

<p>1 Wednesday, 27 June 2018 2 (11.30 am) 3 (Proceedings delayed) 4 (12.20 pm) 5 Submissions in open court 6 JUDGE HILLIARD: Yes, Mr Skelton. 7 MR SKELTON: So when you concluded the last hearing a few 8 months ago, you indicated that there were several 9 outstanding matters which required resolution before you 10 could conclude the inquest. Just dealing with those. 11 The Intelligence and Security Committee of 12 Parliament had previously announced they were looking 13 into certain matters which could be of relevance to the 14 inquest. 15 In fact you made contact with them and they have 16 indicated to you, and confirmed in writing, that they do 17 not currently intend to specifically investigate the 18 death of Mr Perepilichnyy, and therefore one does not 19 need to await any findings on their part. 20 So far as the Home Secretary is concerned, sir, 21 you will recall that Yvette Cooper, the Chair of the 22 Home Affairs Committee, wrote to the then 23 Home Secretary, Amber Rudd, asking for her to consider 24 various deaths which were said to be associated with the 25 Russian state and a review process was commenced.</p> <p style="text-align: center;">Page 1</p>	<p>1 sanctioned by president Putin. 2 By way of an update, in April, the solicitor to the 3 inquest wrote to the interested persons explaining as 4 follows: 5 "The coroner's legal team has met with officials 6 from the US embassy in London in regards to a request 7 for disclosure of a US Government report that is said to 8 comment on the death of Mr Perepilichnyy. The coroner's 9 legal team has now had the opportunity to inspect a US 10 Government report and we are grateful for the 11 cooperation an assistance provided by the US embassy to 12 facilitate this. Discussions are ongoing with the US 13 Government for onward to the interested persons of 14 information contained in that report, as far as it may 15 be relevant to the inquest. Those discussions were at 16 an advanced stage, but it is not possible at the moment 17 to provide a time frame when they will be completed. An 18 update will be provided at the earliest opportunity." 19 Those discussions, sir, were completed and a letter 20 was circulated to the interested persons yesterday 21 directly from the Office of the Legal Attache at the 22 United States embassy in London. I will quote from 23 that, if I may, in full. It states as follows: 24 "The United States Government possesses a document 25 referencing United Kingdom-based public media reports</p> <p style="text-align: center;">Page 3</p>
<p>1 That review process, as Mr O'Connor will address 2 you on, has not yet quite completed, but you have been 3 provided with a report which is produced during the 4 course of the review, which is sensitive and which is 5 the subject of a public interest immunity application 6 today -- I should say parts of that report rather than 7 the whole report. 8 Thirdly, the United States Government. The 9 solicitor to the inquest contacted the United States 10 Government about a BuzzFeed article in which 11 Mr Perepilichnyy was referenced, and asked for 12 disclosure of material relating to that article, and 13 indeed material generally about Mr Perepilichnyy. 14 And as you indicated via your solicitor to the 15 interested persons, enquiries were made on that report, 16 and specifically in respect of the BuzzFeed suggestion 17 that the United States Government had passed to the UK 18 security intelligence agencies high-grade intelligence 19 indicating that Mr Perepilichnyy was likely to have been 20 assassinated on the direct orders from Putin, or people 21 close to him, and that a highly classified report on 22 Russian state assassinations compiled for the 23 US Congress by the Office of the Director of National 24 Intelligence in 2016, asserted with high confidence that 25 Mr Perepilichnyy was murdered and that this was</p> <p style="text-align: center;">Page 2</p>	<p>1 that Alexander Perepilichnyy was assassinated in the UK 2 before he was scheduled to testify about a tax fraud 3 network. This report contains no USG reporting [that is 4 'US Government reporting'] concerning the death of 5 Alexander Perepilichnyy." 6 That letter, sir, encapsulates the relevant 7 information contained in the report, which you, sir, 8 have seen and which the legal team have reviewed. On 9 that basis, it is no longer necessary for a public 10 interest immunity application to be pursued by the UK 11 Government in respect of the original report. So that 12 falls away, sir. 13 It may now fall to you, sir, to say publicly what 14 has been said privately to the interested persons about 15 the sensitive material which you have reviewed in its 16 totality and its significance, so far as your 17 investigations are concerned. After that, Mr O'Connor, 18 I think, will update you, sir, as to the state of the 19 Home Secretary's review and the nature of the 20 application being made and then we will get, I hope, 21 briefly into the principles at play when dealing with 22 the public interest immunity application itself. 23 JUDGE HILLIARD: Yes. 24 Mr Skelton, just before I do that, I think it is 25 just as well to say, obviously, that the interested</p> <p style="text-align: center;">Page 4</p>

<p>1 persons have not been able to see the material, so they 2 are in the usual difficulty. But as you know, we are 3 very far down the forensic process, so that I am very 4 familiar with the issues and with everybody's 5 concerns -- I could not be more familiar with them -- 6 and also of course with the evidence which has been 7 given in public. So what follows summarises the 8 position, I think, as best as I am able to, but I am, of 9 course, willing to listen to any more submissions that 10 anybody wishes to make about any part of it.</p> <p>11 So I am aware that Her Majesty's Government has 12 updated the searches previously conducted in response to 13 the original requests made by the senior coroner for 14 Surrey, to the Home Secretary and Foreign Secretary in 15 letters dated 6 April 2016. To state the obvious, it 16 is, obviously, now June 2018.</p> <p>17 These included requests for any information in the 18 possession of the Security Service and the Secret 19 Intelligence Service relating to, one, threats to the 20 personal safety or life of Mr Perepilichnyy in the 21 period 1 January 2012 to 10 November 2012; two, third 22 party involvement in the death of Mr Perepilichnyy on 23 10 November 2012.</p> <p>24 As part of that exercise, HMG has specifically 25 addressed the question of whether Mr Perepilichnyy was</p> <p style="text-align: center;">Page 5</p>	<p>1 information is reproduced in parts of the evidence that 2 has been heard in the inquests. Bearing in mind the 3 totality of the open evidence that I have received 4 during the course of the inquest, and the fact there is 5 nothing in the updated searches conducted by HMG that 6 materially assists me, I am satisfied that my 7 investigation into Mr Perepilichnyy's death has been 8 fully and fearlessly conducted and that it is not now 9 necessary for me to pursue any additional lines of 10 inquiry.</p> <p>11 I say that, Mr Skelton, but as I have said, I will 12 listen to anything else that anybody wants to say. The 13 difficulty is, of course, I have seen the material and 14 few others have.</p> <p>15 MR O'CONNOR: Sir, the application that is before you today 16 is in the form of a PII certificate, signed by the 17 Home Secretary and dated 18 June 2018. Sir, that 18 certificate is at tab 1 of the bundle. You also are 19 written submissions from me in support of the 20 application at tab 2 in the bundle.</p> <p>21 Sir, you will, of course, be aware this is in fact 22 the second PI application that has been made by the Home 23 Secretary in the course of these proceedings. The first 24 PII application was upheld by Mr Justice Cranston in the 25 High Court, and his judgment is at tab 7 of the bundle.</p> <p style="text-align: center;">Page 7</p>
<p>1 an agent for or had any other contact with British 2 intelligence agencies prior to his death.</p> <p>3 I have considered the updated answers to those 4 requests in the context of the other sensitive and 5 non-sensitive information with which I have been 6 provided in this case. I remain of the view that 7 I expressed at the pre-inquest review on 13 March 2017, 8 namely that, one, nothing in the material that I have 9 seen materially assists me in answering the question of 10 how Mr Perepilichnyy died; and two, nothing in that 11 material alters my decision on the scope of the inquest.</p> <p>12 I have also read the potentially relevant sections 13 of the report prepared for the Home Secretary's review 14 into allegations of Russian state involvement into 15 a number of deaths in the United Kingdom, including that 16 of Mr Perepilichnyy. Some of the information contained 17 in those sections is relevant to this inquest; some of 18 that relevant information, in particular the information 19 relating to Mr Perepilichnyy, had previously been 20 provided to me. Some of it had not been provided 21 previously, including information not relating to 22 Mr Perepilichnyy and the assessments that have now been 23 made for the purposes of the review.</p> <p>24 The effect of some parts of the relevant 25 information -- the effect of some parts of the relevant</p> <p style="text-align: center;">Page 6</p>	<p>1 You, subsequently, reviewed the question of whether 2 those documents, ie the documents that were the subject 3 of the first application, should continue to be subject 4 to PII, and you concluded that they should, and your 5 ruling is at tab 6 of the bundle. Sir, of course 6 you continued to keep that question, in other words the 7 question relating to the first application, under review 8 as of today.</p> <p>9 As far as the second PII certificate, the one with 10 which we are primarily concerned today, sir, the 11 certificate provides a level of detail about the 12 documentation that is the subject of the new claim. 13 It also describes the factors that the Home Secretary 14 has taken into account, both those weighing in favour of 15 disclosure and also those weighing in favour of 16 non-disclosure. The certificate makes clear the 17 Home Secretary himself has balanced those factors and 18 has concluded that the overall balance of public 19 interest favours not disclosing the documentation.</p> <p>20 However, the certificate also acknowledges in 21 express terms that it is this court that bears the final 22 responsibility for determining whether or not public 23 interest immunity has been correctly asserted.</p> <p>24 Sir, there is, clearly, a limit to the extent to 25 which I can elaborate on these matters in open court</p> <p style="text-align: center;">Page 8</p>

<p>1 without doing the very damage that the certificate is 2 intended to prevent, but there are some further details 3 that I can provide. 4 The certificate states at paragraph 9 that amongst 5 the material that is subject to the PII certificate are 6 relevant paragraphs from the review that has been 7 conducted into 14 deaths that have been identified as 8 suspicious in reporting by BuzzFeed news. 9 So, Mr Skelton has referred to the correspondence 10 between Yvette Cooper, the Chair of the Home Affairs 11 Select Committee, and the then Home Secretary, 12 Amber Rudd, that led to the setting up of the review. 13 That correspondence is in your bundle at tabs 8 and 9. 14 The review was of course discussed at the hearings 15 in this inquest in April this year. You made it clear 16 at that stage that you had in fact already written to 17 the Home Secretary asking to be informed about the 18 review and to be provided with any relevant outcome of 19 the review. 20 Sir, as part of that review, a report was prepared. 21 You and your team were shown sections of the report that 22 we consider to be potentially relevant to this inquest, 23 and you have concluded that some of those sections were 24 relevant and it is those sections that are amongst the 25 documents that are the subject of the PII claim.</p> <p style="text-align: center;">Page 9</p>	<p>1 respectful submission is that you should proceed and 2 determine the PII application that is contained in that 3 certificate today. 4 We will, of course, keep you informed of the 5 progress of the further work that is being conducted 6 under the review and we will inform you when that work 7 has been completed. In the very unlikely event that the 8 further work leads to fresh information of potential 9 relevance to these proceedings, we will of course 10 provide it to you and your team. 11 Sir, that is all I propose to today at this stage 12 about the content of the PII. 13 JUDGE HILLIARD: Yes. 14 MR O'CONNOR: I know, as far as the legal principles are 15 concerned, you are familiar with them. They are 16 referred to in Mr Justice Cranston's judgment and I know 17 Mr Skelton proposes to address you on them in due 18 course, so in those circumstances, sir, unless you would 19 like me to I do not propose to address you. 20 JUDGE HILLIARD: Thank you very much. 21 MR O'CONNOR: I am grateful. 22 MR SKELTON: Sir, just briefly in respect of the 23 application, this is, of course, an open hearing. 24 You have the power to have a procedural hearing in 25 private if necessary for procedural reasons. In fact</p> <p style="text-align: center;">Page 11</p>
<p>1 Sir, at the time of the PII certificate was signed 2 10 days ago, the position was that the wider review 3 process and the report were complete. You will see that 4 there is a statement to that effect at paragraph 7 of my 5 written submissions. 6 Since then, and in fact in the last couple of days, 7 it has been decided to conduct a limited amount of 8 further due diligence work. This is, plainly, 9 regrettable as far as these proceedings are concerned, 10 regrettable not only because we had previously informed 11 you that the process was complete, but also because, at 12 least in theory, it is possible that the further work 13 may throw up fresh information that is of relevance to 14 this inquest, and which if it is sensitive, may have to 15 be the subject of a further PII claim. 16 We do not expect this due diligence work to take 17 long. Potentially, as little as a matter of days, but 18 it may take as long as a month. 19 Sir, having said all that, the clear instructions 20 that I have received from the Home Office are that this 21 further work is unlikely to affect the report, and even 22 more unlikely to affect the sections of the report that 23 are of relevance to this inquest. 24 In those circumstances, sir, and since we are here 25 today with a signed PII certificate before you, my</p> <p style="text-align: center;">Page 10</p>	<p>1 after this open hearing, there will be a short what is 2 called closed hearing or private hearing, in which 3 Mr O'Connor will have the opportunity to address you in 4 more detail if necessary on the matters contained in the 5 sensitive documents. 6 So far as those documents are concerned, as 7 Mr O'Connor said and as I indicated earlier, they 8 include extracts from the Home Secretary's report, but 9 they no longer include the US Government report. 10 The legal principles are summarised in 11 Mr Justice Cranston's judgment from November 2016 and 12 are, of course, well-known to this court. Essentially, 13 the court is required to assess the balance of competing 14 public interests. On the one hand, there is the public 15 interest and fairness, open justice. That is conducting 16 an open investigation into Mr Perepilichnyy's in which 17 the interested persons fully participate, which the 18 public can fully understand and which allays public 19 suspicion about the circumstances of his death. 20 On the other hand, there is the public interest in 21 preventing harm to the UK state by the public disclosure 22 of sensitive information. 23 Those are the public interests that you are required 24 to balance when considering the Home Secretary's 25 application.</p> <p style="text-align: center;">Page 12</p>

<p>1 As to the merits of the application itself, like 2 Mr O'Connor, I am in difficulties because I cannot refer 3 to the substance of the material in question. But 4 you will bear in mind that the Home Secretary has 5 certified that, in his view, the disclosure of the 6 sensitive documents would give rise to a real risk of 7 serious harm to one or more important public interests, 8 for the reason explained in the closed schedule to his 9 certificate. 10 I am not in a position to make open submissions 11 about that and whether or not the public interest in 12 their disclosure outweighs the risks that the Home 13 Secretary identifies. However, I am able to say that 14 insofar as the factors weighing in the balance are 15 similar to or analogous to those that were considered by 16 Mr Justice Cranston in November 2016, then you may feel 17 there is some merit in the Home Secretary's application. 18 Prior to doing so, you, sir, will want to help sure 19 that every effort has been made to explain publicly the 20 nature of the relevant information and its significance, 21 and thereby to assure the persons and the public that 22 the withholding of sensitive documents has not 23 undermined the integrity of your investigation. 24 And sir, this summary which you delivered to openly 25 in court and was delivered to the interested persons is</p> <p style="text-align: center;">Page 13</p>	<p>1 a substantial way to addressing or allaying the public 2 concern about Mr Perepilichnyy's death. 3 In your ruling, sir, you agreed with those 4 questions, and also agreed with a submission made by 5 Hermitage that public suspicion or public concern 6 features in the first question, as well as the second. 7 You answered those questions, effectively, by saying 8 that you could carry out a proper investigation and the 9 public concern can satisfactorily be allayed. Although 10 of course, not wholly allayed because, by definition, 11 there is material that you have seen and others have 12 not, and that is most unfortunate. 13 Sir, I cannot again, as I could not last time, 14 describe in detail why the answers to those questions 15 remain the same, but it does remain my view, sir, having 16 seen the material that is the subject of the PII 17 application today, that you can properly discharge your 18 responsibilities and it is not necessary for you to look 19 to the Secretary of State to order a public inquiry into 20 these matters. It may be I need to address you further 21 having heard from Ms Hill, who I know has views on that 22 matter, which she would like to express to you now. 23 Unless I can assist you, I will leave it there. 24 JUDGE HILLIARD: Thank you. 25 MS HILL: Sir, I think my learned friend for the Insurers</p> <p style="text-align: center;">Page 15</p>
<p>1 designed specifically for that purpose, I will submit. 2 There is a corollary, sir, to upholding a public 3 interest immunity application, and that is that relevant 4 documents, because only relevant documents are the 5 subject of an application, are withheld from use in the 6 inquest, which is a public process; in other words, 7 you get to see them, sir, but the interested persons and 8 the public do not, and they cannot for all intents and 9 purposes be relied upon in your conclusions. 10 The corollary of that, sir, is that you must 11 determine whether, having seen the sensitive material, 12 it is necessary for you -- whether you can properly 13 carry out your statutory obligation to conduct a full 14 fair and fearless application. 15 Sir, you will recall that that issue came up last 16 year at the time when you were reviewing the original 17 PII material, and I identified two questions for you to 18 consider which form part of your ruling. Just for the 19 avoidance of any confusion, those questions were, 20 firstly, in the absence of the sensitive material, will 21 it would be possible to conduct a full, fair and 22 fearless inquiry into Mr Perepilichnyy's death and to 23 determine insofar as that is possible how he died. 24 Secondly, in the absence of the sensitive material, 25 will it still be possible for the inquest to go</p> <p style="text-align: center;">Page 14</p>	<p>1 wishes to go before me, if you are content with that. 2 MR MOXON-BROWNE: We have, in the past, I think usually 3 taken me first, but I am quite content to address you at 4 any time. 5 JUDGE HILLIARD: Good, thank you. 6 MR MOXON-BROWNE: Sir, it is our submission that the 7 fairness and transparency of the original public 8 interest immunity hearing was seriously marred by the 9 failure of the then coroner, senior coroner for Surrey, 10 to clearly identify what documents it was that he was 11 seeking from the government. You may recall that no 12 schedule 5 request was made; no formal request for 13 information so far as we were aware was ever made and 14 there remained throughout the process uncertainty 15 that was never resolved about precisely what it was that 16 the coroner was seeking. 17 Now, of course, it is open to the government to say, 18 "we have documents for which we claim immunity from 19 disclosure". It is also open to the government to 20 say -- although I imagine they would only say it in 21 a rather exceptional case -- "it is so secret we cannot 22 even tell you what the documents are, let alone what is 23 in them". But what they cannot do -- and what 24 you should do your utmost to prevent happening -- is to 25 say, "you cannot know what it is the coroner has asked</p> <p style="text-align: center;">Page 16</p>

<p>1 to see", that was the vice of the situation we had 2 before. It was a complaint I made to the senior coroner 3 for Surrey. I made it again in front of 4 Mr Justice Cranston, and it was, as I say, a serious 5 defect in the procedure that was adopted. My concern is 6 that we seem to be heading towards an exactly similar 7 problem in this case.</p> <p>8 You have been, I am sure, unnecessarily advised by 9 Mr Skelton that prior to resolving this application, you 10 will want to ensure that every effort had been made to 11 explain publicly the nature of the relevant information, 12 et cetera, and I would like myself, respectfully, to ask 13 you to add to that to make it absolutely clear what it 14 is you have been asking to see.</p> <p>15 When I saw the application put in and the 16 submissions in support, I was left with no idea at all 17 about what it was we were talking about. It seems that 18 Ms Hill had the advantage of me. She thought it was all 19 about Ms Amber Rudd's certificate and did not realise 20 that there may have been other things. That has been 21 since, at least partially I think, put right.</p> <p>22 But my concern, as always so far as this question of 23 PII is concerned, revolves around a single issue which 24 is whether or not Surrey Police or the Government have 25 evidence that Mr Perepilichnyy was, prior to his death,</p> <p style="text-align: center;">Page 17</p>	<p>1 Which is the very question which we have always been 2 looking for an answer.</p> <p>3 So, my first request to you, when you deal with this 4 PII application is to make it crystal clear that you 5 have asked for that information, and that you have had 6 an answer and, if it be the case, that a claim for 7 public interest immunity has been made by the Government 8 as a reason for not providing you, or anybody else, with 9 the answer to that question.</p> <p>10 So, clarity about what you have asked for; clarity 11 about what the Government's position about that is; and 12 in particular that they, basically, if it be the case, 13 are declining to say one way or the other what the 14 relationship between British Intelligence and 15 Mr Perepilichnyy was. So, that is the first point.</p> <p>16 The second point relates to the way you resolve that 17 PII issue on the merits. It is, of course, well 18 understood by me, indeed it is a trite I think 19 observation, that traditionally NCND (neither confirm 20 nor deny) is the Government's regular, and automatic and 21 final response to any question about who does and who 22 does not work for the intelligence services.</p> <p>23 I would imagine, although it is the nature of these 24 proceedings that I cannot know, that that is at least 25 one of the things that may be said in this case.</p> <p style="text-align: center;">Page 19</p>
<p>1 working for or in contact with British Intelligence. 2 That was one of the issues that we had asked 3 Mr Travers, senior coroner for Surrey, to pursue. In 4 the end, we were told, and it was part of a ruling which 5 I think you declined to interfere, that that question 6 was not relevant. Not that it was a question that could 7 not be answered by the Government because public 8 interest immunity attached, but because it was not 9 relevant. There the matter rested.</p> <p>10 With profound respect, we made it clear all along we 11 did not think that was right. It seemed to us that it 12 was, obviously, very relevant for a couple of reasons, 13 which I will come to, if I may, in just a moment.</p> <p>14 But we see from the summary, which you were kind 15 enough to provide us with in advance of this hearing and 16 have read out, it kicks off with the observation: 17 "I am aware that HMG has updated the searches 18 previously conducted." 19 You do not say how you become aware of that, but one 20 presumes that some request was made. 21 Then: 22 "As part of that exercise, HMG has specifically 23 addressed the question of whether Mr Perepilichnyy was 24 an agent for, or had any other contact that with British 25 Intelligence."</p> <p style="text-align: center;">Page 18</p>	<p>1 I would ask you, in looking at that, to take a very 2 careful look at the merits of that particular 3 justification for claiming immunity in the particular 4 circumstances of this case.</p> <p>5 If I may respectfully say so, all rules -- rules are 6 our servants, they are not our masters. There can 7 always be exceptions. If it was ever said in future: 8 well, in the Perepilichnyy case that question was 9 answered, so you better answer it, hence in another case 10 it should be answered, no, the Perepilichnyy case was 11 exceptional and there were special reasons why it was 12 really important that that question be answered publicly 13 in that case.</p> <p>14 So what is the relevance? It is twofold. The 15 Skripal case demonstrates as clearly as anything could 16 the lengths to which the Russian state is prepared to go 17 in order to make an example of or to punish people 18 perceived of as enemies, traitors or turncoats.</p> <p>19 Mr Perepilichnyy, the evidence you have heard, 20 arguably, if not certainly, falls into the same bracket, 21 just as in the Litvinenko case where I believe I am 22 right in saying an exception to the NCND rule was made 23 because it was made public that Mr Litvinenko did have 24 a relationship with British Intelligence. 25 If that were the case in relation to</p> <p style="text-align: center;">Page 20</p>

<p>1 Mr Perepilichnyy, it would be very powerful evidence 2 indeed that he might well have been in special danger 3 from those who wished him ill because of a perception 4 that he was a traitor or a turncoat, or an enemy of 5 Russia. 6 Without that evidence, there is, if I may 7 respectfully say so, aware as I am of your efforts to 8 not only to conduct a full inquiry but to be seen to 9 have conducted a full inquiry, I appreciate that, it is 10 a big hole and weighing up where the public interest 11 lies I would urge you not to pay, automatically, lip 12 service to a rule which is easy to understand, but which 13 by its nature is not going to be appropriate in every 14 case. 15 JUDGE HILLIARD: Mr Moxton-Browne, I am going to have break 16 off -- when I say "shortly", it probably means now -- 17 but can I just tell you this: I am very much in 18 everybody's hands. I can resume again at about quarter 19 past, probably, then as far as I am concerned, whatever 20 is most convenient, there is obviously people who are 21 taking a note, but -- 22 MR MOXON-BROWNE: Sir, I wonder if I might have another 30 23 seconds. 24 JUDGE HILLIARD: You certainly can. I just wanted to say 25 this, so that everybody can think about it. If</p> <p style="text-align: center;">Page 21</p>	<p>1 situation we have now, it becomes simply impossible to 2 believe that if someone who was in the bosom of 3 British Intelligence was rubbed out in that way. 4 And that of course is, as far as the investigation 5 and the evidence in this case goes, a matter of 6 considerable importance. So, for those reasons, an 7 inquest which does not take account of that factual 8 matter is not going to be, in our respectful submission, 9 perceived as full. 10 If it be the case that Mr Perepilichnyy was not 11 working for British Intelligence, which of course may be 12 the case, then let us know that; if he was, similarly 13 let us know. 14 Mr Fear-Segal has very helpfully drawn my attention 15 to Ms Hill's submissions to Mr Justice Cranston on 16 29 September 2016, at paragraph 100 -- 17 JUDGE HILLIARD: I have not immediately got that to mind. 18 MR MOXON-BROWNE: No, I did not want to take up time with 19 it. 20 JUDGE HILLIARD: No, there is no shortage of time. It is 21 just quite when that time is -- 22 MR MOXON-BROWNE: -- exceptions to when NCND applies and 23 they are set out at paragraph 100. I will make sure you 24 get a copy. 25 JUDGE HILLIARD: Thank you very much.</p> <p style="text-align: center;">Page 23</p>
<p>1 everybody is content with, as it were, just breaking off 2 until quarter past, then carrying on, that is fine. 3 I am just -- 4 MR MOXON-BROWNE: Do you want my 30 seconds now? 5 JUDGE HILLIARD: I will have your 30 seconds. 6 MR MOXON-BROWNE: The second question of relevance relates 7 to the, in our submission, hitherto inadequately 8 explained delay before the identity and significance of 9 Mr Perepilichnyy's role in relation to what I call "the 10 Hermitage affair" came to the attention -- 11 JUDGE HILLIARD: So the inadequately explained delay before 12 his role in the Hermitage affair became -- 13 MR MOXON-BROWNE: Yes, if they say who he was -- they know 14 he was Mr Perepilichnyy, but who he was in the broader 15 sense of his significance and why he might have been 16 someone at risk from a violent death, a curiously long 17 time before that came to the attention of Surrey Police, 18 and of course the critical effect that that had on 19 things like an autopsy which involved the destruction of 20 evidence and various other matters that it is 21 unnecessary to go over again, whereby the trail was 22 allowed to become cold. 23 If it be the case that Mr Perepilichnyy was working 24 for British Intelligence, that which currently strains 25 credibility, which I would respectfully submit is the</p> <p style="text-align: center;">Page 22</p>	<p>1 MR MOXON-BROWNE: Thank you, sir. 2 JUDGE HILLIARD: Quarter past all right for everybody? 3 Good. 4 (12.55 pm) 5 (A short break) 6 (1.20 pm) 7 JUDGE HILLIARD: Can I just say, please do not be under the 8 impression there is a time limit on this. If I may say 9 so, you are being extremely helpful. It is the help I 10 want. It was a question of when we have time. I just 11 needed to -- 12 MR MOXON-BROWNE: I have not felt under the slightest 13 pressure, but I am grateful to you for that. 14 I did, perhaps, take Ms Hill's excellent submissions 15 at an unnecessary gallop. I just would like to read out 16 a very familiar passage from Home Office v Mohammed. 17 This is very familiar to you: 18 It is not simply a matter of a governmental party to 19 litigation hoisting the NCND flag and the court 20 automatically saluting it and so we urge you not to 21 automatically salute the flag. 22 The other point I was making, the effectiveness of 23 the NCND policy is not undermined if it is departed from 24 in exceptional cases. I stress "exceptional". Ms Hill 25 gives a link. I am going to pass you these submissions</p> <p style="text-align: center;">Page 24</p>

<p>1 so you can see it. This is explained in paragraphs 5 2 and 6 of counsel for Litvinenko's inquest submissions 3 and it gives the link. So if you are either unfamiliar 4 or want to refresh your memory about that principle that 5 the effectiveness of the policy is not undermined if 6 it is departed from in exceptional cases you have that 7 link. 8 This document is sullied by annotations in Ms Hill's 9 fair hand. What they say is HCM and then the date of 10 the submissions to the High Court. So it is nothing 11 more -- sullied is the wrong word, declaration 12 annotated. Thank you very much. (Handed). 13 JUDGE HILLIARD: Thank you very much. 14 MR O'CONNOR: Sir, before Ms Hill rises I wonder if I might 15 just make two brief points . 16 JUDGE HILLIARD: Yes. 17 MR O'CONNOR: The first is on the question of the Litvinenko 18 case that my learned friend raises. Just as a matter of 19 fact it is not the position that NCND was departed from 20 in that case. Of course the question as to whether 21 Mr Litvinenko was an agent of any type or worked in 22 anyway for the British Intelligence agencies was raised, 23 but throughout those proceedings Her Majesty's 24 Government never departed from the NCND response in the 25 open proceedings. That is the first point.</p> <p style="text-align: center;">Page 25</p>	<p>1 about the US Government material that has been referred 2 to by counsel to my right. 3 Going over the page, please, to the second page, it 4 is worth recalling for the purposes of this submission 5 what it was that BuzzFeed reported. You can see in the 6 second paragraph on this page a reminder that BuzzFeed 7 reported that there was, firstly, high-grade 8 intelligence indicating that Mr Perepilichnyy was likely 9 assassinated on direct orders from Mr Putin or people 10 close to him. 11 And secondly, that there was in existence a highly 12 classified report compiled for the US Congress by the 13 Office of the Director of National Intelligence, which 14 also asserted with high confidence that his murder was 15 sanctioned by Mr Putin. 16 That is the background, sir, to the negotiations 17 that have taken place, and of course is the background 18 to the letter from the US embassy that you find at 19 tab 10 of your bundle. 20 Sir, the first concern that we have is with the 21 reading of that letter. Perhaps I could ask you to turn 22 up the letter at tab 10 that is dated 14 May? The 23 letter says that the United States Government -- I will 24 just let you find it, sir -- possesses a document 25 referencing United Kingdom based public media reports</p> <p style="text-align: center;">Page 27</p>
<p>1 So the second point on this case my learned friend 2 Mr Moxon-Browne has raised the question. He has shown 3 you that you are right in summary where you refer to the 4 fact that the question as to whether Mr Perepilichnyy 5 was an agent or had any contact with the 6 British Intelligence agencies, you refer to the fact 7 that the question has been asked and answered. 8 Mr Moxon-Browne has said that it is not clear whether or 9 not the answer that has been given is the subject of the 10 PII application that is before you. So I have taken 11 instructions and we can say expressly that it is part of 12 the PII claim that is before you today. So I am 13 grateful. 14 JUDGE HILLIARD: Yes, all right, thank you. Ms Barton, 15 you did not want to say anything. 16 MS BARTON: No, I do not, thank you sir. 17 MS HILL: Thank you sir. I do not know if you have to hand 18 a copy of the letter that was handed by those that 19 instruct me that sets out several point that is we wish 20 to make in relation to the points today. That is the 21 letter dated 27 June it sets out four key points that 22 I wish to just address you on briefly. 23 JUDGE HILLIARD: I am very grateful for that. 24 MS HILL: The first is perhaps the most substantive and you 25 will see in that letter, sir, we refer to the issue</p> <p style="text-align: center;">Page 26</p>	<p>1 that Mr Perepilichnyy was assassinated in the UK before 2 he was scheduled to testify about a tax fraud network, 3 and then says: 4 "This report contains no US Government reporting 5 concerning the death of Mr Perepilichnyy." 6 As we make clear in the letter, sir, with all due 7 respect, we are struggling to follow the meaning of that 8 letter and therefore the rationale for your decision not 9 to pursue disclosure of the report itself. 10 We ask the question in the letter whether the 11 document referred to in this letter from the US embassy 12 is the report cited by BuzzFeed, where it says "the 13 report contains no US Government reporting"; what is the 14 report that is therefore referred to? What does it mean 15 to say that this report, the report in the possession of 16 the US Government, contains no US Government reporting? 17 We are, with all due respect, struggling to follow 18 quite how that fits with what has been reported by 19 BuzzFeed. We are not clear from that, sir, whether or 20 not the report in question is the same as the report 21 that we understand has been inspected by the coroner's 22 legal team. 23 There is an obvious concern, sir, about whether or 24 not what has been reported by BuzzFeed is accurate or 25 not. The concern that our client has is that, as I say,</p> <p style="text-align: center;">Page 28</p>

<p>1 with all due respect, we are struggling to follow the 2 meaning of that letter. It feels rather circular and 3 rather double speak, if you like, to be saying that 4 there is a US Government report that contains no US 5 Government reporting, and therefore we are concerned 6 that this is not an answer to the issue of whether or 7 not there is material that this inquest should look at. 8 Therefore we remain in the dark as to the rationale 9 for not pursuing that line of inquiry. It simply does 10 not give clarity, we say, as to what was reported by 11 BuzzFeed. 12 Going over the page, sir, on to the second page of 13 our letter, you will see that the second broad concern 14 we have raised is that it appears to be the case that 15 there are elements of both the British aspect of the PII 16 material, if I can call it that, and the US aspect that 17 are already matters in the public domain. 18 It seems clear from the submissions that have been 19 made and indeed from your summary, sir, that there are 20 elements of both the domestic material and the US 21 material that are already matters that have been made 22 known in the inquest, or are otherwise in the public 23 domain. 24 So, we have expressed a concern, sir, we remain 25 concerned that PII has been claimed in respect of</p> <p style="text-align: center;">Page 29</p>	<p>1 give clarity to those I represent or perhaps to the 2 public as to what in fact has been discovered. 3 JUDGE HILLIARD: All right. Ms Hill, thank you very much 4 for that and for the letter, which is helpful. 5 Mr Skelton, anything you want to say about any of 6 that at the moment? 7 MR SKELTON: Sir, only one small point. I obviously loathed 8 on my feet to trespass into sensitive -- 9 JUDGE HILLIARD: I would much rather you did not as taking 10 that at a gallop or even a canter is not -- 11 MR SKELTON: Indeed. So far as the last point Ms Hill made 12 about the US Government letter, just to confirm the 13 document referred to in sentence one is the report 14 referred to in sentence two, and that is the report that 15 you and your legal team have seen in response to the 16 request you made to the US Government. That is a small 17 ambiguity at least I can safely clear up now. 18 JUDGE HILLIARD: Yes. 19 MR SKELTON: Sir, I think that concludes the -- 20 MS HILL: Sorry, can I just say, sir, I had understood that 21 and I think my submission was nevertheless then when one 22 reads that final sentence, what one has then is the US 23 Government has a report that contains no US Government 24 reporting and I am afraid that does not help much 25 further.</p> <p style="text-align: center;">Page 31</p>
<p>1 material that is already in the public domain or known, 2 and so we have asked whether or not we can have 3 disclosure, effectively, of those parts of the British 4 or American pots of material that are already in the 5 public domain or known. 6 Sir, you will see briefly the final two points we 7 raise in the letter are simply a question of 8 clarification about the scale or the scope of the PII 9 application today, whether or not we are right to assume 10 that it is only proceeding in relation to those parts 11 of bundle A that have not been referred to in your 12 summary note. 13 Fourthly, we have raised a question, sir, about the 14 basis for your conclusion in your note that there is new 15 material containing assessments that have now been made, 16 but it is not material that leads you to feel the need 17 to conduct any further inquiries. 18 So, those are the concerns, and perhaps the foremost 19 one is the wording of the 14 May letter and the fact 20 that PII appears to have been claimed in relation to 21 some material that is already known. 22 So, sir, those are our broad concerns. We have 23 nothing to add to the legal principles that have been 24 set out clearly, but sir, I hope you can understand why 25 on receipt of the 14 May letter, it does not perhaps</p> <p style="text-align: center;">Page 30</p>	<p>1 JUDGE HILLIARD: All right. 2 MR SKELTON: Yes. I will not try and pass the difference 3 between "reporting" and "report". I have tried to 4 explain to Ms Hill outside of the hearing but I have not 5 succeeded. Perhaps we can take this up again. 6 JUDGE HILLIARD: Quite. Who knows, there may be comment and 7 assessment and so on, on the one hand, and merely 8 rehearsal. 9 But Ms Hill, amongst other things, whatever the 10 solution to the application that is made at the moment 11 is I understand your request, as it were, and 12 Mr Moxon-Browne's about as much clarity as is possible. 13 It is very helpful if I may say so as well, things that 14 are not clear, it is very useful to have them 15 identified. 16 MS HILL: I hope it is understood we do not make any 17 submissions about the legal principles. We fully 18 understand the competing interests in play, and we fully 19 understand the difficult balancing exercise here, but we 20 are concerned to make sure there is as much transparency 21 as possible and as much due process is followed. 22 JUDGE HILLIARD: I am grateful to you both. 23 Anything else, to say at this stage? So we will 24 probably move to the next stage then, Mr Skelton. 25 MR SKELTON: We do, sir. The court must be cleared and we</p> <p style="text-align: center;">Page 32</p>

1 will need to reconvene in a smaller number.
 2 JUDGE HILLIARD: Yes.
 3 MR MOXON-BROWNE: Sir, could I just enquire? Two things.
 4 One, will we be required again today; and secondly,
 5 would it be possible to give any indication at all as to
 6 when final submissions in this case will be invited --
 7 JUDGE HILLIARD: Both --
 8 MR MOXON-BROWNE: -- before we go.
 9 MR SKELTON: Sir, I think the answer is: no further open
 10 hearing today.
 11 JUDGE HILLIARD: If it helps, forgive me, so we need not
 12 detain anybody else?
 13 MR SKELTON: Not for the purposes of today, no. So far as
 14 closing submissions are concerned, that is to be
 15 determined after the hearing and in light of your
 16 judgment and any submissions made to you in light of
 17 that, and subject to diaries as always, which the
 18 solicitors in the inquest will liaise with respective
 19 counter parties.
 20 JUDGE HILLIARD: So, we will send something round about that
 21 with a date that will suit everyone.
 22 MR MOXON-BROWNE: Thank you.
 23 JUDGE HILLIARD: Ms Barton, did you want to say anything?
 24 MS BARTON: It appears that Her Majesty's Government need
 25 a month anyway probably because of the additional

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1 material.
 2 JUDGE HILLIARD: Might do --
 3 MS BARTON: Yes.
 4 JUDGE HILLIARD: Yes. Right. Well, thank you all very
 5 much. I am very grateful to you both, thank you.
 6 (1.37 pm)
 7 (Adjourned in open court)

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