

<p>1 Friday, 21 September 2018 2 (10.30 am) 3 Opening remarks 4 THE CORONER: Mr Skelton, it may help if I say this, just to 5 my understanding of what we may deal with today. As 6 I understand it, we are going to proceed to the 7 penultimate stage of the Inquest. I have given my 8 ruling as to the public interest immunity claim, I 9 upheld that, the ruling is on the chief coroner's 10 website. In summary I said: 11 "Such relevance as there may be in the PII material, 12 over and above what is already publicly available in the 13 Inquest evidence is so marginal and/or minimal as to 14 mean that it will afford me no assistance in resolving 15 the central question in this Inquest as to how 16 Mr Perepilichnyy died." 17 I went on in the ruling to say that in those 18 circumstances, the Inquest could and should continue, 19 but I said I would listen to any further submissions 20 there may be about that. As I understand it, no advance 21 indication of any has been given. 22 Subject to that, I am very grateful to everybody for 23 their assistance which I received in writing -- thank 24 you all for that -- I am not inviting repetition 25 obviously of what is there but if anybody wants to add</p> <p style="text-align: center;">Page 1</p>	<p>1 deputy director for national security in the Home 2 Office. He has appended to a very short statement 3 a letter from Sir Mark Sedwill, who is the national 4 security adviser to Her Majesty's Government, to 5 Jens Stoltenberg, secretary general of NATO. That 6 letter focuses specifically on the Skripal events and 7 indeed the chemical weapons programme on the Russian 8 government. Sir, given the relevance of that evidence, 9 I ask you to exercise your power to admit that formally 10 into evidence in these proceedings. 11 Before doing so you need to announce the nature of 12 it, I have done that in essence. 13 THE CORONER: Yes. 14 MS SKELTON: The full name of the maker, that is 15 Mr Henry Hirsch and that any interested person alongside 16 me may object to its submission. Of course they are 17 entitled to see copy and as I understand it have already 18 seen a copy. On that basis you may direct that all or 19 part of it be read but I do not propose that you do so. 20 We have all read it and it has already formed part of a 21 ruling which is publicly available on the chief 22 coroner's website. 23 THE CORONER: On that basis I shall admit that, anybody want 24 to say anything about that? No? Good. Thank you very 25 much.</p> <p style="text-align: center;">Page 3</p>
<p>1 anything on the law, as far as conclusions are 2 concerned, obviously I will listen to that. 3 As to the question of whether I should make a report 4 to prevent future deaths, again I am happy to hear 5 counsel about that. It occurs to me it may be that 6 Ms Barton could help as to whether there is any current 7 Surrey or police guidance as to categorising a death as 8 suspicious, and what then follows from that decision and 9 whether that is the same or different as 2012, but we 10 can come back to that. Then I think there is also 11 a statement from Henry Hirsch, that's right, that we 12 have to deal with. 13 Broadly speaking that is how I see matters but 14 obviously I shall welcome any help that anybody wants to 15 give. 16 Anything you want to say at the moment? 17 MS SKELTON: No, sir, thank you, no further issues to add to 18 that. 19 Shall I introduce Mr Hirsch? 20 THE CORONER: Yes, please, would you. 21 MS SKELTON: You have the power, sir, under Rule 23.1(d) of 22 the Inquest Rules to admit written evidence which is 23 unlikely to be disputed. In your PII ruling and indeed 24 at the last hearing you referred to a statement from 25 a senior civil servant Mr Henry Hirsch, who is the</p> <p style="text-align: center;">Page 2</p>	<p>1 MS SKELTON: Thank you. 2 THE CORONER: Yes, Mr Moxon Browne. 3 Closing submissions by MR MOXON BROWNE 4 MR MOXON BROWNE: If it pleases you, we have put in pretty 5 extensive written submissions, possibly dauntingly long, 6 and therefore it would be both inappropriate and unfair 7 for me to take up very much time this morning. 8 There is however one quite important matter of law 9 which we have picked up from your counsel's submissions. 10 We think that an error has been made which has the 11 potential to lead you into legal error of an appellate 12 nature. Obviously that is to be avoided and even if 13 only out an abundance of caution I want to be absolutely 14 sure that we all know where we are on that point. 15 THE CORONER: Yes. 16 MR MOXON BROWNE: Sir, the point arises in Mr Skelton's 17 submissions and Mr Fear-Segal will give me a reference 18 in the submissions bundle, at page 15, it is internal 19 pagination of the CTI's submissions, page 15. 20 THE CORONER: Yes. 21 MR MOXON BROWNE: It is at tab 5, I am told, internal 22 pagination 15. 23 THE CORONER: Yes. 24 MR MOXON BROWNE: Mr Skelton has set out a series of five 25 propositions which lead him to the conclusion -- I am</p> <p style="text-align: center;">Page 4</p>

<p>1 not sure quite how this lives with rule 27 but anyway it 2 is there -- the likely explanation for 3 Mr Perepilichnyy's death is that he died of natural 4 causes. 5 Just looking at those propositions, the first one, 6 the only two potential causes of death are unlawful 7 killing or natural causes. That we agree with, that is 8 common ground everywhere I think. 9 Secondly, there is evidence to support the 10 conclusion that if one of those causes of death is 11 likely, then the other becomes unlikely and vice versa. 12 It is true that there is such evidence that came from 13 the joint agreement of Dr Wilmshurst and 14 Professor Sheppard. 15 It is the third one which is, in our submission, 16 wrong: 17 "There is also evidence to support the conclusion 18 that unlawful killing is unlikely." 19 That is, we submit, in point of fact, wrong, if 20 there is any such evidence it has certainly eluded me, 21 it is plainly a matter which I was concerned to look at 22 quite carefully. It does have an important knock-on 23 effect so far as weighing inherent improbabilities is 24 concerned, it's a point I want to come on to. 25 Just if I can make the point good about the</p> <p style="text-align: center;">Page 5</p>	<p>1 findings either supporting or refuting a cardiac cause 2 of death. I think since we are in a binary situation, 3 although they are not toxicologists, we may perhaps take 4 it is their view, vice versa. The three sources 5 provided, that is records, witness evidence and 6 pathological findings, provide no evidence consistent or 7 inconsistent with a cardiac cause of death. 8 I respectfully submit that that probably includes by 9 inference or indeed a poisoning. 10 Then we have Professor Ferner and Dr Perry and 11 Dr Rice, who of course are the toxicologists who say we 12 agree it is possible that Alexander died as a result of 13 poisoning. Whether that is likely or unlikely has to be 14 decided on the basis of an alternative diagnosis. If 15 cardiac arrhythmia is likely in all the circumstances 16 then poisoning is unlikely and vice versa. 17 That is one of the expressions of the point that 18 Mr Skelton was making. 19 That was in point of fact drafted by me before the 20 final days of the Inquest, when if you recall 21 Professor Ferner came back to give more evidence. He 22 did so in the context of evidence about events in Paris 23 and the possibility of fish poisoning and so on, but 24 your counsel, and indeed counsel for Surrey Police, took 25 the opportunity just to see if they might squeeze</p> <p style="text-align: center;">Page 7</p>
<p>1 evidence, may I take you to my own written submissions 2 at internal pagination page 28, which is at page 228 in 3 your submissions bundle. At paragraph 123 we say that 4 in our submission there is no positive medical or 5 forensic evidence that Alexander Perepilichnyy was 6 murdered. That is the starting point. 7 The relevant experts are all agreed that the 8 pathological signs and the observations made at the time 9 of death are equivocal, neither specifically supporting 10 or refuting either of the two postulated causes of 11 death. You can read that evidence up hill and down dale 12 and you will not fine anybody, be they expert or lay 13 witness, who is prepared to say what the probabilities 14 are arising out of what they saw, the word "equivocal" 15 is repeatedly used, consistent with both, not 16 inconsistent with either. 17 Dr Fegan-Earl and Dr Ratcliffe in their agreed 18 statement said there is no clear observable pathological 19 process that explains this man's death, the cause of 20 death is properly regarded as unascertained. Then, 21 looking at it from the cardiological or cardiac point of 22 view, not as toxicologists but as cardiologists, we have 23 Professor Sheppard and Dr Wilmshurst agreeing -- this is 24 at my paragraph 126 -- there was no positive evidence in 25 the medical records, witness evidence or pathological</p> <p style="text-align: center;">Page 6</p>	<p>1 a little bit more out of him on this issue of 2 likelihood. I would like to take you and it is the only 3 transcript reference I want to take you to, I want to 4 take you to what he said on that occasion. 5 It was on Day 15, and I am told that in your 6 transcripts bundle we will find that at page 1140, that 7 is internal pagination, page 102. 8 THE CORONER: Yes. 9 MS SKELTON: Bottom left-hand corner. 10 Mr Skelton is saying to the Professor, who you will 11 bear in mind was qualified in toxicology, pharmacology 12 and general medicine, so he is the man for this point: 13 "Thank you, sir, and I will come back to the overall 14 conclusions as well to make sure we fully understand 15 them and to give the Professor an opportunity just to 16 make absolutely clear his views, his final opportunity 17 ... Previously you said [says Mr Skelton to the 18 witness] If someone dies suddenly within an hour of 19 being well, it is possible they were killed by 20 a delayed-action poison. 21 "Answer: Correct. 22 "Question: You also said that Mr Perepilichnyy's 23 clinical features, as you then understood them, were 24 non-specific? 25 "Answer: That is at the time that he died?</p> <p style="text-align: center;">Page 8</p>

<p>1 "Question: Yes. 2 "Answer: Correct. 3 "Question: You felt able to rule out the likelihood 4 of a cumulative poison? 5 "Answer: Correct, and that was the conclusion of 6 the experts together ..." 7 "Question: ... as I understood your evidence you 8 were unable to express a view as to when it was likely 9 [I think it must be 'whether it was likely'] 10 ie a greater than 50 per cent chance, that he was killed 11 by a swiftly acting poison except for the ones that were 12 ruled out by testing. 13 "There were others, action for example 14 organophosphate poisons which may act very swiftly and 15 cannot be ruled out? 16 And Professor Ferner adds: 17 "And cyanide for example." 18 Cyanide of course being a very common poison. 19 "Question: Likewise with a delayed-action poison, 20 again except for the ones that were ruled out, for 21 example paracetamol? 22 "Answer: Yes. 23 "Question: From a medical perspective and 24 a toxicological perspective two possibilities remained, 25 death from a cardiac cause or deliberate poisoning?"</p> <p style="text-align: center;">Page 9</p>	<p>1 Because he was explaining why he qualified that: 2 "You gave the view that the determination of which 3 was the more likely [that is out of poisoning or 4 cardiac] was dependent on an assessment of external 5 circumstances? 6 "Answer: Correct. 7 "Question: Which is a matter for the court? 8 "Answer: Absolutely. 9 "Question: Can I just then get to the point of 10 whether or not all of those views remain the same now or 11 whether or not to some extent you have crystallised or 12 changed your views further? 13 "Answer: No, I haven't changed my views at all. 14 I think it is still unclear and it is still for the 15 court to decide on the external factors." 16 The way I put it in my submissions was that at the 17 end of the day, the answer to this puzzle, if there is 18 an answer, is going to lie in the circumstances of 19 Mr Perepilichnyy's life and not in the circumstances of 20 his death. 21 Well that was Mr Skelton's attempt to get 22 Professor Ferner to come off the fences and as you will 23 see he resolutely declined to do that but undeterred, 24 Ms Barton on behalf of Surrey Police returned to the 25 point when she cross-examined Professor Ferner and we</p> <p style="text-align: center;">Page 11</p>
<p>1 And he said: 2 "I think I said in my original report that these two 3 possibilities are not mutually exclusive." 4 Of course he was referring to poisons that can bring 5 on cardiac symptoms: 6 "Question: You did raise the possibility of 7 allergic reaction to penicillin ..." 8 I think Mr Skelton may have misunderstood for 9 a moment what Professor Ferner was referring to and he 10 says: 11 "Answer: Yes leaving that aside ... as we have 12 discussed in the case of colchicine, there are poisons 13 that predispose you to heart rhythm disturbance ..." 14 And he refers to Dr Wilmschurst saying that. 15 Mr Skelton says: 16 "That is one of the categories I have just given 17 you, isn't it, there is a cardiac cause, an independent 18 cardiac cause [not one arising from a poison] from 19 a structural abnormality which has not been picked up on 20 post mortem or some form of poisoning. They are the 21 primary possibilities?" 22 Professor Ferner says: 23 "I don't wish to quibble. I don't think you 24 interpolated the word 'independent' in your first 25 question."</p> <p style="text-align: center;">Page 10</p>	<p>1 see that on internal pagination 110, just a couple of 2 pages on in your bundle, I imagine. 3 THE CORONER: Sorry, give me that again? 4 MR MOXON BROWNE: It is internal pagination 110, 1142. 5 THE CORONER: Yes. 6 MR MOXON BROWNE: We are on the same point, trying to hunt 7 down whether there is any evidence to back up 8 Mr Skelton's observation that there is evidence that 9 poisoning is unlikely. 10 THE CORONER: We will come back to hear from him what he 11 meant by that. We are going to come back, Mr Skelton, 12 later you can tell us what you were referring to when 13 you said that, but we will do this for now. 14 MR MOXON BROWNE: It is no criticism of Mr Skelton. 15 THE CORONER: No. 16 MR MOXON BROWNE: There are not any references in his 17 submission, so it is understandable. 18 THE CORONER: Yes. 19 MR MOXON BROWNE: At the top of 110. 20 "Answer: There has been very detailed toxicological 21 analysis but, as we have discussed, it is not exhaustive 22 and cyanide is a case in point." 23 That's Professor Ferner]. 24 "Question: It is exhaustive insofar as toxins can 25 be tested for in the samples that are available at this</p> <p style="text-align: center;">Page 12</p>

<p>1 stage, that's right ...</p> <p>2 "Answer: Well we have discussed that too, I think,</p> <p>3 and the answer is it has been very extensive.</p> <p>4 "Question: ... it is right, isn't it that as</p> <p>5 a result of the extensive testing, no known toxins have</p> <p>6 been found in any of the samples?</p> <p>7 "Answer: That is my understanding.</p> <p>8 "Question: You have posited a number of</p> <p>9 possibilities which arise from the evidence that is</p> <p>10 available and the clinical evidence that is available?</p> <p>11 "Answer: Of course.</p> <p>12 "Question: None of those possibilities are in your</p> <p>13 view likely?"</p> <p>14 He is there referring to the possibility of</p> <p>15 poisoning:</p> <p>16 "Answer: That is true but the question is not</p> <p>17 whether they are likely, it is whether they are more</p> <p>18 likely than cardiac arrhythmia ..."</p> <p>19 That was in our submission a very important answer,</p> <p>20 and a correct one on the evidence:</p> <p>21 "Answer: ... sorry, as an independent cardiac cause</p> <p>22 I think.</p> <p>23 "Question: Your view is that they are not more</p> <p>24 likely than the independent cardiac cause?"</p> <p>25 That is the possibility of poisoning.</p> <p style="text-align: center;">Page 13</p>	<p>1 requisite degree of probability by reference to the</p> <p>2 improbability of another cause. You have to look at the</p> <p>3 issue of SADS, whether it is a conclusion that you could</p> <p>4 come to at all, let alone whether it was probable,</p> <p>5 without reference to what the alternatives are. There</p> <p>6 is no logic and if it's certainly not lawful to say,</p> <p>7 "Well, poisoning is unlikely and therefore death by SADS</p> <p>8 is likely".</p> <p>9 You will have in mind the authority that I referred</p> <p>10 to in my submissions the Popi M, I dare say you are very</p> <p>11 familiar with in any event. This is important and</p> <p>12 I would like to take the liberty of taking you to that</p> <p>13 authority just for a second so we can see, it is cited</p> <p>14 and applied in any number of cases where these issues</p> <p>15 arise.</p> <p>16 I take you to the case fully aware, of course, that</p> <p>17 it was in the end a case about the burden of proof and</p> <p>18 that there is no burden of proof in coronial proceedings</p> <p>19 and we have looked at Popi M I will make my submission</p> <p>20 about why it is nevertheless helpful in the context of</p> <p>21 these proceedings.</p> <p>22 My friends who may not have a copy of the</p> <p>23 authorities will find the relevant passage in my</p> <p>24 submissions at page 220 of the bundle., it is the famous</p> <p>25 quotation from Sherlock Holmes. I cannot get out of my</p> <p style="text-align: center;">Page 15</p>
<p>1 "Answer: That is not my view. I am not able to</p> <p>2 express a view but I did hear Professor Sheppard and</p> <p>3 Dr Wilmhurst give evidence and their evidence, I think,</p> <p>4 was that in 70 per cent of cases that they attribute to</p> <p>5 sudden acute cardiac death no cause is found ... that is</p> <p>6 not quite the same as saying no cause.</p> <p>7 "Question: As far as you are concerned, with the</p> <p>8 evidence you have heard and have had access to are you</p> <p>9 able to say what is more likely than not to have been</p> <p>10 the cause of death?</p> <p>11 "Answer: No. And if I were, I am sure it would be</p> <p>12 helpful for the proceedings."</p> <p>13 You may remember that answer which elicited a little</p> <p>14 ripple of amusement in the court.</p> <p>15 Unless I missed something which is very possible,</p> <p>16 there is in our submission no warrant for the</p> <p>17 observation that there is evidence that you could</p> <p>18 consider and act on that death by poisoning is unlikely.</p> <p>19 Why is that important?</p> <p>20 For this reason. That it is not a permissible</p> <p>21 approach, and this is the next step I think you are</p> <p>22 invited to follow, and this would be a wrong step. It</p> <p>23 is not permissible to invest an explanation for death</p> <p>24 for which there is insufficient evidence to persuade you</p> <p>25 that it is probable to invest it or bolster it with the</p> <p style="text-align: center;">Page 14</p>	<p>1 mind the image of Mr Skelton in a deerstalker hat</p> <p>2 talking to Mr Wastell as the person of Dr Watson.</p> <p>3 Sir, if I just rehearse the facts. The Popi M was</p> <p>4 a Greek rust bucket which sunk on a calm day in good</p> <p>5 weather in the middle of the Mediterranean for no</p> <p>6 apparent reason. There were by the time the matter got</p> <p>7 to court, it was a binary situation, it was agreed on</p> <p>8 all sides that either the ship had hit an underwater</p> <p>9 submarine, a submarine under water, or that because of</p> <p>10 its poor condition it had simply fallen apart in the</p> <p>11 water, the falling apart theory.</p> <p>12 The judge, Mr Justice Bingham as he then was,</p> <p>13 concluded that the falling apart in the water theory for</p> <p>14 technical reasons was nigh impossible, he expressed it</p> <p>15 tactfully, if that did happen he couldn't understand the</p> <p>16 mechanism. He said he was therefore driven to conclude</p> <p>17 that it must be the submarine theory, although for</p> <p>18 obvious reasons he thought that was pretty improbable</p> <p>19 too but of the two he felt obliged to prefer the</p> <p>20 submarine and it wound its way all the way up to the</p> <p>21 House of Lords, it had to get itself in front of</p> <p>22 Lord Brandon before anybody said, "Wait a moment, have</p> <p>23 they discharged the burden of proof? That is the answer</p> <p>24 here".</p> <p>25 The Court of Appeal, in various respects, a somewhat</p> <p style="text-align: center;">Page 16</p>

<p>1 compliant Court of Appeal didn't interfere with 2 Mr Justice Bingham's conclusions. 3 We pick it up on 955: 4 "The passages I quoted from Mr Justice Bingham's 5 judgment amply support the observations about his 6 approach to the case that I made earlier. These 7 observations were to the effect that he regarded himself 8 as compelled to make a choice between the shipowners' 9 submarine theory on the one hand and the underwriters' 10 wear and tear theory on the other. He failed to keep in 11 mind that a third alternative, that the shipowners had 12 failed to discharge the burden of proof that lay on them 13 was open to him. As regards the shipowners' submarine 14 theory Mr Justice Bingham stated in terms that he 15 regarded it as extremely improbable, a view with which 16 I think it unlikely that any of your Lordships will 17 quarrel." 18 Wear and tear contended by counsel, that he said it 19 was impossible but Lord Brandon points out that the 20 language used is more consistent with a view that any 21 mechanism by which it could have operated was in doubt, 22 which as I said is a tactful of way of saying if that 23 did happen I cannot understand how: 24 "My Lords, the late Sir Arthur Conan-Doyle in his 25 book The Sign of the Four describing his hero,</p> <p style="text-align: center;">Page 17</p>	<p>1 dictum can only apply when all relevant facts are known 2 so that all possible explanations except the single 3 extremely improbable one can properly be eliminated. 4 That state of affairs does not exist in the present 5 case, take one example the ship sank in such deep water 6 that a diver's examination of the nature of the 7 aperture, which might have thrown light on the cause, 8 could not be carried out." 9 You will bear in mind, the case we are dealing with 10 bristles with unknowns, we don't know what was in 11 Mr Perepilichnyy's stomach when he died, we don't even 12 know for certain what he had for lunch. We don't know 13 who he met at the St George's club, his wife said that 14 he had been there before his run. The CCTV was never 15 interrogated, we don't know what telephone calls 16 Mr Perepilichnyy made with the telephone he was carrying 17 when he died. There are lots and lots of parallels with 18 the Popi M as far as uncertainty is concerned. 19 Then thirdly: 20 "The legal concept of proof in a case on the balance 21 of probabilities must be applied with common sense, it 22 requires a judge at first instance before he finds 23 a particular event occurred to be satisfied on the 24 evidence that it is more likely to have occurred than 25 not. If such a judge concludes on the whole series of</p> <p style="text-align: center;">Page 19</p>
<p>1 Mr Sherlock Holmes, as saying to the latter's friend 2 Dr Watson, 'How often have I said to you that when you 3 have eliminated the impossible, whatever remains however 4 improbable must be the truth'. It is no doubt on the 5 basis of this well known but unjudicial dictum that 6 Mr Justice Bingham decided to accept the shipowner's 7 submarine theory, even though he regarded it for seven 8 cogent reasons as extremely improbable. In my view 9 there are three reasons why it is inappropriate to apply 10 the dictum of Mr Sherlock Holmes to which I have just 11 referred to the process of fact finding which a judge at 12 first instance has to perform at the conclusion of the 13 case of the kind here concerned [I would interject or 14 indeed a coroner]. 15 "The first one is one that I have already sought to 16 emphasise as being of great importance, namely that the 17 judge is not bound always to make a finding one way or 18 another with regard to the fact averred, it is open to 19 him a third alternative of saying that the party upon 20 whom the burden of proof lies in relation to any 21 averment by him has failed to discharge it. No judge 22 likes to decide cases on the burden of proof, but there 23 are cases which owing to the unsatisfactory state of the 24 evidence is the only course. 25 "The second reason [this is important] is that the</p> <p style="text-align: center;">Page 18</p>	<p>1 cogent grounds that the occurrence of an event is 2 extremely improbable, a finding by him that is 3 nevertheless more likely to have occurred than not must 4 not accord with common sense." 5 You have to make up your mind whether it is probable 6 that Mr Perepilichnyy died from an undetected and 7 undetectable cardiac arrhythmia. You might decide on 8 the evidence open to you to find that is probable. It 9 happens all the time, people drop dead for no apparent 10 reason and it is assumed that is because of a cardiac 11 arrhythmia. You might decide, entirely a matter for 12 you, that that is not at all probable, that someone in 13 perfect health who has survived quite well to the age of 14 44, never had any symptoms, carries no genetic markers 15 for this disability, should die in those circumstances, 16 on any view as to be statistically an extremely rare 17 event. 18 That is a matter for to you decide but if you 19 conclude that it is not inherently probable that such 20 a person should die of SADS, you cannot in our 21 submission bolster or make good that want of evidence of 22 probability by reference to an evidence of 23 an improbability that Mr Perepilichnyy died from 24 poisoning. 25 If I can just go back to the way your counsel has</p> <p style="text-align: center;">Page 20</p>

<p>1 put it, he says there is evidence to support the 2 conclusion that unlawful killing is unlikely. The 3 correct way of putting it, and it is crucially 4 different, is that there is, on one view, a view you are 5 entitled to come to, insufficient evidence to support 6 the conclusion that unlawful killing is likely. 7 Perhaps I can say that again: insufficient evidence 8 to support the conclusion that unlawful killing is 9 likely. That is the correct way of putting it. If that 10 is your conclusion, but you nevertheless somehow pray in 11 aid that want of sufficient evidence to bolster a theory 12 that Mr Perepilichnyy died of SADS, then you would be 13 wrong in law. 14 Can I then turn to a couple of short points that 15 arise out of that, I think chiefly stemming from the 16 submissions put in on behalf of Mrs Perepilichnaya. 17 Reference is made in those submissions to a document 18 called "Joint guidance for coroners and coroner's 19 officers, sudden cardiac death, inherited heart 20 conditions". 21 There are a number of quotations from that document 22 in Mr Beggs's submissions. I need not take you to them 23 but they are really these. 24 First of all: 25 "The vast majority of sudden cardiac deaths are</p> <p style="text-align: center;">Page 21</p>	<p>1 cardiac deaths, which is of itself obviously a sub group 2 of all cardiac deaths, 4 to 5 per cent may be attributed 3 to SADS. It really is small and of course it happens 4 and it is for you to decide but it is obviously 5 a possible explanation for the death, but to say that it 6 is probable in a man like Mr Perepilichnyy, healthy, no 7 history of trouble, no symptoms, energetic life, active 8 life, no genetic marker, whether it is right to say it 9 is probable is very much a live matter and a matter for 10 you to decide, if indeed you can come to that conclusion 11 at all, having regard to what on any view are other 12 possibilities, bearing in mind that SADS is a diagnosis 13 of total exclusion. 14 So it is an uncommon condition on any view. 15 Just looking at the question of whether it is 16 permissible in any event to conclude that SADS is even 17 a possibility, let alone a probability, we need to 18 remember that all the experts who spoke about this 19 agreed that SADS is a diagnosis of total exclusion. 20 They were not, it would seem, particularly interested in 21 evidence in exploring exactly what that means but 22 certainly I, simply as a layman as it were and 23 a bystander, would concede or indeed assert that that is 24 a mantra or a maxim that needs to be applied sensibly 25 and in a purposeful way.</p> <p style="text-align: center;">Page 23</p>
<p>1 caused by coronary heart disease. However most sudden 2 cardiac deaths in people under 40 years of age are 3 caused by an inherited heart condition from a fault in 4 a single gene that may be passed from one generation of 5 a family to another." 6 That may be so, I think we have had evidence that 7 that is indeed the case, that when you get a young 8 person who dies suddenly for no apparent reason, in 9 a good number of cases it is presumed that that is 10 because they have an inherited heart abnormality, 11 deriving from a faulty gene. However we know that is 12 not the case here because Mr Perepilichnyy did not have 13 an inherited heart condition and there was nothing wrong 14 with his genes so far as the appropriate and very 15 sophisticated genetic tests could establish. That was 16 a test ordered by your predecessor, the senior coroner 17 for Surrey. 18 It eliminated, as I understand it, this possibility. 19 So what is apparently the most common explanation for 20 people dropping dead at a comparatively young age 21 leaving no sign of what has happened to them has been 22 eliminated in this case. That is a factor, it is only 23 a factor, but it is a factor which helps to narrow the 24 cohort of possible explanations for this death. 25 The evidence is and has always been that of sudden</p> <p style="text-align: center;">Page 22</p>	<p>1 If one took the maxim literally, in every case when 2 someone dies and no evidence is found of what has 3 happened to them, it would be impossible to conclude 4 that the cause of death was SADS so long as the 5 possibility of poisoning by an undetected poison 6 remained open. In which case it would, it certainly 7 seems to us, be almost impossible ever to arrive at -- 8 so there must be some way of filtering that and to 9 inject the word like "realistic" or "practical" or 10 something which is not fanciful, as a coroner, 11 an epidemiologist may take a different view but for you 12 common sense and a practical approach is, we would 13 suggest, the right one. 14 That is why, and this is really my second point, 15 a very important point. It is necessary for you 16 grapple with the circumstances of Mr Perepilichnyy's 17 life and not to concentrate exclusively on the 18 circumstances of his death. You have with respect -- 19 you are in any event with respect, mandated to do that 20 by the scope direction of your predecessor, the senior 21 coroner for Surrey, who deliberately and purposefully 22 directed that the scope of the Inquest should consider 23 the question of whether Mr Perepilichnyy was associated 24 or connected with what has been described inaccurately 25 as the Hermitage fraud and whether as a result of that</p> <p style="text-align: center;">Page 24</p>

<p>1 there might be people who had a motive to kill him. 2 Even if it didn't as it were didn't otherwise strike you 3 as something it was necessary to look at, that is 4 something you do need to look at. 5 You in fact had as the succeeding coroner obviously 6 the power, you chose to say I don't think I do need to 7 look at those matters, that was his view but that is not 8 my view. You in fact considered that scope direction 9 when you ruled on the first PII hearing and you said at 10 that time the scope is not altered. In other words what 11 I have seen does not persuade me that it is material 12 I have to look at, nor -- so you adopted it actively if 13 I can put it that way, rather than passively. 14 So these are matters you have to look at. 15 If I can just take the example of some suffragan 16 bishop of blameless character cycling to evensong who 17 falls off his bicycle and no cause of death is apparent, 18 it would in our submission be fanciful to suggest -- the 19 obvious conclusion then you would be driven to is that 20 he had suffered a SADS incident, and to suggest, "Oh 21 well there is always a possibility that he may have been 22 poisoned", would be in our submission fanciful and 23 remote. The importance and the necessity for you to 24 reach conclusions about who Mr Perepilichnyy really was 25 and what he did is important in showing that in his case</p> <p style="text-align: center;">Page 25</p>	<p>1 retribution, and those potential perpetrators or their 2 potential associates in Russia may have had the 3 capability to poison him in a way that was difficult or 4 impossible to detect." 5 It is not just that he was a candidate for 6 assanation but a candidate for assassination at the 7 hands of people who would have the means to carry it 8 out. You will notice that the way that your counsel has 9 set that out implies no criticism whatsoever of 10 Mr Perepilichnyy, and that is not something which we 11 invite you to get into. That is not necessary. 12 The point is was he connected -- those are the words 13 that your predecessor -- and as a result of that 14 connection does it appear that he was at the risk that 15 I have identified? 16 Mrs Perepilichnaya's submissions stress how painful 17 it is to her to hear arguments about her husband's 18 character and so on. We are sympathetic to that and we 19 would certainly not invite you to go any further than 20 you need to do, but it is necessary to grapple with 21 this, not to brush it away. You have to as your 22 predecessor mandated it, and you need to because it is 23 only thus that you can reach a conclusion about whether 24 the theory that Mr Perepilichnyy may have been poisoned 25 by an undetected poison is a realistic, sensible theory</p> <p style="text-align: center;">Page 27</p>
<p>1 that is not the picture. 2 It is unhappily not a fanciful postulation that 3 people might come from Russia to our shores equipped 4 with sophisticated poisons with a view to harming 5 someone they saw as their enemy. 6 That is I think something which you have been 7 advised by your counsel is, at least in their 8 submission, established by the evidence that you have 9 heard. I am just looking for where we find that. It is 10 at internal pagination 13 of the CTT's submissions. 11 Which is tab 5, you see at letter D: 12 "It is possible that Mr Perepilichnyy was killed by 13 a type of poison that is either undetectable and so by 14 definition has not been detected or is detectable but 15 has not been detected because the opportunity for 16 undertaking such testing was lost in the days following 17 the death." 18 So that is a conclusion that they say you could 19 reach. They go on to say: 20 "There is a substantial body of circumstantial 21 evidence to support the conclusion that Mr Perepilichnyy 22 had become a whistleblower in respect of an alleged 23 organised crime perpetrated in Russia. As a result the 24 potential perpetrators of that alleged crime may have 25 wanted to kill him, either to silence him or to seek</p> <p style="text-align: center;">Page 26</p>	<p>1 or whether it is what I call fanciful and remote. 2 If you conclude that it is realistic and sensible, 3 then in our submission you cannot conclude that this is 4 a SADS death. You are driven to conclude that there is 5 insufficient evidence to support either of the two 6 postulated causes, it must be one of them but as to 7 which you would be unable to say. 8 It has been stressed in the submissions of 9 Mr Skelton that it is somehow very unfortunate and 10 a matter for real regret if you are unable to come to 11 a positive conclusion about this and that really you 12 ought to, it is suggested, lean against that conclusion 13 if you possibly can. 14 We don't accept that. As we understand it, it is 15 lawful and indeed probably sensible for you to go to 16 some length to set out here what you think happened, 17 because that is what people, if I may say so, are 18 expecting. How that fits into a conclusion and what 19 used to be called a verdict is a different matter but at 20 some point in some way obviously you are going to say 21 what you think happened. So even if it is in the end in 22 a box "open", at least people will have a very full 23 understanding, one hopes and assumes, as a result of 24 what you say as to what you think it all amounts to. 25 So that is not really something that you should be,</p> <p style="text-align: center;">Page 28</p>

<p>1 dare I say, ashamed of or regret, it is the nature of 2 the task that you have been set. I would say also, if 3 I may, from personal experience, acting for life 4 insurance companies, all the time we are confronted in 5 inquests with a choice between for example an accidental 6 death, which would be covered typically by an insurance 7 policy and a suicide which very often is not. Time and 8 again in such cases, coroners enter open verdicts even 9 when the evidence points, sometimes quite strongly, to 10 one conclusion or the other. They say "I can't tell". 11 That is not in our submission something which should 12 necessarily be regretted. 13 It is something that arises particularly, this is a 14 point I made in my written submissions, in cases where 15 you have two different standard of proofs to look at. 16 Suicide has very recently changed a bit but certainly 17 for a long time it was thought and held that the coroner 18 couldn't reach a verdict of suicide unless he was sure. 19 So you have this between two stools situation, the 20 coroner saying, "It doesn't look like an accident but on 21 the other hand I can't be sure it is suicide", it hangs 22 there in the middle. The same with is it accident or 23 homicide, two different standards of proof. So it is 24 the nature of the beast, and if that the answer you come 25 to, that is the most courageous course, to say, "I don't</p> <p style="text-align: center;">Page 29</p>	<p>1 that we have made in writing. 2 Sir, our legal position remains that the only 3 permissible conclusion on the evidence is an open 4 conclusion. We depart from the legal analysis of your 5 counsel and I would like to amplify why. Sir, the 6 reasons why we say with all due respect to your counsel 7 that they are incorrect in the way they have approached 8 the law is as follows. 9 First, that it is wrong in law to say that the 10 approach in this case has to be binary. There are 11 plenty of inquests, as Mr Moxon Browne has alluded to, 12 where the pathologist gives "unascertained" as a medical 13 cause of death. In many cases by way of example 14 involving a decomposed body that is all the pathologist 15 can do, can say that this is an unascertained medical 16 cause. 17 If you have an unascertained medical cause in box 2, 18 the logical consequence in many cases is an open 19 conclusion. There is no difficulty or embarrassment 20 about that, especially in a case, sir, of this nature 21 that we would submit is analogous to one of those cases 22 that is often described as being in the inquest funnel, 23 where a very large amount of evidence is adduced, there 24 are of course further lines of enquiry that we have 25 submitted could have taken place, but we accept that you</p> <p style="text-align: center;">Page 31</p>
<p>1 know". 2 Thank you, sir. 3 THE CORONER: Thank you very much. 4 Closing submissions by MS HILL 5 MS HILL: Thank you, sir. 6 Sir, you have been provided with extensive written 7 submissions on behalf of Hermitage but I would like to 8 headline some of the points that are made and respond to 9 some points made, in, particular by your counsel. 10 I would like to begin, sir, please by making some 11 perhaps common sense propositions that inform the legal 12 submissions that I will then develop. 13 First, sir, the starting point has to be the 14 pathology evidence and here two post mortems have been 15 carried out and the pathology evidence has not returned 16 a natural cause but instead has pronounced this 17 an unascertained death. 18 Secondly and thirdly, sir, the toxicology gaps -- 19 about which I will address you further -- mean there is 20 significant uncertainty that remains. 21 Fourthly, sir, as I will come to develop further, 22 the lack of proper investigation that we say took place 23 in respect of the murder hypothesis, despite that being 24 the reason for the investigation to be opened in the 25 first place by Surrey Police, make good the propositions</p> <p style="text-align: center;">Page 30</p>	<p>1 have carried out a significant number of enquiries, but 2 where you have landed is with the evidence. 3 Sir I am simply responding to counsel to the 4 inquest's propositions at the moment. Firstly we say it 5 is wrong in law to say the approach has to be binary. 6 Secondly, we submit, sir, it is wrong on the 7 evidence to look at the more likely than not 8 proposition, because a proper reading of the pathology 9 evidence is to the effect that the question for you in 10 order to return SADS or not, which is a theoretical 11 cause that is in play, is: can the possibility of 12 poisoning be totally excluded? I will come to develop 13 that, sir. It is not a more likely than not question. 14 There are perhaps different things going on here, sir, 15 if I may say in the arguments. If you decide, as the 16 learned coroner in the New Cross fire case did, that it 17 is more likely than not that Mr Perepilichnyy was 18 murdered, then you are free to make a factual finding to 19 that effect. But that is quite different to the 20 analysis that you have to apply to box 2 and to the 21 conclusion. 22 We say the test for you to grapple with based on the 23 pathology evidence is: is it safe for you return 24 SADS? 25 We say it is not on the evidence because the proper</p> <p style="text-align: center;">Page 32</p>

<p>1 test is: can the possibility of poisoning be totally 2 excluded?</p> <p>3 Sir, we say with respect to your counsel, they are 4 of course only making submissions to you as they accept, 5 that that is simply an incorrect analysis to say that 6 you have to try and shoehorn this into a what is more 7 likely than not approach.</p> <p>8 Third, there are a raft of evidential reasons that 9 I come to as to why the possibility of poisoning cannot 10 be excluded. Indeed I note from your counsel's 11 submissions, sir, that I think they accept that factual 12 proposition, I think they accept that the possibility 13 cannot be excluded. Those overwhelming evidential 14 matters mean that if you were to approach this on a more 15 likely than not basis it would not be reasonable to say 16 it is more likely than not that he was not murdered. It 17 would not be safe to do so.</p> <p>18 Sir, our submission is that one has to start this 19 from the pathology and the pathology tells you that your 20 question is: can poisoning be totally excluded? And it 21 simply cannot on the evidence. So our submissions on 22 conclusion flow from that medical cause. You will 23 approach this of course, sir, following the chief 24 coroner's guidance. You will go through the process of 25 making fulsome findings of fact. You will then have to</p> <p style="text-align: center;">Page 33</p>	<p>1 findings of fact. I think there is universal agreement 2 from the bar about that. I see that counsel to the 3 inquest and Mrs Perepilichnaya certainly have encouraged 4 you to make fulsome factual findings given the public 5 interest in this case. I think your counsel agree, sir, 6 that in addressing the factual matters that you need to 7 make findings on, you will want to address the context, 8 you will want to address the circumstances, with a small 9 c, not in a legal sense, in which this man died.</p> <p>10 Sir, if I could ask you now to perhaps keep a hand 11 in page 22 and turn up what is either, on my handwriting 12 I am afraid, either 70 or 76, I think it is page 70, 13 which is the beginning of appendix A. Thank you.</p> <p>14 You will see, sir, there is then a document that 15 sets out in detail the context that we say is pertinent, 16 the context in which Mr Perepilichnyy died and that this 17 document includes the key matters that you will want to 18 address in your factual findings. They include, and 19 I will just perhaps number the 10 key points --</p> <p>20 THE CORONER: You can do that but I mean I have it here. 21 I have read it and I will read it again.</p> <p>22 MS HILL: I see, thank you, sir.</p> <p>23 THE CORONER: You are just going to be reading out the 10 --</p> <p>24 MS HILL: I don't think there is disagreement about the fact 25 that the threats issues, the frauds issues, the</p> <p style="text-align: center;">Page 35</p>
<p>1 return box 2, the medical cause, and that will inform 2 your answer to the conclusion question that are in the 3 later boxes on the form. The only permissible medical 4 cause, we submit, is "unascertained" and it follows from 5 that and for a range of other reasons that the only 6 permissible box 4 conclusion is one of "open".</p> <p>7 Sir, could I perhaps just develop those headline 8 points in a little more detail by I hope helpfully -- 9 please indicate if it is not helpful -- navigating you 10 a little bit around what I know is a large amount of 11 material that we provided you with in writing.</p> <p>12 Sir, could I just help you in understanding some of 13 the structure of the points that we make?</p> <p>14 Sir, you will see at internal page 22 of your bundle 15 what is perhaps our overview crib sheet, if I can call 16 it that, which gives you all of our headline 17 propositions in one place. The hope, sir, is that that 18 overview document enables you to understand in one place 19 what our overall position is. It then extends out to 20 some more developed submissions in different places but 21 essentially if you perhaps go to the overview, sir, you 22 will see, as I have indicated to you, that our 23 documentation amplifies the proposition that there are 24 several factual issues which the coroner should resolve 25 in accordance with your duty to make appropriate</p> <p style="text-align: center;">Page 34</p>	<p>1 background to Mr Perepilichnyy's involvement with the 2 Swiss proceedings, the timing of the information given 3 about the confrontation with Mr Stepanov, the analogies 4 that are to be drawn, you might think helpfully or not 5 with the Litvinenko case and the Magnitsky case, they 6 are all part of we would submit the context.</p> <p>7 Sir, that of course is the first stage of your 8 approach.</p> <p>9 Going back if I may, please, to our overview. Our 10 second key point is that agreeing that Galbraith plus is 11 the test, that is not met we submit in respect of any 12 positive medical cause. Sir, the reasons for that are 13 that, if one looks at the medical evidence that you have 14 heard in total, none of the medical experts are offering 15 any positive medical cause and then the only theoretical 16 cause that could go in box 2 is the SADS conclusion in 17 box 2, but that cannot properly be returned on the 18 evidence, sir, we say. Perhaps if you go to page 2 of 19 our overview, it is the top of our page, for two reasons 20 it would not be proper or safe to return SADS because 21 the test, as we have said, is the complete exclusion of 22 other possibilities. As I say at (ii) at the top of 23 page 2:</p> <p>24 "On a proper approach to the evidence in this case, 25 no reasonable coroner could exclude that possibility of</p> <p style="text-align: center;">Page 36</p>

<p>1 poisoning. (1) because he was plainly at risk of being 2 poisoned by those with the motive and the capability to 3 so poison him. (2) the factual evidence does not rule 4 out the possibility of poisoning." 5 THE CORONER: I can see that. 6 MS HILL: "(3) the experts themselves could not rule that 7 out." 8 It is for those reasons, sir, we get to the 9 proposition that the only short form conclusion 10 available to you is open. 11 It is our position, sir, that if you make a fulsome 12 factual ruling and you return an open conclusion that 13 that will satisfy the public need to understand what 14 your views are. 15 The findings that you make will of course be made 16 public, sir. Is that to be assumed you will give 17 a determination of in public of your findings. 18 Sir, the additional documents that we have provided 19 will I hope assist you in approaching those questions. 20 You will see that in addition to the context matters 21 that begin at page 70. At page 94, please, sir, you 22 will see there is a further document, an appendix 23 document, that sets out hopefully pulling together in 24 a helpful way, sir, the evidence of the different 25 sources of material about threats and risks to</p> <p style="text-align: center;">Page 37</p>	<p>1 internal paragraph 39, that is where we set out what the 2 correct questions for you to answer on box 2 are. So 3 for box 2, the medical cause of death: is there 4 sufficient evidence to the Galbraith plus standard of 5 a positive natural cause? We submit the only 6 permissible answer is no. Is there sufficient evidence 7 to the Galbraith plus standard of SADS? Again, we 8 submit no on the evidence is the only permissible answer 9 to that and we develop those submissions below. 10 Sir, could I just flag for you please in this 11 document internal paragraph 44. I won't take you to the 12 transcripts in any detail, sir, but I would ask you to 13 look particularly carefully please at paragraphs 44 14 through to paragraph 47. I would ask you to read that 15 particularly carefully sir, because that is where we 16 have pulled together the evidence that we say is the 17 pathological root of this, which is that the 18 Dr Fegan-Earl analysis and description of SADS is that 19 this is one of complete exclusion and there are various 20 references in the transcript that make clear in our 21 submission that what is to be excluded is a possibility 22 and not a probability. 23 That in our submission with respect is where we 24 depart from the analysis of your learned counsel. The 25 correct test, perhaps the nub of our argument on this,</p> <p style="text-align: center;">Page 39</p>
<p>1 Mr Perepilichnyy. They of course are dealt with in 2 detail under different headings but they deal, as you 3 will see at the beginning of that document, with his own 4 words, the threats from text and Skype messages, the 5 threats that were reported to the FLOs, the legal 6 proceedings, the life insurance evidence, the hit list, 7 the threats to Hermitage, the Magnitsky issues and the 8 particular risks it is clear we say from a close reading 9 of the emails that Mr Perepilichnyy faced in the final 10 weeks of his life. 11 Sir, we have brought all that material into one 12 place because of course whether or not he was at risk of 13 being poisoned feeds directly into your approach to the 14 SADS question. That is why we have put this material 15 before you. It also, we submit, shows how wrong it was 16 of Surrey Police to conclude that there was no such 17 threat or risk to him of any significance, because when 18 one looks at that corpus of material in one place, it 19 can only show that that conclusion was fundamentally 20 wrong. 21 Sir, the legal elements of the conclusion 22 submissions I don't think are in dispute in any way. 23 I will perhaps just flag for you, if I may, please, if 24 you can go to the document that begins at your page 30, 25 that is our conclusion submissions and go to the</p> <p style="text-align: center;">Page 38</p>	<p>1 is at paragraph 47. We had said this at 47 of course 2 before seeing your counsel's submissions. It is clear 3 we submit that the correct test is not whether poisoning 4 or SADS is more likely. The reason is obvious perhaps 5 that SADS is not a diagnosis based on positive evidence, 6 it is a rare presumed cause of death, that is why all 7 competing possibilities must be completely excluded. 8 Then we have made clear why the more likely than not 9 approach is not in our submission the correct one. 10 We have set out just perhaps if you could just look 11 at the headings if I may just take you through them, 12 sir, on a proper approach to the evidence when one 13 applies that test, can the possibility of poisoning be 14 completely excluded? 15 Under (a) he was plain at risk of being poisoned by 16 those with the motive and capability to so poison him, 17 we have set out the evidence in relation to that. 18 Over the page (b) the factual evidence does not rule 19 out the possibility of poisoning. Of course there are 20 significant unknowns about his final movements that 21 illustrate very simply how the factual evidence cannot 22 rule out that possibility, the lack of understanding of 23 his final movements combined with the failure to 24 preserve the scene means that there are significant gaps 25 as to his final movements, both just before his collapse</p> <p style="text-align: center;">Page 40</p>

<p>1 and straight after in terms of other people at the scene 2 and so on. 3 Then under (c), and perhaps most compellingly, the 4 experts could not themselves rule out the possibility of 5 him having been poisoned. You will remember the various 6 exchanges where the experts were taken very carefully 7 through a long list of possible poisons, we have set out 8 for you at 51 and thereafter the ones that the experts 9 on a joint basis said remained possible. That is 10 azides, phosphides, cyanogens, the other group of 11 poisons there. 12 You will remember paragraph 53 at the April hearing 13 from this year, there were some further poisons that 14 Professor Ferner considered, albeit in the context of 15 him looking initially at the potential food poisoning 16 issue, that he has said remain in play as possibilities. 17 That comfortably gets to at least over 10 possible 18 poisons from those two lists from the experts, so when 19 one takes a step back from this, sir, and understands 20 that the pathology evidence we say generates a question 21 for you of: can you rule out the possibility of him 22 having been poisoned? And you have a group of 23 experienced experts, some of the most distinguished 24 names perhaps in the country that can comment on these 25 issues, agreeing that there are at least 10 poisons here</p> <p style="text-align: center;">Page 41</p>	<p>1 Perhaps a secondary purpose of that document is that 2 it helps illustrate yet again the unknowns that you have 3 in this case, because at various points in this 4 document, sir, the serious failings of Surrey Police 5 have led to significant gaps in knowledge and all of 6 that is relevant to your box 2 question: can 7 I reasonably exclude poisoning? The answer is based 8 partly on what you don't know as it is on what you do 9 know. 10 Sir, we do say that the failings in the Surrey 11 Police investigation were significant and I don't think 12 there is any serious dispute on the legal approach to 13 preventing further deaths report but we do rely on what 14 we say are 15 key failings in the investigation. They 15 are that there was a failure, as we know, to classify 16 the death as suspicious at the outset which led to many 17 evidential and forensic opportunities being lost. We 18 understand from the documentation now and the 19 questioning of the police witnesses that the crime scene 20 investigation was only opened in response to press 21 reporting and public pressure. 22 (3) it is our submission -- 23 THE CORONER: You could read all these out I suppose but 24 I mean I have them. I mean -- 25 MS HILL: I will perhaps just summarise them for you then.</p> <p style="text-align: center;">Page 43</p>
<p>1 that remain possible. It is on a perhaps analysis of 2 that nature that one realises the only permissible 3 answer to your box 2 question on SADS is, "No, I cannot 4 reasonably exclude the possibility of poisoning". 5 Sir, perhaps I would take you now, if I may, to the 6 other documents that we have provided to you, I think 7 that is perhaps all I would wish to develop at this 8 point in relation to conclusions. Is there anything 9 else I can assist you with -- 10 THE CORONER: No, Ms Hill, I am very grateful to you for 11 pulling it all together. 12 MS HILL: The two further documents then, sir, that I would 13 ask you to look at and I am sure you will in due course, 14 is that we have made a further appendix of material that 15 begins I think at your internal page 111. I would wish 16 to just develop this a little if I may, sir. 17 This is where we have pulled together the evidence 18 as to what we say are serious failings in the Surrey 19 Police investigation. The reason we have done that is 20 twofold. (1) because, as you know, we have long trailed 21 and do invite you to make a preventing further deaths 22 report. I am grateful for your counsel's reminder that 23 the rule 27 prohibition does not apply in quite the same 24 way to those submissions and that is why partly you have 25 such an extensive appendix that begins at 111.</p> <p style="text-align: center;">Page 42</p>	<p>1 They deal in chronological order with what we say are 2 the failings in the investigation. Crucial parts of 3 this we say are about failing to obtain evidential of 4 his movements, the failures in relation to toxicology, 5 the failure we say to carry out a fair and proper 6 analysis of the threats evidence, the flawed 7 communication strategy. All of those things, sir, feed 8 into both the PFD submissions and the box 2 question, 9 because at each turn if you are looking at: was there 10 a proper analysis of the organised criminal possibility 11 here? 12 We say no, we say at every turn actions are closed 13 down, matters are not followed up, that there is 14 a completely circular approach which is to not do 15 anything about the murder proposition unless there is 16 some positive evidence. So each and every one of those 17 mean that you have even more unknowns, but, sir, the 18 purpose of the submissions as far as the preventing 19 further deaths report are concerned, I am sure you have 20 grasped from the indication that you gave to Ms Barton 21 that you are interested in a particular topic, that 22 there is plainly a public concern here that we are in 23 a situation where in the journey of this case there has 24 been the events of Salisbury, where there is plainly 25 a concern, certainly a very firm concern for my clients</p> <p style="text-align: center;">Page 44</p>

<p>1 having heard Mr Pollard's evidence, that essentially he 2 wouldn't do anything different again, that if there was 3 to be another person who collapsed on Surrey Police's 4 watch in the same circumstances as Mr Perepilichnyy, 5 that the scene would not be preserved, that evidential 6 opportunities would be lost, that various lines of 7 communication in terms of evidence would not be seized, 8 that those who were suspects would not be properly 9 interviewed. All of those things remain a matter of 10 very real concern.</p> <p>11 I agree with your counsel on the legal approach to 12 the preventing further deaths issue. I disagree with 13 Ms Barton, you are not required and indeed it is not 14 your role to set out what you think the police should 15 do, but if you are satisfied of the questions that we 16 have set out -- perhaps I can just take you to page 2 of 17 our preventing further death submissions, they begin at 18 page 53 -- that you have of course as you see from the 19 text of Schedule 5, paragraph 7, at our internal 20 paragraph 6, I think that will be on your page 54. Is 21 there anything revealed by your investigation that gives 22 rise to a concern that circumstances creating a risk of 23 other deaths will occur or will continue to exist in the 24 future? Is it your opinion that actions should be taken 25 to prevent the occurrence or continuation of such</p> <p style="text-align: center;">Page 45</p>	<p>1 have acted with impunity and will not now face any 2 justice for what they did, if in fact that happened. 3 Even if that is not how Mr Perepilichnyy died, there is 4 clearly a risk that a message is being sent that one can 5 act with impunity.</p> <p>6 We have developed the submissions further by 7 reference to all of those very serious failings that we 8 set out in our third appendix. I have set out I think 9 beginning at section 36, your internal paragraph 36, 10 page 12, why action should be taken. Sir, there is 11 clearly a wider concern here. You are very familiar 12 with the reporting of the Skripals incidents in 13 Salisbury, the death of Nikolai Glushkov in March of 14 this year and the decision to enquire into whether or 15 not there was sufficient robustness in the police 16 investigations.</p> <p>17 Sir, it is clear on the evidence, we would submit, 18 if one looks please at our paragraph 41 that if you do 19 need to think about what a report of this nature might 20 achieve, I don't accept that you need to specify what 21 the police do, that is not your role, but you might want 22 to think about whether such a report is merited.</p> <p>23 We submit it plainly is in light of the very 24 significant public interest in these sorts of cases if 25 in fact one is dealing with international organised</p> <p style="text-align: center;">Page 47</p>
<p>1 circumstances or to eliminate or reduce the risk of 2 death created by such circumstances? Then you are under 3 a duty to make a report.</p> <p>4 Sir, we have reminded you, perhaps you could just go 5 through to paragraph 14, there have been a series of 6 cases where gaps and failings in the investigation have 7 merited a preventing further deaths report. None of 8 them are quite on the same factual matrix that we are 9 dealing with here but here, when we are dealing 10 potentially with international organised crime, there is 11 plainly a link between a failure to investigate that 12 properly and the risk of further such criminal acts 13 taking place. Especially in proceedings that are being 14 closely watched. There is clearly here a risk that if 15 the police do not investigate murder and organised crime 16 properly, there will be a sense of impunity that flows 17 from that.</p> <p>18 Insofar as the proposition at 14 in our submissions 19 needs making good at all, we have provided you I think 20 with all of those PFD reports so you can see exactly the 21 sort of cases where reports have been made.</p> <p>22 Perhaps the thrust of our submissions is at your 23 internal paragraph 18, please, which is that these very 24 serious failings, if indeed Mr Perepilichnyy was 25 murdered, have increased the prospect that his killers</p> <p style="text-align: center;">Page 46</p>	<p>1 crime sanctioned by an overseas state, it is hard to 2 imagine of a much more serious context. You can see at 3 41 and onwards in these submissions that DS Pollard was 4 asking at the gold group meetings for intelligence about 5 how this could have occurred and other examples, there 6 were questions about whether there was an off-the-shelf 7 forensic strategy for this type of incident. It doesn't 8 appear that was given that assistance. It seems clear 9 there was no awareness by the officers that an unusual 10 poisoning might not be easily detected, so it would 11 potentially be sensible for officers to be trained in 12 the fact that some poisons can leave no obvious signs, 13 that sophisticated poisons might not reveal cause for 14 suspicion early on.</p> <p>15 The point that you have already alighted on, sir, 16 about how a suspicious death is categorised, you will 17 remember the CAD documentation from 2012 that had 18 a marker on it about how essentially one would approach 19 suspicious deaths or not but you are clearly, sir, 20 looking for some information about whether that remains 21 the case.</p> <p>22 If there had been greater knowledge in the officers 23 at the scene, it might be that this death would have 24 been investigated differently but it remains a matter of 25 serious concern, I think the third point is perhaps at</p> <p style="text-align: center;">Page 48</p>

<p>1 our 45, that there was in existence -- as we have 2 submitted in our third appendix -- a significant amount 3 of information within the UK government agencies, other 4 police forces and intelligence research about the 5 actions of the KOCG in this country and therefore the 6 threats and risks that Mr Perepilichnyy faced. That was 7 subjected to very little, if not no, proper analysis by 8 Surrey Police. We do submit, sir, this is not only 9 a situation that merits a preventing further deaths 10 report to the chief constable of Surrey Police but that 11 there is obviously we would submit on the evidence 12 a concern about the national response here, it does look 13 as if the officers here were asking for support from 14 a wider pool of information and did not get it. We do 15 propose that if you are minded to make a preventing 16 further deaths report arising from these very serious 17 failings, that you make a similar report to the Home 18 Secretary, as well as to the chief constable. 19 Sir, I think I have made I hope obvious the point 20 that this is not a situation where one is looking at 21 a few discrete lines of enquiry that were not followed 22 up. If you look in fact at the totality of our third 23 appendix, it is the weightiest of the documents we have 24 provided you with. I would ask that you read it 25 particularly carefully, because it sets out in very</p> <p style="text-align: center;">Page 49</p>	<p>1 "Is there insufficient evidence to support the 2 conclusion that unlawful killing is likely?" 3 The question, the proper question, is: is there 4 sufficient evidence to prove beyond reasonable doubt 5 that Mr Perepilichnyy was unlawfully killed? That is 6 the legal test for unlawful killing, because it carries 7 the higher standard of proof. Nobody has seriously 8 suggested that this verdict is available on the evidence 9 as a matter of law. 10 The second available verdict is natural causes. The 11 question in relation to that is: is there sufficient 12 evidence to prove that it is more likely than not that 13 Mr Perepilichnyy died of natural causes, specifically 14 SADS? In considering this question, it is not the 15 medical cause of death that is the only evidence, it is 16 the totality of the evidence which you have heard and 17 which you are entitled to take into account. That is 18 where I depart from Ms Hill's submissions to you, that 19 in applying that legal standard, it is obviously not 20 necessary to totally exclude the possibility of 21 poisoning. 22 What you do have to do is consider whether it is 23 more likely than not that he was poisoned when 24 considering this question, because if it is more likely 25 than not, then it must follow that it is not more likely</p> <p style="text-align: center;">Page 51</p>
<p>1 significant detail what we say are those 15 key 2 failings, each and every one of which would be serious 3 on its own. 4 Sir, unless there is anything else I can assist you 5 with. 6 THE CORONER: Thank you very much. 7 (12.03 pm) 8 (A short adjournment) 9 (12.20 pm) 10 THE CORONER: Yes. 11 Closing submissions by MS BARTON 12 MS BARTON: Sir, I am not going to go to my written 13 submissions, I am going to deal directly with the 14 submissions that are made by Mr Moxon Browne and Ms Hill 15 this morning on the issue of conclusions. 16 What is apparent from the submissions which have 17 been made by the interested persons is that there are 18 really only three available conclusions: unlawful 19 killing; natural causes, specifically SADS; and an open 20 verdict. 21 What is equally apparent is that there is 22 insufficient evidence to support the verdict of unlawful 23 killing on any view. I say that because I do take issue 24 with the way that Mr Moxon Browne presented the 25 questions for you this morning. He said:</p> <p style="text-align: center;">Page 50</p>	<p>1 than not that he died of natural causes. That is the 2 relevance of that question. That is one of the 3 circumstances in which you would come to the conclusion 4 that only an open verdict was available to you, because 5 you couldn't have brought in the unlawful killing, you 6 can't bring in the natural causes so you then turn to 7 the alternative. 8 But you will recall that it is the totality of the 9 evidence which is important. The test is not to the 10 level of scientific certainty that we had when we had 11 the experts giving evidence in this court but to the 12 satisfaction of this court on the appropriate legal 13 standard. 14 To summarise and draw together the threads of the 15 submissions that have been made this morning, we say 16 that the evidence in respect of unlawful killing, nobody 17 is suggesting it meets the required standard. The 18 balance of probabilities in respect of natural causes 19 takes into account all the evidence. And it is 20 important to recognise that the verdict, an open 21 verdict, is only available to you if you are unable to 22 say -- that you are unable to be satisfied to the 23 requisite standard in respect of the natural causes 24 verdict which is available to you. 25 Sir, those are my submissions in respect of the</p> <p style="text-align: center;">Page 52</p>

<p>1 manner in which the available verdicts ought to be 2 addressed.</p> <p>3 I then turn to the prevention of future deaths 4 report, and although it is in my submission, I do think 5 I need to respectfully remind you, sir, of the legal 6 principles applicable which are in paragraph 4 of my 7 submission, because there is a severity test which 8 arises before you are in a position to make a prevention 9 of future deaths report. The test is:</p> <p>10 "Where a senior coroner has been conducting 11 an investigation under this part into a person's death, 12 anything revealed by the investigation gives rise to 13 a concern [this is the important test] that 14 circumstances creating a risk of other deaths will occur 15 or will continue to exist in the future and in the 16 coroner's opinion action should be taken to prevent the 17 occurrence or continuation."</p> <p>18 If those two conditions are satisfied, then there is 19 a duty to report. I say that the evidence in this case 20 falls far short of satisfying schedule 5, 21 paragraph 7.1(b), which is the circumstances creating 22 a risk of other deaths.</p> <p>23 I accept that there are, in theory, circumstances in 24 which failures in a police investigation would be so 25 severe that -- or there is a policy in existence for</p> <p style="text-align: center;">Page 53</p>	<p>1 a policy regarding suspicious deaths. There is, and 2 there was. The policy is called "Deaths attendance and 3 investigation of untimely deaths procedure".</p> <p>4 It was revised in May 2018 and I have seen this 5 morning the 2018 version but I am told a similar version 6 was available in 2012 and I am just going to get a copy 7 of it. Paragraph 2 of the policy provides:</p> <p>8 "Any sudden or unexplained death should be treated 9 as suspicious."</p> <p>10 Indeed, that is what happened in this case. You 11 will recall the evidence of the SIO and the reference 12 above is transcript Day 16, paragraph 139, the death was 13 being treated as unexplained and the report at bundle 9, 14 page 114, shows again that the death was being treated 15 as sudden or unexplained.</p> <p>16 The policy is and was there and was followed.</p> <p>17 THE CORONER: So is it in the same terms --</p> <p>18 MS BARTON: I am going to see if it is in exactly the same 19 terms. The SIO indicates that it is his recollection 20 that it probably was in the same or similar terms but 21 I will confirm that.</p> <p>22 Certainly as of today's date, having been revised 23 in May 2018, that policy is in existence and those were 24 the terms of it. I can certainly make it available to 25 you, sir, and we can email it through to you.</p> <p style="text-align: center;">Page 55</p>
<p>1 example that there is going to be no investigation into 2 deaths arising from domestic violence. That sort of 3 policy might give rise to circumstances creating a risk 4 of other deaths, because if individuals know there is 5 going to be no investigation, then one can see how the 6 risk arises.</p> <p>7 However, if there are, and I do not accept that 8 there were the myriad of failings which my learned 9 friend Ms Hill has put before the court, but that is 10 neither here nor there because even if there were, I say 11 that this falls far short of the required criteria.</p> <p>12 Individual failings would not give rise to 13 circumstances creating a risk of other deaths because 14 the expectation in the UK is that deaths will be 15 investigated and indeed this death was investigated and 16 there is very clear evidence that the nature and scope 17 of the investigation was very thorough indeed. You will 18 recall the evidence from Dr Fegan-Earl when he said this 19 was the most extensive toxicology he had ever seen 20 conducted.</p> <p>21 The reality of this case is that there was 22 an investigation, it was a thorough investigation, it 23 turned up no evidence that Mr Perepilichnyy had in fact 24 been killed.</p> <p>25 You asked this morning, sir, whether there is</p> <p style="text-align: center;">Page 54</p>	<p>1 MS HILL: Sir, if I can assist, sorry to interject, at 2 paragraph 3 of our document that begins at 111 we have 3 quoted the transcript that replicates the policy as it 4 then was:</p> <p>5 "If there is the slightest doubt as to the 6 circumstances of the death, it should be treated as 7 suspicious."</p> <p>8 THE CORONER: Ms Hill, is that page 111?</p> <p>9 MS HILL: If you find the appendix that begins at 111, that 10 is our Surrey Police document. At paragraph 3 I have 11 quoted what was the evidence of the 2012 version, which 12 was written, if I remember correctly, across the top of 13 the CAD:</p> <p>14 "If there is the slightest doubt as to the 15 circumstances of the death, it should be treated as 16 suspicious."</p> <p>17 I depart from my learned friend as to whether or not 18 it was in fact -- our position is that it was not 19 treated and that is why scenes of crimes did not attend 20 and things like that, but that is the policy I think.</p> <p>21 THE CORONER: Yes, that may be a bit different from -- it 22 may be that things have moved on a little bit because 23 what you were saying, any sudden death should be treated 24 as suspicious --</p> <p>25 MS BARTON: Yes.</p> <p style="text-align: center;">Page 56</p>

<p>1 THE CORONER: -- is more extensive than, "If there is the 2 slightest doubt about the circumstances of a death ..." 3 MS BARTON: Yes. It may have done. That certainly is what 4 it says at the moment. 5 THE CORONER: Can I just leave that with you, because 6 I would just like to know. 7 MS BARTON: Of course. 8 THE CORONER: If the position is that it says now, "Any 9 sudden death should be treated as suspicious", it may 10 then go on to say and what follows because it is 11 a sudden death as to the type of -- I just don't know. 12 MS BARTON: It is a fairly comprehensive policy. Sir, we 13 will make it available to you and to the other IPs. 14 THE CORONER: All right. 15 MS BARTON: What I should say, sir, is in view of the 16 existence of that comprehensive policy, then it 17 certainly cannot be said that the second limb of the 18 severity test is made out because the reality is it 19 wouldn't be necessary to take any action because the 20 structure and procedures are already in place. 21 That is why I say that individual mistakes, if there 22 were any, cannot lead to a PFD report. The severity of 23 those mistakes must be such that they create the risk of 24 further deaths. The investigation of sudden deaths in 25 the UK is perhaps the most thorough and there is</p> <p style="text-align: center;">Page 57</p>	<p>1 Closing submissions by MR BEGGS 2 MR BEGGS: Sir, can I just first respond to one point from 3 Mr Moxon Browne and then secondly address you extremely 4 briefly from the widow. 5 When you are reflecting on your narrative, can we 6 invite, please, careful review of paragraph 76 of our 7 submission. I won't read it but it is to the effect 8 that the absence of any genetic corroboration does not 9 undermine the likelihood of SADS. You will recall the 10 evidence of Dr Homfray and we have set it out in a bit 11 more detail within the body of our skeleton. 12 Similarly, just two paragraphs later on, can we also 13 invite you to review our paragraph 78, with a series of 14 propositions emerging from Dr Sheppard's evidence 15 relating to SADS, with the correction that 16 Mr Moxon Browne helpfully made to our paragraph 78(b). 17 Sir, again I will not read them because I will 18 simply reference them for you but it leads us to make 19 this observation in relation to the Greek rust bucket 20 and the Popi M case referred to by my learned friend and 21 if you were able to go back to his internal pagination, 22 page 20. 23 MR MOXON BROWNE: Of mine? 24 MR BEGGS: This is the lengthy citation from that shipping 25 case.</p> <p style="text-align: center;">Page 59</p>
<p>1 publicly available material which shows the detection 2 rates in respect of murders in this country and they are 3 commendably high. So it is in my respectful submission 4 a complete nonsense to suggest that people might be 5 encouraged to come to the UK, in particular to Surrey, 6 and think they are going to get away with a murder which 7 is premised, it has to be the premise of the argument 8 that is being run on behalf of Hermitage. For that 9 reason I say that on these particular facts, this is 10 a totally inappropriate case for a prevention of future 11 deaths. 12 THE CORONER: It might be said that as it were the risk is 13 as it were if somebody has committed in a way that 14 doesn't have obvious signs and so on, that that will not 15 be investigated, but that is why I am just interested in 16 if any sudden death is to be treated as suspicious. 17 MS BARTON: Yes. 18 THE CORONER: Anyway I will leave that with you, you have 19 the point. 20 MS BARTON: I have. Yes, I have. 21 THE CORONER: All right. 22 Thank you very much. 23 Yes, Mr Beggs. 24 25</p> <p style="text-align: center;">Page 58</p>	<p>1 THE CORONER: Yes. 2 MR BEGGS: A rare reversal of Bingham J, as he then was, my 3 learned friend read the extract: 4 "If such a judge concludes on a whole series of 5 cogent grounds that the occurrence of an event is 6 extremely improbable, a finding by him that it is 7 nevertheless more likely to have occurred than not does 8 not accord with common sense." 9 Which is a proposition of the obvious. However, 10 a conclusion of SADS, the existence of SADS, is not 11 extremely improbable, even on the reduced percentage 12 with the correction at 78(b) of our submission it occurs 13 and Dr Sheppard has given you the statistics and it 14 cannot sensibly be described as extremely improbable. 15 It is a tragic and recurrent event. 16 That is all I say in response to Mr Moxon Browne. 17 Can I come to two or very three brief concluding 18 remarks more generally. We stand by our skeleton 19 argument and do not need to adumbrate further in 20 relation to it. However the widow has asked me to 21 record her distress that over what is now almost six 22 years, two very well-funded commercial enterprises, 23 Legal & General, a household name, and Hermitage Capital 24 Management, less well known but nonetheless increasingly 25 well known, have prolonged the progression of this case</p> <p style="text-align: center;">Page 60</p>

<p>1 to the point of almost the sixth anniversary of 2 Alexander's death. It must be obvious to them that 3 their conduct of this Inquest has increased the 4 distress, not just to the widow but to what were two 5 young children and now are now five-and-three-quarter 6 years older children. 7 It scarcely requires imagination as to the reasons 8 for that distress, that is to say the promulgation and 9 promotion, both in court and, in the case of Hermitage, 10 outside court of various florid theories as to 11 poisoning, assassination, organised crime and so forth. 12 Yet we have now arrived at the position where neither of 13 their leading counsel are able to contend for the 14 unlawful killing outcome. Indeed it is common ground 15 that there is manifestly insufficient evidence for you 16 to so find. 17 Can we please commend to you the language of your 18 counsel, Mr Skelton, who we observe has exhibited 19 studied neutrality and impartiality from the outset of 20 his instructions. Therefore you perhaps will look at 21 his submissions with that in mind, studied impartiality 22 cannot be said on the part of Legal & General, who have 23 a commercial motive for certain outcomes, or Hermitage 24 who have a well-established political motive. It is 25 three particular paragraphs that we invite you to adopt</p> <p style="text-align: center;">Page 61</p>	<p>1 standard of proof, what Mr Skelton, impartial counsel to 2 the inquest, is saying is that the evidence is not 3 sufficient even to establish to the civil, low standard, 4 that my client's husband was murdered. That is 5 something that has yet to find the slightest expression 6 in a single journalistic outlet to date but we hope when 7 you have finished your conclusions and your 8 deliberations I should say that it will find expression 9 so that the children of the deceased can tell their 10 friends that their father was not murdered, that is not 11 the evidence and that all of the florid and exciting 12 theories promoted by commercial and political interests 13 can be put to one side, in their interests if nothing 14 else. 15 Thus we conclude in relation to Mr Skelton's 16 conclusions, which we commend to you, with his 17 paragraph 56.5, again having put the antecedents 18 propositions with which we agree, Mr Skelton and his 19 junior conclude the likely explanation for 20 Alexander Perepilichnyy's death is that he died of 21 natural causes. That is what impartial counsel to the 22 inquest has concluded. 23 There is just one other matter to record publicly, 24 sir, and then I will sit down. Throughout this case, 25 there has been hit-and-run sniping at the good character</p> <p style="text-align: center;">Page 63</p>
<p>1 and follow. 2 Firstly, paragraph 51(f) of Mr Skelton's submissions 3 where, having given the antecedents propositions at 4 51(a) to (e), he correctly concludes that there is no 5 positive evidence that the potential perpetrators of the 6 alleged crime in Russia, to which I anticipate he is 7 referring to the fraud, but there are other crimes 8 associated therewith, or their potential associates 9 actually killed Alexander Perepilichnyy. We adopt and 10 promote that conclusion to you. 11 Perhaps more importantly and more significantly, he 12 says that, having regard to the standard of proof 13 required for a finding of unlawful killing, namely the 14 criminal standard, but then in paragraph 53 he says, 15 again correctly, "The answer would in our view be the 16 same even if the civil standard of proof were to be 17 applied". 18 In other words, the circumstantial evidence about 19 potential motivation and capability, which he summarised 20 above, is insufficient on its own to reach the 21 conclusion that it is likely or more probable than not 22 that Alexander Perepilichnyy was unlawfully killed and 23 it would be unsafe to do so." 24 For the benefit therefore of journalists who are not 25 riveted by legal debate about what is meant by the</p> <p style="text-align: center;">Page 62</p>	<p>1 of Alexander Perepilichnyy, it comes from counsel to my 2 left. Either expressly or impliedly or a combination of 3 the two. I simply have to place on record in relation 4 both to the deceased and my client's brother, 5 Rishat Ismagilov, that neither have ever been found 6 guilty of any allegation of criminality of any kind in 7 any court in any jurisdiction. That is a fact. 8 Confining my concluding remarks to the deceased, 9 about which this Inquest is concerned, he was a man of 10 the utmost good character and you are invited to so 11 find. I notice that today Mr Moxon Browne has rowed 12 back graciously from previous utterances which he had 13 made which were deeply hurtful to the widow and to the 14 two children -- more importantly deeply unjustified. It 15 would be completely outrageous if a man incapable of 16 defending his reputation were to be in any way slandered 17 or slurred by any findings, there is no basis for any 18 such findings which I am certain, sir, you will on 19 further reflection so conclude. 20 Sir, that is all I wish to say, thank you. 21 THE CORONER: Thank you very much. 22 MS BARTON: Sir, before Mr Skelton gets up, can I just 23 indicate, so that all in court know the position with 24 the two versions of the policy. There is a 2008 policy, 25 a 2012 policy that was in place and the one that has</p> <p style="text-align: center;">Page 64</p>

<p>1 just been updated in May 2018 and both of them have the 2 following words: 3 "All sudden/untimely deaths should be treated as 4 suspicious until shown otherwise. If there is the 5 slightest doubt as to the circumstances of the death, it 6 should be treated as suspicious." 7 Both versions of the policy have been sent to 8 Mr Suter. 9 THE CORONER: Thank you. 10 MS HILL: Sir, just before your counsel arises, could I ask 11 that we are provided with those policies as soon as 12 possible, it does rather appear from what my learned 13 friend has said that the wording was similar in 2008, so 14 if that is right there is an obvious question as to 15 whether anything has in fact changed. I would just 16 direct you with respect to the fact that of the 15 key 17 failings, the failure to classify the scene as 18 suspicious is only number 1, so my learned friend's 19 points do not meet 2 to 15. 20 THE CORONER: Just give me one minute. (Pause) 21 Yes, Mr Skelton. 22 Closing submissions by MR SKELTON 23 MS SKELTON: Sir, the gauntlet has been laid down by Ms Hill 24 and Mr Moxon Browne that Mr Wastell and I, and I should 25 say it is both of us that have written the submissions,</p> <p style="text-align: center;">Page 65</p>	<p>1 its totality has not elicited any positive form of 2 death, whether natural causes or of foul play. It is 3 not quite right however to say that there is no positive 4 evidence from any of the experts as to the probable 5 cause of death. May I just quickly refer you to 6 Dr Rice's evidence at the conclusion of both of his 7 appearances in court. The first was in June 2017, 8 17 June, Day 10 of the hearings. I believe I was asking 9 the questions. 10 MR MOXON BROWNE: Which day? 11 MS SKELTON: 19 June 2017. 12 So the question was put: 13 "Just to sum up then, there is no positive evidence 14 that Mr Perepilichnyy was poisoned in this case, 15 notwithstanding the battery of tests which were 16 conducted which I have taken you through?" 17 "Answer: Yes. 18 "Question: Do you accept the hypothesis that either 19 he died from a cardiac arrhythmia or he died from 20 poisoning? 21 "Answer: I think those still remain possibilities, 22 yes, two possibilities. 23 "Question: Is it the case that if one becomes 24 unlikely, the other becomes likely, is that a proper 25 assessment of the logic of the death? If it is only to</p> <p style="text-align: center;">Page 67</p>
<p>1 have fallen into error in respect of the law. 2 May I deal with that matter compendiously if I may, 3 although I must recognise that Ms Barton has in effect 4 pithily dealt with the points more crisply than I am 5 about to do. 6 During the course of the last few years, sir, you 7 and your predecessor the senior coroner have undertaken 8 a comprehensive investigation into in Perepilichnyy's 9 death lasting several years. That has involved adducing 10 evidence of a multitude of witnesses of fact who saw 11 Mr Perepilichnyy in the months, days and minutes before 12 he died and who saw him after he died at the scene. It 13 also has involved a host of expert witnesses, 14 scientists, pathologists, toxicologists, doctors who 15 have carried out exhaustive investigations into the 16 circumstances pertaining to Mr Perepilichnyy's death. 17 It has been said repeatedly in this forum that the 18 toxicological evidence is unprecedented in the degree of 19 its exhaustiveness. 20 The result of the factual investigation has not 21 shown any positive evidence of foul play, poisoning or 22 otherwise. No evidence of murder whatsoever, and that 23 is an uncontentious submission I can make I hope without 24 breaching any rule. 25 The scientific evidence, if I can call it that, in</p> <p style="text-align: center;">Page 66</p>	<p>1 take those two potential causes that if one is unlikely, 2 the other must necessarily become likely?" 3 "Answer: Yes, I would agree with that. It works 4 both ways round. I think if you are absolutely certain 5 and you can absolutely eliminate poisoning then your 6 diagnosis becomes one of sudden cardiac death. But vice 7 versa, if the expert opinion is that sudden cardiac 8 death is unlikely then it puts more emphasis on 9 poisoning as the only other cause of death that you have 10 left to you." 11 "He went on: 12 "I think that is the dilemma we are in." 13 The question: 14 "Just taking the totality of the evidence as you 15 have seen it, all the information available about the 16 timing of Mr Perepilichnyy's death and the supposition 17 that it could have been a delayed-action poison or 18 a fast-action poisoning, the means of administration 19 that are available for certain types of poison, whether 20 a nerve agent or a gas like cyanide, or cyanide in 21 a different form, the signs and symptoms he demonstrated 22 pre-death, which are very few obviously, pathological 23 signs until the collapse? 24 "Answer: Yes. 25 "Question: The findings of the pathology and then</p> <p style="text-align: center;">Page 68</p>

<p>1 the toxicology testing, are you able to come to a view 2 on the balance of probabilities as to whether it is 3 likely or unlikely that poison is the cause of death? 4 "Answer: I don't think you can with 100 per cent 5 certainty eliminate poisoning as a cause of death. 6 However, given all of the things that you said in terms 7 of summarising the position I would still put the 8 balance of possibility being on a sudden cardiac death." 9 Sir, he returned to give evidence on 12 April, which 10 was Day 15 and in effect stood by that testimony, 11 concluding, and I will read it out -- it was put to him, 12 in the context of novichok, if you recall he was called 13 effectively because of the Skripal poisoning. It was 14 put to him: 15 "You said last time in the context of the 16 cholinergic crisis, which you described as the classic 17 presentation of the nerve agent poisoning, that on your 18 understanding of the factual evidence given to this 19 court Mr Perepilichnyy didn't display those classic 20 symptoms. 21 "Answer: Yes, that is what I said and I would 22 stand by that. 23 "Question: They include sensations and the like? 24 "Answer: Yes. 25 "Question: That I just described?</p> <p style="text-align: center;">Page 69</p>	<p>1 of poisoning. 2 "Question: Do you stand by that conclusion? 3 "Answer: I do." 4 In terms of positive evidence, I would, sir, advance 5 Dr Rice's evidence as positive. He has taken a view 6 that one explanation is likely. 7 Sir, Mr Moxon Browne, talks about the sufficiency of 8 evidence. The authorities require you to consider the 9 sufficiency of the totality of the evidence, the 10 circumstantial evidence from the witnesses and the 11 documents and the expert evidence before forming a view. 12 If you don't feel you have sufficient evidence or you 13 don't feel that it is safe to do so, you should not 14 reach a conclusion or a particular conclusion about the 15 cause of death. If you do feel you have sufficient 16 evidence, bearing in mind the immense wealth of the 17 evidence that has been put before this court, then you 18 ought to do so if you can. 19 You may conclude on that basis that this is not 20 a Popi M type case, that in fact you are not dealing 21 with a whole wealth of possibilities none of which ever 22 makes the grade as a probability but in fact some things 23 are more probable than not, or some things are more 24 improbable than not. It is perfectly open to you, sir, 25 I would submit, looking at the totality of the evidence</p> <p style="text-align: center;">Page 71</p>
<p>1 "Answer: Yes. 2 "Question: You therefore concluded that in your 3 view in was unlikely on the balance of probabilities 4 that he was killed by a nerve agent? 5 "Answer: That's correct and I stand by that. 6 "Question: Does that conclusion apply to all forms 7 of nerve agents including, for example, novichok? 8 "Answer: Yes, if we are talking about the group of 9 agents called novichok then my knowledge of those would 10 not change my overall opinion that I expressed in June. 11 This is the critical question: 12 "Question: Widening your view, not simply to 13 include nerve agents but to include poisons more 14 generally, or hostile poisoning, leaving aside the issue 15 of food poisoning your view as expressed to the court 16 last time was that you couldn't rule it out as 17 a possibility? 18 "Answer: No." 19 The questioning goes on: 20 "However, presented with the choice between 21 a potential cardiac cause, arrhythmia cardiac cause or 22 poisoning, based on your analysis of the factual 23 evidence you took the view that it was more likely that 24 he died of natural causes than was poisoned? 25 "Answer: Yes, because of the lack of evidence was</p> <p style="text-align: center;">Page 70</p>	<p>1 to say it is improbable that this man was poisoned. You 2 can take such evidence as you see fit into account, for 3 example the evidence at the scene. The medical 4 evidence, the expert evidence and bearing in mind how 5 the crime might have been committed. Was this a perfect 6 crime or was it an imperfect crime that through 7 serendipity has not been detected? 8 If you are satisfied that the evidence is sufficient 9 and it is safe to do so, I would submit it is clearly 10 open to you, both on the totality of the evidence, to 11 conclude it is improbable that Mr Perepilichnyy was 12 murdered by poison or otherwise. But if you don't feel 13 you are in a position to do that, then you should not do 14 so. 15 The issue of SADS is a peculiar diagnosis because it 16 is one of exclusion, as has been said on a multitude of 17 occasions in this court. In other words, it relies on 18 positive evidence or negative evidence that excludes 19 other causes before it becomes a probability or 20 a possibility. 21 So it is connected, it is not like Popi M, it is 22 just not one of the causes sort of bubbling around at 23 the bottom of the ocean that one might posit as the 24 cause of the ship's loss, it becomes probable when other 25 things become improbable. In this case the expert</p> <p style="text-align: center;">Page 72</p>

<p>1 evidence is clear that you have two potential causes of 2 death if the evidence is sufficient, one is natural 3 causes and one is SADS -- sorry, one is foul play by 4 poisoning. 5 In respect of ruling out natural causes, 6 investigations have been done which have ruled out for 7 example cardiac abnormalities and diseases and there are 8 not any major alternatives in terms of natural causes. 9 Food poisoning is not obviously a viable proposition. 10 You are then left with foul play by deduction. If 11 then, sir, you can rule out foul play, ie it becomes 12 unlikely, improbable, then because one is dealing with 13 two possible causes, SADS becomes a probability because 14 it is a connected deduction. Should you then exclude it 15 to a point of 100 per cent certainty? Answer, no, as 16 Mr Moxon Browne acknowledged I think that is almost 17 an impossibility, even with the suffragan bishop one 18 would need to know everything about the man and his 19 background to even possibly exclude the possibility that 20 someone had animus towards him. It is an impossible 21 thing to do and possibly impossible scientifically as 22 well. 23 What standard must you apply as a judicial officer 24 sitting in the coronial court? The court is clear the 25 application is the conventional civil standard when it</p> <p style="text-align: center;">Page 73</p>	<p>1 I think we must be. 2 THE CORONER: Thank you very much. 3 Ms Barton, thank you very much just for seeing that 4 material. 5 MS BARTON: Mr Suter has it now I think. 6 THE CORONER: You did say, yes. 7 MS BARTON: I am grateful. 8 THE CORONER: I am not going to say it because I don't know 9 when I shall be in a position to conclude matters myself 10 but can I just ask this question, I don't need an answer 11 now, you can think about it perhaps and tell Mr Skelton. 12 Indeed I think I may have said at one time that come the 13 conclusion, that I would deliver those at Woking. I am 14 not saying that I definitely wouldn't. There are some 15 reasons why it might be easier to do it here but if you 16 could all just let Mr Skelton know what your views are 17 about that and then I shall take all that into account. 18 MS SKELTON: Thank you, sir. 19 THE CORONER: Mr Skelton, nothing else then we need to deal 20 with now? 21 MS SKELTON: No. 22 THE CORONER: As I said, thank you all very much indeed for 23 all the help you have given, not just in the documents 24 you have put in but throughout the proceedings. I am 25 very grateful to everyone.</p> <p style="text-align: center;">Page 75</p>
<p>1 comes to determining what has happened as a matter of 2 fact, ie: on the balance of probabilities what is the 3 likely or the unlikely explanation? 4 Because SADS becomes likely when other things are 5 unlikely, having excluded the other possibilities which 6 include other forms of natural causes and forms of foul 7 play, namely poisoning, then SADS becomes the likely 8 proposition. It is not quite the case, as I think may 9 have been implied by Mr Beggs, that your counsel, 10 Mr Wastell and I, have said that you should come to that 11 conclusion that it is natural causes. What we have said 12 is it is open to you to do so based on the evidence, but 13 it is also open to you to say, "I, having looked at all 14 the evidence, am not sufficiently confident to form 15 a view to the satisfactory standard". You may either do 16 that in the short form, it is an open verdict, ie it is 17 unascertained or you may do it in a long form. 18 Those, sir, are my submissions on that issue. 19 I appreciate it is a difficult logical balancing 20 exercise but I am afraid I have to absolutely refute the 21 suggestion that there has been any error of law on my 22 part or indeed on Mr Wastell's part. 23 Sir, I will not address you on the PFD reports, 24 I think the issue has been well addressed by my 25 colleagues. We are studiously neutral on that issue, as</p> <p style="text-align: center;">Page 74</p>	<p>1 (1.03 pm) 2 (The Inquest adjourned) 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">Page 76</p>

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