

1 THE INQUIRY CONTINUED AT 10.00 A.M. ON THURSDAY,
2 22ND MAY 2025 AS FOLLOWS:

3
4 CHAIRPERSON: Good morning, Mr. Greaney.

5 MR. GREANEY: Good morning, sir.

10:08

6
7 This morning first we will hear submissions from
8 Mr. Eamon Foster.

9
10 Sir, I'll start again. This morning we'll hear
11 submissions from Mr. Eamon Foster, and he will address
12 you on behalf of the families represented by Fox Law.
13 Mr. Foster.

10:08

14 CHAIRPERSON: Good morning, Mr. Foster.

15 MR. FOSTER: Good morning, sir. My name is
16 Eamon foster. I appear with Mr. Southey, Kings
17 Counsel, and Mr. McGowan, instructed by Fox Law. I
18 make submissions on behalf of the Core Participants
19 that they represent.

10:08

20
21 Sir, at the outset I would say that we endorse the
22 approach adopted by counsel to the Inquiry as per the
23 note of 14th May 2025 in respect of the redactions of
24 the names of junior civil servants prior to being
25 disclosed to the Core Participants, as well as the four
26 categories of suspects. We have set out our position
27 in our written submissions, and they should hopefully
28 be with you.

10:09

1 However, we would like to take this opportunity to make
2 some short additional oral submissions and observations
3 in respect of the proposed redactions of the names of
4 junior civil servants. In particular, our concerns are
5 about the status of Core Participants, and the duty of 10:09
6 candour in light of the importance of openness and
7 transparency to ensure public confidence. A number of
8 the Core Participants that Fox Law represent were
9 involved in the campaign that had one intention, sir -
10 to establish the truth. 10:10

11
12 At the conclusion of the judicial review proceedings
13 brought by Mr. Gallagher, Horner J, as he then was,
14 determined that there were plausible arguments that
15 there was a real prospect of preventing the Omagh 10:10
16 bombing, and that therefore an Article 2 compliant
17 investigation should be established, which would be
18 necessary and would involve the scrutiny of both open
19 and closed material.

20 10:10
21 This Inquiry was established to carry out that scrutiny
22 through its inquisitorial function into what happened
23 and what can be learned. As indicated in our
24 submissions at paragraph 4, we submit that it should be
25 remembered that there was an excessive secrecy applied 10:10
26 in the past in the context of Northern Ireland, which
27 would imply that justifications relied upon should be
28 reviewed with the utmost care.

1 In this context, I want to refer you to paragraph 17 of
2 the skeleton argument submitted on behalf of the
3 Secretary of State, in which it is stated:

4
5 "This is not a situation in which it is proposed to 10:11
6 withhold the names from the Chair or the Inquiry legal
7 team."

8
9 But we respectfully submit, sir, that, by inference, it
10 is proposed to withhold them from the Core Participants 10:11
11 and thereby excluding them, and, we submit, introducing
12 at this early stage a level of secrecy into process
13 that's contrary to the Core Participants' expectation
14 of overarching openness and transparency in order to
15 have an effective investigation to ensure that there 10:11
16 can be full and proper scrutiny.

17
18 On that point, I refer you to Section 5 of the 2006
19 Inquiry Rules and, in particular, (1) and (2).

20 Firstly, I would highlight the word "designate". In 10:11
21 that subsection --

22 CHAIRPERSON: Could you just bear with me a second,
23 Mr. Foster, I just want to open up my documents.

24 Sorry, you wanted me to look at Rule 5?

25 MR. FOSTER: Yes, Chair. And (1) states: 10:12
26

27 "The chairman may designate a person as a core
28 participant at any time during the course of the
29 inquiry, provided that person consents to being so

1 designated. "

2
3 we submit that by being designated, that individual has
4 been given a status within the Inquiry and part of the
5 function wherein that inquisitorial function. 10:13

6
7 I would bring you then to (2). In this section, I will
8 highlight the word "significant". In (2), it states:

9
10 "In deciding whether to designate a person as a core 10:13
11 participant, the chairman must in particular consider
12 whether -

13 (a) the person played, or may have played, a direct and
14 significant role in relation to the matters in which
15 the inquiry relates 10:13

16 (b) the person has a significant interest in an
17 important aspect of the matters to which the inquiry
18 relates

19 (c) the person may be subject to explicit or
20 significant criticism during the inquiry proceedings or 10:13
21 in the report, or in any interim report."

22
23 Therefore, we respectfully submit, in order to be a
24 designated Core Participant, to obtain that status a
25 person, an individual, must possess a feature of 10:14
26 significance that is important to the subject matter of
27 this Inquiry. They have a status before this Inquiry,
28 they are a participant, they are a Core Participant.
29 But on the basis of paragraph 17, it has been proposed

1 at this early stage to exclude them and dilute that
2 status.

3
4 I would highlight to the Inquiry, sir, that some of the
5 Core Participants that Fox Law represent have been 10:14
6 involved in campaigning for this public inquiry for
7 over 20 years. This included the lengthy judicial
8 review proceedings brought by Mr. Gallagher following
9 the decision in 2013 of the Secretary of State at that
10 time not to hold a public inquiry. 10:15

11
12 It also involved an extensive set of civil proceedings
13 against a number of dissident republicans. They also
14 commissioned a report, the Bridger Report, into the
15 circumstances surrounding the bomb. They also gave 10:15
16 evidence to the Northern Ireland Affairs Committee.
17 That's not withstanding the numerous meetings that were
18 held and arranged with various individuals over that
19 period of time, and Mr. Gallagher is currently engaged
20 in proceedings regarding the effectiveness of the 10:15
21 police investigation following the bomb.

22
23 I believe that counsel to the Inquiry commented
24 yesterday that it should not be assumed that the
25 Inquiry has all the wisdom. I would respectfully 10:15
26 submit that some of that wisdom does rest with the Core
27 Participants. There is a knowledge, an insight and
28 wisdom that cannot be excluded or diluted.
29

1 CHAIRPERSON: I perhaps infer that what you're
2 submitting, Mr. Foster, when we look back at paragraph
3 17 of the skeleton argument for the Secretary of State,
4 is that the duty of candour which was being discussed
5 there is not just a duty of candour to me as the Chair 10:16
6 of the Inquiry and to the Inquiry legal team, but a
7 duty of candour more broadly to the Inquiry and to
8 those who participate in it?

9 MR. FOSTER: Yes. Yes, that's correct, sir.

10
11 Paragraph 17 of the Secretary of State's submissions
12 continue:

13
14 "The legal team for the inquiry will be well equipped
15 to assess the relevance and significance of the 10:16
16 documents as they undertake the review."

17
18 we would submit, sir, that that goes to undermining the
19 knowledge and insight that is available within the Core
20 Participants, and also the status that has been 10:17
21 afforded through their appointment or designation as
22 Core Participants. In fact, sir, why else would they
23 be designated; they possess something that is
24 significant to the Inquiry. I think it has also to be
25 reflected that designation wouldn't necessarily be 10:17
26 automatic, and it's not the case that everybody who
27 applied for designation was accepted.

28
29 I think there is an important aspect here, sir, in

1 becoming a Core Participant. They've also given an
2 undertaking to you, sir, as Chairperson, in respect of
3 confidentiality. I would like to take a minute and
4 refer you to that document.

5
6 In that document, it states that the individual
7 undertakes to keep all such documentation safe and not
8 to leave it unattended other than in a secure location;
9 keep all such documentation confidential; only use such
10 documentation for the purposes of the Inquiry into the 10:18
11 Omagh bombing and any directly related legal
12 proceedings.

13
14 Further it states:

15
16 "... any disclosure or discussion should take place
17 with people who have given identical undertakings.
18 It is the responsibility of that person to ensure that
19 any person has that undertaking before discussing or
20 disclosing any document or information." 10:18

21
22 That raises a question, sir: How is that undertaking
23 viewed by the Secretary of State? What weight has been
24 placed on it? There have now been six tranches of
25 disclosure and no evidence has been adduced by the 10:19
26 Secretary of State, or even a suggestion, that that
27 undertaking has been breached.

28
29 Again, we would submit that the proposed redaction goes

1 to undermining the significance of that undertaking and
2 the associated integrity with an undertaking of
3 confidentiality.

4
5 I referred earlier, sir, to the Core Participants'
6 expectation of openness and transparency which
7 introduces the duty of candour. At paragraph 2 of the
8 submissions on behalf of the Secretary of State, and
9 with reference to IAB case, it is stated that:

10:19

10
11 "It is important to recognise that those observations
12 relate to the very particular duty of candour that the
13 government owes in judicial review proceedings."

14
15 we would respectfully submit that an observation arises
16 out of that regarding what is meant by a very
17 particular duty of candour. Does that mean that there
18 is a hierarchy of a duty of candour applicable to a
19 judicial review or to an inquiry? we would say that
20 there is no hierarchy. we respectfully submit that a
21 duty of candour is just that, it's a duty of candour,
22 an obligation and responsibility to be open and honest.

10:20

10:20

23
24 when it comes to the relevance of documents and the
25 significance of documents, that's a matter for the
26 Inquiry; not to be predetermined, not to be dealt with
27 by blanket anonymity.

10:21

28
29 we respectfully submit while an inquiry may have a

1 wider role than judicial review proceedings, it does
2 not lessen the duty of candour, it's still present. We
3 would actually submit that it reinforces the need to
4 exercise that duty, given that the statutory power to
5 establish an inquiry is based on public concern. As 10:21
6 indicated in the note of counsel to the Inquiry, you,
7 sir, have an expectation of complete candour from all
8 Core Participants, and Mr. Greaney has emphasised the
9 word "complete".

10
11 Further, reference is made to the expectation that the 10:22
12 State Core Participants understand and exhibit the
13 Hillsborough Charter and the Hillsborough Law.

14 We submit that that expectation of complete candour
15 from all Core Participants should be a very particular 10:22
16 duty of candour attached to this Inquiry. We submit
17 that the duty of candour goes to the heart of the
18 process of ensuring an effective investigation because
19 it impacts upon public confidence that the scrutiny
20 referred to by Horner J is steeped in openness and 10:22
21 transparency.

22
23 To repeat the words above, "There is a necessity for
24 complete candour from all Core Participants." They, by
25 doing so, will assist collaboratively in the process of 10:23
26 establishing the truth. We say that the Core
27 Participants represented by Fox Law are here to assist
28 and work collaboratively to establish that truth.
29

1 In summary, sir, we say that the Core Participants have
2 been designated a status within this Inquiry to work
3 collaboratively within that inquisitorial function to
4 establish the truth. We say that there is no hierarchy
5 of duty of candour, it is what it is.

10:24

6
7 Unless there is anything else further, sir.

8 CHAIRPERSON: Was there anything else you wanted to say
9 about the PSNI application?

10 MR. FOSTER: No. We endorse the note of the counsel to
11 the Inquiry in respect of that.

10:24

12 CHAIRPERSON: Thank you. Well, Mr. Greaney.

13 MR. GREANEY: Sir, thank you. We will now make some
14 short, I hope short, closing remarks on behalf of the
15 Inquiry legal team.

10:24

16
17 Yesterday in our submissions we made plain that in
18 March of this year, 80 documents could not be disclosed
19 to Core Participants because of the outstanding issues
20 of redaction that we have been considering over the
21 course of the last two days. That figure now stands at
22 approximately 700 documents, which amounts to about
23 8,000 pages. Accordingly, as we observed yesterday,
24 the need to resolve the issues of redaction has, as an
25 objective fact, placed a break on the work of
26 disclosure of the Inquiry. However, we must be clear
27 that in referring to that break, we were not to be
28 taken to be suggesting that either HMG or PSNI has been
29 deliberately impeding the work of your Inquiry. We,

10:25

10:25

1 the Inquiry legal team, are sure that they have been
2 doing no such thing.

3
4 HMG considered that there was an important issue to
5 resolve. Although, as we will explain, we do not
6 consider their argument sustainable, we accept that it
7 was advanced in good faith. And, as we said yesterday,
8 PSNI has raised issues that are important ones for your
9 consideration. Sir, we consider that all of that
10 should be understood.

10:25

10:26

11
12 Against that background, we have final submissions to
13 make on the junior officials issue and on the PSNI
14 issue; rather more about the former than the latter.
15 But before we develop those submissions, it's important
16 that we should repeat that what we are concerned with
17 in this hearing is only whether material should be
18 disclosed unredacted to Core Participants, not whether
19 it should be disclosed into the public domain.

10:26

20
21 Sir, first the junior officials issue. The effect of
22 the decisions of the High Court and the Court of Appeal
23 of England and Wales in IAB are clear; indeed, beyond
24 clear. As the Court of Appeal put it in the final
25 paragraph of its ruling - that's paragraph 36 - I
26 quote:

10:26

10:27

27
28 "Defendants in judicial review proceedings do not
29 fulfil their duty of candour, save for good and

1 specific reasons, if they disclose documents with
2 redactions of the names of civil servants. I am
3 struck", said Bean LJ, "by the robustness with both
4 Swift J, a judge of almost unparalleled experience of
5 public law litigation, both as treasury counsel and 10:27
6 later as a judge of the administrative court, and
7 Fordham J, another judge with an encyclopaedic
8 knowledge of judicial review, have rejected the
9 arguments for routine redaction. I agree with them."
10 In fact, the judge said "I entirely agree with them." 10:27

11
12 "The practice is inimical to open government and
13 unsupported by authority. If Parliament takes the view
14 that members of the Civil Service have a general right
15 to anonymity in judicial review litigation, then it 10:28
16 should enact a primary statute to that effect."
17

18 Sir, as you will know, the reference to Fordham J in
19 that final paragraph is a reference to his decision in
20 the case of Sneddon, which is to the materially 10:28
21 identical effect as the decision of Swift J in IAB at
22 first instance.

23
24 So, the approach of redacting the names of junior
25 officials from documents in judicial review proceedings 10:28
26 was strongly deprecated in IAB, and yet that is
27 precisely the approach that HMG proposes to adopt in
28 this Inquiry. That, we suggest, will require HMG to
29 distinguish IAB and to explain why the reasoning that

1 was so roundly rejected in that case is, in fact and to
2 the contrary, sound in the context of your public
3 inquiry.

4
5 The position of the Inquiry legal team, having heard 10:29
6 the argument over the course of most of yesterday and a
7 small part of this morning, is that HMG has failed to
8 establish any meaningful or sufficiently meaningful
9 distinction between the reasoning in IAB and the
10 reasoning in this case. 10:29

11
12 To return to the reasons that have been advanced by the
13 Secretary of State and dealing first of all with
14 relevance, we have three points.

15
16 One. As we pointed out yesterday, in IAB at first
17 instance Swift J made clear the practical difficulties
18 that the redaction of names of junior officials from
19 documents makes. Without going again through the full
20 passage that we cited yesterday, the judge explained, 10:30
21 and we quote a small part, "redaction leads to
22 significant practical difficulties." He later
23 continued:

24
25 "... at the least, redacting names makes the 10:30
26 decision-making process and the significance of each
27 document disclosed more difficult to understand. In
28 some instances it may obscure the significance of a
29 document almost completely."

1
2 Sir, in circumstances in which the judge was
3 anticipating that there would be circumstances in which
4 the significance of a document might be almost
5 completely obscured, it is hardly surprising that he 10:30
6 described the practical difficulties created by the
7 proposed approach of HMG as significant.

8
9 HMG suggests, sir, as we have understood it, that the
10 reasoning of Swift J in IAB, and indeed the reasoning 10:30
11 of the Court of Appeal, does not apply to a public
12 inquiry because Swift J was expressing a view in the
13 context of judicial review in which only significant
14 documents, as Ms. Fee put it, will be disclosed, giving
15 rise, it was said, to a particular duty of candour; 10:31
16 whereas the Inquiry will be disclosing, as it was put
17 yesterday, relatively innocuous emails and documents
18 that, while relevant, are not significant.

19
20 Sir, as we understood it, the distinction relied upon 10:31
21 was said to arise from the fact that on the one hand in
22 judicial review proceedings, only significant documents
23 are disclosed, but in these proceedings documents that
24 may be again "relatively innocuous emails" may be
25 disclosed. 10:31

26
27 That analysis does not seem to us to be sound. First,
28 if what was being proposed by HMG was that the names of
29 junior officials should be redacted only from

1 relatively innocuous emails, it might be possible to
2 follow the logic of the argument, but that is not what
3 is being suggested. What is being suggested is that
4 the names of all junior officials should be redacted
5 from all documents. We presume that HMG accepts that 10:32
6 at least some of the documents we disclosed to Core
7 Participants will be significant, not relatively
8 innocuous. So, it follows that redactions will
9 inevitably be made on the HMG approach to significant
10 documents. So even on the approach of HMG, the 10:32
11 reasoning of Swift J will apply precisely, and the
12 practical difficulties he describes will blight this
13 process.

14
15 Second, even if the argument of HMG were to be that the 10:33
16 names of junior officials should be redacted only from
17 relatively innocuous emails and similar documents,
18 which of course is not their position, it would not
19 work. That is because any such argument would assume
20 that the probative value of a document can be 10:33
21 determined with certainty at this stage.

22
23 In our view, that is plainly wrong as a general
24 proposition. Sir, as you know, the Inquiry legal team
25 receives from material suppliers documents that the 10:33
26 material provider considers potentially relevant. The
27 Inquiry legal team assesses those documents and then
28 discloses to Core Participants those documents from the
29 material disclosed to it that it assesses to be

1 relevant to your Terms of Reference. So, relevant
2 documents are disclosed to Core Participants.

3
4 what cannot be assessed with confidence at that stage,
5 at least not necessarily, is quite how much probative 10:34
6 value any particular document will ultimately have. A
7 document that appears to have a high degree of
8 relevance - or to be significant, as HMG puts it - may
9 turn out not to be so because another document or
10 witness explains its true meaning and it turns out to 10:34
11 be unimportant. Conversely, a document that appears of
12 marginal relevance may turn out to be significant when
13 put together with other documents, or when explained by
14 a witness. We dare say that every lawyer in this room
15 would have had such experiences: something that looks 10:34
16 important but that, when the true picture is revealed,
17 is not; something that looks unimportant which, when
18 the true picture is revealed, is important.

19
20 Sir, that is connected with the second point on 10:34
21 relevance, which is this: The bald proposition that
22 the name of all junior officials are irrelevant is one
23 that we simply cannot accept as having a sensible
24 foundation. The true significance of a document
25 cannot, as we have just submitted, necessarily be 10:35
26 determined at this early stage. That means that the
27 relevance of any particular document and the importance
28 of any person referred to within it cannot be
29 determined at this stage. A relatively innocuous

1 e-mail may turn out to be significant, as we have
2 submitted, while a person carbon copied, cc'd, into an
3 e-mail may simply have been copied as a courtesy and
4 hardly have noticed that happened. Alternatively, that
5 person may have been copied in because they were an 10:35
6 important decision maker or because, as is revealed
7 when a statement is taken from them, they were a
8 witness to a connected meeting of importance. It is
9 simply impossible to say at this stage whether a
10 particular name is or is not relevant within a relevant 10:36
11 document.

12
13 That means the only safe, fair, and principled approach
14 is to proceed on the basis that the name of someone
15 contained within a relevant document is relevant until 10:36
16 it becomes plain that it is not.

17
18 As Mr. McKay put it yesterday, HMG is approaching the
19 issue from the wrong end of the telescope. We agree.

20 10:36
21 The third point arises from HMG's attempt to
22 distinguish IAB on the basis that the material will
23 come to the Inquiry legal team unredacted, unlike in
24 IAB in which the court received redacted documents.
25 We acknowledge that is a difference, but we suggest it 10:36
26 is not one with real meaning in the context of this
27 argument.

28
29 The argument of HMG appears to be that we, the Inquiry

1 legal team, will be able to look at the unredacted
2 version of a document, say to ourselves that a
3 particular name of a particular junior official is
4 relevant and so lift that particular redaction when the
5 document goes to the Core Participant. Well, we agree 10:37
6 that in some cases that may be so, but in all cases? Is
7 it to be suggested that we will recognise the relevance
8 of the names of all junior officials in all documents?
9 As we put it yesterday and as Mr. Foster referred to
10 today, that assumes that the Inquiry legal team has a 10:37
11 monopoly of wisdom, and we are modest enough to
12 acknowledge that we do not.

13
14 Our highly informed Core Participants have, as
15 Mr. Foster has just put it, a knowledge, an insight and 10:37
16 wisdom that cannot be excluded or diluted. We agree.
17 They have a vital role to perform in identifying
18 whether any particular junior official has important
19 evidence to give, or may do.

20 10:38
21 If the Core Participants receive redacted documents or
22 documents with the names of junior officials redacted,
23 they will not be able to perform that role and our
24 process will be the poorer. Even if there has been
25 candour with the Inquiry, there will not have been full 10:38
26 candour with the Core Participants.

27
28 So, sir, for all of those reasons, and for the reasons
29 that we gave yesterday which we submit hold good, we

1 suggest that you should reject the contention that the
2 names of all junior officials are irrelevant.

3
4 As for privacy, the proposition that junior officials
5 have a reasonable expectation of privacy and 10:39
6 confidentiality as a class is one that we consider you
7 should also reject. One, HMG has wholly failed to
8 establish any proper evidential foundation for that
9 proposition despite having had every opportunity to do
10 so. 10:39

11
12 Two. As we explained yesterday, Swift J dismissed, and
13 roundly dismissed, a materially identical argument in
14 IAB. His words do deserve repetition:

15
16 "I do not consider any such general expectation, even
17 assuming it exists in practice, could be reasonable.
18 No such expectation would attach to any person as a
19 matter of general employment law. Moreover, when at
20 work civil servants are not involved in anything that 10:39
21 can be described as a private activity. They are
22 exercising public functions as part of the public
23 service of the country."

24
25 "It is also material that while the Secretary of 10:40
26 State's submission refers to the class of junior civil
27 servants, this label was applied only to distinguish
28 them from the civil servants working in grades
29 comprising what the government refers to as the Senior

1 Civil Service. Therefore, the distinction between
2 junior and senior civil servants is akin to the
3 distinction between junior and leading counsel and is
4 not necessarily any indication of age or experience.
5 The class of junior civil servants includes civil
6 servants with significant responsibilities. "

10:40

7
8 Sir, in that passage, Swift J was plainly not
9 expressing a principle that applied only in judicial
10 review proceedings. Instead, he was expressing a
11 principle of general application. We submit that the
12 judge's reasoning is sound and applies equally to the
13 argument that has been presented by HMG to you.

10:40

14
15 Three. We, for our part, are unsure whether the
16 Article 8 argument raised in the HMG skeleton argument
17 is intended by HMG to add anything to the privacy
18 argument developed in the application. If it is, we
19 say with respect that Ms. Fee was unable to explain on
20 what basis you could conclude that the Article 8 rights
21 of a junior civil servant might be engaged in respect
22 of the identity of their employer or the nature of
23 their work, certainly on a class basis, which is the
24 basis of the argument. It is surprising, if Article 2
25 is generally engaged in the way that appeared to be
26 suggested, that that argument was not deployed in front
27 of or considered by Swift J in IAB.

10:41

10:41

10:41

28 CHAIRPERSON: Do you mean Article 8?

29 MR. GREANEY: Article 8, I do. Sorry.

1
2 Furthermore, there was, it seemed to us on your
3 questioning of Ms. Fee, an overlap between what was
4 being said related to Article 8 and what was being said
5 related to Article 2 in the analysis of HMG. We 10:42
6 consider - and, sir, we predict that you will
7 consider - that it is important in the highest degree
8 that the issues of privacy and risk should be
9 considered separately and not lumped together as if
10 they are the same. 10:42

11
12 Ultimately, we submit that the reference to Article 8
13 added nothing to the argument of HMG on privacy, which
14 we consider is an argument you should reject.

15 10:42
16 Little needs to be said about risk this morning. The
17 position is if an issue engaging the Article 2 rights
18 of a particular junior official is raised and is
19 properly evidenced, then, of course, those rights will
20 be respected by this Inquiry. But that is simply not 10:43
21 what is happening here in this argument. Instead, what
22 is happening is that you are being asked, sir, to rule
23 on a class basis without in any event the risk alleged
24 being evidenced in any or any meaningful way. So, we
25 do not consider it would be appropriate or even lawful 10:43
26 for you to rule that the names of junior officials
27 should be redacted from documents before they are
28 disclosed to CPs on a class-based risk basis.
29

1 In the circumstances, we submit that there is no good
2 reason advanced on the basis of which you should accede
3 to the application of HMG, and good reasons why you
4 should reject it.

5
6 Before we turn much more briefly to the PSNI issue, we
7 must emphasise that if in relation to any particular
8 junior official, an Article 2 risk does arise, that
9 will be respected, but HMG must tell us where that is
10 so, if it is so.

11
12 HMG first raised this issue in March, and this Inquiry
13 has been running for a considerable period now. HMG
14 simply must know and they must tell us immediately, by
15 which we mean early next week at the latest, if there
16 is any such case. Sir, is there any particular junior
17 official in respect of whom there is a genuine Article
18 2 risk? HMG simply must know and they must tell us and
19 identify in which document any such person is named so
20 that the issue can be addressed.

21 CHAIRPERSON: That just reminds me of an issue,
22 Mr. Greaney. We have been talking about junior civil
23 servants in a sense as if that phrase covered the
24 entire spectrum of the Civil Service. But the
25 application from the Government Legal Department which
26 was submitted to the Inquiry, whilst headed up
27 "Redaction of Civil Service names", begins by
28 explaining that the inquiry route to GLD in relation to
29 the material provider review of NIO documents. In

1 paragraph 4 under the heading of "Application", the
2 document states:

3
4 "We are writing to formally request permission to
5 redact the names of junior civil servants that have
6 been identified in relevant disclosure provided by the
7 NIO."

10:46

8
9 The same phraseology appears in Ms. Fee's skeleton
10 argument.

10:46

11 MR. GREANEY: It does.

12 CHAIRPERSON: This is something, it would seem, which
13 is focused on civil servants who work within the
14 Northern Ireland Office. In the way that you have just
15 been alluding to, that department will have a
16 significant experience and familiarity with the process
17 of risk assessment.

10:46

18 MR. GREANEY: Absolutely, sir, yes.

19 CHAIRPERSON: We saw that mentioned, for example, in
20 the cases to which my attention was drawn yesterday of
21 RC and others.

10:46

22 MR. GREANEY: Yes. Sir, as we've understood the
23 application, it is focused upon junior officials within
24 the Northern Ireland Office. It seemed to us that the
25 first argument that is deployed, namely relevance, is
26 one which, on the approach of HMG, would apply to all
27 junior civil servants notwithstanding which department
28 they were in. Equally, privacy would apply to all
29 junior civil servants whichever department they are in,

10:47

1 and it is only in relation to the issue of risk that
2 any specific argument is deployed in relation to the
3 Northern Ireland Office. As you have said, sir, that
4 is a part of government that has particular expertise
5 in the assessment of risk, which only serves to make 10:47
6 starker the fact that this argument, the third
7 argument, is addressed on a class basis as opposed to
8 specific basis.

9
10 Mr. de la Poer is reminding me that in Ms. Fee's 10:47
11 skeleton argument at paragraph 34, she did say -- I say
12 Ms. Fee's, I should have said HMG's skeleton argument
13 -- "as identified in the Secretary of State's
14 application, there may be some junior civil servants,
15 for example working in defence or security roles, for 10:48
16 whom the risks to their safety may be of a different
17 character."

18
19 It may be, having regard to that, that the application
20 is a little broader than just Northern Ireland Office 10:48
21 officials. But the response is identical; if there is
22 a person working in the Ministry of Defence or in some
23 other department in respect of whom there is a specific
24 real and significant Article 2 issue, then please tell
25 us, because it will be redacted, and at the moment you 10:48
26 have not, if there is any such person.

27
28 In fact, sir, reading that paragraph 34 again, I'm
29 unsure that that is a description of people working in

1 particular roles within the Northern Ireland Office or
2 people working in wholly different parts of government.
3 I suspect, in fact, it is the former.

4 CHAIRPERSON: well, that's the sort of impression I had
5 formed.

10:50

6 MR. GREANEY: Yes.

7 CHAIRPERSON: Because I was reminding myself of the
8 statement lodged in support of the application as
9 provided by Ms. Carter, and she is the Deputy Director
10 of the Legacy Group in the Northern Ireland Office.
11 She deals with this concept of defence personnel at
12 paragraph 19 onwards.

10:50

13 MR. GREANEY: Mr. Suter has just drawn our attention to
14 that, sir.

15 CHAIRPERSON: She begins by saying she has considered
16 the position of colleagues working in defence, and she
17 talks about the difficulties that might arise there.

10:50

18 MR. GREANEY: Yes.

19 CHAIRPERSON: Now, she talks about defence staff and
20 she mentions that there have been circumstances in
21 which members of the military have been targeted. But
22 for my part, I had read that as being defence staff
23 that worked within the Northern Ireland Office, but it
24 is possible I've not given that a broad enough
25 interpretation.

10:50

10:51

26 MR. GREANEY: Sir, Ms. Fee isn't here today, no doubt
27 for good reason, and in any event there is no reason
28 why that point should not be clarified, if your
29 understanding is not correct, in correspondence, we

1 would suggest before the end of the day.

2
3 As we've understood the position of HMG overall, it is
4 that the approach of redacting the names of junior
5 officials from documents is one that inquiries ought to 10:51
6 respect whether the junior official is working in the
7 Northern Ireland Office or elsewhere, otherwise there
8 will be no reason for their reliance, for example, on
9 the protocol of the UK Covid-19 Inquiry, but that there
10 is a particular reason for the Inquiry to adopt such 10:52
11 approach in the circumstances of the Omagh bombing
12 Inquiry because of the risk profile to those working in
13 the Northern Ireland Office.

14
15 Sir, that is a rather long way of saying the approach 10:52
16 that we invite you to adopt to the application made by
17 HMG is that it is focused upon junior officials within
18 the Northern Ireland Office, and that if that
19 understanding is erroneous, HMG should inform Mr. Suter
20 of the error and what the true position is before the 10:52
21 end of today.

22 CHAIRPERSON: In any event, if risk is the issue which
23 goes to justify redaction, then it requires to be
24 identified, whether it's risk to a civil servant within
25 the Northern Ireland Office or any other department. 10:52

26 MR. GREANEY: Absolutely. It needs to be identified on
27 a case by case, by which we mean person by person
28 basis, not on a class basis. That is the clear effect
29 of the law upon which all were agreed yesterday, and in

1 their submissions, with the possible exception of HMG.

2
3 Sir, would it be convenient for me to turn to deal
4 briefly with the PSNI issue?

5 CHAIRPERSON: Yes, please. Thank you.

10:53

6 MR. GREANEY: Little, in fact, needs to be said about
7 the PSNI issue. The position as a matter of law and of
8 procedure appears to be clear. The starting point is
9 that a person investigated on suspicion of a criminal
10 offence but not charged has a reasonable expectation of
11 privacy, with the emphasis on the words "starting
12 point", because that expectation may prove in any
13 particular case to be unreasonable, or an interference
14 with a reasonable expectation may be lawful. All in
15 the process appear to agree or at least not demur from
16 our proposition that the four categories we have
17 identified provide a logical analysis of where a
18 particular suspect is likely to fit, and of the likely
19 but not inevitable conclusion if they do. We say not
20 inevitable because each suspect must be given
21 individual consideration and will be the subject of a
22 separate and reasoned decision.

10:53

10:54

10:54

23
24 Sir, having said all of that, which appears in light of
25 the arguments to be uncontroversial, we do not consider
26 that you need to make a ruling on this issue. Indeed,
27 there is no application before you, and we're unclear
28 what issue you would be ruling on beyond perhaps
29 expressing a view about some principles which are, in

10:54

1 any event, agreed and that may therefore not have much
2 value. Moreover, you have not been invited to make a
3 ruling by anyone.

4
5 That, sir, we think is all that needs to be said about 10:55
6 the PSNI issue, and indeed about the two issues that
7 arise for consideration.

8
9 All we finally wanted to say, subject to anything you
10 wanted to ask us, is that we are grateful to all Core 10:55
11 Participants for their written and oral submissions and
12 for enabling this hearing to run, we believe, smoothly.

13 CHAIRPERSON: I wonder what you suggest I should do
14 about the submissions I have heard from PSNI and from
15 the other Core Participants in response to them? As 10:55
16 you rightly say, there is no application. In
17 Mr. Henry's helpful contribution, he sketched out the
18 sort of general principles that he said might underpin
19 the thinking that went into that process. But quite
20 what process I'm not sure, because I am not asked to do 10:56
21 anything.

22 MR. GREANEY: No.

23 CHAIRPERSON: Should I simply give some guidance as to
24 the way in which I would approach an application, or
25 something of that sort? 10:56

26 MR. GREANEY: That's not -- it would not be wrong for
27 you do so and it may be helpful, but that is not
28 necessary. Ultimately, it may be that the Inquiry
29 legal team could prepare a document that sets out the

1 approach that it proposes is appropriate, although it
2 would not say a great deal more than what is said in
3 its skeleton argument. If you wish to do so, sir, you
4 could endorse that as the appropriate approach. It
5 would not seem to us to be a useful use of your time, 10:56
6 sir, given that there is much for you to do, to spend a
7 great deal of time preparing what may be an interesting
8 academic piece of work on the approach that should be
9 adopted to the suspects issue.

10
11 As Mr. de la Poer was saying, what needs to happen now
12 is that individual decisions are made in relation to
13 individual suspects named in individual documents.

14 CHAIRPERSON: Yes.

15 MR. GREANEY: If PSNI believes in relation to any 10:57
16 particular decision that we have made a mistake, then
17 that can be raised and ruled upon. Probably the better
18 way for these issues to be raised and ventilated and
19 determined is in the context of a real-life situation.

20 CHAIRPERSON: Yes, because the process that the Inquiry 10:57
21 will engage in is one in which it receives information
22 from the material provider, and, in relation to
23 suspects, that will come from PSNI.

24 MR. GREANEY: Yes.

25 CHAIRPERSON: The Inquiry will perform an assessment of 10:58
26 its own, taking account of the sort of principles that
27 were canvassed yesterday, and make a decision. If that
28 decision is either to redact or not to redact, that
29 decision will be fed back to the material provider.

1 MR. GREANEY: It will.

2 CHAIRPERSON: And at that stage, they will have an

3 opportunity to contribute and to invite the Inquiry to

4 take a different decision.

5 MR. GREANEY: Yes. And if a dispute arises between 10:58

6 the material provider and the Inquiry legal team, that

7 will be litigated. Litigated is the wrong way of

8 putting it; that will be argued and determined in the

9 ordinary way at a hearing such as this.

10 CHAIRPERSON: Yes. All right. Thank you very much, 10:58

11 Mr. Greaney.

12 MR. GREANEY: Sir, we will all next meet in Omagh on

13 23rd June in order that we can hear the opening

14 statements of Core Participants.

15

16 THE INQUIRY ADJOURNED TO MONDAY, 23RD JUNE 2025

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