



Coroner's Inquests into the London Bombings of 7 July 2005

The Rt. Hon Lady Justice Hallett DBE

Decision following pre-inquest hearing from 26 to 30 April 2010

Introduction

1. On 7th July 2005 four bombs exploded in London: one on a bus and three on the Underground system, causing untold misery and devastation. Fifty six people died and hundreds were injured, many severely. It has been described as a bloody landmark on British history. It was the worst attack on London since World War II and it has affected the lives of people across the globe.

2. People grieve and come to terms with tragedy in different ways. Some bereaved families and survivors do not wish to be part of any inquiry into what happened and find this process and the attendant publicity distressing. However, for others, asking questions is an important part of the healing process. There have been various official investigations into what happened, but none has yet focussed on the individuals who died or properly engaged the families. Questions, it is said, remain unanswered. Bereaved families, survivors and members of the wider public hope that by conducting inquests into the deaths, I shall be able to fill in the blanks, or at least some of them. They have urged me to do so.

3. In summary, I must rule on whether there is sufficient cause to resume the inquests into the deaths of all fifty six people who died, whether the inquests into the deaths of the fifty two members of the public killed by the bombs should be joined together and to the inquests into the deaths of Mohammed Sidique Khan ("MSK"), Shehzad Tanweer, Hasib Hussain and Jermaine Lindsay, what the scope

of the inquests should be, who is entitled to ask questions as an interested person and whether I must/should summon a jury.

4. I have heard or read submissions from counsel representing about seventeen different organisations or groups of people. Some of the lawyers representing the bereaved families received, understandably, conflicting instructions from their various clients and they were obliged, therefore, to advance submissions on behalf of one group of clients which contradicted those they advanced on behalf of another. Their instructions also changed as their clients listened to the way the arguments developed. This has lengthened the period required for oral and written submissions. Time is pressing. If I resume the inquests I wish to do so in October at the latest. The families and survivors have waited long enough. I must deliver this ruling as soon as possible. I hope I shall be forgiven, therefore, if, on occasions, I refer to the submissions globally. It does not mean I have forgotten the powerful and compelling arguments both oral and written put before me by each counsel, to each and every one of whom I am indebted.

5. During the course of this ruling I shall refer to the fifty two members of the public who died as “the 52” collectively. In so doing, I do not in any way forget that each was an individual loved and mourned by their relations and friends.

Formalities

6. Coronial law is not straightforward and I must begin with the formalities. The explosions occurred in three coronial jurisdictions:

- i. Inner North London (for the deaths at King’s Cross / Russell Square and Tavistock Square);
- ii. City of London (for the deaths at Aldgate);
- iii. Inner West London (for the deaths at Edgware Road).

7. In July 2005, pursuant to section 14 of the Coroners Act 1988 (‘the 1988 Act’), the inquests into the deaths at Aldgate were transferred from the City of

London to Inner North London. Later, the inquests into the deaths arising from the explosions at Aldgate, King's Cross/Russell Square and Tavistock Square were transferred from Inner North London to Inner West London. Since 2007 Dr. Andrew Reid, the Inner North London Coroner, has acted as Assistant Deputy Coroner for Inner West London and has had conduct of all 56 inquests.

8. The Director of Public Prosecutions requested that Dr Reid adjourn the inquests pending criminal proceedings. On 31st July 2007, Dr Reid formally adjourned all 56 inquests pursuant to section 16(1)(b) of the 1988 Act. At the time of the adjournment, the identification and registration details of all 56 of the deceased were registered, as were their causes of death.

9. The request to adjourn was necessitated by the initiation of criminal proceedings against 3 men: Waheed Ali, Sadeer Saleem and Mohammed Shakil. They were charged with having conspired with MSK, Tanweer, Hussain and Lindsay and others unknown to cause an explosion, contrary to section 3(1)(a) of the Explosive Substances Act 1883. On 1st August 2008 the first trial ended in the disagreement and discharge of the jury. The retrial concluded on 28th April 2009. All three defendants were found not guilty of conspiracy to cause an explosion. Ali and Shakil were convicted of conspiring to attend a place for terrorist training.

10. In the meantime, without prejudicing the criminal proceedings, a number of bodies were charged with investigating the circumstances of the bombing, in particular, the Intelligence and Security Committee ("the ISC") and the "7 July Review Committee" of the London Assembly. The ISC reported to Parliament in 2006 under the heading "Report into the London Terrorist Attacks on 7 July 2005" (Cm 6785) and in May 2009 under the heading "Could 7/7 have been prevented? Review of the Intelligence on the London Terrorist Attacks on 7 July 2005" (Cm 7617). The "7 July Review Committee" has produced a number of very thorough and sensible reports dating back to 2006. They have made recommendations and they continue to monitor implementation thereof. Amongst a number of other documents I have been shown are "The Government's Response to the ISC's report into the London Terrorist Attacks on 7th July 2005" (May 2006 Cm 6786) and one entitled "Report of the Official Account of the Bombings in

London on 7th July 2005” (also May 2006 HC 1087). The London Regional Resilience Forum has also published a report on lessons learned and progress made since the 7th July bombings in relation to emergency planning.

11. These inquiries did not satisfy some of the bereaved families and survivors (for reasons I shall explain later). They have consistently pressed for a public inquiry into the wider circumstances of the bombings. The government has equally consistently refused. A group of families and survivors sought judicial review of that decision. The proceedings are currently stayed pending the resolution of these inquests.

12. I should also add that what have been called “conspiracy theories” abound in the media and on the internet. Mr Christopher Coltart who appeared for some of the bereaved families summarised them for me. Some are more outlandish than others. Suffice it to say there has been widespread speculation about the wider circumstances of the plot and the identity of any mastermind.

13. On 26th November 2009 my appointment as the Assistant Deputy Coroner for the Inner West London (Westminster) District with jurisdiction over all 56 inquests was publicly announced. I appointed an Inquest Team consisting of Counsel, Solicitor and Secretary to the Inquests and held a private meeting for the families of the 52 deceased in order to explain to them what was happening.

14. The first pre-inquest review took place on 25th February 2010, at which I made a number of directions, including a direction that Scene Reports for each of the bomb sites and each of the deceased should be prepared and served on the appropriate parties. All the lawyers involved save Mr Imran Khan have complied with my directions.

MSK, Tanweer, Hussain and Lindsay

15. Mr Imran Khan represents or represented Hasina Patel (MSK's wife) and Mr and Mrs Hussain, Hussain's parents. Despite repeated efforts to contact them by Mr Martin Smith, Solicitor to the Inquests, we have received no substantive response from the families of Tanweer and Lindsay. Gultasab Khan, brother of MSK said he wished to be an interested person. Unfortunately, despite requests, he has provided no reasons for his application; nor has he stated in which inquests he would wish to be so designated. After the deadline for the filing of submissions had passed and after considerable prompting by Mr Smith, Mr Imran Khan informed us his clients have been refused public funding. Had he been put in funds, he said "Counsel would have made submissions that...the inquests should be resumed.... and the inquests should be joined." He added: "My clients seek to be interested persons in the inquests of some of the deceased." He did not condescend to detail. I have no idea, therefore, in which inquests he seeks or would have sought interested person status for his clients or the grounds upon which he suggests the inquests should be resumed and/or joined. He has provided no clue as to the issues his clients would wish to pursue.

16. When I first alerted the families and survivors to the fact that I might receive submissions to the effect that all 56 inquests should be heard together some expressed understandable and very public anxiety. I have heard in very moving terms of the undoubted distress most of the bereaved families would suffer if the inquests into the deaths of their loved ones were to be heard at the same time as those into the deaths of MSK, Tanweer, Lindsay and Hussain. Further, Mr Patrick O'Connor QC, who appeared for some of the bereaved families and survivors, argued that the ability of survivors to give evidence is likely to be adversely affected should they be required to give that evidence in an inquisitorial process that is concerned not only with the 52 deaths but also with those of MSK, Tanweer, Lindsay and Hussain. Practical arrangements could be made in an attempt to reduce this distress, but, he observed, such arrangements can only go so far.

17. Mr Hugo Keith QC, Counsel to the Inquests, was acutely conscious of the possible distress of involving the families of MSK, Tanweer, Lindsay and Hussain in the inquests into the deaths of the 52, but, consistent with his neutral stance, he felt compelled to observe that the concerns may not be met simply by splitting the inquests so that the 52 are heard separately from theirs. There remains the possibility that it is at least arguable, in law, that the families of MSK, Tanweer, Lindsay and Hussain would be entitled to interested person status at the inquests into the 52. If granted such status, they would be entitled to examine witnesses at those inquests.

18. Given the high level of anxiety on this topic, I was anxious to reach a decision on the inquests into MSK, Tanweer, Lindsay and Hussain as soon as possible. Unfortunately, I am not now in a position to do so. All parties reluctantly agree that I am forced, by circumstances beyond my control, to adjourn the questions relating to their inquests. In so doing I make it plain, however, that if any submissions are to be made as to resumption of the inquests into the deaths of MSK, Tanweer, Lindsay and Hussain, I will require proper and fully reasoned submissions on the issues it is said should be explored. If interested person status is sought, I wish to know what questions the person concerned would wish to ask and in which inquests. Any further delay in filing those submissions will only make it harder to persuade me that, having embarked upon the inquest process as far as the 52 deaths are concerned, it would be practical or appropriate to hear all 56 inquests together.

19. I also note that nothing has yet been put before me to justify a resumption of the inquests into MSK, Tanweer, Lindsay and Hussain. It does not follow as a matter of course or of law. There is no statutory obligation upon me to resume any inquests that have been adjourned pursuant to section 16(1) of the 1988 Act. Section 16(3) provides (where relevant):

“(3) After the conclusion of the relevant criminal proceedings, ... , the coroner may, subject to the following provisions of this section, resume the adjourned inquest if in his opinion there is sufficient cause to do so.”

20. In *R v Inner West London Coroner ex parte Dallaglio*, at page 155D Simon Brown LJ observed:

“The decision to be made under s 16(3) is of a highly discretionary character and in no way circumscribed by a need to find exceptional circumstances, only 'sufficient cause'.”

21. Given the nature of the possible issues to be explored in any resumed inquests of the 52 as put before me during the course of the hearing, it was not immediately apparent that the families of MSK, Tanweer, Lindsay and Hussain would have any legitimate interest in pursuing those issues. It may be there are other arguments or issues worthy of exploration of which I am presently unaware. I can only wait and see, but I shall not wait forever.

22. Delay not only causes practical problems, it adds immeasurably to the distress of the bereaved families and survivors. I urge any party (including those who did make submissions before me) who is thinking of challenging the refusal of public funding, this ruling, or any part of it, to do so as a matter of urgency and, in any event, to inform me of their decision within two weeks of receipt of this ruling. The parties have had ample time to consider and take instructions on all possible permutations of my rulings.

Resumption and Scope: the law

23. In deciding on whether to resume it is helpful to remind oneself of the central function of an inquest which is to investigate and, if possible, to answer four questions: who the deceased was and “how, when and where he came by his death”: for which see section 11 (5) (b) of the 1988 Act and rule 36 of the Coroners Rules 1984.

Rule 36 provides that:

- (1) the proceedings and evidence at an inquest shall be directed solely at ascertaining the following matters, namely:
 - (a) who the deceased was;
 - (b) how, when and where the deceased came by his death;
 - (c) the particulars for the time being required by the Registration Acts to be registered concerning the death

24. Mr Neil Garnham QC for the Secretary of State for the Home Department and the Security Service emphasised that the proceedings and the evidence “shall” be directed “solely” at the four questions “who” “how” “when” and “where”. The

conclusions of the inquests on those four matters are recorded in a document known as the inquisition, which includes the ‘verdicts’ of the inquest proceedings.

25. The phrase “how the deceased came by his death” may appear straightforward but it bears different meanings depending on whether the inquest is (a) simply playing a part in the discharge of the state’s positive obligation under Article 2 of the ECHR to set up an effective judicial system for determining the cause of death or (b) required in order to discharge a specific procedural investigative obligation under Article 2 (an ‘enhanced’ inquest). If the inquest is not an ‘enhanced’ inquest, then the term is to be interpreted in the narrow sense of “by what means the deceased came by his death” (see *R v HM Coroner for North Humberside and Scunthorpe, ex parte Jamieson* [1995] QB 1). If the inquest is enhanced the term is to be read as “by what means and in what circumstances the deceased came by his death” (see *R (Middleton) v West Somerset Coroner and another* [2004] AC 182).

26. However, the distinction between the two may become blurred. The term “how the deceased came by his death” (whichever meaning it carries) identifies only the issue that is to be inquired into and answered by means of the inquisition. The scope of the factual investigations that are necessary and appropriate in order to conduct that inquiry and, if possible, to reach a verdict, is a separate matter for me to determine. In *Dallaglio*, Simon Brown LJ stated at 155B:

“The inquiry is almost bound to stretch wider than strictly required for the purposes of a verdict. How much wider is pre-eminently a matter for the coroner whose rulings upon the question will only exceptionally be susceptible to judicial review.”

27. In *Jamieson* Sir Thomas Bingham MR giving the judgment of the Court observed at 23G:

“(1) An inquest is a fact finding inquiry conducted by a coroner with or without a jury to establish reliable answers to four important but limited factual questions..... Rule 36 requires that the proceedings and evidence shall be directed solely at ascertaining these matters and forbids any expression of opinion on any other matters.”

However, he later added at 26B:

“(14) It is the duty of the coroner ... to ensure that the relevant facts are fully, fairly and fearlessly investigated ... He must ensure that the relevant facts are exposed to public scrutiny ... He fails in his duty if his investigation is superficial, slipshod or perfunctory. But the responsibility is his. He must set the bounds of the inquiry.”

28. I have also been reminded of my powers under rule 43 of the Coroners Rules 1984 to make a report after all the evidence is heard if I believe that action should be taken to prevent the recurrence of deaths in similar circumstances. Mr Garnham stressed that the terms of rule 36 prevent any factual inquiries being conducted at an inquest for the purposes of making a rule 43 report that are not directed towards the four core issues.

29. Counsel for the families argued strenuously that what is required here is an “enhanced” inquest, but if that is not possible they sought what they called an “extended Jamieson” inquest covering alleged failings by the intelligence community and by the emergency responders. They agreed, subject to one reservation about the nature of any verdict, that the latter would meet the requirements of their lay clients and cause them no disadvantage.

30. For these purposes, I have also borne in mind the judgment of the Divisional Court delivered by Smith LJ in *R (Paul) v Deputy Coroner of the Queen’s Household* [2008] QB 172. At paragraph 42, I am advised that the proper and logical course before considering whether to summon a jury is for me first to consider the scope of any resumed inquests. The same reasoning would apply here to the question of resumption. To determine whether there is sufficient cause to resume, I shall consider first possible scope.

Scope: the possible factual disputes

31. The submissions on possible scope fall into three main categories:

- i. The immediate aftermath of the bombings and the emergency response;
- ii. Post 7th July 2005 and possible failings on the part of the authorities;
- iii. Pre 7th July 2005 and possible intelligence failings.

32. In respect of each question, it is very early days (albeit 5 years on) for me to be reaching any conclusions. That is because much of the available material has yet to be examined in detail *as it affects individual deceased* and much of the intelligence material currently remains closed to us. I am conscious, therefore, that I must keep any decisions I reach under review and I shall do so.

The immediate aftermath

33. The majority of the bereaved families wish the inquests to be resumed, if for no other purpose, so that they can learn everything there is to know about the detailed and individual circumstances of the deaths of their loved ones. To some extent the very fact of my holding this hearing has begun that process. The Inquest Team with the assistance of the Metropolitan Police acting in their capacity as Coroner's Officers have prepared and served Scene Reports relating to each of the incidents at Edgware Road, Aldgate, King's Cross / Russell Square and Tavistock Square. These have brought to light matters of which some families were previously unaware and also possible inaccuracies in the official reports. Understandable concerns have been expressed that they have had to wait so long to find this out.

34. The Scene Reports indicate that one or more of the deceased at each scene survived for at least a period after the explosions. Some families question, therefore, what happened before their loved one died: whether more could have been done to save their loved one, whether help could have reached their loved one sooner and what, if any, help he or she was given. Some question where the body of their loved one was found and when it was found. I was asked to note that the London Assembly report quite properly praised the bravery of individual members of the emergency services, but also made a number of criticisms of the procedures in place at the time. One criticism suggested that the official inquiry into the King's Cross Fire recommended 18 years ago that action be taken to address the problem of communication underground yet problems remained at the time of the bombings. Thus, the issues arising under the heading of "immediate aftermath" include the adequacy of lighting on the Underground

system, access to the bomb sites, closure of the transport system, communications between emergency services (both above and below ground), the speed of attendance at individual scenes, the provision of first aid equipment, the provision of medical treatment, and the equipment and resources available and deployed.

35. The interests of the bereaved were referred to by Sir Thomas Bingham MR in *Dallaglio* as one of a number of “powerful” factors that were relevant to the exercise of the discretion to resume (at p.164D). It is clear from submissions before me and the responses to a questionnaire sent out by Dr Reid that a significant number of bereaved families wish the issue of the immediate aftermath to be explored.

36 I have no doubt whatsoever that the calling of evidence as to the immediate aftermath would serve a “worthwhile purpose” (*Dallaglio*, per Simon Brown LJ at p. 155C-D). Previous inquiries have not focussed on the individual deaths, whether particular individuals survived the initial blast, if so for how long and what happened to them in the period between the blast and their death. They have not addressed in any detail, or at all, some of the questions the families wish and are entitled to explore as to how, when and where their loved one died. It may well be that on further exploration of the immediate aftermath, the families will learn that nothing more could have been done for their loved one. It may be that any systemic or individual failings, if established (and I emphasise *if* established) played no part in the death of their loved one. However, the families are entitled to know as much as they can. It is in their interests and it is in the wider public interest that they should do so. The reports available so far raise sufficient concerns to warrant further investigation going to the very heart of the questions of “how, when and where the deceased came by his or her death”. I have decided, therefore, that, at the very least, there is sufficient cause to resume the inquests into deaths of the 52 on the issue of the immediate aftermath and the response of the emergency services. I shall conduct the 52 inquests together. I do not feel it necessary to give any further reasons in the light of the unanimity of the response to this question in the submissions before me. Even those who wished to remain neutral acknowledged the force of the arguments in favour of resumption on this issue.

Post 7th July 2005 - possible failings of the authorities in the days that followed

37. Some of the families wish to raise a number of issues under this heading, for example: delays in identification, the operation of the London Resilience Mortuary, the conduct of the post-mortem examinations, alleged failings in communication with the families and the return of property. Mr Gareth Patterson for one family informed me they wish to explore the efficiency with which the post mortems were conducted and why the decision was taken to have non-invasive post mortems. I confess it was not immediately clear to me how this line of questioning, if appropriate, would assist anyone to determine the four core questions. Full autopsies might or might not have helped answer them. The fact is for good reason or bad and, for my part, I suspect good, the post mortems were non- invasive. I remind myself of the passage in *Dallaglio* at page 164 from the judgment of Sir Thomas Bingham MR:

“It is for the coroner conducting an inquest to decide, on the facts of a given case, at what point the chain of causation becomes too remote to form a proper part of his investigation. That question, potentially a very difficult question, is for him. *If* these inquests were to be resumed, and I emphasise if, the question would have to be answered by the new coroner, exercising his judgment as best he can on all the information available in the knowledge that, wherever he drew the line, his ruling would be unwelcome to some. It is, however, clear, as was accepted by counsel for the applicants in argument, that the treatment of the bodies of the deceased after death could not form part of a properly conducted inquest”.

38. In any event, as the submissions under this heading unfolded, it became increasingly apparent to me that counsel were not arguing with any great force that these issues either legitimately or sensibly come within the scope of these proceedings, given their nature and the number of issues to be explored. Counsel seemed content to flag them up and for me then to leave it to the parties to see if they can be resolved. I detected an optimism among counsel that this may happen within the next few months. I have been repeatedly assured that I can rely on the wholehearted co-operation of the Secretary of State for the Home Department, the Security Service (“MI5”), the Police Forces concerned, counsel and solicitors. I intend to do so. I wish to emphasise, however, that any questions under this

heading must be channelled through my Inquest Team and any enquiries of this nature should be sent to them as soon as possible.

39. Accordingly, since I was not convinced that these issues would properly fall to be determined in the scope of the resumed inquests, but conscious as I am of their importance to the families concerned, I have decided that I should adjourn consideration of them, in the hope the families' questions may be answered in some other way.

Pre 7th July 2005 - Alleged Intelligence failings

40. That brings me to one of the most hotly contested issues before me: what has been called "the preventability issue". The families and the survivors want to know if there was anything the intelligence services could reasonably have done to prevent the bombings. I emphasise they wish to know if anything could reasonably have been done. Save for Mr O'Connor who, on one occasion, went so far as to accuse MI5 of lying to the ISC, the families are not asserting MI5 was guilty of any intentional wrongdoing. They are concerned that there may have been failings and simply wish to know more. I make it clear that no failings either systemic or individual have yet been established and no evidence has been produced to me yet to justify the assertion any member of MI5 has lied.

41. To date, all we have to go on are the two redacted ISC reports which are in the public domain. It is difficult to assess properly their conclusions, because we do not know on what material they were based. Thus, we do not know the full extent of the material available to MI5 on the movements and associations of MSK, Tanweer, Lindsay and Hussain in the 18 months leading up to the bombings. Members of the ISC have seen some, if not all, of it but could not publish what they had seen in the interests of national security, at that time. I emphasise at that time because I do not know whether the same considerations apply in 2010 as applied in 2006 and 2009. It seems nor does Mr Garnham. He has not seen the closed material. He is acting on instructions when he asserts that the interests of national security still dictate that all the closed material remains closed and that there can be no inquiry by me sitting as a coroner alone or with a

jury. He placed considerable stress on the particular and virtually insuperable difficulties that, he says, sitting with a jury would bring.

42. I shall summarise the material available to us. In so doing I shall focus on what was known or what it is said could have been known with due diligence before the bombings. In that way I hope to avoid as best I can the benefit of hindsight. I cannot, of course, do so entirely because I know all too well the tragedy that occurred on 7th July 2005.

43. In 1993, a man called "Sidique Khan" was arrested for assault by West Yorkshire Police and received an official caution. A police record was created and a photograph was taken. This was a routine police matter unconnected to national security and none of the details were shared with MI5. During the course of preparing for the inquests West Yorkshire Police discovered another, much earlier, set of prints for him filed under a different formulation of the same name. The significance of this is not that his activity at that time should have alerted the authorities to any terrorist tendencies, but that the material has only just come to light.

44. In 2001, a group of 40 men was observed by West Yorkshire Police attending a training camp organised by two known extremists. Stills were produced from video footage of the camp and these pictures were shown to a number of sources, resulting in nine of the 40 men being identified at the time. MSK was at the camp but not identified on the photograph until after 7th July 2005.

45. On 14 April 2003, a West Yorkshire Police team kept surveillance on a known extremist as part of a joint West Yorkshire Police and MI5 operation. The extremist was seen to be given a lift in a car registered to a "Sidique Khan". This contact lasted only three minutes and was not considered significant in the context of the operation.

46. In early 2003, MI5 obtained intelligence indicating that Mohammed Qayum Khan (MQK) from Luton, was the leader of a group of extremists which

supported the Al-Qaida cause and which was involved in providing financial and logistical support for it. He became a “desirable” target. They began an investigation codenamed “CREVICE”.

47. At the time, MI5 prioritised investigative effort based on the threat posed by individuals. The system has now changed but, at the time, targets were divided into three categories:

“Essential – An individual who is likely to be directly involved in or have knowledge of plans for terrorist activity, or an individual who may have knowledge of terrorist activity.

Desirable – An individual who is associated with individuals who are directly involved in or have knowledge of plans for terrorist activity or who is raising money for terrorism or who is in jail and would be an essential target if at large.

Other – An individual who may be associated with individuals who are directly involved in, or have knowledge of, plans for terrorist activity.”

48. In July 2003 data from a mobile phone associated with MQK revealed a number of calls with a telephone number MI5 had not seen before. The number was registered to “Siddique Khan” of 49a Bude Road, Leeds (the address of a bookshop selling extremist literature). MI5 at that time could not match the name “Siddique Khan” with any in their databases, and the contact was not investigated further.

49. In January 2004 another individual Omar Khyam was also identified. Initially it was thought he was simply a courier. MI5 decided to put him under limited surveillance. In February 2004 MI5 received intelligence which changed things dramatically. MI5 discovered a bomb plot probably aimed at the UK. Khyam became one of MI5’s top targets and Operation CREVICE became their top priority. All of the people that Khyam met and spoke to were assessed to see if they were involved in the plan to attack the UK. Most were not. Some were thought to be involved in general criminal activity, others were thought to be in the “facilitation” part of CREVICE, and a few were thought to be actively involved in

the bomb plot. MI5 needed to prioritise and focus their limited resources on those individuals they knew were directly involved in the plot to kill people.

50. Mr Garnham was at pains to point out the scale of the operation. CREVICE was the largest operation MI5 and the police had ever undertaken. It spanned a variety of countries across the world. In terms of the resources deployed by MI5, there were in the order of: 30 addresses searched, 45,000 man-hours devoted to monitoring and transcription, 20 CCTV operations, 34,000 man-hours of surveillance, *** covert searches of targets' property and baggage, and *** eavesdropping devices deployed (the asterisks indicate where information has been redacted in the ISC report that is publicly available).

51. Of the thousands of telephone calls analysed and assessed to relate to international counter-terrorism between 1 January and 1 April 2004, there were tens of thousands of unique numbers. Of these, 4,020 were linked to CREVICE. Two numbers were later associated with MSK. The vast majority of the numbers were eventually assessed not to relate to the bomb plot itself, or even to the wider facilitation network, and were in fact wholly innocent or irrelevant. Each was a potential lead, however, that had to be checked. Mr Garnham properly reminded me of the extremely difficult balance to be struck between the invasion of innocent people's privacy and digging deep enough to discover that a person may have extremist views or may represent a threat to the UK.

52. The size of the operation must be borne in mind when I recite briefly the circumstances in which we now know that MSK and Tanweer were observed meeting the CREVICE conspirators in "highly suspicious" circumstances. These meetings have been selected with the benefit of hindsight from a vast collection of material.

53. On 2nd February 2004 Omar Khyam parked his car in Crawley. There was another person with him in his car. A green Honda Civic then arrived with three occupants and parked alongside. After two minutes the Honda (with two occupants later assessed by surveillance to be Khyam and an unidentified male ("UDM")) left and drove up and down the A23 (asserted before me to be an anti

surveillance technique). The other three individuals remained in Khyam's parked car. The men returned to their original cars and both cars drove off. The Honda was followed.

54. At Toddington Service Station on the M1, the surveillance team photographed the three UDMs in the Honda and classified them as UDMs C, D and E. The Honda continued its journey to Leeds where it dropped off two males at Lodge Lane and Tempest Road; its last destination was in Dewsbury. It was parked outside 10 Thornhill Park Avenue. The car registration was checked, and it was found to be registered to a "Hasina Patel" at that address. MI5 asked West Yorkshire Police to check the name "Hasina Patel" and the address. Nothing was found. After the bombings she was identified as MSK's wife and the UDMs were identified. UDM C was Shipon Ullah (also known as Waheed ALI). UDM D was Tanweer. UDM E was MSK. The fact the ISC concluded there was nothing suspicious about that meeting has been the subject of much criticism before me.

55. On 20th February 2004, an electronics expert called Mohammed Momin Khawaja arrived from Canada on a two day trip to meet Khyam. Surveillance showed that he was advising Khyam and his associates on the construction and operation of remote detonation devices

56. Also on 20th February 2004, the police were alerted to a suspicious 600kg bag of fertiliser left in a storage unit since 11th November 2003. The police visited the storage unit and discovered the fertiliser. The police obtained the details of the fertiliser and the rental agreement and what they found confirmed intelligence previously received and indicated that the fertiliser was intended for use in a bomb attack: this showed Khyam not only had the intention to launch an attack, he also had the capability.

57. In the evening of 21st February 2004 Khyam and two unidentified males left Mahmood's house (in Crawley). Khyam, one of the UDMs and another man travelled to what the ISC described as a "farewell meal" for the bomb expert. A number of people were present and their movements logged. Their conversation

was bugged. MI5 did not know precisely how many people, or who, attended this “farewell meal”.

58. After 7th July 2005, new intelligence came to light which showed that MSK (and possibly Tanweer) had a conversation with Khyam in his car that evening. It is, therefore, likely that MSK (and possibly Tanweer) attended this “farewell meal”. If any criticism is made of the analysis of the tapes of the meeting, MI5 would point to the time pressures upon its staff in assessing the material and the enormous difficulties in transcribing tapes of disjointed, sometimes muffled conversations in several languages. Nevertheless, Mr Coltart and others would wish to explore whether proper transcription of the tapes was made a sufficiently high priority and what was done at this time to re-analyse and reassess Khyam’s meetings and associates.

59. On 22nd February 2004, Khyam was heard considering a number of possible targets which would cause either mass casualties (such as the Bluewater shopping centre or the Ministry of Sound nightclub) or mass disruption (like the gas supplies).

60. The investigation moved into an even more intensive phase, with consistent monitoring of Khyam, so that MI5 and the police could find out who else was involved and, crucially, prevent an attack. To minimise the chances of an attack, MI5 replaced the fertiliser with an inert substance.

61. There was another meeting between Khyam and the three UDMs on 28th February 2004 in Crawley. The meeting took place just before 9.00 a.m., but the three UDMs then remained in Khyam’s company for the rest of the day, travelling together to a number of places including Toddington Service Station where they met MQK. Nothing of interest was discussed in Khyam’s car but, I was asked to note, MSK and Tanweer drove hundreds of miles to spend many hours in suspicious circumstances in the company of suspected terrorists. The ISC report contains little further detail of who met whom and little comment, the families would say, on the significance of the meeting. A Metropolitan Police Service

(“MPS”) surveillance team again followed the UDMs back to West Yorkshire to try and link them with an address.

62. MI5 checked the details of the Honda Civic again and this time it was found to be registered to a “Sidique KHAN”, living at 99 Stratford Street, a different address from the addresses in Leeds and Batley at which the car had previously been observed. MI5 and the police ran checks against their databases on the name and all the addresses. Because they had found various different spellings of the name, and there were no significant traces found, the police believed that it might be an alias. This assessment and the failure to track down MSK at this stage, in the light of the leads available, are described by counsel to the families as possibly grave errors. The ISC is criticised for paying insufficient attention to the failure to pursue this line of inquiry: they record MI5’s request to WYP to check on the Honda only in the “Timeline” of events contained in Annex A of the ISC report. Mr Coltart particularly asked me to note that on 2nd March 2004 in a request to WYP, MI5 linked 99 Stratford Street to a “storage facility that may be linked to Khyam”.

63. Further surveillance on Khyam saw him picked up by an unidentified driver in a green Corsa on 21st March 2004. They drove around for 40 minutes and he was dropped off. On 23rd March 2004 the green Corsa was again in evidence. It had the words “Car Clinic” and a telephone number on the side. MSK and Tanweer were seen with Khyam and others travelling from Crawley to Slough in two cars: Khyam’s car and the Corsa. The surveillance team believed that the driver of the Corsa was the same man as drove the Honda Civic on 28th February. Another of the individuals is described as being identical to one of the passengers. During the afternoon, in Khyam’s car, Khyam and an UDM spoke briefly about the “success of the Madrid bombings”. In preparation for the CREVICE trial, more detailed evidential transcripts were produced which showed that this conversation was between Khyam and Tanweer. They visited an internet café before returning to Khyam’s flat. There the eavesdroppers learned that the men were from Leeds and the conversation was largely related to financial fraud. UDM E also mentioned that he worked in a school counselling children, and that he had to return his Vauxhall Corsa hire car and pick up his repaired car from the garage. The key element of the conversations that day for MI5, who were focused on listening for

any indication that Khyam might launch his attack, was his saying that he was moving to Pakistan for good. The families would argue MI5 failed to pick up the fact that 2 men from Leeds seemed to be involved in whatever plot was going on, or why else would they keep travelling hundreds of miles for meetings in suspicious circumstances?

64. Given that the UDMs from Leeds were apparently only discussing financial fraud, and there was no mention of a bomb plot, they were assessed as not posing an immediate threat to life and were therefore classified as “desirable” (i.e. rather than essential). The families and survivors wish to challenge that classification and question why they were not placed under surveillance as others given the same classification were. They want the chance to argue that the meetings attended by MSK and Tanweer were sufficiently suspicious to alert the authorities that they were planning to bomb somewhere in the UK. The CREVICE plotters themselves were arrested between 29th March and 1st April 2004.

65. Once Operation CREVICE finished and more resources became available, additional checks were carried out. MI5 provided West Yorkshire Police with details of the Honda Civic and Vauxhall Corsa together with a total of 12 names (including “Sidique Khan”) and 13 addresses (including three linked to MSK). West Yorkshire Police did not find anything significant linked to the vehicles, names or addresses provided.

66. Many of the CREVICE conspiracy contacts were discounted. However, a different group of men (whom MI5 already had under investigation) started talking about possible terrorist attacks in the UK and the US. This became MI5’s top priority. The new operation was codenamed RHYME. The RHYME terrorist plotters were planning a series of co-ordinated attacks in the UK, including packing three limousines with gas cylinders and explosives before setting them off in underground car parks. The group were also believed to be planning to use radiological material in bombs. Investigating the RHYME group again absorbed most of MI5’s resources.

67. On 3rd August 2004, thirteen individuals were arrested. MI5 returned to follow up on the 4,000 contacts they had come across during CREVICE, and they also added the contacts they had found during Operation RHYME. New plots were being discovered all the time, and each new plot demanded considerable resources and pushed the follow-up work lower down the scale of priorities. In each instance, the potential threat to life had to be dealt with first. There were still further operations which were completely unconnected to CREVICE. These are set out in some detail in the 2009 report of the ISC and indicate with some degree of clarity the pressures on the intelligence community. After the London bombings a new operation called Operation Theseus was opened. The material gathered during the course of that operation dates back to the spring of 2004 and links in to Operation CREVICE.

68. Mr Garnham points to the huge quantity of resources invested in the other investigations and the fact that over the final six weeks of Operation CREVICE, for example, the police recorded a total of 1,154 vehicles connected to Khyam in some way. They could not follow them all.

69. MI5 insist there was no reason to target MSK or Tanweer as number one priorities because at the time they reasonably thought they were no more than small-time fraudsters who had some minor contact with the CREVICE plotters. MI5 had to focus on the known bomb makers. They were the essential targets. In the spring of 2004 this did not include UDMs D or E. The pressures were elsewhere.

70. The families and survivors believe they understand the pressures and they do not want to put the country's safety at risk, but they want to know in essence the answer to two simple questions: why were MSK and Tanweer not put under surveillance? Had they been, might the London bombings have been prevented? Mr O'Connor added that on behalf of his lay clients he wishes to know why, it is said, MI5 were less than frank to the ISC about their knowledge of MSK and Tanweer. MI5 told the ISC in 2006 that they had not identified MSK and Tanweer as targets before 7th July 2005 when "plainly they had". He dismissed MI5's

explanation to the ISC, as recorded in 2009, that the intelligence community uses a more rarefied definition of the word “identified”, in this context.

Whether there is a specific investigative obligation under Art 2

(i) Arguable breach of substantive obligation under Article 2

71. Art 2(1) provides:

“Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”

72. The first question for me, in determining whether this is a ‘Jamieson’ inquest or a ‘Middleton’ inquest is whether the specific investigative obligation under Art 2 of the ECHR is engaged. The existence of this investigative duty was referred to in the case of *McCann v United Kingdom* [1995] 21 EHRR 97. At paragraph 161 of its decision the Strasbourg Court said this:

“The obligation to protect the right to life under [article 2(1)], read in conjunction with the State’s general duty under article 1 of the Convention to ‘secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention’, requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by, inter alios, agents of the State.”

73. It is common ground that the specific investigative obligation will be engaged if there is an arguable case that the UK has breached its substantive obligations under Article 2 (1) (although Mr O’Connor argues that, even if there is no arguable substantive breach, the investigative obligation is still engaged – see below).

74. As the case-law on Article 2 has developed, the Strasbourg Court has recognized a number of discrete factual situations that raise issues as to a State’s substantive duties. The most obvious are those involving the use of lethal force by state agents, or by third parties with the collusion of state agents. However, the Court has also ruled that, in certain factual situations, Article 2 may impose an

obligation on the authorities of a State to protect life, for example cases in which the authorities have assumed responsibility for an individual's welfare and cases in which the authorities knew or ought to have known that there was a real and immediate risk to an individual's life but failed to take appropriate steps to meet that risk.

75. The latter category stems from the seminal decision of *Osman v United Kingdom* [1998] 29 EHRR 245. Much time was spent during the course of submissions considering its effect. Ali Osman and his son Ahmet Osman were shot at by a former teacher of Ahmet Osman named Paul Paget-Lewis. Ali Osman was killed and Ahmet Osman wounded. The applicants, Ahmet Osman and his mother, alleged that in the weeks prior to the attack the authorities had failed to appreciate and act upon what they claimed was a series of clear warning signs that Paget-Lewis represented a serious threat to the physical safety of their family.

76. The extent and nature of the State's duty is to be found at paragraphs 115 and 116 of the Court's judgment:

"115. The Court notes that the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see the *L.C.B. v. the United Kingdom* judgment of 9 June 1998, *Reports of Judgments and Decisions* 1998-III, p. 1403, § 36). It is common ground that the State's obligation in this respect extends beyond its primary duty to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions. It is thus accepted by those appearing before the Court that Article 2 of the Convention may also imply in certain well-defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual. The scope of this obligation is a matter of dispute between the parties.

116. For the Court, and bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk

from materialising. Another relevant consideration is the need to ensure that the police exercise their powers to control and prevent crime in a manner which fully respects the due process and other guarantees which legitimately place restraints on the scope of their action to investigate crime and bring offenders to justice, including the guarantees contained in Articles 5 and 8 of the Convention.

In the opinion of the Court where there is an allegation that the authorities have violated their positive obligation to protect the right to life in the context of their above-mentioned duty to prevent and suppress offences against the person (see paragraph 115 above), **it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.** (Emphasis added) The Court does not accept the Government's view that the failure to perceive the risk to life in the circumstances known at the time or to take preventive measures to avoid that risk must be tantamount to gross negligence or wilful disregard of the duty to protect life (see paragraph 107 above). Such a rigid standard must be considered to be incompatible with the requirements of Article 1 of the Convention and the obligations of Contracting States under that Article to secure the practical and effective protection of the rights and freedoms laid down therein, including Article 2 (see, *mutatis mutandis*, the above-mentioned McCann and Others judgment, p. 45, § 146). For the Court, and having regard to the nature of the right protected by Article 2, a right fundamental in the scheme of the Convention, it is sufficient for an applicant to show that the authorities did not do all that could be reasonably expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge. This is a question which can only be answered in the light of all the circumstances of any particular case.

On the above understanding the Court will examine the particular circumstances of this case."

77. The Court went on to assess the facts of the case. Its ultimate conclusion was that the facts did not disclose a breach of the State's substantive duty under Article 2. Mr Garnham places considerable emphasis on the reasons why. The applicants failed to identify to the Court's satisfaction any decisive stage in the sequence of events leading up to the attack when it could be said that the police knew or ought to have known that the lives of the Osman family were at real and immediate risk from Paget-Lewis. At best the applicants could point to a series of missed opportunities which would have enabled the police to neutralise the threat posed by Paget-Lewis. This was not enough. Judged reasonably, the court was not satisfied that even arresting or detaining him would in fact have produced the

desired result and prevented the attack. The court held that the police must discharge their duties in a manner which is compatible with the rights and freedoms of individuals. In all the circumstances, they could not be criticised for attaching weight to the presumption of innocence or failing to use powers of arrest, search and seizure, having regard to their reasonably held view that they lacked at relevant times the required standard of suspicion to use those powers or that any action taken would in fact have produced concrete results.

78. There appear to be four separate limbs to the *Osman* test for an arguable breach of the substantive Article 2 obligation: the knowledge or deemed knowledge on the part of the State of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and a failure to take reasonable measures within the scope of its powers to avoid that risk. Basing his written submissions on the four elements Mr Garnham confidently maintained in his written submissions that the Strasbourg Court had never applied the *Osman* principle to a case where the risk was to the public at large as opposed to an “identified” individual or individuals. By “identified” he meant the individuals must be identified by time and location so that, for example, an imminent threat to the travelling population of London would not be sufficient. Mr Coltart described this as a bold submission in the context of a terrorist attack which by its very nature is likely to be indiscriminate. However, during the course of the hearing the researches of the Inquest Team produced the 2002 decision of the Strasbourg Court in *Mastromatteo v Italy* [Application number 37703/97].

79. Mr Mastromatteo asserted that the Italian authorities were responsible for his son’s death. His son had been murdered during the course of a bank robbery by prisoners who had been granted prison leave and had taken advantage of it to abscond. He relied on Article 2 and alleged a breach by the Italian State of its positive obligation to protect his son’s life in that they had granted prison leave to very dangerous habitual offenders. In paragraphs 67 to 68 the Court rehearsed without amendment the principles derived from cases such as *Osman*. At paragraph 69 the Court distinguished the facts of *Mastromatteo* from *Osman* on the basis that the potential targets of the lethal violence in *Osman* could be identified.

80. In *Mastromatteo*, the Court defined the issue before them as
“ the obligation to afford general protection to society against the potential acts of one or of several persons serving a prison sentence for a violent crime and the determination of the scope of that protection.”

At paragraph 74, the Court held:

“ a mere condition sine qua non does not suffice to engage the responsibility of the State under the Convention; it must be shown that the death of A Mastromatteo resulted from a failure on the part of the national authorities to “do all that could reasonably be expected of them to avoid a real and immediate risk to life of which they had or ought to have had knowledge” (*Osman*), the relevant risk in the present case being a risk to life for members of the public at large rather than for one or more identified individuals.

81. *Mastromatteo* has been referred to in argument and judgments of previous cases in the UK but, it seems, no comment has been made upon the apparent extension to the *Osman* principle within it, in relation to those who must be identified as at risk. Had the Strasbourg Court felt they were departing significantly from or extending the well established principles of a seminal decision such as *Osman* one would have expected them to say so. It may be that they did not believe they were doing so. In any event, counsel for the families gratefully adopted the definition of the relevant risk in that case being “to the public at large”. Nevertheless, Mr Garnham insisted that the individuals at risk must be capable of identification with some degree of precision before Article 2 is engaged in this respect. He suggested *Mastromatteo* could be distinguished on its facts given the State’s duty to the public at large in respect of violent prisoners.

82. If I were forced to decide the point, I would be inclined to find that the class of individuals at risk should not be construed as narrowly as Mr Garnham suggested nor as broadly as Mr O’Connor would have it. I found interesting Mr Coltart’s suggestion that to use terrorist plots as an example, those which plainly engaged the *Osman* principle could be divided into two categories: Category 1: where the authorities have reliable information as to the time and location of a likely explosion. Category 2: where the authorities have reliable information not as to the bomb itself but as to the bomber. In both situations the burden placed on the State would not be disproportionately harsh. However, I do not need to

decide the point (which is perhaps fortunate given the lateness of the surfacing of *Mastromatteo*) because to my mind the argument fails at the first hurdle. As eloquent as the submissions before me were, they have failed to identify, on the facts, as at 2004 or even 2005 a *real* and *immediate* risk (from MSK and others) about which the authorities knew or ought to have known and to prevent which they failed to take reasonable measures. '*Real and immediate risk*' is defined in *Re Officer L* [2007] 1 WLR 2135 as one which is '*present and continuing*'.

83. To the extent that MSK and Tanweer (and I have not forgotten Tanweer as Mr Coltart suggested Mr Garnham had) were involved in plotting terrorist activity with Khyam, the information before us at present would indicate that they were on the periphery of the CREVICE plot. It is far from clear when the plot to bomb London crystallised to any significant extent. Suspicions were raised in the spring of 2004 as to what MSK and Tanweer were up to but, in my judgment, those suspicious meetings, even with a suspected terrorist and bomb expert, do not come close to establishing an arguable case that the authorities *knew or ought to have known* at the time that they posed a *present and continuing* threat to life. Even if it were the case that Khan and Tanweer should reasonably have been identified between February 2004 and July 2005, or between the CREVICE arrests and July 2005, and made subject to some form of surveillance or investigation, it does not necessarily follow that their subsequent activities would have been uncovered or disrupted. At best, on the material currently available, counsel have identified a possible missed opportunity or missed opportunities to keep MSK and Tanweer under surveillance. That is not enough. Although the test is whether there is an "arguable" breach, the threshold imposed by Article 2 in this respect is high.

(ii) Whether the 'investigative' obligation under Article 2 may arise even in the absence of an arguable substantive breach

84. However, Mr O'Connor maintained that the 'investigative' obligation under Article 2 would still be in play even if I were to find that it was not even arguable that there had been a breach of the substantive obligation. It is therefore necessary to look at the case law. In domestic law the starting point is the decision in

Middleton. At paragraph 3, Lord Bingham described the procedural obligation as arising:

“in circumstances in which it appears that one or other of the foregoing substantive obligations has been, or may have been, violated and it appears that agents of the state are, or may be, in some way implicated.”

At paragraph 6 of the same Opinion, Lord Bingham phrased the first question arising for determination as:

“What, if anything, does the Convention require (by way of verdict, judgment, findings or recommendations) of a properly conducted official investigation into a death involving, or possibly involving, a violation of article 2?”

85. The House of Lords in *R (Amin) v Secretary of State for the Home Department* [2004] 1 AC 653 has implicitly approved the formulation of Jackson J in *R (Wright) v SSHD* [2001] UKHRR 1399, to the following effect:

“Where the victim has died and it is arguable that there has been a breach of article 2, the investigation should have the general features identified by the court in *Jordan v United Kingdom*, at paragraphs 106-109”

Similar forms of words have been used in subsequent cases.

86. In *R (Takoushis) v Inner North London Coroner* [2006] 1 WLR 461 the Court of Appeal stated at paragraph 38:

“... we are satisfied that article 2 is engaged in the sense that it gives rise to certain obligations on the part of the state whenever a person dies in circumstances which give reasonable grounds for thinking that the death may have resulted from a wrongful act of one of its agents.”

87. In *R (Lin and others) v Secretary of State for Transport* [2006] EWHC 2575 (Admin), Moses LJ stated at paragraphs 25-26:

“25. ... The problem will be resolved if the test propounded by Lord Bingham in *Middleton* is applied, namely (1) may there have been a violation of the state’s ... substantive obligation not to take life without justification? Or (2) may there have been a violation of the state’s substantive obligation to establish a framework of laws, precautions, procedures or means of enforcement designed to the greatest extent practicable to protect life?

26. If the answer to either question is yes, and state agents may be implicated, then the inquest must satisfy the full requirements of a state-instituted investigation as explained by Lord Bingham between paragraphs 35 to 38 of Middleton.”

88. In *Alison Moss v Coroner for North and South Districts of Durham and Darlington* [2008] EWHC 2940 (Admin), Underhill J stated at paragraph 31:

“In the absence of authoritative guidance, I return to the underlying principle. A *Middleton*-type investigation is required when there is a potential case of a breach by the state of its positive obligation to protect life.”

89. In *R(Gentle) v Prime Minister* [2008] 1 AC 1356; [2008] UKHL 20 (at paragraph 6) per Lord Bingham:

“It is the procedural obligation under article 2 that the claimants seek to invoke in this case. But it is clear (see the *Middleton* case [2004] 2 AC 182 , paragraph 3, *Jordan v United Kingdom* (2001) 37 EHRR 52 , paragraph 105; *Edwards v United Kingdom* (2002) 35 EHRR 487 , paragraph 69; *In re McKerr* [2004] 1 WLR 807 , paragraphs 18–22) that the procedural obligation under article 2 is parasitic upon the existence of the substantive right, and cannot exist independently. Thus to make good their procedural right to the inquiry they seek the claimants must show, as they accept, at least an arguable case that the substantive right arises on the facts of these cases. Unless they can do that, their claim must fail”

90. In the light of the repeated references to the existence of an “arguable”, “possible”, and “potential” breach of the substantive duty under Article 2, as a pre-condition to triggering the investigative duty, it was a bold submission from Mr O’Connor that there is no evidential burden upon him to establish an arguable / potential breach of the state’s substantive obligation.

91. He relied for the most part on the decision of the House of Lords in *R (L (A Patient)) v Secretary of State for Justice* [2009] 1 AC 588 which held, on the facts of that case, no such arguable breach had to be shown in order for the investigative duty to arise. As Counsel to the Inquests observed, however, the facts were significant. JL attempted to commit suicide whilst in custody at a Young Offender’s Institution. The reasoning of the decision is encapsulated in paragraphs 58 and 59 of Lord Rodger’s speech. He said this:

“58 Precisely because the obligation on the prison authorities to protect a prisoner from himself is not absolute and depends on the particular circumstances, a suicide can occur without there having been any violation of the prison authorities' obligations under article 2 to protect the prisoner. Focusing on that point, Mr Giffin argued on behalf of the Secretary of State that article 2 did not require an independent investigation to be held unless there was some positive reason to believe that the authorities had indeed been in breach of their obligation to protect the prisoner.

59 That argument is mistaken. Whenever a prisoner kills himself, it is at least *possible* that the prison authorities, who are responsible for the prisoner, have failed, either in their obligation to take general measures to diminish the opportunities for prisoners to harm themselves, or in their operational obligation to try to prevent the particular prisoner from committing suicide. Given the closed nature of the prison world, without an independent investigation you might never know. So there must be an investigation of that kind to find out whether something did indeed go wrong. In this respect a suicide is like any other violent death in custody. In affirming the need for an effective form of investigation in a case involving the suicide of a man in police custody, the European court held that such an investigation should be held "when a resort to force has resulted in a person's death": *Akdogdu v Turkey*, paragraph 52.”

92. I was also invited by Mr Keith to consider comments to similar effect from Lord Phillips at paragraphs 38-39, Lord Mance at 113 and, in particular, Lord Brown at 97-98:

“97 My Lords, the problem of suicides in custody is all too well known. Although fewer such deaths occurred in 2005 and 2006 than in the previous three years, in 2007 numbers were tragically back to where they had been, almost two a week. The number of near-suicides in custody (genuine suicide attempts resulting in lasting serious injury) is greater still. As Lord Bingham of Cornhill pointed out in *R (Middleton) v West Somerset Coroner* [2004] 2 AC 182, 192, paragraph 5: "many of those in prison are vulnerable, inadequate or mentally disturbed; many have drug problems; and imprisonment is inevitably, for some, a very traumatic experience."

98 Unsurprisingly, therefore, the law imposes upon detaining authorities special duties with regard to safeguarding those (whether of sound or unsound mind) in their custody: a common law duty to take reasonable care for their safety (*Reeves v Comr of Police of the Metropolis* [2000] 1 AC 360 where, at p 369, Lord Hoffmann describes the duty as "a very unusual one, arising from the complete control which the police or prison authorities have over the prisoner, combined with the special danger of people in prison taking their own lives"), and a duty under article 2 of the European Convention on Human Rights "to protect them [and] to account for any injuries suffered in custody, which obligation is particularly stringent when the individual dies" (*Keenan v United Kingdom* (2001) 33

EHRR 913, paragraph 90 where the court emphasised, as it had in earlier cases, "that persons in custody are in a vulnerable position")."

93. The repeated references there to the particular vulnerability of prisoners and the state's special duty to them did not daunt Mr O'Connor. He took me to other more recent decisions which he claims have taken the jurisprudence a stage further. He relied on *Goodson v HM Coroner for Bedfordshire* [2004] EWHC Admin 2931, a case in which an elderly man died in hospital following an elective operation. His family wanted an enhanced Article 2 investigation. The Coroner refused. Richards J analysed the relevant decisions of domestic law and Strasbourg in particular in relation to medical cases. He came to a number of conclusions including one upon which particular reliance was placed at paragraph 59

"Thus the need for an effective investigation is not limited to those cases where there is a potential breach of the positive obligations to protect life."

However, Mr Keith invited my attention to another of his conclusions to the effect that most healthcare cases would not give rise to an investigative duty at all, and that in "*exceptional*" cases, such a duty would arise where "*the circumstances give rise to the possibility of a breach of the state's positive obligations to protect life under article 2.*"

94. Hickinbottom J was faced with a similar problem in *R (Humberstone) v LSC* [2010] EWHC 760 (Admin). Miss Humberstone challenged the lawfulness of a decision refusing her legal aid to be represented at the inquest into the death of her son. He died in hospital after an asthma attack. Hickinbottom J provided a useful analysis of some of the cases put before me:

"51. Given that wide span of function for an investigation, it is unsurprising - and clear - that the state may have a duty to hold an investigation into a death - or, rather, support a mechanism for investigation into a death - even where there is no reason to believe that state agents have failed to perform the primary duty imposed by Article 2. That runs as a constant theme through the authorities, but the following are particularly clear and helpful expressions: *Goodson* at [59] per Richards J, *Takoushis* at [94] and following per Sir Anthony Clarke MR, and *L* at [21]-[31] especially at [29] per Lord Phillips. The state may be sufficiently implicated in a death to trigger the obligation of investigation even without any likelihood or even

possibility of the state having breached its primary duty under Article 2 to preserve life.

The obligation on the state to investigate a death may arise in circumstances in which the deceased was not in the particular care of the state: for example, Vo v France suggests that the duty arises whenever a death occurs to a patient under medical supervision, whether that be public or private. Indeed, the trend in these cases is towards recognising that the state has an obligation to ensure that an effective investigation is conducted into *any* death in which there may be doubt as to the circumstances of death (see, e.g., Takoushis).

However, it is unnecessary to go as far in this case, because the authorities are clear that the obligation - the secondary duty on the state under Article 2 - particularly arises when the deceased was in the special care of the state, for example when the deceased dies in custody or in a state hospital. Such an investigation will frequently then be required to ascertain whether there was, in fact, a violation of the primary duty (L at [61] per Lord Rodger). In those cases, the state is sufficiently implicated in the death because the deceased was in the care of a state agent at the time of death, and because of the possibility of that agent was responsible, in some way, for the death.

However, as I have explained, a duty to investigate may arise under Article 2 even where there is no possibility that any state agent breached the primary duty under that Article (see paragraph 51 above). The decision letter is based upon the premise that a duty to investigate can only arise when there is at least the possibility that some agent of the state has breached the primary duty to protect life under Article 2. For the reasons I have given above, that is a false premise.

I have no doubt that, in the circumstances of this case, a duty to investigate did arise under Article 2. It is quite clear from Goodson (at [59]) and Takoushis (at [94]-[105]) that, where a patient dies in an NHS hospital, the obligation to investigate the death arises. Leaving aside the possibility that it might arise from other features, it arises from the fact that the patient was in the particular care of the state at the time of death, and because of the possibility of agents of the state (including individual healthcare professionals) being responsible for the death. That is a sufficient basis to found the duty.

However, in this case, that is reinforced by the fact that Miss Humberstone faces suggestions by those very state agents that she (rather than they) may be responsible in whole or part for the death. I appreciate that that is different from Khan, in which there was a suggestion of a deliberate cover-up of grossly negligent treatment; but, in my view, it does reinforce the involvement of the state in this case in a similar way.

In any event, returning to the wider features of the case, it appears from Vo v France and Takoushis, that any death in the care of any medical professionals triggers the secondary duty under Article 2."

95. Mr O'Connor urged me to adopt what he claimed was the broader approach floated by Hickinbottom J. However, the important thing to note from the above passages is that at the heart of Hickinbottom J's judgment is the fact that "the patient was in the particular care of the state at the time of death". There was "the possibility of agents of the state (including individual healthcare professionals) having been responsible for the death." It was on that basis he found that the procedural obligation was triggered. This was yet another special care case. It established no new principles.

96. The present case does not fall within the category of a special care/special need case. Although the victims were, physically, in a vulnerable position and faced difficulties in trying to protect themselves against terrorist threats they were not under the 'complete control' of the State or in an especially dangerous position.

97. Absent a special relationship, and/or an arguable breach of the Article 2 substantive obligation, to my mind, there is as yet no authority for the proposition Mr O'Connor advanced. I have no inclination, therefore, sitting as a Deputy Assistant Coroner to accept Mr O'Connor's invitation to purport to make new law.

98. In the circumstances, strictly, I do not need to consider the series of criteria that an investigation discharging this procedural duty is required to meet (see *Jordan v UK* (2001) 37 EHRR 52). I will say, however, that I would have rejected Mr Garnham's argument that if any investigative obligation was here triggered, it has been met. I accept that a court should look at the whole of the investigative process not merely one part of it. It is not simply a question of looking at the ISC reports. I also accept that a measure of flexibility is permitted, but, as has been stated many times, there are certain minimum standards below which an enhanced investigation must not fall.

99. The police investigation and the prosecution of the other alleged London bombing conspirators did not focus on the movements of MSK, Tanweer, Lindsay and Hussain in the spring of 2004. Indeed Mr Max Hill QC for the MPS was at pains to point out the conspiracy alleged against Ali, Saleem and Shakil dated in

reality from no earlier than November 2004. At the heart of that trial was an alleged reconnaissance mission to London on 16th/17th December 2004. Very few of the issues with which we are potentially concerned were at stake.

100. As far as the ISC is concerned, whatever its good intentions, it could not fulfill the role of independent investigator. It may be an independent creature of Statute but it has no true hierarchical and institutional independence, as Mr Garnham was forced to concede. Its members are appointed by and report to the Prime Minister. Some had been ministers in the then Government. In 2006 the ISC did not have an independent secretariat and no budget of its own. It was served by the Cabinet Office. During 2009 (the precise date is unclear) the ISC developed an independent secretariat but this remained hosted by the Cabinet Office. Further its budget continued to be decided and allocated by the Cabinet Office. The ISC had no research team and, its members were obliged, therefore, to work out what issues needed to be explored and files accessed. As one Chairman of the ISC once wryly observed: “if you don’t ask for it you don’t get it”. In 2006, if not 2009, they had to take things on trust. Several of the parties before me have pointed to what they claim is a lack of rigour in the Committee’s analysis and a willingness to accept what they had been told by the intelligence community. The families of the deceased and the survivors were hardly involved at all and the hearings, or meetings, were behind closed doors.

101. Even allowing for the highly exceptional circumstances of the events of 7th July 2005, and the considerable measure of flexibility which is justified in discharging any consequent investigative duty, to my mind the inquiries of the ISC standing alone or with the other inquiries would not have been enough. There may be practical difficulties in doing more, it may take some time, but it is a counsel of defeat to say the difficulties cannot be overcome before one has even embarked upon the task. The highly sensitive nature of the underlying material and the need to conduct a comprehensive inquiry may have necessitated a ‘closed’ inquiry such as that undertaken by the ISC in 2006 and 2009. It does not necessarily follow that a closed inquiry for all purposes is still required. Mr Garnham conceded in argument that questions can be asked and answered. It is possible that the answers may not satisfy the families and they may not be able to

test them as fully as they would like, but that is something we can only discover by embarking on the process.

102. Further, I accept it is important to bear very much in mind fairness to the MI5 and police officers involved. It would be quite wrong to reach conclusions on only part of the story when full examination of the facts might reveal a wholly different conclusion was appropriate. Most importantly, one would have to try to ensure officers were not unnecessarily diverted from their primary task of protecting the public and their lives were not put at risk. However, given MI5 and the police have already prepared the material and their explanations to the ISC, this additional task should not be unduly or disproportionately burdensome for them.

103. Thus, had I been persuaded of an arguable breach of article 2 or a freestanding procedural obligation under Article 2, I would have concluded the inquiries could and should go further. To my mind the investigations so far taken individually or taken together do not meet the *Jordan* standards, but an inquest is potentially capable of doing so.

The full width of a Jamieson inquest

104. My finding there is no arguable breach of the substantive obligations of Article 2, is by no means an end of the matter. I must decide whether nevertheless the “preventability” question may legitimately be explored within the confines of a *Jamieson* inquest. Although Mr Garnham argued I am not entitled as a matter of law to allow an inquest to address this issue, in reality, his opposition was largely based on his “impracticality, unfairness and danger to the country” arguments. I have already given my reasons for concluding it would be possible, fair and not disproportionate to embark upon an inquiry of this kind.

105. Mr Max Hill (perhaps to the chagrin of Mr Garnham whom he purported to support) accepted that an inquiry into the background of those he says are responsible for the bombings might be required and possible, at least as far as November 2004. On behalf of the MPS he has offered to provide to the inquest

material gathered during the CREVICE and Theseus Operations where relevant. However, he wished to limit any inquiry in time and to the open material and he disputed the assertion that the “issue” of preventability falls legitimately within the scope of the inquests. Once, and if, one accepts that some exploration of the background of MSK, Tanweer, Lindsay and Hussain was permissible, it was not clear to me why the inquiry should be necessarily limited in the way Mr Hill suggested. If, in principle, I conclude it would be right to explore what was known of them, logically the only legal limitation thereafter would be remoteness and the only evidential limitations would be national security and/or relevance.

106. In a *Jamieson* inquest, the question for the Coroner is “by what means” did the deceased meet their death. It is not “in what broad circumstances” did the deceased meet their death (see *Jamieson* itself). Mr Garnham submitted that investigating the involvement of the security services would inevitably stray into the “broad circumstances of death” and, therefore, beyond the legitimate scope of *Jamieson*. He suggested I must focus on the point at which the chain of causation becomes too remote to form a proper part of the investigation and on that basis, the role of MI5, especially in 2004, is manifestly too distant. Any inquiry into their role is bound to stretch beyond the cause of death. It is not open to me to allow evidence to be called which is not relevant to the four statutory questions.

107. Mr Garnham properly reminded me of the governing common law, Statute and the Coroners Rules, in particular rule 36 and argued I should not allow by the back door that which I could not allow by the front. In a recent judgment, Beatson J observed that, whilst a Coroner’s powers as to the scope of an inquiry are wide, they are not unlimited (*R (Butler) v HM Coroner for the Black Country District* [2010] EWHC 43 at paragraph 65). In *Butler* the claimants successfully challenged the Coroner’s decision as to the scope of the inquest not because the intended scope was unlawfully wide per se but because the means by which the Coroner reached his decision as to scope. Beatson J said this on the impact of rule 43 used to justify a broader approach:

“74....I do not consider that rule 43 enables a coroner to admit evidence that he cannot properly admit having regard to the provisions in the rules and his common law duties. But, in assessing all the factors relevant in

determining the scope of an inquest, and bearing in mind the statement of Lord Lane CJ in *R v South London Coroner, ex p. Thompson* (1982) 126 SJ 625...and his reference to the public interest, the coroner was entitled to take into account the possibility of the need to refer the matter to the relevant person or authority under rule 43”.

108. Thus, the power to produce a report under rule 43 is not conclusive, but it is relevant to the decision on scope. In *R (Lewis) v HM Coroner for the Mid and North Division of the County of Shropshire* [2009] EWCA Civ 1403 (admittedly an Article 2 case) the Court of Appeal approved the practice of obtaining the jury’s findings as to matters of fact that, whilst not causative of the deaths, might form the subject of a rule 43 report.

109. In *Lin*, Moses LJ made the following helpful observations:

“31. But it was of particular interest to learn, I appreciate not in evidential form, from the Bar what happens when no enhanced investigation takes place. Even absent an obligation on the state to initiate an investigation, the inquest must be full and fair, practical and effective. It must be public and the bereaved must have the opportunity of fully taking part: (see *Takoushis*, paragraphs 44 to 47 and paragraph 106). It is of note that in *Takoushis*...the claimant succeeded in establishing the failure of the coroner to hold a sufficiently full inquest into the failures of the system even though there was no requirement under Article 2 to hold an enhanced inquest....

32...Coroners nowadays are more concerned to conduct full inquiries with ample opportunity for participation, even absent the obligation to conduct enhanced inquests. Many, I was told, seek to conduct a full and fair inquiry and do not believe in offering the bereaved what may be perceived as a second-class inquest. Thus, following *Takoushis*, there will often be little difference in practice between an enhanced *Middleton*-type inquest and other inquests following deaths which give rise to concern both to those immediately involved and to their families”.

110. I respectfully agree. I remind myself of the guidance of the Court of Appeal in *Dallaglio* to the effect that:

“The inquiry is almost bound to stretch wider than strictly required for the purpose of a verdict. How much wider is pre-eminently a matter for the coroner whose rulings upon the question will only exceptionally be susceptible to judicial review.”

That would appear to indicate I have a broad discretion. Given the breadth of my discretion and the obvious legitimate public interest in investigating broader

issues, I have no doubt some sort of independent inquiry conducted in public and involving the families is required on issues which go beyond the immediate aftermath. It will help put minds at rest, confirm or allay the rumour and suspicion generated by ‘conspiracy theorists’ and most importantly answer those of the families’ questions that Mr Garnham concedes can be asked. To those who ask “what is the point?” I would reply, as Mr Keith suggested: to those who lost their loved ones on 7th July 2005, there may be every point.

111. An inquest is not limited to looking at the last link in the chain. Thus, we are not necessarily restricted to a review of 7th July 2005 or even to the days before. It all depends on the facts of a case how far back one can go before the events become too remote. Here, the events of the spring of 2004 are said to be relevant because we now know two of those to whom the police have attributed responsibility for the bombings were not only on MI5’s radar but were seen with a terrorist and a known bomb expert. If that is correct, to my mind that seems far from remote. I am satisfied that to embark on a consideration of MSK, Tanweer, Lindsay and Hussain’s background to this extent (if that proves possible) would be in accordance with my duty to ensure that the details of the catastrophic events of 7th July 2005 are, to adopt the term employed in *Jamieson*, “fully, fairly and fearlessly investigated” or, to adopt the words of Lord Lane CJ in *R v South London Coroner, Ex p Thompson* [1982] 126 SJ 625, in accordance with my duty to “seek out and record as many of the facts concerning the death as [the] public interest requires”. I shall, therefore, conduct an investigation into their background, what was known about them and what decisions were taken in relation to them, in so far as it relates to what happened on 7th July 2005 and in so far as I am satisfied it is consistent with the interests of national security. On the present material, this will involve going back at least to the spring of 2004 and possibly 2003. To be clear, whilst I will, of course, keep the parameters of this area of inquiry under review, my current intention is that my investigation of these issues should cover both the background of the four men and also the conduct of, and the alleged failings in, the investigations conducted by MI5 and the Police relating to MSK and Tanweer prior to their deaths.

112. I have indicated the broad ambit of the investigations that I propose to conduct with regard to the 'preventability' issue. It will be necessary following the handing down of this Decision to identify in a little more detail the lines of inquiry that are to be pursued, although, as I have said, those lines of inquiry will be kept under review as further documentation and evidence is received. It may be there is a limit as to how far those lines of inquiry can be taken, but that does not mean they cannot be explored. I should emphasize that I will not allow assertions of gross negligence, dishonesty or malpractice to be put to any individual, unless there is some basis for making them (and, of course, the boundaries set by rules 36 and 42 of the Coroners Rules 1984 must be respected in any event). Counsel, I am sure, will keep within the bounds of their professional obligations.

Designation of Interested persons

113. I turn to the question of designation of interested persons. It is important to note that the only distinction in law between those who are designated interested persons and those who are not is the entitlement to examine witnesses. The provisions are contained within rule 20 of the Coroners Rules 1984 (under the heading 'Entitlement to Examine Witnesses'), rule 20 provides:

20 Entitlement to examine witnesses

(1) Without prejudice to any enactment with regard to the examination of witnesses at an inquest, any person who satisfies the coroner that he is within paragraph (2) shall be entitled to examine any witness at an inquest either in person or by an authorised person:

(2) Each of the following persons shall have the rights conferred by paragraph (1):—

(a) a parent, child, spouse, civil partner, partner and any personal representative of the deceased;

(b) any beneficiary under a policy of insurance issued on the life of the deceased;

(c) the insurer who issued such a policy of insurance;

(d) any person whose act or omission or that of his agent or servant may in the opinion of the coroner have caused, or contributed to, the death of the deceased;

(e) any person appointed by a trade union to which the deceased at the time of his death belonged, if the death of the deceased may have been caused by an injury received in the course of his employment or by an industrial disease;

- (f) an inspector appointed by, or a representative of, an enforcing authority, or any person appointed by a government department to attend the inquest;
- (g) the chief officer of police;
- (h) any other person who, in the opinion of the coroner, is a properly interested person.

114. The absence of designation does not prevent any person from making submissions to me on the law or suggesting lines of inquiry within the determined scope of the inquests. Unusually for an inquest I have both a Solicitor to the Inquests who assists me in my investigation and Counsel to the Inquests who will question witnesses on my behalf and make submissions to me on the law. The role both of Solicitor and Counsel to the Inquests is to assist me but in an independent and impartial way. Thus, they are ready, willing and able (as they have already proved) to ensure that all possible arguments are put before me and every legitimate avenue of inquiry pursued.

Automatic Designation: 20 (2) (a)

115. I can deal swiftly with automatic designation under subparagraph (a). Attached to this ruling (marked Appendix A) are all those who have applied for designation as interested persons and who, I am satisfied, fall within category 20(2)(a) either by blood, marriage, civil partnership, executor status or because I am satisfied they lived as a partner of the deceased in an enduring family relationship.

Designation under 20(2)(d)

116. I have received two applications for designation under rule 20(2)(d); one from the East London Bus & Coach Company ('ELB') and the other from the driver of the number 30 bus, Mr. Psaradakis. Both applicants have also applied in the alternative under rule 20(2)(h). The application under rule 20(2)(d) is pursued on the basis that the applicants' act of allowing Hussain to board the bus "caused or contributed to the deaths".

117. To fall within the subsection, I must be of the opinion that the applicant holds some ‘responsibility’ by action or omission that may have been causative of the death. No- one suggests they do. The bus driver’s “action of allowing Hussain to board the bus” is, in my judgment, too remote in the chain of causation to be properly and purposively construed as an act or omission that “caused or contributed to the deaths” of the deceased. I reject the applications under 20(2)(d).

Designation under 20(2) (g)

118. The chief officers of MPS, the City of London Police (COLP) and the British Transport Police (‘BTP’) have each applied for designation under rule 20(2)(g). ‘*The chief officer of police*’ is defined by rule 2(1) of the Coroners Rules 1984 as: *the chief officer of police for the area in which the coroner’s jurisdiction is comprised*. I could take time on a nice legal argument about who qualifies as “the” chief officer of police for these purposes. I shall not. The MPS will be designated under 20(2)(g) and the other two designated either under the same subsection or using my discretion under 20(2)(h). They each and independently of each other have a great deal to offer the inquiry in relation to the emergency response and other matters. It will assist me to have them represented and entitled to ask questions.

Designation under 20(2)(h)

119. The remaining applications made under rule 20(2)(h) broadly fall into four categories. First, relatives of the deceased who do not have an automatic entitlement under rule 20(2)(a) to examine witnesses; second, organisations responsible for planning, preparing, rehearsing and implementing the emergency response to a major incident; third, other organisations or government bodies, and last, but by no means least, the survivors of the 7th July bombings.

120. The leading authority on rule 20(2)(h) is *R v Greater London South District Coroner ex parte Driscoll* (1995) 159 JP 45. Kennedy LJ held at page 9:

“In the course of the hearing we explored with counsel whether it is possible to define in general terms who for the purposes of r.20(2)(h) should be regarded as ‘properly interested persons’. I doubt if such a definition is possible, because circumstances will vary so much and, as Mr. Cooper pointed out, ‘properly interested persons’ are ordinary English words to which the coroner must be allowed to give an ordinary meaning....For my part I think that he may be assisted by Mr. Owen’s submission in reply that a properly interested person must establish more than idle curiosity. The mere fact of being a witness will rarely be enough. What must be shown is that a person has a genuine desire to participate more than by the mere giving of evidence in the determination of how, when and where the deceased came by his death. He or she may well have a view that he wants to put to the witnesses, but there is no harm in that. Properly controlled it should assist the inquisitorial function.”

Pill J observed at pages 9 – 10:

“I add a few words only on the question of the meaning of the expression ‘properly interested person in r.20(2)(h)...The word ‘interested’ should not be given a narrow or technical meaning. It is not confined to a proprietary right or a financial interest in the estate of the deceased. It can cover a variety of concerns about or resulting from the circumstances in which the death occurred. The word ‘interested’ is not used in the rule to described or identify the persons in the categories in r 2(a) to (g) but it may be said that they can each have an interest in the sense contemplated...However, all those persons are capable of having an interest in the sense in which, in my judgment, the word is then used in the additional category, category (h), included at the end of the rule. Categories (a) to (g) do provide a guide to the type of interest envisaged in paragraph (h).

It remains to consider the significance to be attached to the word ‘properly’ in paragraph (h). In the context it imports not only the notion that the interest must be reasonable and substantial, and not trivial or contrived, but in my judgment also the notion that the Coroner may need to be satisfied that the concern of the person seeking to intervene is one genuinely directed to the scope of an inquest as defined in r. 36.”

121. In *Re Northern Ireland Human Rights Commission* [2002] HRLR 35, the House of Lords considered the test to be applied in determining whether a third party should be allowed to intervene in an inquest in Northern Ireland (to which a different statutory scheme applies). Lord Woolf observed at paragraph 32:

“The practice of allowing third persons to intervene in proceedings brought by and against other persons which do not directly involve the person seeking to intervene has become more common in recent years but is still a relatively rare event. The intervention is always subject to the control of the court and whether the third person is allowed by the court to intervene is usually dependent upon the court’s judgment as to whether the interests of justice will be promoted by allowing the intervention. Frequently the

answer will depend upon whether the intervention will assist the court itself to perform the role upon which it is engaged. The court has always to balance the benefits which are to be derived from the intervention as against the inconvenience, delay and expense which an intervention by a third person can cause to the existing parties.”

Relatives of the Deceased

122. I have received a number of applications from brothers and sisters of the deceased. In some instances, these applications are in addition to other family members who have an automatic entitlement to examine witnesses pursuant to rule 20(2)(a). In other instances, no family members with an automatic entitlement have applied. In one case, a sister has applied where there is no-one who qualifies under 20(2)(a) to represent her brother.

123. Again, I could have spent time analysing the intention of Parliament in deliberately excluding siblings from those with an automatic entitlement under rule 20(2)(a). However I do not intend to do so. Given the number of issues which require resolution and the time available we have not delved into the individual circumstances of each and every brother or sister. I am satisfied given the closeness of their relationship to the deceased, the promptness of their applications and their expressed concerns for the process that they meet the criteria for a properly interested person. They have a genuine desire to participate and they may be able to assist the process. Not many are involved (under ten) and for the most part submissions on their behalf are unlikely to differ from those made on behalf of the rest of their families. By designating them now, little, if any, inconvenience or additional cost will be occasioned.

124. Therefore, as far as siblings are concerned, rather than cause unnecessary distress by questioning them closely with regard to the particular circumstances of their applications, I will designate all those siblings listed in Appendix A under my discretionary power. I appreciate that some may think I may have been somewhat generous to them in so doing, but they are all very closely related to the deceased into whose deaths I am appointed to inquire.

First Responders and Emergency Responders

125. I have received applications for designation as interested persons under rule 20(2)(h) from the following: London Ambulance Service (“LAS”), London Fire and Emergency Planning Authority (“LFEP”), Transport for London (“TFL”) and Tube Lines Ltd

126. I am satisfied that there are cogent reasons for exercising my discretion in relation to all of them. Each of these organisations had significant operational roles on 7th July 2005 as first / emergency responders in the initial aftermath of the explosion. They are in a similar position in this respect to the police forces I have already designated. They have specialist knowledge and should be in a position to offer considerable help. They should know what questions should be asked to assist the process in so far as the planning for and the actual emergency response are concerned. They may be asked to explain alleged systemic failings and/or failings of individuals. Hundreds of their employees have already provided statements to the police. The London Assembly Report has provided sufficient material to merit a proper investigation with them fully involved at all stages of the process.

Other Organisations / Government Departments

127. However, I was not persuaded that the same arguments apply to the ELB or their driver Mr. Psaradakis. There may be similarities between the ELB and TFL (and Tube Lines Ltd) but, as Counsel to the Inquests observed, there are important distinctions. First, whilst the explosions affected both, TFL had a significant role to play in the operational response; ELB did not. Second, there has not yet been any suggestion that the ELB may be at risk of criticism. Third, although Mr. Psaradakis may be summoned as a witness, his employer can adequately support him without requiring designation. Finally, absent designation, the ELB will not in any way be precluded from attending the public hearings, making submissions on the law or suggesting lines of inquiry should they wish to. The same goes for Mr. Psaradakis who I note, perhaps for

understandable reasons, has not shown a wish to participate in these proceedings personally.

128. As far as West Yorkshire Police (WYP) is concerned, I am satisfied they should be designated under my discretionary powers. The reasons are obvious. MSK, Tanweer and Hussain all resided within their area. The inquests may touch upon their background, and their community. WYP will no doubt be able to assist me with such matters. Plus, and importantly, given the determined scope of the inquests, their role in events prior to 7th July 2005 is likely to come under scrutiny and the organisation may be at risk of criticism.

Secretary of State for the Home Department and the Security Service

129. The Secretary of State and the Security Service have reserved their position on whether they wish to be designated as properly interested persons until after the determination of scope.

Survivors

130. I turn to the survivors. I have not found this an easy decision. I have read and heard some moving accounts about and from them. They have suffered so much. In addition to Mr Psaradakis to whom I have referred above, eighteen of them wish to be designated as interested persons. Some are represented by Mr O'Connor and his Instructing Solicitors, some are unrepresented. I have read the submissions of all of them and given those unrepresented the chance to address me in open court or send me comments in writing. The unrepresented include, Mr. Tim Coulson (who provided first aid in the affected carriage at Edgware Road) and Ms. Annaik Guitteny (a passenger in the affected carriage at King's Cross/Russell Square).

131. As was emphasised by Counsel to the Inquests at the hearing on 25th February 2010, each survivor applicant is 'unique, different and distinct' and I have, therefore considered each application on its individual merits.

132. Mr O'Connor based his applications on the alleged engagement of Article 2 and on the breadth of my discretion under 20(2)(h). Given everything the survivors have been through and the fact that many of them may well be called to give evidence at the inquest, he argued it makes sense and it would be humane to designate them as interested persons. They have a genuine desire to participate and they have much to offer. If they are not so designated, their lawyers will receive no further funding to represent them and will not, therefore, help prepare them for the inquest. They are traumatised witnesses who, he argued, need very sensitive handling to optimise the help they can give to the inquest.

133. I did ask Mr O'Connor to focus on whether there are any additional issues the survivors would wish to raise or any further lines of inquiry they wish to pursue that he would not be pursuing on behalf of the bereaved families he represents. He failed to identify any. On the contrary, he indicated that their interests coincide. Had they not done, he and his Instructing Solicitors said they would not have felt able to represent them all in the Judicial Review proceedings. However, Ms Rachel North, one of the survivors, was able to explain in a very moving statement read to the court what it would mean to her to be designated an interested person. She feels it would make a considerable difference. She would feel a proper part of the process and it would enable her to see documents.

134. Given my ruling on Article 2, part of Mr O'Connor's submissions fall away. If I am correct in finding the Article 2 investigative duty does not arise as a consequence of the deaths, it plainly cannot be prayed in aid by the survivor applicants. I should, however mention that had I been forced to decide this point I would have required a great deal more help on whether all the survivors should be treated as falling within the category of a "near miss". Obvious distinctions can reasonably be drawn between those travelling in the carriages or on the bus in which the explosions occurred and those who were not. I also had concerns about Mr O'Connor's legal analysis which, as it seemed to me, failed to make the distinction made by domestic and European law between cases where death has occurred and cases where it has not. The requirements of an Article 2 investigation in "near death" cases may be less stringent than in cases where death has occurred (see the speeches of Lord Phillips and Lord Brown in *R (on the*

application of JL v Secretary of State for Justice [2008] UKHL 68). In this respect the interests of the bereaved families have a 'further dimension of gravity'.

135. However, I need not dwell upon my concerns and I return to the question in hand: should I exercise my discretion in favour of designating the survivors under rule 20? I needed no reminding of the extent of the suffering of those who survived the bombs. The Scene Reports make graphic and extraordinarily distressing reading even for those of us used to horrific criminal acts. I needed no persuading that many survivors will have a valuable role to play in the resumed inquests. However, at times I confess Mr O'Connor's submissions, with great respect to him, seemed to me to be more about providing a mechanism for the survivors to obtain legal representation than the legitimate scope of designated person status under rule 20. These are inquests under a particular statutory regime. They are not a public inquiry under the Inquiries Act 2005 or otherwise. I have an independent legal team available to the survivors and to others to ensure issues they may wish to pursue are brought to my attention and, if I think it appropriate, canvassed in evidence. To my mind it does not require separate representation and therefore separate public funding to ensure their interests are properly protected. I intend to make sure survivors feel they are a proper part of the process. To that end, I have already authorised the release of the Scene Reports to those survivors who have signed the confidentiality undertaking. Survivors may attend the proceedings whenever they wish. Some will be called to give evidence. I shall encourage them to use the services of the Inquest Team and to ensure that we pursue all legitimate lines of inquiry and ask all relevant questions. I will read and hear submissions from them if they wish to submit them. I will ensure the process is as open as possible. A transcript of the public proceedings will be published each day on the website thereby enabling the survivors to follow them in detail. I will ensure that all survivors are treated with care and sensitivity.

136. However, as sympathetic as I feel towards them, I must bear very much in mind the primary functions of an inquest which are to inquire into the four statutory questions about the deaths and I must bear in mind the views of some of the bereaved families. I take Mr O'Connor's point that it was not clear exactly how

many bereaved families are united in opposing the application to designate the nineteen survivors as interested parties, but in my judgment, there were enough. There was clear anxiety on the part of a significant number. If Mr O'Connor or any of the survivors in person had been able to identify for me issues upon which they have a unique perspective, which could only properly be reflected by their being able to ask questions, I might have decided differently. They were not. In those circumstances, I can see no proper legal basis for designating the survivors as interested persons in addition to all the others designated. There will be numerous parties represented and asking questions at the resumed inquests and there may be unrepresented parties wishing to ask questions. I will have to control them all (within reason) if I am to keep to the strict timetable I wish to set. I want the bereaved families and the survivors to have as many answers as possible and preferably by the end of the year. Adding to the list of those entitled to ask questions I fear will not assist that process.

Jury

137. I turn to the final and vexed question of whether to empanel a jury. I confess to a degree of surprise that Mr O'Connor, Ms Gallagher and their Instructing Solicitors saw fit to take advantage of an opportunity I gave to the parties to amplify their submissions on the effect of section 8 of the 1988 Act to withdraw what appeared to me to be a clear concession Mr O'Connor made, on instructions, in open court. The situation arose in this way: at the beginning of the hearing most of the submissions before me were neutral on the issue of a jury or argued strongly for empanelling one either under the mandatory provisions of section 8(3)(d) of the 1988 Act or under my discretionary powers under section 8(4). Mr Patrick Gibbs QC ploughed a lonely furrow arguing positively that the mandatory provisions of section 8(3) were not triggered and, that, in any event, given the issues here, it would be impractical to use the services of a jury. As the week developed more people began to see the force in his oral submissions, largely because the families and survivors present heard Mr Garnham's warning, loud and clear, that if I am forced to empanel a jury, an inquiry into the intelligence background is "impossible". Their priority was and remains a full and fair investigation into the aftermath and the background of the bombers. If, to achieve

this, they must sacrifice a jury (this being the choice posited by Mr Keith) they are prepared to do so.

138. Towards the close of submissions I asked each counsel in turn where they stood on whether the mandatory provisions of section 8(3)(d) were triggered and whether they still advanced a positive case for a jury (under the mandatory or discretionary provisions). One by one (save for Mr Neil Saunders who needed time to take instructions) they said they did not. I asked Mr O'Connor in terms whether he advanced a positive case on the question of a jury. Given the context of what had gone before, I believed it was quite clear what I meant by that. He said no. Because the submissions had changed, and because Mr Saunders needed time to take instructions, Mr Keith suggested I invite further written submissions from counsel on the effect of section 8(3)(d). This I did, intending that counsel should amplify them not change them. Nevertheless, that is exactly what Mr O'Connor and Ms Gallagher have done. They now argue that the concessions made at the hearing were a "transparent device" to get round the mandatory provisions of section 8(3)(d). If so, they gave the clear impression they were lending themselves to that "device". If, having left court they realised the concession was wrongly made or their instructions had changed, I would have expected to be alerted to that fact within a very short time. However, I was not. This meant the other parties prepared their submissions and I spent the week working on my rulings ignorant of their change of heart. It has also meant that I have received written submissions contradicting what appears on the official transcript of the proceedings published on the internet.

139. Mr O'Connor and Ms Gallagher very belatedly urged me to consider a path which could involve the use of section 17A of the 1988 Act. They suggested I should resume the inquest in relation to the immediate circumstances of the bombings with a jury and the Government could then order an inquiry with me as its Chair under the Inquiries Act 2005 to explore the issue of "preventability". What this line of argument fails to address is the fact that the power to order a public inquiry lies with the Minister not me. So far, he or she has refused an inquiry. I must still decide the legitimate scope of these inquests and whether a jury is necessary or desirable.

140. On the question of whether a jury is desirable, I am a firm believer in the jury system in criminal cases and I confess that when I was first appointed with responsibility for these inquests I was of the preliminary view that even if a jury was not mandatory under the 1988 Act, I would wish to empanel one in the exercise of my discretion. My view remained much the same until I began the hearing on Monday 26th April 2010. However, by the end of the week I too had come to a different conclusion. Mr Garnham outlined the enormous practical difficulties of conducting an inquiry, in this case, into alleged intelligence failings with a jury. Some of his arguments I found more compelling than others, but there can be no doubt it will be easier to have a full and effective hearing without a jury. It would take less time and would cost less money. It would mean the families and the survivors have not only a series of findings, they have a series of reasoned findings. Seeing the way some of the parties were swayed by these arguments and were moving towards Mr Gibbs' position, Mr Garnham submitted that if I resume the inquests on the "preventability issue" the provisions of section 8(3)(d) of the 1988 Act would inevitably be triggered. It was his contention that I would therefore be acting irrationally to find otherwise. This seems to be Mr O'Connor's present approach.

141. The statutory duty to hold an inquest is contained in section 8 of the 1988 Act. Section 1(a) applies here in that each of the 52 died "a violent" and "an unnatural death". Section 8(3) identifies four set of circumstances in which I am obliged to conduct an inquest with a jury. Section 8(4) provides me with the residual discretion to summons a jury if it 'appears' to me that there is 'any reason' to do so. Section 8(3) and 8(4) provide:

(3) If it appears to a coroner, either before he proceeds to hold an inquest or in the course of an inquest begun without a jury, that there is reason to suspect—

(a) that the death occurred in prison or in such a place or in such circumstances as to require an inquest under any other Act;

(b) that the death occurred while the deceased was in police custody, or resulted from an injury caused by a police officer in the purported execution of his duty;

(c) that the death was caused by an accident, poisoning or disease notice of which is required to be given under any Act to a government department, to any inspector or other officer of a government department or to an

inspector appointed under section 19 of the Health and Safety at Work etc Act 1974; or

(d) that the death occurred in circumstances the continuance or possible recurrence of which is prejudicial to the health or safety of the public or any section of the public,

he shall proceed to summon a jury in the manner required by subsection (2) above.

(4) If it appears to a coroner, before he proceeds to hold an inquest, on resuming an inquest begun with a jury after the inquest has been adjourned and the jury discharged or in the course of an inquest begun without a jury, that there is any reason for summoning a jury, he may proceed to summon a jury in the manner required by subsection (2) above.

I shall not dwell upon the rest of section 8 albeit it must inevitably inform my approach to the interpretation of the section and the Parliamentary intention.

142. I have already determined the scope of the inquests before determining the relevance and applicability of sections 8(3) and 8(4) as I was bidden to do in *R (Paul) v Deputy Coroner of the Queen's Household* (paragraph 42). As I have indicated it is too early to come to firm conclusions on the exact scope of the inquests, but in broad terms I have decided to allow exploration of the background of MSK, Tanweer, Lindsay and Hussain and exploration of what happened in the immediate aftermath of the bombings.

143. Counsel to the Inquests have compiled a summary of propositions of law on the meaning of section 8(3)(d) which I gratefully adopt. In *R v HM Coroner, ex parte Peach* [1980] 1 QB 211, consideration was given to the meaning of 'circumstances' in section 8(3)(d). Sir David Cairns held at 228:

"The reference to 'continuance or possible recurrence' indicates to my mind that the provision was intended to apply only to circumstances the continuance or recurrence of which was preventable or to some extent controllable. Moreover, since it is prejudice to the health or safety of the public or a section of the public that is referred to, what is envisaged must I think be something which might be prevented or safeguarded by a public authority or some other person or body whose activities can be said to affect a substantial section of the public".

I should add that in *Paul* the court questioned the use of the adjective "substantial" to qualify "section of the public", pointing out that they could find no support for its use in the statute itself.

144. It is not necessary to establish a causative link between the ‘circumstances’ of which the continuance or possible recurrence is prejudicial to the health and safety of the public and the deceased’s death (*R v Inner London North District Coroner, ex parte Linnane* [1989] 1 WLR 395). The prospect of recurrence required for the section to be applicable is low; it is the possibility of recurrence and not any higher chance (*Paul* at 32).

145. If the circumstances that are prejudicial to the health and safety of the public suggest a system failure, the subsection is likely to be triggered. If the circumstances suggest an individual failure, the subsection is unlikely to be invoked (*R v HM Coroner, ex parte Wright* [1996] 35 BMLR 57 at 59). However, significantly, the assessment of the possible prejudice to the health and safety of the public is made *at the time of the inquest* and not at the time of the death. If steps have been taken since the death such that there is no prospective risk, the subsection is not invoked (see *R (Takoushis) v Inner North London Coroner* [2006] 1 WLR 461 at paragraph 64). The section uses the present tense not the past. It is looking to preventing the same circumstances continuing into or recurring in the future. It is not looking at whether the circumstances could have been prevented in the past. Hence my rejection of Mr Garnham’s argument that I would necessarily be acting irrationally to allow an exploration of the preventability issue and not summon a jury. Even if the bombings were preventable, even if lives could have been saved, it does not mean the situation remains the same 5 years on.

146. In *Paul*, where the Divisional Court held that the subsection applied and that a jury was required to be summoned, Smith LJ observed at paragraphs 37 – 39:

“It is true that the deaths with which these present inquests are concerned occurred as a result of a collision on a road. However, the circumstances leading up to this collision were very unusual and had additional features to those found in a more usual type of road accident. As appears from the Stevens report, the car carrying the Princess of Wales and Mr. Al Fayed was being pursued by paparazzi moments before the fatal crash...
....It is likely that there will be a recurrence of the type of event in which the paparazzi on wheels pursued the Princess and Dodi Al Fayed. It is not only

members of the Royal Family and their friends who receive this unwelcome attention; any celebrity is vulnerable. Not only is the safety of the person potentially put at risk but there may well be a risk to bystanders. In our view, occurrences such as this are prejudicial to the safety of a section of the public. It is possible that this danger could be prevented by legislation or other means”.

147. Every case must be decided on its own facts and in *Paul* the facts were exceptional. The circumstances of the deaths extended beyond the crash itself. Here too the facts are exceptional and the circumstances extend beyond the four explosions themselves. Sadly, here too there is the possibility that events comparable to those of 7th July 2005 may recur and threaten the health or safety of the public. Since January 2010, the threat level in the United Kingdom has been ‘Severe’ (defined as ‘an attack is highly likely’). Allegations of systemic failings have been made (for example in the London Assembly’s report and in the ISC’s reports). At first blush, therefore, one can understand Mr Garnham’s submission that, much as some of the parties may want me to have a choice in the matter, in fact I have none.

148. However, with the assistance of the Inquest Team I have pressed counsel on the extent to which allegations of systemic and individual failings are made and the extent to which, if any, failings are said to persist today. Mr Coltart, Mr Patterson and Mr Saunders have kindly responded with a careful and helpful analysis of the possible failings and the attempts made to remedy them. Mr O’Connor and Ms Gallagher, on the other hand, have repeated their summary of the alleged failings both systemic and individual, but claim they cannot assist me on the extent to which the failings have been remedied. They make a number of criticisms of the various investigations undertaken to date and claim they cannot “sensibly accept that any failings have been dealt with to the extent that there is no possibility of recurrence”. They insist that by conceding a jury is not mandatory, it would undermine the very reasons why their lay clients are entitled to an inquest with a broad scope.

149. I shall first consider the issue of ‘alleged intelligence failings’. Combining all the submissions the following appear to be the main headings said to be obviously

worthy of further exploration. Others may appear on more detailed review. I adopt Mr Saunders' summary.

150. Both the first and second ISC report ("ISC1" and "ISC2") examined the intelligence that the security services and the police had in respect of the bombers. The reports recognised that MSK and Tanweer had associations with people such as Khyam and Mahmood who were under investigation as part of Operation CREVICE. The "untested" explanation was that MSK and Tanweer were not classified as "essential" targets and it was not considered necessary or proportionate to put them under surveillance. Further, MI5 concentrated on known targets, rather than focusing time and resources on unknown or potential threats. This, it was said, could be categorised as failures both systemic and individual: systemic in terms of the method of analysis employed by the Security Service, and individual in terms of human choices made not to pursue certain leads. A lack of resources provided by the State may have contributed to the failure to give proper priority to the threat posed by MSK, Tanweer, Lindsay and Hussain. Communications between MI5 and regional police forces left a great deal to be desired. Further, I was reminded ISC 1 and ISC 2 pointed to evidence that MSK and Tanweer attended extremist training camps in Pakistan in 2004-2005, a fact not detected by the police and MI5. Again, it was said this failure could be categorised as both systemic and individual: it is systemic in terms of the method of analysis employed by the security services, and individual in terms of human choices made not to pursue certain leads. Mr O'Connor added complaints about record keeping and the database.

151. However, I was informed that significant progress has been made in the way investigations of this kind are now handled, as follows:

i. Identification and prioritisation of targets: The need to re-focus resources was recognised by ISC 1, paragraph 130 A 'legacy team' has been established in order to follow up, re-assess and if necessary re-prioritise individuals identified in earlier operations, but not pursued (ISC 2, paragraph 167). The government has developed and implemented strategies for addressing the speed of radicalisation.

On the basis of the lessons learned so far, it is fair to assume that further measures have been taken since ISC 2 and will be taken as a result of internal reviews.

ii. Resources: The resources of MI5 were increased significantly between 2004 and 2007 (ISC 2, paragraphs 161-162). In its Response to Terrorist Attacks in February 2010, the Home Office stated:

“That the United Kingdom faces a grave threat from terrorism cannot be disputed; we are therefore pleased that budgets for both counter-terrorism policing and the security services have increased substantially.” (paragraph 50)

iii. Overseas Training Camps: MI6 and GCHQ have received increased funding since 2004, which has allowed them to increase intelligence gathering and improve coverage of terrorist-related activity overseas, including liaison with overseas authorities. Attendance at extremist training camps has been made a criminal offence. (ISC 2, paragraphs 188-192)

iv. Co-operation between police and security services: The relationship between MI5 and the police has changed dramatically. A programme of regionalisation has been accelerated, allowing MI5 to improve their intelligence coverage across the UK. Counter-Terrorism Units have been created in the West Midlands, Greater Manchester, West Yorkshire and Thames Valley. ISC 2 describes this as “one of the most important changes arising from the lessons of 7/7”, and states that “it has brought considerable improvements to joint investigations and intelligence and information sharing.” (paragraph 201)

152. I turn to the emergency response. It was said that analysing possible individual failings may be difficult until the scene reports have been fully considered. The potential systemic issues are said to be much clearer. Amongst other things I have been asked to consider are: shortcomings in communications above and below ground; an overreliance by the emergency services on mobile phones, which jammed through over use; decisions re the mobile phone network taken by emergency responders; a failure to close the bus network; possible delays in emergency responders reaching the injured passengers and, if so, the reasons for such delays; the provision of emergency lighting and proper medical supplies;

the triage process and the question of whether the victims received medical treatment in a timely fashion and appropriate to their injuries; whether they were removed from the tunnels and transported to hospital in a timely fashion; whether injured passengers who ultimately died might have survived had they received appropriate and more timely medical treatment; whether, having regard to all the circumstances, emergency responders organised their tasks in an appropriate and concerted manner, and showed appropriate division of roles; and inadequate record-keeping in relation to the response.

153. These possible failings have been gleaned from the reports available. Mr O'Connor argued the inquiries to date have not gone far enough and reminded me that even the London Assembly called for a public inquiry. On that basis he suggested it would be pure speculation to assert the failings have been remedied. However, it is clear to me that much has been done to ensure that systems are now in place which are better equipped to deal with a catastrophe on this scale. All the organisations involved in the emergency response have carried out internal reviews and have co-operated and are co-operating with other agencies on external reviews. They now have a far more co-ordinated approach to disasters on this scale. Lessons have clearly been learned. The following is summary of the improvements, as provided by counsel, that have been made and are in the process of being made monitored by amongst others the London Assembly and the London Regional Resilience Forum (LRRF). The latter reported in September 2006 under the heading "Looking Back, Moving Forward".

i. Communications: The major issue of communications on the London Underground has been addressed. New systems of communication including the Connect Radio infrastructure and Airwave are being or have been installed on the Underground. Airwave should be operational within all the deep sections of the Underground allowing communication between users above and below ground. All Underground stations now have portable handheld loudhailers amongst their emergency equipment.

ii. Deployment of Emergency Responders and Response times: The relevant emergency services have carried out an overhaul of their systems, for example the

London Ambulance Service has actively improved its response systems. They have confirmed that the installation of Airwave has progressed well. All LAS operational vehicles have a GPRS data system and officers managing incidents are given Airwave radios. Similarly, Airwave radios have been provided to all police forces in England, Scotland and Wales and the MPS has confirmed that Airwave radios work on the Underground to an operationally acceptable level. Emergency services across London meet with Airwave regularly to discuss inter-agency issues. Lessons are shared at these meetings. There is a range of back-up communication systems in the event that digital communications do not work. The process for declaration of a major incident has been reviewed and each of the emergency services will attend a major incident even if they do not regard it as such.

Identification of Locations: The London Fire Brigade, in conjunction with Transport for London, has developed a new system for identifying the location of incidents on the underground network, to which the LAS has access and the MPS may have access.

Storage and Availability of Medical Equipment: this has either been addressed or is in the process of being addressed, with co-ordination between the NHS, Network Rail and London Underground to identify locations for the storage of mass casualty equipment and the provision of first aid kits. All underground stations have medical supplies and supplies in major transport hubs are being further built up. There are now fully-stocked equipment support vehicles located permanently in central London, and additional supplies are to be carried in twenty-five training officer vehicles across London. Transport for London has also undertaken an emergency equipment review. Larger first aid kits are being supplied to stations following consultation with the NHS, along with other emergency equipment such as hands-free torches, paper overalls and masks to prevent dust inhalation. All rolling stock has emergency lighting. Safety posters have been distributed.

The Recording and Sharing of information: recommendations on the keeping of accurate records of the response are being implemented as are recommendations as to the notification of hospitals in the vicinity of a major incident.

My conclusions on the effect of section 8(3)(d) and section 8(4) of the 1988 Act

154. To my mind, whatever doubts Mr O'Connor may have about the willingness of the intelligence community to learn from experience, it appears that they have done so. On any view the indications are that significant improvements have been made. It may be that these are not enough and it may be that the ISC did not press MI5 on some of the alleged failings as robustly as the families would like, so that more may come to light. It is impossible to say at this stage of the process. All I know at the moment is that the alleged systemic failings, lack of co-operation, lack of resources, the method of targeting individuals have been addressed and in a significant way. The Local Counter Terrorism Units, in particular, have led to considerable improvements in joint investigations and intelligence/information sharing. As far as the alleged failings in the database system are concerned, as it seemed to me, these were in truth not so much alleged failings in the system of recording information as allegations that the data may not have been analysed correctly by individuals so that no-one "joined up the dots".

155. My current view is that the alleged intelligence failings are far more likely to be attributed to individuals than to the system. The complaints, for the most part are directed at the judgement calls that were made at the time. What in truth the families and the survivors want to know is: whether a "proper" analysis of the meetings between MSK, Tanweer, Khyam and the bomb expert would have revealed the true nature of the threat MSK and Tanweer posed; whether MSK was put in the correct category of target and why, in any event, the decision was made not to place him under surveillance.

156. Given the way some of the submissions have been phrased, I must emphasise again that the families and survivors raise these allegations as possibilities. No findings have yet been made in these inquests. Counsels' assertions are not facts unless and until they are established to the satisfaction of a court or inquest by evidence.

157. I accept the standard for triggering the mandatory provisions of section 8(3)(d) does not appear to be a high one: “a reason to suspect” a possible recurrence is all it takes. However, if one sets the bar too low, any violent or unnatural death may recur and would lead to the summoning of a jury. This cannot have been Parliament’s intention. More is required than simply a possible recurrence. In *Takoushis*, Sir Anthony Clarke MR emphasised that section 8(3)(d) is essentially forward looking, in that it is concerned with ‘*the prevention or reduction of the risk of future injuries in similar circumstances*’.

158. If the circumstances still exist or could recur and they threaten the present and future health and safety of the public, I accept, as I must, that the provisions of section 8(3)(d) are triggered and a jury is mandated. However, if that situation has been remedied, a jury is not essential. To my mind there is presently no reason to suspect, given the various improvements made, to the way intelligence is gathered, analysed and shared that any alleged systemic or individual intelligence failings do persist.

159. I reach the same conclusion in relation to the emergency response. There are, of course, clear allegations that there may have been systemic failings, for example in the communications systems and the provision of first aid. However, the London Assembly for one has done an extremely thorough job of evaluating the emergency responses and of making recommendations for significant improvements. Others have done and are doing the same. Organisations continue to monitor the implementation of their recommendation. Mr O’Connor was unable to identify for me any significant failing which has not been addressed. Accordingly, on the material *presently* before me, I find no reason to suspect that the deaths occurred in circumstances the continuance or possible recurrence of which *is* prejudicial to the health or safety of the public or any section of the public.

160. In the circumstances I do not need to dwell upon the arguments of Mr Gibbs on the law (which Mr Coltart and others doubted). In summary Mr Gibbs argued, on behalf of the British Transport Police, that, for the purposes of s.8(3)(d), the relevant ‘circumstances’ in this case relate only to ‘the desire to kill’ and the ‘desire to save life’. As these basic human instincts cannot be prevented or

controlled by rules or legislation, section 8(3)(d) is not engaged. Mr Coltart suggested this argument was premised on a restrictive interpretation of scope and gives insufficient weight to the fact that no causative link need be established between the relevant ‘circumstances’ and the deaths in question. Section 8(3)(d) may be engaged by issues of a wider, contributory nature. I was inclined to agree with Mr Coltart, but for reasons I have already given, it matters not. I agree with Mr Gibbs in the result.

161. Finally, on the question of the application of section 8(3)(d), I must add for the avoidance of doubt that I accept the submissions of Mr Coltart, Mr Patterson and Mr Saunders, supported by others, that the fact that sufficient action may have been taken to disengage section 8(3)(d) does not render consideration of such action irrelevant at the inquests. On the contrary, the very fact that so much improvement has been necessary may illustrate the extent to which the systems were deficient in the first place. Learning lessons for the future forms but one part of a coroner’s inquest. There remains an overwhelming public interest in exploring the broad background in which the 52 victims met their deaths. I shall not, therefore, prevent the parties from investigating whether the present confidence in improvements made is misplaced.

162 If none of the mandatory criteria for summoning a jury are invoked, section 8(4) provides me with a discretion to summons a jury if it appears that there is any reason to do so. I have considered whether to exercise that discretion. I have been provided by Counsel to the Inquests and Mr Gibbs with a useful summary of broad propositions relevant to the exercise of my discretion. I gratefully adopt them and add my comments.

163 There are several reasons why some suggest that it is more appropriate for a professional judge to hear the inquests:

(i) The inquests are likely to require investigation and consideration of a considerable volume of material placing a heavy burden upon any jury. That said, juries empanelled in terrorism and serious fraud cases are expected to deal with a comparable amount of material, and, in my experience, cope well.

(ii) The inquests will require the examination of sensitive intelligence material. It is not possible at this stage to identify the nature of the intelligence material that might be relevant and admissible. Much will depend on the extent to which I find it will be necessary to explore the raw intelligence material, and on the response of the Secretary of State (and other interested agencies). They have assured me of their fullest co-operation. The absence of a jury would not, in any event, remedy the likely difficulties associated with the disclosure of sensitive material to the properly interested persons. However, I must have at the forefront of my mind Mr Garnham's powerful submission that, on the facts of this case, a jury will inevitably inhibit a full and fair investigation certainly of the intelligence material.

(iii) A jury would be unable to give a reasoned explanation for its conclusions, but would only provide brief answers to a limited number of questions. In the absence of a jury, I could publish a full explanation of my conclusions. This may more suitably meet the expectations of the bereaved families, survivors and the wider public, including the "conspiracy theorists".

(iv) The value of a jury's views as a tool for assessing and improving procedures is limited in circumstances where further investigation of policies and procedures, as distinct from facts, is required (see *R (Scholes) v Secretary of State for the Home Department* [2006] EWCA Civ 1343 at paragraph 70). However, arguably this is somewhat tempered by my power to leave factual findings to a jury on issues which may inform any report under rule 43 of the Coroners Rules 1984.

(v) The jury will be exposed to distressing evidence and material. Sadly, that is far from uncommon and steps can be taken to minimise distress for all those involved.

(vi) The hearing of the inquests by a jury will increase the length of time and the costs of the inquests.

164. I can state my conclusion on the exercise of my discretion briefly. All parties seemed agreed that if I concluded the scope of the inquests must include

alleged intelligence failings, my sitting with a lay jury without security clearance would inhibit, if not entirely prevent, a full and fearless investigation. A jury may render the inquests virtually meaningless on that issue, which, I repeat, is extremely important to the families and survivors. It is one of the reasons some of them have been pressing for a public inquiry. To my mind, that consideration alone is enough to answer the question of whether to exercise my discretion. I do not need to dwell upon the other possible difficulties.

165. I should add I am aware of the acute public interest in the events of 7th July 2005 and that some may feel a jury would provide the requisite levels of public scrutiny. That was how I felt until I heard the arguments and considered the material in greater detail. I can only assure those of that view, that I have given the matter a great deal of thought and I shall keep it under review, aware of my powers under sections 8(3)(d) and 8(4) to summon a jury should I consider it mandatory (under section 8(3)(d)) or desirable (under section 8(4)).

APPENDIX A

SUMMARY OF RULINGS ON APPLICATIONS TO BE DESIGNATED AS INTERESTED PERSONS

Family members designated as Interested Persons

Deceased	Designated as of right under r.20(2)(a)	Designated as an exercise of discretion under r.20(2)(h)
Adams, James	Mr & Mrs Adams (parents)	
Badham, Samantha		Louise Badham (sister)
Baisden, Lee	Denise Baisden (mother) Paul Groman (partner)	
Beer, Philip	Kim Beer (mother)	
Brewster, Michael	Sandra Brewster (wife)	
Cassidy, Ciaran	Mr & Mrs Cassidy (parents)	Lisa Cassidy (sister)
Chung for Yuen, Rachelle	Mr Chung for Yuen (husband)	
Ciaccia, Benedetta	Roberto Ciaccia (father)	
Daplyn, Elizabeth	Michael Daplyn (father) Robert Brennan (partner)	
Downey, Jonathan	Veronica Downey (wife)	
Ellery, Richard	Mr & Mrs Ellery (parents)	
Fatayi-Williams, Anthony	Dr Fatayi-Williams (father)	
Foulkes, David	Mr & Mrs Foulkes (parents)	
Frederick, Arthur	Astrid Wade (son)	
Gluck, Karolina		Mrs Gluck-Pawlik (sister)
Gordon, Jamie	Pairose Bond (mother)	
Gray, Richard	Louise Gray (wife)	
Gunoral, Gamze	Ahmed Tawfiq Ghayas (uncle & personal representative)	
Harris, Lee	Mr & Mrs Harris (parents)	
Hart, Giles	Mrs Gorzynska-Hart	

	(wife) Maryla Hart (daughter)	
Hartley, Marie	David Hartley (husband)	
Hyman, Miriam	Mr & Mrs Hyman (parents)	
Ikeagwu, Ojara	Okorafor Ikeagwu (husband)	
Jain, Neetu	Ramesh Jain (father)	Reetu Jain (sister)
Jenkins, Emily	Mr & Mrs Jenkins (parents)	
Johnson, Adrian	Catherine Johnson (wife) Mrs PA Johnson (mother)	
Jones, Helen	Liz Staffell (mother)	
Levy, Susan	Harry Levy (husband)	
Mather, Shelley	John Mather (father) Kathryn Gilkison (mother)	
Matsushita, Michael	Mr & Mrs Matsushita (parents) Rosie Cowan (partner)	
Mayes, James	Mr & Mrs Mayes (parents)	
Moffat, Anne		Chris Moffat (brother) Tom Moffat (brother)
Morley, Colin	Rosalind Morley (wife) Gavin Morley (son) Jake Morley (son) Oliver Morley (son)	
Mozakka, Behnaz	Nader Mozakka (husband) Saba Mozakka (daughter) Saeed Mozakka (son)	
Nicholson, Jennifer	Julie Nicholson (mother)	
Parathasangary, Shyanuja	Mr & Mrs Parathasangary (parents)	
Rosenberg, Anat	Naomi Rosenberg (mother)	
Russell, Philip	Mr & Mrs Russell (parents)	
Sharifi, Atique		Farishta Sharifi (sister)
Slimane, Ihab	Emna Slimane (mother)	Nouhal Slimane (sister) Nissem Slimane (sister)

Small, Christian	Sheila Henry (mother)	
Stevenson, Fiona	Mr & Mrs Stevenson (parents)	Andrea Watson (sister)
Suchocka, Monika	Edmund Suchocki (father)	
Taylor, Carrie	Mr & Mrs Taylor (parents)	
Trivedi, Mala	Ashok Trivedi (husband)	
Webb, Laura	Hazel Webb (mother)	David Webb (brother) Robert Webb (brother)
Wise, William	Christine Wise (wife)	

Organisations designated as Interested Persons

Organisation	Provision under which designated
British Transport Police	Designated as a matter of discretion under r.20(2)(h), without deciding whether r.20(2)(g) applies
City of London Police	Designated as a matter of discretion under r.20(2)(h), without deciding whether r.20(2)(g) applies
London Ambulance Service	Designated as a matter of discretion under r.20(2)(h)
London Fire and Emergency Planning Authority	Designated as a matter of discretion under r.20(2)(h)
Metropolitan Police Service	Designated under r.20(2)(g)
Transport for London	Designated as a matter of discretion under r.20(2)(h)
Tube Lines Limited	Designated as a matter of discretion under r.20(2)(h)
West Yorkshire Police	Designated as a matter of discretion under r.20(2)(h)

Persons & Organisations not designated as Interested Persons

Person / Organisation not designated	Decision
Blundell, John	Refused under r.20(2)(h)
Brown, Andrew	Refused under r.20(2)(h)
Cole, Joanne	Refused under r.20(2)(h)
Coulson, Tim	Refused under r.20(2)(h)
East London Bus & Coach Company	Refused under r.20(2)(d) and (h)
Guitteny, Annaick	Refused under r.20(2)(h)

Henning, Michael	Refused under r.20(2)(h)
Ioannou, Evangelia	Refused under r.20(2)(h)
Kenworthy, Elizabeth	Refused under r.20(2)(h)
MacDonald, John	Refused under r.20(2)(h)
Mallinson, Ross	Refused under r.20(2)(h)
Maxwell, Susan	Refused under r.20(2)(h)
Mitchell, Paul	Refused under r.20(2)(h)
North, Rachel	Refused under r.20(2)(h)
Psaradakis, George (bus driver)	Refused under r.20(2)(d) and (h)
Putnam, Jacqueline	Refused under r.20(2)(h)
Ratcliff, Lesley	Refused under r.20(2)(h)
Roskilly, George	Refused under r.20(2)(h)
Thwaites, Been	Refused under r.20(2)(h)
Young, Elaine	Refused under r.20(2)(h)

Adjourned applications for Interested Person status

Deceased	Applicant for Interested Person status	Decision
Hussain, Hasib	Mr & Mrs Hussain (parents)	Application adjourned
Khan, Mohammed Sidique	Hasina Patel (wife) Gultasab Khan (brother)	Application adjourned