherto called the "Court  
19 Martial 7".

20 As regards witnesses who are also core participants,  
21 the position here is that the Inquiry has a rolling  
22 programme of identifying those witnesses whose interests  
23 are such as make them likely core participants. They  
24 are then contacted by the Inquiry and invited to  
25 consider to designation as a core participant. To date

1 approximately 24 witnesses have consented to designation  
2 as core participants in addition to the Ministry of  
3 Defence, the detainees and the Court Martial 7. There  
4 are approximately 29 witnesses outstanding who have not  
5 applied to the request from the Inquiry as to whether  
6 they consent to designation or not. Where these are  
7 legally represented, we would encourage swift replies to  
8 the invitation to consent to core participant status.  
9 We believe that designation as a core participant has no  
10 disadvantage for military witnesses in the circumstances  
11 of this Inquiry. It certainly does not indicate in any  
12 way any decided view about the role or conduct of that  
13 individual.

14 A word about witness services. May I say a little  
15 about arrangements for witnesses at the hearings? The  
16 default and normal position will be that witnesses  
17 called to give evidence to the Inquiry will do so in  
18 their own names in hearings that are open to the public.  
19 Members of the Inquiry staff will be on hand to welcome  
20 them, to explain the Inquiry's procedure and the hearing  
21 room equipment. In all cases witnesses will be here as  
22 witnesses to the Inquiry, not as witnesses for or  
23 against any core participant. They are, in short, the  
24 Inquiry's witnesses. Nevertheless, where witnesses are  
25 legally represented, their legal representatives will,

1 of course, be allowed consultation facilities here on  
2 the day.

3 The arrangements for any witness who has partial or  
4 full anonymity will have been made known in advance, as  
5 will arrangements for any witnesses who are to be  
6 screened. In some cases evidence may be taken by  
7 videolink and notice of this will also be given. This,  
8 obviously, sir, is not a trial, but we appreciate that  
9 for different reasons and for different witnesses the  
10 process of giving evidence to the Inquiry may not always  
11 be easy. Accordingly, non-legal support from the  
12 charity personal support unit will be available by  
13 arrangement for all witness and the Inquiry is also  
14 liaising with the military authorities for appropriate  
15 support services for military witnesses. Details of  
16 these will soon be finalised and communicated to  
17 relevant core participants. Arrangements for the  
18 detainees have been the subject of quite considerable  
19 liaison with the Inquiry team already and I hope that,  
20 through these various means, all concerned will  
21 appreciate that the Inquiry is doing what it can to  
22 ensure fair treatment for all of its witnesses.

23 THE CHAIRMAN: That brings you to the end of item 6, does it  
24 not?

25 MR ELIAS: It does, sir.

1 THE CHAIRMAN: At that stage, you were going to sit down and  
2 we were going to invite any comments that any of those  
3 present would want to make. It occurs to me it is now  
4 20 past 11. We would normally have a break of quarter  
5 of an hour for the shorthand writer at this stage in  
6 these direction hearings. Whether we have that break  
7 when we get to the oral hearings is still a matter for  
8 discussion.

9 However, today we will have a break of quarter of an  
10 hour, and probably the sensible thing to do is to break  
11 now so that those who have been listening to you can  
12 have an opportunity of digesting it before making any  
13 response that they may want to. I will rise for quarter  
14 of an hour. We will come back at exactly 11.35.

15 (11.19 am)

16 (A short break)

17 (11.35 am)

18 MR ELIAS: Sir, I leave the floor to the other core  
19 participants.

20 THE CHAIRMAN: Yes, they will be delighted to know that they  
21 can see what they are saying on LiveNote now.

22 I propose to call on them in the random order which  
23 has just been taken from the list of people who I have  
24 appearing today. What order you all speak when we  
25 actually get to the Inquiry itself, we will arrange, but

1 at the moment it's just the order that's provided.

2 So, Mr Barr, whose defence is first on, I am going  
3 to leave you to last, Mr Barr. I hope you don't mind  
4 that.

5 Starting off with those soldiers represented by the  
6 Treasury Solicitor. Mr Garnham?

7 MR GARNHAM: Sir, nothing to say, thank you.

8 THE CHAIRMAN: That's helpful. Kingsley Napley,  
9 Mr Dingemans?

10 MR DINGEMANS: No observations, sir.

11 THE CHAIRMAN: Thank you.

12 Mr Beer, Hill Dickinson?

13 MR BEER: Likewise, sir.

14 THE CHAIRMAN: Thank you.

15 Mr Singh, you have been kind enough to put in, with  
16 your counsel, representations which we have all read.

17 MR SINGH: Yes.

18 THE CHAIRMAN: I think you have also had an opportunity of  
19 talking to Mr Elias about them. Anything you want to  
20 say now?

21 MR SINGH: Just two things. Short points. One is that I  
22 don't think everyone has in fact had an opportunity to  
23 read them. I understand from Mr Elias that there's no  
24 objection from the Inquiry team that we should copy our  
25 note to this Inquiry to the other core participants.

1 THE CHAIRMAN: I should have thought that very helpful.

2 MR SINGH: We can do that after today's hearing.

3 THE CHAIRMAN: I think Mr Elias told you he found it very  
4 helpful.

5 MR SINGH: Yes, I am grateful to him and to you, sir, for  
6 that indication.

7 The other thing is -- it may have been a slip of the  
8 tongue -- on the date for the extended time for written  
9 openings, Mr Elias mentioned Friday 7 September. In  
10 fact the 7th is the Monday. I assume that what we  
11 should do --

12 THE CHAIRMAN: You meant the Monday rather than the Friday?

13 MR ELIAS: I meant Monday the 7th.

14 MR SINGH: I am grateful.

15 THE CHAIRMAN: No doubt everybody else has paid attention to  
16 that.

17 Yes, Ms Glass?

18 MS GLASS: No observations, sir.

19 THE CHAIRMAN: Thank you.

20 Mr Clark?

21 MR DINGLE CLARK: Nothing, sir.

22 THE CHAIRMAN: Nothing?

23 Mrs Hogg?

24 MRS HOGG: Sir, nothing.

25 THE CHAIRMAN: Ms Edington for Stacey --

1 MS EDINGTON: Nothing, sir.

2 THE CHAIRMAN: Thank you very much.

3 Mr Topolski.

4 MR TOPOLSKI: Nothing to add, sir.

5 THE CHAIRMAN: Very well.

6 And Mr England?

7 MR ENGLAND: Nothing to add, sir.

8 THE CHAIRMAN: That is very helpful. I hope that will  
9 continue over the course of the Inquiry.

10 Thank you very much for coming. I hope that you  
11 don't feel that it was a waste of time all of you being  
12 here. I do think it's important. I think it's  
13 important not only as I said earlier for the core  
14 participants but also for the public to know what's  
15 going on. So I do not regret the fact that none of you  
16 have anything to say. In fact I am rather encouraged by  
17 that.

18 Thank you, Mr Elias.

19 MR ELIAS: Sir, two matters. You said you would call on  
20 Mr Barr. I think you haven't formally done so.

21 THE CHAIRMAN: I haven't, you are quite right. Having had  
22 you at the top of the list and then put you at the  
23 bottom I completely forgot. I am very sorry, Mr Barr.

24 MR BARR: Not at all, sir. I too have nothing to add.

25 THE CHAIRMAN: I include you in the remarks I made just

1           then.

2   MR ELIAS:  I don't know if we should take the absence of  
3           comment as a ringing endorsement of the plans we set out  
4           but I hope they may be.

5           May I say one or two other short miscellaneous  
6           matters?

7   THE CHAIRMAN:  Yes.

8   MR ELIAS:  Just to say this, because it is not specifically  
9           on the agenda: a number of the core participants have  
10          raised with us the question of in camera hearings,  
11          whether they will be necessary and what the arrangements  
12          will be.

13          The Inquiry has obviously been giving thought to  
14          this.  I would note at this stage, however, that given  
15          the more limited nature of the revised redactions  
16          provided by MOD, the Inquiry at present does not  
17          perceive that the need for in camera hearings is likely  
18          to arise in any particularly significant way during  
19          module 2.

20          As with other procedural matters, however, we will  
21          look first to see whether a consensus can be agreed  
22          between the representatives of the core participants and  
23          core participants may expect to be approached about this  
24          soon after we have opened in July.

25          Sir, may I also say this: I hope what we have been

1           able to say today provides the core participants with a  
2           useful update on the position which has been reached.  
3           Those on the Inquiry and all of us do appreciate the  
4           demands being placed on core participants in terms of  
5           the return of statements, the pressures of disclosure  
6           and equally of documents not yet available. If I may,  
7           I would repeat my thanks to them for the constructive  
8           way that this has been approached by the legal teams,  
9           military and detainee alike.

10           At the same time, whilst sympathetic to the burdens  
11           of the large documents soon to be disclosed, it's right  
12           that I should emphasise that the primary burden in this  
13           investigation, and examination of the materials  
14           according to the timetable set, rests on the Inquiry  
15           team. May I take personally a moment to thank them all,  
16           Legal and Secretariat, for their unstinting and  
17           professional efforts in keeping the Inquiry on track.

18           Our aims in this regard remain those emphasised in  
19           your opening statements: to endeavour to get at the  
20           truth, to ensure that the Inquiry transacts its business  
21           as efficiently, effectively and expeditiously as  
22           possible whilst respecting at all times the over-riding  
23           need to ensure justice and fairness to all those who are  
24           involved in the Inquiry.

25   THE CHAIRMAN: Thank you very much, Mr Elias.

1           May I also add my thanks to all those in the Inquiry  
2           who really are and have done a tremendous amount of  
3           work, pushed by me to see that we stick to the  
4           timetable. They have performed admirably and I am  
5           grateful. I hope that for all our sakes we will be able  
6           to complete this Inquiry in due course as speedily as we  
7           can, always remembering that it must be fair to  
8           everybody.

9           Thank you all very much for coming along.

10          (11.52 am)

11          (The Inquiry adjourned until Monday 13 July 2009)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1		INDEX	
2	Opening remarks by THE CHAIRMAN .....		1
3			
4	Submissions by MR ELIAS .....		3
5			
6	Submissions re timetable .....		4
7			
8	Submissions re redaction and disclosure ..		8
9			
10	Submissions re inquiry bundles .....		
11			
12	Submissions re ciphering .....		22
13			
14	Submissions re anonymity .....		24
15			
16	Submissions re witness services and core ..		28
17	participant issues		
18			
19			
20			
21			
22			
23			
24			
25			

