

OPUS 2

INTERNATIONAL

Independent Jersey Care Inquiry

Preliminary Hearing

June 16, 2014

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1 Monday, 16 June 2014
 2 (2.00 pm)
 3 THE CHAIR: Good afternoon, ladies and gentlemen. Today is
 4 the second public session of the Independent Jersey Care
 5 Inquiry. Many of you will recall that on 3 April at the
 6 first public hearing I explained what the Inquiry was
 7 doing and how we intended to go about our work.
 8 We have already put a considerable amount of
 9 information onto our website and now for today I am
 10 going to ask counsel to please tell the Inquiry the
 11 position to date in relation to the disclosure of
 12 documents.
 13 Submissions by MS JERRAM
 14 MS JERRAM: Thank you, Madam Chairman. Good afternoon. My
 15 name is Ms Jerram as you know and I appear as co-counsel
 16 to the Inquiry along with Mr Patrick Sadd.
 17 Madam, before you today we have Advocate Lacey who
 18 appears on behalf of three States of Jersey Departments,
 19 the Chief Minister's Department, the Education, Sport
 20 and Culture Department and the Health and Social
 21 Services Department and it is the last of these
 22 Departments that is relevant for the purposes of the
 23 matters you need to decide today.
 24 The States of Jersey Police are represented by
 25 Robert MacRae who sits at the back, I hope you can see

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1 him.
 2 THE CHAIR: Yes. I will move slightly so that I can.
 3 MS JERRAM: The Attorney General is represented in a limited
 4 capacity by Laura Stephenson who sits just to the right
 5 here.
 6 Madam Chairman, this is a preliminary hearing to
 7 deal with a number of procedural issues that have arisen
 8 during the course of the Inquiry's preparation for the
 9 oral hearings and there are three central issues for
 10 your determination at this stage. The first relates to
 11 disclosure of material by the Health and Social Services
 12 Department, what I will refer to as "the Department", of
 13 documents that are likely to be relevant to
 14 the Inquiry's work.
 15 The second relates to disclosure by the States of
 16 Jersey Police, whom I will refer to as the SOJP, of
 17 documents in their possession which are relevant to your
 18 terms of reference.
 19 The third and minor issue relates to the application
 20 by the Attorney General in respect of his application
 21 for interested party status and in essence it simply
 22 requires an indication from him as to whether he applies
 23 in his own personal capacity or in the capacity of the
 24 Law Officers' Department.
 25 In that respect there has been updated

2

1 correspondence from his Department on Friday and if
 2 I may ask that that letter be handed up to you, in
 3 addition to a letter from Alan Collins of Slater &
 4 Gordon on behalf of the JCLA. (Handed).
 5 THE CHAIR: Thank you.
 6 MS JERRAM: Madam Chairman, in relation to the letter from
 7 Slater & Gordon, this is a letter of 13 June, it simply
 8 confirms that Mr Collins does not intend to appear on
 9 Monday but will be available by telephone if necessary.
 10 He indicates that he represents the JCLA only in this
 11 matter. Finally he says:
 12 "We expect the States of Jersey and the police to
 13 make full disclosure as required by the Committee of
 14 Inquiry."
 15 So Mr Collins does not propose to attend today.
 16 In relation to the letter from the
 17 Attorney General's office dated 12 June this clarifies
 18 the application he made on 2 June in respect of
 19 interested party status and he clarifies that it was his
 20 intention that the Law Officers Department should in
 21 effect have an interested party status so that relevant
 22 persons in the Department can be appraised of matters.
 23 Perhaps it would be appropriate if interested party
 24 status needs to be given to any entity that it is given
 25 to the Attorney General as Solicitor General from time

3

1 to time."
 2 He goes on to say though that:
 3 "If however the Panel is of the view that interested
 4 party status can be given to a non-corporate Department
 5 then please treat my application as made on behalf of
 6 the Law Officers' Department."
 7 So to that extent his application has been clarified
 8 and the matter for your determination then in due course
 9 is whether you will grant him interested party status on
 10 that basis.
 11 Madam Chairman, the other document you will have
 12 been handed up I hope shortly before the hearing was
 13 a list of issues for your determination today which
 14 I will take you through briefly if I may at this stage.
 15 THE CHAIR: Yes, please do.
 16 MS JERRAM: The first issue, 1, is in relation to the HSSD,
 17 the Department, whether the Panel requires immediate
 18 compliance with the summons issued against that
 19 Department, or whether it is content to allow consents
 20 to be sought for the disclosure of certain documentation
 21 prior to disclosure as suggested in correspondence by
 22 Lacey Advocates. That is the key issue of principle.
 23 If I may put it this way: whether you will seek
 24 compliance with the summons or whether the consent
 25 process advocated by Lacey Advocates is a preferable

4

1 route in your judgment.
 2 The second issue goes to the issue of redaction
 3 which I shall come to in a moment and the issue for
 4 determination is whether you would wish to add an
 5 amendment to the wording of paragraph 24.3 of the Data
 6 Protection Freedom of Information and Redaction Protocol
 7 to allow the facility expressly for a challenge to any
 8 determination that you make about provisional redactions
 9 submitted by the interested parties and I will give
 10 a further explanation of that in due course.

11 The third issue goes to confidentiality undertakings
 12 and as a result of issues raised both by the Department
 13 and the SOJP as to whether you are satisfied with the
 14 confidentiality undertakings which are set out in the
 15 protocols and which I will take you to in due course.

16 The fourth issue which we have already alluded to is
 17 the application by the Attorney General for interested
 18 party status, and then finally a matter of housekeeping
 19 as to whether the interested parties want to make
 20 opening statements at the opening of the Inquiry.

21 So those are the issues before you. Before you hear
 22 from the interested parties on those matters, in our
 23 submission it would be helpful to set out some
 24 background, especially in relation to the protocols so
 25 that it is understood by all how the procedures for

1 obtaining evidence and carrying out redactions is
 2 envisaged to work on behalf of the Inquiry.
 3 Members of the Panel, you will know that in order to
 4 report on the very wide-ranging terms of reference set
 5 by the States of Jersey that you will have to
 6 investigate into a very wide-ranging set of issues.
 7 Your terms of reference require you in particular to
 8 consider care provided across a series of residential
 9 homes on the island between 1945 to date, and also
 10 relate to the provision of care in foster homes. They
 11 require you to examine the political and other oversight
 12 of those homes, how they were managed and governed and
 13 whether that governance was adequate. This requires you
 14 to consider the conduct of the Health and Social
 15 Services Department and its predecessor and, as you will
 16 know, you will hear evidence from those who say they
 17 were abused as well as alleged abusers and you will be
 18 asked to consider what action, if any, was taken in
 19 relation to concerns raised or complaints made at the
 20 time in relation to the abuse. In that respect you are
 21 asked to consider in particular the conduct of both the
 22 police and the HSSD and its predecessor, but also the
 23 judiciary and politicians.

24 That at this stage is a very brief summary of the
 25 immense work that the Inquiry has to carry out.

1 Of course in carrying out that work the Inquiry will
 2 have to consider a wide range of documentation from
 3 a number of different sources. It will include generic
 4 documentation about legislation, how homes were set up
 5 and run, how they were governed, disciplinary
 6 proceedings and so forth, but alongside that generic
 7 material there will be a large number of documents
 8 relating to individuals and the most recent
 9 correspondence from Advocate Lacey would suggest that
 10 there are around 12,000 children's files and another
 11 2,000 staff and foster carer files.

12 However, and crucially for the purposes of your
 13 consideration today, the documents that is of most
 14 immediate concern to the Inquiry is that held by the
 15 Historic Abuse Redress Scheme, because this, as we
 16 understand it, brings together all of the crucial
 17 paperwork in relation to each of the 133 applicants to
 18 that scheme.

19 Likewise the evidence held by the States of Jersey
 20 Police and in particular their investigation files into
 21 alleged abuse are of central and primary concern to
 22 the Inquiry.

23 So whilst in the Jersey archive there is bound to be
 24 a very very significant body of evidence which will take
 25 many weeks to consider, the crucial evidence to start

1 the Inquiry's work is contained in the Redress Scheme
 2 documentation and the police documentation.

3 Members of the Panel, you are aware that much of the
 4 documentation I have referred to is likely to contain
 5 the most sensitive of data about young and vulnerable
 6 individuals who were in care in Jersey and there will be
 7 documents for example explaining the family
 8 circumstances of the the child, why they were accepted
 9 into care and their pathway through that care system
 10 whilst they were being looked after by the State. Other
 11 documents will give details of abuse that is said to be
 12 suffered and what action or inaction resulted.

13 It is recognised by the Inquiry legal team and I'm
 14 sure the Panel as well that this is some of the most
 15 sensitive information that could be recorded about any
 16 person and the Inquiry is acutely conscious of this. It
 17 is also conscious of the fact that any information it
 18 holds must be held with proper safeguards and proper
 19 protections, in particular to ensure that it is not more
 20 widely disseminated than it needs to be for the purposes
 21 of the Inquiry.

22 The other aspect of which the Inquiry is mindful are
 23 the particular concerns that pertain to Jersey, as
 24 a reasonably small island community, where there is
 25 scope potentially -- even when names, addresses, dates

1 of birth are redacted from documents -- that by piecing
 2 together collateral or snippets of information, a person
 3 is capable of being identified and that is a real
 4 concern and it is one that's been expressed on behalf of
 5 the States and the SOJP and it is a concern that we
 6 share.
 7 Madam Chairman, it was with those concerns in mind
 8 that prior to the launch of this Inquiry on 3 April
 9 a series of procedural protocols were drawn up to deal
 10 with the provision of evidence and the management of
 11 that information. The purpose of the protocols as far
 12 as the documentation is concerned is to ensure that all
 13 proper safeguards are in place and to ensure that there
 14 is no inadvertent identification of those who do not
 15 wish to be named.
 16 Members of the Panel, to assist you and I hope the
 17 interested parties I will now take you to certain
 18 passages in the protocols to explain how sensitive
 19 material is to be dealt with. In broad terms though
 20 there are two key areas. The first as you know is
 21 redaction, which means the blacking out in documents of
 22 information said to be sensitive, and the second is how
 23 documents given to the Inquiry will be classified and
 24 published.
 25 If I may take you, Members of the Panel, firstly to

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1 tab 7 in the bundle that's been produced for today, this
 2 is the key protocol I am sure that will be the focus of
 3 submissions today. It is the Data Protection Freedom of
 4 Information Redaction Protocol and you will see from
 5 paragraph 2 that the purpose of the protocol is to set
 6 out how the Inquiry will deal with the data that it
 7 gathers.
 8 Paragraph 4 sets out the sort of documentation that
 9 the Inquiry expects to receive. Those include documents
 10 provided to the Inquiry by any individual institution,
 11 organisation or body, witness statements, evidence given
 12 by witnesses at oral hearing and evidence that
 13 the Inquiry obtains from its own research or efforts.
 14 Now, in relation to the issue of redaction, if
 15 I could just take you on please to the redaction section
 16 on page 3 starting at paragraph 13, in recognition of
 17 concerns that evidence might identify individuals or
 18 identify particular information about them that would
 19 mean that they were capable of being identified,
 20 the Inquiry will allow documents to be redacted in
 21 certain circumstances and to that end -- and you will
 22 see at paragraph 17 -- the Inquiry has already issued
 23 a general protective ruling and it may be helpful for me
 24 to read that out in full so it is understood.
 25 Paragraph 17:

1 "In order to restrict the disclosure or publication
 2 of the identity of certain persons and information,
 3 the Inquiry has implemented a general protective ruling
 4 being a general ruling to protect information provided
 5 to the Inquiry. The general protective ruling means
 6 that the following information will be redacted from all
 7 material before it is disclosed by the Inquiry to
 8 interested parties and/or published on the Inquiry's
 9 website."
 10 Number 1:
 11 "The names and identifying details of: 1,
 12 individuals identified as having claimed to have been
 13 abused or as having been a witness to any abuse alleged;
 14 2, any individuals accused of abuse except for those who
 15 have criminal convictions for that abuse."
 16 So pausing there, as a matter of course the names
 17 and identifying details of those two classes of
 18 individual will not be published in any document, save
 19 where a person accused of abuse has a criminal offence
 20 conviction in that respect.
 21 Then going on:
 22 "Individuals not falling into any of the above
 23 categories whose identity the Inquiry considers ought
 24 not to be disclosed."
 25 So pausing there, it is open for an interested party

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1 to make application to you that a particular name should
 2 not be disclosed or for reasons identified.
 3 Then 4:
 4 "Any applicants who have successfully applied to
 5 the Inquiry to not have their identities revealed and
 6 who do not fall into any of the above categories."
 7 Then 17.2 "Other personal information":
 8 "This does not extend to individuals' names, save
 9 for those specified at paragraph 17.1 above, but would
 10 include telephone numbers, dates of birth and home
 11 addresses, unless there are particular circumstances
 12 that make such personal information relevant to
 13 the Inquiry's terms of reference."
 14 Then at paragraph 18:
 15 "In order to ensure compliance with the Inquiry's
 16 general protective ruling, evidence providers are
 17 required to follow the following procedures in relation
 18 to the redaction of documents."
 19 And the process set out there may be summarised as
 20 follows in relation to redaction: each evidence
 21 provider, that's the person asked to provide documents,
 22 will submit to the Inquiry documents provisionally
 23 redacted and that's to say that they highlight in yellow
 24 those passages that they say should be redacted by
 25 the Inquiry before publication on the database, and it

1 will then be for the Inquiry to consider those
2 provisional redactions and there are two points to note
3 here. Firstly of course you will be able to see the
4 words highlighted in yellow and in any event the
5 evidence provider will keep a clean, original copy of
6 the document as required under the protocol.

7 Then you will see at paragraph 24 over the page, it
8 is for the Panel then to consider those provisional
9 redactions and crucially in relation to paragraph 24
10 the Inquiry will not publish the provisionally redacted
11 parts of the document to interested parties unless:

12 "1, an individual witness or interested party was
13 the author or recipient of the unredacted evidence and
14 is therefore entitled to see it in its unredacted form,
15 or 2, the evidence provider has subsequently agreed in
16 writing to the removal or amendment of the provisional
17 redactions, or 3, the Inquiry has refused the evidence
18 provider's application for a protective ruling."

19 Over the page at 27 you will see there is provision
20 there as follows that:

21 "Where a protective ruling has been made by
22 the Inquiry without a written application having been
23 made by the evidence provider and an interested party is
24 dissatisfied with the extent of the redaction specified
25 in the protective ruling, they may apply to the Inquiry

1 seeking a variation of the protective ruling."

2 The issue that's been raised in correspondence is
3 effectively this: the ability of an evidence provider to
4 challenge any determination by the Panel as to the scope
5 of provisional redactions and it has been drawn to our
6 attention that the mechanism, it is said, is not
7 explicit enough and does not give a timeframe and to
8 that end, Madam Chairman, we would invite you to make an
9 amendment to paragraph 24.3 of the protocol adding the
10 words which are set out in your list of issues at
11 number 2 and I will read that out in its entirety, so
12 24.3 will read:

13 "The Inquiry has refused the evidence provider's
14 application for a protective ruling and has given the
15 evidence provider five days' notice of that decision so
16 that it can be challenged by the evidence provider,
17 either by way of application to the Inquiry, or through
18 due process and for the Inquiry to be notified of such
19 a challenge."

20 The wording of that I hope meets the difficulty
21 identified by two of the interested parties and what it
22 would allow for is a challenge before the information is
23 published onto the database and it is hoped that that
24 gets round one of the issues that's been raised to date
25 in correspondence.

1 Madam Chairman, the other issue that's been raised,
2 and I mentioned it earlier, is this issue about what
3 I would call collateral information, information going
4 beyond the name and date of birth of the person but that
5 might make it possible for that person to be identified
6 and if one takes an example, one could have somebody who
7 says that they were abused in a children's home in
8 Jersey, say in the 1960s, and they now go on to give
9 details of their occupation, say if they are an honorary
10 constable in a particular parish, it is readily
11 understood how that person could be identified through
12 that sort of information and the procedure set out in
13 these paragraphs is designed precisely so that the
14 evidence provider can identify which parts of the
15 evidence it says is liable to identify a particular
16 person and to submit provisional redactions accordingly
17 and it is hoped with the challenge process built in that
18 that should meet those concerns.

19 THE CHAIR: So a safeguard, Ms Jerram, either way at the
20 start by the proposed redaction and then the ability to
21 challenge the Inquiry if satisfaction is not --

22 MS JERRAM: Exactly, yes.

23 Madam, then if I can turn back in this document to
24 the issue of what's called the categorisation of
25 documents simply to clarify and make sure it is

1 understood how documents are going to be categorised.
2 So this is paragraph 6 which appears on page 2 and it
3 provides for categorisation of information received by
4 the Inquiry into the following categories: category 1
5 information is evidence given and referred to during
6 oral hearings:

7 "This will include witness statements of those
8 giving oral evidence and those that are taken as read
9 into the Inquiry's record."

10 And it is that information and that information
11 alone that will appear on the Inquiry's website.

12 Category 2 evidence is different. This is
13 information that is relevant and material to
14 the Inquiry's terms of reference and is probative of
15 them and that is information that will be provided to
16 the interested parties on the database that I referred
17 to. It will not be disseminated more widely.

18 Category 3 evidence is not really of concern today,
19 but that is information that is irrelevant or immaterial
20 to the Inquiry's terms of reference and that is not
21 going to be published anywhere.

22 Now, as far as the access to the database is
23 concerned, just to clarify, a party will have to satisfy
24 you that they merit interested party status and be
25 granted interested party status before they have access

1 to the database and when they are given interested party
2 status they will have to sign confidentiality
3 undertakings as to their use of the material on the
4 database and to that end, Madam, can I turn you please
5 in the next tab, tab 8, to the general procedures
6 protocol and in particular paragraph 15 onwards.

7 This deals with undertakings that have to be signed
8 by interested parties before they are allowed access to
9 the documents database and it provides in paragraph 15
10 that:

11 "A person, which includes an institution,
12 organisation or body, who is designated as an interested
13 party and who agrees to such a designation automatically
14 undertakes to be bound by the following confidentiality
15 provisions in respect of the Inquiry's work."

16 You will see the wording of 15.1, it is a central
17 tenet of this undertaking that all material provided to
18 the interested party by the Inquiry is confidential and
19 the interested party agrees to take all necessary steps
20 to preserve that confidentiality. Importantly the
21 material provided is solely for the purpose of assisting
22 the interested party in assisting the Inquiry and for no
23 other purpose. So no publication outside the Inquiry.

24 15.2 deals with this issue of disclosure or
25 dissemination:

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1 "All interested parties undertake to the Inquiry not
2 to disclose or pass on to any third party, other than to
3 interested parties' own legal representatives, any
4 document, witness statement, or other material supplied
5 to it by the Inquiry."

6 15.3 deals with secure storage and at the end of the
7 Inquiry you will see from 15.4 that:

8 "Any interested party at the direction of the
9 Inquiry must return that documentation to the Inquiry,
10 or destroy it at the Inquiry's request."

11 Importantly at 16 those confidentiality obligations
12 continue even after the Inquiry's work has finished and
13 at 17 -- and this may be of particular interest, that:

14 "Where an interested party is an organisation or
15 institution or other body, every individual who forms
16 part of that interested party will be subject to the
17 above confidentiality agreements."

18 And, Madam Chairman, you will know as a matter of
19 practicality that where an organisation is given
20 interested party status only limited numbers of licences
21 are given for access to the database, so simply because
22 say, for example, the Health and Social Services
23 Department is given access to the database, there will
24 only be very limited individuals within that
25 organisation --

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1 THE CHAIR: Who can actually access it, yes.

2 MS JERRAM: Exactly.

3 Those obligations, as I say, from paragraph 15, are
4 automatic and it is axiomatic that anyone who takes up
5 interested parties complies with those confidentiality
6 undertakings.

7 Madam Chairman, you will be asked to consider
8 whether those undertakings are sufficient for the
9 purposes of the Inquiry and I'm sure that you will hear
10 submission on that from the other interested parties.

11 So that deals with the provision of evidence under
12 the protocols and, as I have already indicated, both the
13 States of Jersey Police and the States Department have
14 been approached to provide documentary evidence.

15 The other main issue before you today, Members of
16 the Panel, is the appropriate mechanism by which
17 the Inquiry should obtain that documentation, both from
18 the HSSD and the SOJP and this brings us back to whether
19 the consent route is the appropriate route, or whether
20 the summons route is the appropriate route.

21 Madam Chairman, when you launched this Inquiry on
22 3 April on the issue of disclosure of documents you said
23 the following, paragraph 96:

24 "In relation to documentary evidence, to the extent
25 possible we anticipate that any documents we seek will

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1 be provided voluntarily. We have no doubt that Jersey's
2 public bodies and the other organisations involved will
3 wish to cooperate with our work and provide the
4 documentation we request. These public bodies and other
5 organisations have made us aware, however, that there
6 are data protection considerations that apply to the
7 documents. Therefore cooperation and willingness on
8 their part to provide the documents will not be enough.
9 There are powers for the Inquiry to summons documents,
10 meaning that we can compel their production. Summonses
11 have therefore been issued and will be served shortly.
12 The Inquiry understands that the public authorities or
13 organisations generally accept that position. We are
14 keen to avoid any delay in the Inquiry's work and we
15 anticipate that summoning documents will help to
16 minimise delay. Where we request documents to be
17 produced we would normally expect to receive them within
18 14 days."

19 Madam Chairman, the particular concern that you were
20 referring to then was the concern on behalf of the
21 interested parties that in disclosing documentation to
22 you those interested parties would be liable to breach
23 their non-disclosure obligations under the data
24 protection legislation and in relation to the consent
25 process, as you can imagine, obtaining consent in

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1 relation to every single document by every single
 2 individual would simply be unworkable, given the number
 3 of individuals who are likely to be named across all of
 4 the documentation that you are likely to see. Just to
 5 take one example, a list for example of the residents of
 6 Haut de la Garenne in any one year. It would be so time
 7 consuming and unworkable to approach every one of those
 8 individuals that it is not thought appropriate on behalf
 9 of the Inquiry for that to be the appropriate route.

10 As far as the Redress Scheme documentation is
 11 concerned, there may well be witnesses who mention other
 12 children in a children's home at the same time and again
 13 it would not simply be a question of getting the consent
 14 of the individual witness, it would be a question of
 15 getting the consent of all of those other people named
 16 in the statement and to that end it is unlikely, if that
 17 route were adopted, that the Inquiry would start its
 18 work within a reasonable period.

19 As you indicated, it appeared as at 3 April that it
 20 was accepted that the consent route was not workable and
 21 fortunately, as you indicated then, you had at your
 22 disposal an alternative means of compelling the
 23 production of documents, namely through a summons, and
 24 that is by virtue of Article 2 of the States of Jersey
 25 Powers, Privileges and Immunities Committees of Inquiry

1 Jersey Regulations 2007 which I will refer to as the
 2 2007 Regulations. This provides an exemption to the
 3 non-disclosure provisions in the data protection
 4 legislation, meaning that an evidence provider can
 5 supply documentation without breaching its data
 6 protection duties.

7 Now, that issue, Madam Chairman, is entirely
 8 separate from the redaction issue and shouldn't be
 9 confused with it. Whilst an evidence provider is
 10 duty bound to provide documents requested under
 11 a summons, those documents still fall to be redacted in
 12 the usual way under the procedures described earlier.
 13 If there are issues over the extent of redaction in any
 14 document, that does not mean that the document should
 15 not be disclosed at all and issues of redaction will
 16 remain irrespective of whether the document is supplied
 17 under the summons route, or whether it is supplied
 18 through the consent route, so those issues are going to
 19 be live in either scenario.

20 Now, as far as the summonses are concerned, Madam,
 21 if I might just take you to the summons issued against
 22 the Department. This is in the bundle behind tab 1 and
 23 it is behind the letter dated 23 April from the Inquiry
 24 to Advocate Lacey and behind it you will see the wording
 25 of the summons and this was served on the Historic

1 Redress Scheme care of Beverley Lacey Advocates.
 2 I understand that it should properly have been issued
 3 against the Department, although as I understand the
 4 position as at today no issue is made in relation to
 5 that.

6 The wording of the summonses is to provide:
 7 "... all and any documents, including copies of
 8 documents or categories of documents that are or may be
 9 relevant to the Inquiry's terms of reference which are
 10 annexed to this summons that are in your possession,
 11 custody or control. Such documents should be provided
 12 to the Inquiry in accordance with the instructions set
 13 out in the Inquiry's protocol and as published on its
 14 website with the address given."

15 The wording of the summonses in relation to this and
 16 the SOJP are wide. That is because it is not known
 17 precisely what documents either organisation has and the
 18 onus is on the evidence provider to identify the
 19 documents that are relevant to your terms of reference.
 20 Put the other way, it is simply not for the Inquiry to
 21 second-guess, if you like, what information those
 22 institutions might hold.

23 Although it is not set out in the body of the
 24 summons, it is clear from what you said on 3 April and
 25 from the protocols that they were to be complied with

1 within 14 days and the protocols also provide for
 2 a procedure whereby interested parties can apply for
 3 an extension of time if they are unable to comply within
 4 that period.

5 As for the remainder of the summons you will see
 6 that it is set out that a summons can be challenged
 7 under regulation 4 of the 2007 regulations and likewise
 8 that it is an offence not to comply with the summons
 9 without reasonable excuse and those are matters set out
 10 in the summons and as at today neither the summons
 11 against the SOJP or the Department has been complied
 12 with and, as we understand it, no challenge has been
 13 made to the validity under regulation 4 and likewise no
 14 applications have been made for an extension of time, so
 15 that procedurally is where we are at in relation to
 16 that.

17 It should be said of course that we recognise that
 18 the task of providing this documentation is an onerous
 19 one and it will take some time, but against that
 20 the Inquiry will not be able to perform the work asked
 21 of it by the States of Jersey in investigating its terms
 22 of reference without reference to that documentation, so
 23 in the first instance it is a matter of prioritising the
 24 key information and ensuring that it is disclosed as
 25 soon as possible.

1 Madam Chairman, as far as the issues raised by
2 Advocate Lacey and Advocate MacRae, they will deal with
3 that in due course but if I can just summarise the
4 position as follows from the correspondence -- Madam,
5 I probably won't need to take you at the moment to
6 individual letters.

7 THE CHAIR: No, a summary would be helpful.

8 MS JERRAM: Yes. Shortly after the hearing on 3 April, by
9 her letter of 11 April Advocate Lacey indicated that on
10 behalf of the Department she was taking issue with the
11 summons approach and wished to adopt the approach for
12 seeking consent from those named in the documents.

13 There then followed, as you will have seen, a series
14 of correspondence between Advocate Lacey and the Inquiry
15 and in which the Inquiry reiterated the practical
16 difficulties of the proposed approach by Advocate Lacey.

17 By her reply of 2 May Advocate Lacey again disputed
18 that the summons was the appropriate course and
19 indicated that she was writing to all of the Redress
20 Scheme claimants to seek consent to the release of their
21 data.

22 Now, Madam, the letter that she wrote to the Redress
23 Scheme claimants is in your bundle. It is dated 6 May.
24 If I could just turn you to that for a moment. It is
25 behind her letter of 2 May. So, Madam, this was

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1 a letter we understand went out to the 133 claimants and
2 this was a copy of that kindly provided to the Inquiry.
3 THE CHAIR: And appended thereto a permission form, is that
4 the document?

5 MS JERRAM: Exactly so, yes.

6 Turning to page 3 you will see that Advocate Lacey
7 is setting out here that:

8 "We ask that as soon as possible you complete and
9 sign the permission form [that you have just identified]
10 and return it to you confirming whether you consent or
11 have any objection to any category 3 documents related
12 to you being disclosed to the Inquiry."

13 And then a section marked "What if I consent?" and
14 it sets out there the processes, as I have just
15 described, in relation to redaction, namely:

16 "We will proceed to mark up or highlight across all
17 documents to be disclosed to the Inquiry all those
18 references that identify you and others which should not
19 be made public. Copies will then be provided to
20 the Inquiry. The Inquiry will understand the
21 highlighted areas contain private information which is
22 to be removed from any publication. This will ensure
23 that the identities of you and others will not be made
24 publicly known."

25 So that is an accurate description of the redaction

26

1 process.

2 Then the other category of people "What if I object
3 or do not reply?" and it is said as follows:

4 "It is important that the Inquiry has the fullest
5 facts before it to enable it to report. The Inquiry has
6 the legal power to order the supply of relevant
7 documents to it. It is only in exceptional
8 circumstances that a States of Jersey Department can
9 object in disclosing relevant documents if the Inquiry
10 issues such an order."

11 Of course, Madam, you have issued such an order by
12 having a summons served on the Department.

13 It goes on to say this:

14 "If you do not reply to this letter, or if you reply
15 objecting to the disclosure of some or all of your
16 records being made but the Inquiry still considers your
17 records to be relevant and necessary to its work,
18 the Inquiry may formally demand their disclosure. In
19 that situation in the absence of your consent the
20 relevant Minister may seek to object to their production
21 depending on the nature of the document and any
22 reassurances given by the Inquiry. However, it will
23 remain the case that the Inquiry may refuse to accept
24 those objections and the relevant Minister may still be
25 ordered to disclose your documents. If that were to be

27

1 the case any information capable of identifying you and
2 witnesses would be highlighted to the Inquiry as private
3 in order for them not to be made public by the Inquiry."

4 Now, in relation to that passage in our submission
5 it is clear that it is understood by the Department that
6 they will be bound to comply with the summons and for
7 our part we submit that the process of seeking consent
8 in this way is flawed and it is not likely to result in
9 the production of documentation within a reasonable
10 period. Furthermore, it is unlikely to achieve the
11 result of full documentation being given to the Inquiry,
12 which is what you need in order to be able to
13 investigate fully.

14 The Inquiry responded in detail to all of the issues
15 raised in Miss Lacey's correspondence by a detailed
16 letter of 30 May. I don't know whether you have had the
17 chance to read that.

18 THE CHAIR: I have, thank you, Ms Jerram, and I think my
19 Panel members have as well.

20 MS JERRAM: Thank you. That summarises all of the arguments
21 made either way.

22 Madam Chairman, the latest letter from
23 Advocate Lacey I think distills the issues. It is
24 a letter received on 13 June which I think you have been
25 handed up as an additional document.

28

1 THE CHAIR: Yes, I think we received that this morning.
 2 That was Friday's letter.
 3 MS JERRAM: Yes. To cut matters short, if I may, just to
 4 take you to the final page "Way forward", I hope that in
 5 setting out these paragraphs I distill the arguments
 6 raised by Advocate Lacey. She says this:
 7 "The Departments fully appreciate the Inquiry must
 8 fearlessly discharge its terms of reference. Equally
 9 the victims are at the heart of the Inquiry and they are
 10 the focus of the Department's concerns. However, it is
 11 considered inappropriate for the Department simply to
 12 release information on the basis of a summons with the
 13 high potential for further damage to those same
 14 individuals harmed in the past."
 15 She then goes on to give a list of potential ways
 16 forward. The first two are really practical matters and
 17 in relation to that, Members of the Panel, I would
 18 invite you not to descend into the detail of the
 19 practical considerations. That I anticipate can be
 20 dealt with in meetings with Advocate Lacey. It is the
 21 issues of principle really that you need to decide.
 22 So the first issue is the consent versus summons
 23 route. The second issue is in relation to the approach
 24 to additional redactions, with particular reference to
 25 the names of other children in care, family members and

1 so forth, and I hope I have dealt with that already.
 2 Four is a separate issue arising out of the request
 3 to provide details of specific offences for which
 4 individuals were prosecuted and in my submission
 5 the Inquiry is not in a position to do that at this
 6 stage.
 7 Then point 5 brings us back to the key issue, which
 8 is whether notwithstanding the issue of a summons in
 9 respect of the Historic Abuse Scheme records, children's
 10 service files, medical records and mental health service
 11 records the individuals' consent should be sought.
 12 So those are the issues in relation to the
 13 Department. As far as the SOJP is concerned, in broad
 14 terms they share a number of the same concerns, falling
 15 into these categories: the ability to challenge
 16 provisional redactions and the issue of the security of
 17 the undertakings and concerns about onward transmission
 18 of data from the database by interested parties.
 19 Madam Chairman, in that respect the Inquiry has
 20 received correspondence from Carey Olsen on behalf of
 21 the police marked "Private and confidential" and they
 22 have been informed that all correspondence is liable to
 23 be made public, so if I may as a matter of record invite
 24 Carey Olsen in future to write on an open basis so that
 25 matters can be dealt with in a hearing such as this, but

1 I hope I don't oversimplify things by saying that in
 2 relation to the police the issues are effectively the
 3 same.
 4 So, Madam Chairman, that is the procedural position
 5 as at today and I hope that by explaining the protocols
 6 it is understood by the interested parties how you
 7 intend the dissemination, use of evidence to be managed
 8 by the Inquiry.
 9 Madam Chairman, is there anything else by way of
 10 background that I can help you with?
 11 THE CHAIR: Not as far as I'm concerned, Ms Jerram. I will
 12 just check with my Panel members. No, thank you very
 13 much.
 14 MS JERRAM: Would you like to hear from Advocate Lacey?
 15 THE CHAIR: Yes, I think the Panel particularly would be
 16 assisted now by hearing from Advocate Lacey and then
 17 Advocate MacRae.
 18 Submissions by ADVOCATE LACEY
 19 ADVOCATE LACEY: Thank you Madam Chairman.
 20 I wrote the letter of 13 June, Madam, to bring all
 21 issues together in one letter to summarise where we are
 22 at. If I might talk first in relation to the Historic
 23 Redress Scheme. 132 claimants came forward seeking
 24 financial compensation and they came forward in what was
 25 assured to be a confidential arrangement. As part of

1 the scheme processes individuals, or the majority of
 2 individuals were required to undergo psychiatric
 3 assessment both in terms of the reliability of their
 4 historic stories told, but also relating to the damage
 5 suffered and leading to long term (inaudible) from the
 6 harm suffered. In addition claimants gave us complete
 7 access to their medical records and Social Services
 8 files. It is not just in relation to the applicants
 9 themselves but also the families concerned.
 10 So the Historic Abuse Redress Scheme lawyers hold
 11 a huge amount of very very sensitive data concerning the
 12 claimants. As part of the process we created what was
 13 called a control sheet which brings together the summary
 14 of the time in care, the background to why taken into
 15 care, the specific abuse alleged whilst in care, any
 16 cooperation across the files that we found in relation
 17 to the allegations. We would then feed into that
 18 control sheet information supplied to us in confidence
 19 by the police based on their extensive witness
 20 statements towards corroborating or not corroborating
 21 the explanations given.
 22 Then we would also feed into that from relevant
 23 medical history together with the view of the forensic
 24 psychiatrist as to the reliability of the story which we
 25 have been given and the harm suffered.

1 The control sheet is a privileged document and the
 2 Minister has made it plain that she is more than happy
 3 to waive privilege over that very document in order to
 4 potentially avoid the Inquiry team spending many many
 5 months piecing the evidence together, but her underlying
 6 concern is ensuring the privacy of the claimants
 7 themselves who have been reassured throughout of
 8 confidentiality.
 9 132 claimants came forward to the scheme as I have
 10 said and a number of those made it plain they want
 11 nothing whatever to do with the Inquiry. As a result,
 12 once we were told this Inquiry would be going down the
 13 summons route as opposed to a consent route the Minister
 14 was consulted as to the approach to be adopted and
 15 I have to say the Minister was saddened to hear
 16 a summons route was being adopted given that it is our
 17 understanding that in relation to the Northern Ireland
 18 Inquiry the consent route was adopted save that
 19 ultimately a summons was applied in respect of the
 20 Roman Catholic Church and the religious orders.
 21 A summons is not viewed by the Minister, Madam, as
 22 the appropriate mechanism by which to access someone's
 23 most private data and that was the background to the
 24 letters being issued by my firm asking the individuals
 25 concerned whether they consented to the data being

1 released or not.
 2 You will see from our letter of Friday that we have
 3 had back so far 47 positive consents. We have
 4 potentially eight further consents, bringing it up to
 5 55, once we clarified what the tick boxes mean on the
 6 form returned to us, but we do have eight specific
 7 objections to any of the individuals' records being
 8 delivered up to the Inquiry.
 9 We also know, Madam, that there are many other
 10 claimants who are prepared to consent. Those claimants
 11 are represented under the scheme by Mr Alan Collins,
 12 formally of the law firm Pannone, but it is our
 13 understanding that Mr Collins advised his own claimant
 14 clients not to return their forms until there was
 15 a clear understanding as to how those individuals' most
 16 private data might be dealt with by this Inquiry.
 17 So you have the confidence in the scheme, Madam, and
 18 the confidentiality on which it has been operated
 19 potentially being blown apart by the summons. In
 20 addition we note that a number of the current claimants
 21 under the scheme are in ongoing therapeutic
 22 relationships with the Department that I represent, the
 23 Health and Social Services Department, and there is very
 24 serious concern that the trust and confidence that has
 25 to be at the heart of the health service will be

1 undermined and damaged if there is forced disclosure of
 2 individuals' most private records.
 3 In relation to the confidentiality undertaking that
 4 interested parties are signing up to, the interested
 5 parties that we are aware of at the moment are the
 6 States of Jersey Police and the Jersey Care Leavers
 7 Association, those are two -- obviously the police is
 8 a very large body. The JCLA has to my understanding
 9 over 50 members and there is concern of the leakage of
 10 information through the interested party route. I am
 11 sure the Inquiry understands the huge sensitivity around
 12 an individual, not just applying to the Scheme, but
 13 particularly the psychiatric evaluation by a forensic
 14 psychiatrist. The experience itself must have been
 15 pretty daunting for most of the victims, but then the
 16 thought and worry that the report itself will be
 17 disclosed up to this body, I know is causing a number of
 18 the claimants serious concerns.
 19 I mentioned the confidentiality undertaking because
 20 I am most unclear as to what the sanction will be for
 21 breach of that undertaking. I can't see it specified
 22 under the Inquiry rules and once there is a leakage it
 23 is then too late to do anything about it.
 24 So in relation to the consent route which I really
 25 really would urge upon this Inquiry to follow, it really

1 comes back to this, and that is that as a matter of
 2 fundamental law an individual is entitled to expect
 3 a private life. When the claimants came forward to the
 4 scheme they had no inkling whatsoever that an Inquiry of
 5 this form might take place and that their private
 6 documents might be subpoenaed to be produced. A number
 7 of them have received their financial compensation and
 8 are desperate to put everything behind them and to move
 9 on and not have the thought of the Inquiry reviewing
 10 their records.
 11 So the question it seems to me comes down to how far
 12 it is necessary for this Inquiry to make the forced
 13 disclosure of very very private material. All the
 14 points, Madam Chairman, are laid out in our letter of
 15 13 June. There is particular concern over the high
 16 level of vulnerability of many of these claimants and
 17 for that reason the Minister urges a most cautious
 18 approach and to continue pursuing for now the consent
 19 mechanism, but giving reassurances to claimants
 20 expressly as to how their data will be sensitively
 21 handled by this Inquiry.
 22 That's all I wish to say, Madam.
 23 THE CHAIR: Thank you for those submissions, Advocate Lacey.
 24 Advocate MacRae?
 25 ADVOCATE MACRAE: I think I am in a restricted view seat.

1 THE CHAIR: Would it help you to move forward? Whatever is
 2 more convenient to you.
 3 Submissions by ADVOCATE MACRAE
 4 ADVOCATE MACRAE: Madam, can I first say that the States of
 5 Jersey Police are, as you would expect, wholly committed
 6 to assisting this Inquiry in any way that it can. It
 7 has demonstrated that throughout and has proved that
 8 fact by already providing more than 2,500 pages of
 9 material. There are of course many more pages that can
 10 be disclosed and are ready for disclosure. They have
 11 been considered, redacted to protect the identity of
 12 complainants, witnesses and suspects who have not been
 13 convicted. The States of Jersey Police stand ready to
 14 disclose this material too.
 15 I would like to correct one or two suggestions made
 16 by my learned friend Ms Jerram in the course of her
 17 submissions. Firstly, the States Police have never
 18 challenged the summons route taken by the Inquiry in any
 19 way, shape or form. And we are not in breach of the
 20 summons as we have made disclosure. But there are
 21 impediments in the way of further disclosure which arise
 22 by virtue of certain parts of the protocols.
 23 In short, the States of Jersey Police does not wish
 24 to take any steps which would either cause distress to
 25 existing complainants, or prevent other complainants in

1 relation to allegations of abuse coming forward in the
 2 future and of course there are existing investigations
 3 today, as we speak, which the States Police would not
 4 wish to be prejudiced in any way by steps that it might
 5 take in relation to this Inquiry.
 6 I now want to explain what these three -- there are
 7 three difficulties -- are and I will do so very shortly
 8 and insofar as I may do, publicly.
 9 Firstly, I want to touch on the issue of redaction.
 10 As I have said, the States of Jersey Police have
 11 redacted the material that it proposes to disclose now
 12 and that material in great part consists of
 13 investigative documents, such as statements from
 14 complainants made to the police in relation to
 15 Operation Rectangle and other investigations. As
 16 the Inquiry knows, but I will repeat for those who are
 17 in the gallery, the redactions are only made by way of
 18 a yellow highlighter, as agreed with the Inquiry's
 19 lawyers, and the Inquiry can see precisely what has been
 20 said. The Inquiry will see what has been said in full,
 21 but the redaction is to ensure that any publication,
 22 even on a restricted document management system
 23 available to interested parties only, is limited so it
 24 is not possible to identify any complainant or witness,
 25 or unconvicted suspect.

1 The States Police are concerned that owing to
 2 Jersey's small size and the connected nature of this
 3 island community, unacceptable details, if not obscured
 4 by redaction, may give rise to identification of
 5 individuals and thus cause those persons distress and
 6 other difficulties.
 7 Now, the first concern was that those redactions
 8 proposed might be rejected by the Inquiry and we have
 9 now seen, Madam, for the first time a proposal to
 10 address those concerns. We saw it, Madam, first in the
 11 bundle over the weekend in the letter to Lacey Advocates
 12 from Friday and the proposed solution was revealed to us
 13 for the first time in this document received of course
 14 minutes before the Inquiry sat.
 15 THE CHAIR: Mr MacRae, you are referring to the preliminary
 16 hearing issues for determination?
 17 ADVOCATE MACRAE: Yes, this document. Perhaps I can
 18 request, Madam, on the next occasion that there is
 19 a hearing we are given the agenda before we come to the
 20 hearing and are able to take instructions on the
 21 proposal.
 22 Plainly the proposal goes some ways to meeting our
 23 concerns. I have not of course had a chance to take
 24 instructions on it, or consider it.
 25 THE CHAIR: Mr MacRae, it is but a short amendment, do take

1 as long as you need to make a telephone call or if you
 2 want to do that now.
 3 ADVOCATE MACRAE: The observations I would merely make are
 4 that the decision I will anticipate will be a reasoned
 5 decision that is given to us and it will relate to
 6 specific documents as opposed to general classes and
 7 I merely ask for clarification as to what the words "or
 8 through due process" are supposed to mean, as it is not
 9 clear to me.
 10 Certainly, Madam, I accept the solution would appear
 11 to be a workable starting point for dealing with that
 12 particular issue. But I emphasise the solution would
 13 need to make it clear that there will be a specific
 14 notice of rejection in relation to specific documents,
 15 otherwise a five day notice period would be inadequate
 16 if it was to apply to a general class of documents.
 17 Madam, the second concern and more general concern
 18 is that even if the material is redacted as it has been
 19 redacted and will be supplied to the Inquiry, material
 20 uploaded onto the Inquiry's document management system
 21 as category 2 material will then be available to
 22 interested parties, which depending upon the extent of
 23 the ultimate dissemination of those materials may
 24 ultimately allow individuals to recognise their own
 25 statements and those of others.

1 The concern that the States of Jersey Police have --
 2 and Advocate Lacey has made the point about there being
 3 no sanction -- is that either persons currently
 4 accredited as interested parties, or persons in due
 5 course may inadvertently or otherwise permit persons or
 6 parties to access materials so it ultimately finds its
 7 way into the public domain and the Panel should know
 8 from its knowledge now of this island that that sort of
 9 thing has happened in relation to this sort of material
 10 in the recent past on this island and our concern is
 11 that that risk cannot be eliminated entirely by the
 12 protocols as drawn.

13 I fully accept of course that category 2 material as
 14 referred to in the course of a witness giving evidence
 15 will become category 1 material and thereafter be
 16 published as the way that's provided, of course I accept
 17 that, but the concern that we have is that, for example,
 18 individual redacted witness statements will find their
 19 way onto the document management system, thereafter
 20 interested parties and thereafter the third parties and
 21 be uncontrolled and cause enormous distress to
 22 individuals, and the justification for this access to
 23 interested parties we find in the protocol at divider 8
 24 of your bundle, Madam, at paragraph 20.4. It is
 25 important in my submission to consider the purported

41

1 justification for this mass of highly confidential and
 2 personal material being uploaded onto this document
 3 management system.

4 We see it, Madam, at paragraph 20.4:
 5 "The purpose of such access is to enable an
 6 interested party and/or its relative lawyer ..."
 7 20.4.1:
 8 "... to read the relevant evidence in advance of
 9 oral evidence and to present requests to Inquiry counsel
 10 to consider for specific questions to be asked to
 11 witnesses in accordance with the procedure set out in
 12 the Inquiry protocol oral hearings."

13 Now, I have indicated that in relation to material
 14 supplied thus far, for example reports into the States
 15 of Jersey Police, general material in relation to
 16 Operation Rectangle, of course there is no objection to
 17 that being downloaded onto the document management
 18 system. But bearing in mind the extent of the
 19 redactions that will be applied to this very personal
 20 data, and the concern that I have explained to this
 21 tribunal, I and my clients struggle to see why it is
 22 thought necessary to make this sort of material
 23 available to interested parties and/or their lawyers.
 24 If, of course, in the course of the Inquiry counsel to
 25 the Inquiry wishes to ask specific questions of

42

1 witnesses then one can see in those circumstances why
 2 particular documents might be released to interested
 3 parties through the document management system, but the
 4 States of Jersey Police do not see and have not received
 5 any satisfactory answer or indeed any answer to address
 6 its concerns as to why such sensitive material should be
 7 placed on the computer system in this way, particularly
 8 bearing in mind that it will be heavily redacted.

9 A similar point we have made and again there has
 10 been no response, I regret to say, in relation to
 11 paragraph 8 of the previous protocol, which is at
 12 divider 7, which provides:

13 "Following the conclusion of the Inquiry's work all
 14 category 1 and category 2 material will be transferred
 15 to the States of Jersey archive in redacted form."

16 Again we ask, and it appears to be a rhetorical
 17 question because there has been no answer: why should
 18 all such material be transferred to the States' archive
 19 in redacted form? Why are such personal details of
 20 complaints, medical records, assessments of complainants
 21 and so on, and if transferred there to whom would be
 22 made available? The public at large? There has been no
 23 response to this question and in my submission one is
 24 warranted.

25 The public interest in highly personal material

43

1 being left indefinitely in a public archive for
 2 an indefinite period of time is one which we submit is
 3 not in the public interest and it troubles the States of
 4 Jersey Police.

5 Madam, the third and final concern about which I do
 6 not want to say a great deal, is of course further
 7 alleged victims of abuse, or mistreatment in children's
 8 homes and in foster care may come to light which are not
 9 known to the States of Jersey Police in the course of
 10 this Inquiry. In addition existing complainants who are
 11 known may make further or fresh allegations against
 12 individuals about which they have made no complaints to
 13 date, or indeed further complaints against such
 14 individuals. Such allegations may be made to
 15 the Inquiry, or to the States Police, or to both. All
 16 these things are not merely likely, but very likely
 17 indeed and if these allegations are not treated
 18 sensitively and pursuant to some sort of agreement then
 19 there is a risk that criminal investigations instigated
 20 or to be instigated by the States of Jersey Police could
 21 be hampered and the prospect of obtaining further
 22 convictions diminished.

23 We have looked for guidance on an agreed protocol in
 24 relation to these matters and having now accepted that
 25 the protocols are wanting in at least one respect,

44

1 I would invite the Inquiry to consider our proposals in
 2 this regard. For example, and it is only an example, it
 3 is suggested that the Inquiry should keep confidential
 4 any details of ongoing criminal investigations provided
 5 to it by the States of Jersey Police. That's merely
 6 a suggestion as to one of the agreed rules that we have
 7 suggested needs to be in place to protect the integrity
 8 of investigations that will arise as a consequence of
 9 the good work done by this tribunal and the States of
 10 Jersey Police are determined to ensure that all
 11 investigations and prosecutions have the greatest chance
 12 of success.

13 Madam, I don't propose to say any more about that,
 14 but that discrete issue, my third issue, need not hold
 15 up the process of disclosure and does not in any way
 16 derogate from the firm intention of the States Police to
 17 disclose all relevant material that it has in order to
 18 assist this Inquiry and ensure it has all the material
 19 needed to perform its task.

20 Madam, those are my submissions.

21 THE CHAIR: Mr MacRae, thank you.

22 I don't think there are any other submissions from
 23 interested parties. Can I call now on counsel to
 24 respond.
 25

1 Submissions by MR SADD
 2 MR SADD: Madam, yes, thank you so much. If I may deal
 3 first with Advocate Lacey and I hope not facetiously
 4 I would want to bring the Panel back to the terms of
 5 reference and the reason why we are here.
 6 It has never been an issue for the Panel, it is
 7 common ground with the Panel and Advocate Lacey and the
 8 Minister that this Inquiry is dealing with vulnerable
 9 individuals and that acknowledgment is a thread that is
 10 sewn through the protocols. So we have been given
 11 an example by Advocate Lacey of her concern should
 12 psychiatric evidence be put before the Inquiry and what
 13 should be done about that evidence.

14 Two points we make about that, Madam Chairman. The
 15 first is the extent to which psychiatric evidence is
 16 relevant for the purposes of this Inquiry is limited,
 17 but where it is relevant is in gauging the vulnerability
 18 of the particular individual and whether the Inquiry
 19 should have concerns about that individual giving
 20 evidence and what provision could be made, as provided
 21 for under the protocols, what provision could be made
 22 for that individual if they do give evidence, so
 23 protection is afforded a vulnerable witness and that
 24 protection is dependent on that witness' circumstances.

25 So yes, ostensibly it appears as if access to

1 a psychiatric report immediately exposes that
 2 individual, but that's to assume that the use made of
 3 that evidence is somehow going to be dissipated. It
 4 won't be, Madam, that is not the intention of these
 5 protocols, nor of this Inquiry team.

6 There is nothing in what we have heard from
 7 Advocate Lacey that changes the present position so far
 8 as the Minister is concerned. There is at present no
 9 legal basis put before the Panel, in our submission,
 10 that justifies non-compliance by the Minister with the
 11 summons.

12 In effect you are faced today with a de facto
 13 refusal to comply with the summons and if you needed any
 14 better evidence of that refusal, I would remind the
 15 Panel of the paragraphs that Ms Jerram took you to in
 16 the letter dated 13 June from Advocate Lacey, the "way
 17 forward" paragraph that she showed you. If need be
 18 I can take you to that again. It is page 11 of that
 19 letter.

20 We would caution the Panel against allowing what are
 21 on any view legitimate concerns regarding the complex
 22 practicalities involved in the provision of
 23 documentation, of that we have no doubt, we have heard
 24 it both from Advocate MacRae and we have heard it from
 25 Advocate Lacey, but those concerns, certainly so far as

1 the Minister is concerned, are not concerns that meet
 2 the obligation to comply with the summons. Those
 3 practicalities should not detract from the principle
 4 that you the Panel are here today to decide on and that
 5 is: has the Minister complied with the summons?

6 There is clearly, as I say, an ongoing debate about
 7 how to organise disclosure and it is an ongoing debate
 8 with which Lacey Advocates have engaged very
 9 productively and helpfully but again that is an issue
 10 that is secondary to the provision of the documents.
 11 The documents are what the Inquiry needs. The documents
 12 we know are available and how do we know that they are
 13 available? Because, as you have heard described by
 14 Advocate Lacey, the Historic Abuse Redress Scheme was
 15 served initially with a summons. That body as
 16 identified isn't one that exists legally, but in fact
 17 the documents that that scheme hold are documents that
 18 Advocate Lacey and her team have managed to compile by
 19 reference back to the archive, by reference back to
 20 consent forms obtained to get medical records, to get
 21 social service records. So in effect the very work that
 22 perhaps the Inquiry might have envisaged having to do
 23 itself has been done by Advocate Lacey and her
 24 assistants.

25 The reason why that is relevant is if there are

1 48 consents, as we have heard, then that documentation,
 2 those files should be here tomorrow. There is no reason
 3 to stop those files being provided, albeit they have
 4 been obtained going down the route of consent, which is
 5 not a route, Madam, as you will have seen in the
 6 correspondence, that of course the Inquiry supports.
 7 But we have a fear as to why that documentation
 8 hasn't been produced and that fear points to the very
 9 issue as to why consent is not going to work, which is
 10 that within the documents to which individuals have
 11 provided their consent for release there will be other
 12 individuals named whose consent has to be sought and so
 13 one can see that it is like piling Pelion on Ossa, it
 14 will go on and on and on, and there is this additional
 15 concern which is that if one follows the consent route,
 16 at any stage that consent can be withdrawn and so that
 17 raises the spectre of enormous complications for
 18 the Inquiry as it goes about its business.
 19 So, Madam, what we say in response to
 20 Advocate Lacey's submissions and indeed her
 21 correspondence is there is no doubt about the issue of
 22 sensitivity. The protocols are drafted with that in
 23 mind. There is no doubt that the Inquiry is well aware
 24 of those sensitivities and the span of those
 25 sensitivities from childhood to adulthood. That is not

1 in issue. What is needed are the documents for
 2 the Inquiry to be able to engage in the 15 terms of
 3 reference that it has been required to do so by
 4 the States.
 5 Summarising the position, the Minister, however
 6 proper her motivation -- and one cannot go behind that,
 7 one cannot question it, but clearly she has concerns,
 8 has refused and continues explicitly to refuse to comply
 9 with the summons and as I have said, at the risk of
 10 repeating myself, as always happens, the protocols
 11 provide for the very legitimate concerns regarding
 12 confidentiality and vulnerability.
 13 Turning, if I may, to Advocate Mcrae's points, he
 14 raises the issue of the spreading of information, the
 15 doubts, if you want, and he puts it very very neutrally
 16 and fairly, the doubts that he raises about the
 17 inadvertent, for instance, was the phrase he used,
 18 dissemination of information that has been granted
 19 interested parties as they look at information put up on
 20 the database.
 21 That is a risk -- it is not necessarily
 22 a satisfactory answer, but that is a risk that will
 23 always exist with this information. It is a risk which
 24 one tries to meet by the confidentiality which is
 25 automatic, as you have heard Ms Jerram take you to, and

1 in the present context, again as Advocate MacRae rightly
 2 identifies, there are limited interested parties. Three
 3 of the interested parties are Government Departments, so
 4 one would imagine that that risk is met immediately.
 5 As far as the fourth interested party, the JCLA, it
 6 is right that there are two members who have agreed and,
 7 although not necessary, have signed up to
 8 confidentiality.
 9 Madam, unsatisfactory though it may be to hear, it
 10 is the nature of an Inquiry that those who are
 11 interested parties be entitled to take part and that
 12 they have a right and indeed an obligation once they
 13 become interested parties to engage wholly with
 14 the Inquiry process. If those risks exist, they will
 15 always be there, but those risks are met by the
 16 responsibility that goes with the provision of
 17 interested party status.
 18 What cannot happen, however, is that there be
 19 qualified provision of information whereby you make
 20 a determination that one interested party should be
 21 allowed only certain access to information. That would
 22 defeat the very process of that interested party being
 23 entitled to engage with this process and remember,
 24 Madam, to gain interested party status, to make that
 25 application to you, they will have had to have met

1 a series of criteria and for you and your Panel members
 2 to have been satisfied that they have indeed done so, so
 3 they have had to meet a threshold and once they have met
 4 that threshold then they are entitled to the same
 5 privileges -- and with privileges comes
 6 responsibility -- they are entitled to the same
 7 privileges afforded by IP status.
 8 Madam, the next issue raised by Advocate MacRae --
 9 and I hope I don't do him a disservice by summarising it
 10 in this way -- again comes down to the issue of the
 11 extent of redaction. So you were given examples, or he
 12 raised examples again of the sensitivity of material.
 13 That process of analysing sensitivity, that process of
 14 identifying named individuals whose confidentiality
 15 ought to be protected, is a process that is allowed for
 16 in the protocols as they presently are configured. If,
 17 as Advocate MacRae suggests, "Well, we would want this
 18 protocol to be amended in this way", or "that protocol
 19 to be amended in another way", that is something that we
 20 would need to see and, as you say, Madam, we have yet to
 21 know and for reasons that are entirely legitimate,
 22 I don't make any criticism of that, we have yet to know
 23 from Advocate MacRae whether what we have put forward
 24 today is a proposal that his clients would accept, but
 25 be that as it may, the investigation that has been set

1 off by the terms of reference does require a very full
 2 and complete investigation of a great many issues that
 3 are sensitive by their very nature and therefore
 4 the Inquiry cannot be prevented -- for instance when one
 5 thinks immediately of term of reference 13, which
 6 requires you the Panel to look at decisions made to
 7 prosecute or not to prosecute and whether there is any
 8 suggestion that those decisions were not made properly,
 9 that opens a huge and very difficult area for different
 10 parties, but it is an area that you have been asked to
 11 consider and you cannot consider that with one arm tied
 12 behind your back. Yes, the concerns raised by the
 13 States of Jersey Police are legitimate, but those
 14 concerns we say will always be met by a discourse about
 15 the implementation of the protocols.

16 In relation to -- and I hope again I have understood
 17 this correctly from Advocate MacRae -- new allegations
 18 as they emerge, Madam, I would say this, I hope not too
 19 harshly, but it is not for you, Madam, or your Panel
 20 members, to highlight where potential allegations or
 21 potential offences arise. As an interested party no
 22 doubt the SOJP will know because they will have advance
 23 warning of the evidence that's going to be heard at any
 24 particular time, that provides them with the opportunity
 25 to have someone here, for them to raise issues, but it

1 is certainly not the Panel's obligation or
 2 responsibility to alert the States of Jersey Police to
 3 up and coming and potential new allegations and
 4 problems, putting it in the most neutral way, that might
 5 arise with those allegations coming forward.

6 In relation I think, I hope, to the last point, it
 7 comes back to issues on redaction, but we have heard
 8 that there may be more substantial protocols that the
 9 States of Jersey Police might want to introduce. Madam,
 10 we would countenance -- although one hasn't seen that
 11 yet in this forum, we would countenance very strongly
 12 against a major overhaul of the protocols that go
 13 towards a particular issue or another issue, because you
 14 cannot be dealing with competing protocols and different
 15 standards applied to evidence. Again that sets up
 16 a different approach to interested parties which is not
 17 something that this Inquiry would want to countenance or
 18 encourage.

19 Madam, I hope I haven't traduced what either of
 20 my learned friends have said, but those are my
 21 submissions in reply unless I can help you.

22 THE CHAIR: I will just see if there are any questions. No.
 23 Thank you, Mr Sadd, and it is now nearly 3.30. We are
 24 now going to rise and consider the submissions and we
 25 will notify you in due course, certainly within half an

1 hour. I know also that one of our transcribers need
 2 a break so this may be a convenient moment. We can make
 3 that a productive break in every sense. So we will rise
 4 now and I will come back with the determinations.

5 ADVOCATE MACRAE: Madam, could I say one thing. I didn't
 6 address you on paragraph 5 of your agenda. I do
 7 apologise, Madam. Opening statements?

8 THE CHAIR: Yes. Can I say, Mr MacRae, if it assists, I had
 9 rather assumed that parties may wish to make opening
 10 statements and if that's the case you can advise us in
 11 due course. It was just a matter of courtesy that it
 12 was on the agenda. There will be no objection.

13 (3.30 pm)

14 (A short break)
 15 Decision by the Panel

16 (4.10 pm)

17 THE CHAIR: Public inquiries are by their nature rare
 18 events. We in this Public Inquiry recognise that there
 19 is a tension between, on the one hand, the Inquiry's
 20 responsibility to discharge its obligations under the
 21 terms of reference by conducting a thorough and fearless
 22 investigation in public of the facts and, on the other,
 23 the need to protect the sensitive nature of the material
 24 as well as those who provide that information by
 25 providing adequate safeguards.

1 We have no doubt whatsoever that Advocate Lacey's
 2 client, as we have read and heard, has the interests of
 3 vulnerable witnesses at heart and so does this Public
 4 Inquiry. A balance has to be struck in resolving this
 5 tension. That balance in our view is achieved by
 6 the Inquiry's protocols. The minister's concerns are
 7 met by the protocols published on 3 April this year.
 8 The protocols provide the very safeguards that the
 9 Minister presently considers can only be met by
 10 following the process of consent. Such safeguards
 11 indeed appear to be recognised in, as I shall term it,
 12 the consent letter sent by Advocate Lacey to the 132
 13 Historic Redress Scheme applicants.

14 For this Inquiry, despite assurances and expressions
 15 of support, we have to date not received the Historic
 16 Redress Scheme files. Obtaining documentation by the
 17 consent route, as was foreshadowed in my address on
 18 3 April, takes a disproportionate amount of time.
 19 The Inquiry therefore consciously, for the reasons I set
 20 out on 3 April, issued the summons to assist all
 21 concerned, but fundamentally to facilitate the work of
 22 this Inquiry for the benefit of all concerned.

23 We now require that documentation.

24 I turn to a submission made in respect of interested
 25 party status. One very important factor in considering

1 applications for interested party status is the
2 reliability of that party's agreement to
3 confidentiality. That is an issue that we the Inquiry
4 take very seriously and we will refuse interested party
5 status if reliability is in question. Interested party
6 status brings with it a heavy onus of responsibility and
7 we keep that constantly under review.
8 Furthermore I make it clear that there is
9 a responsibility on the interested parties'
10 representative to ensure that those they represent do
11 understand and do comply with the confidentiality
12 requirement set out in the protocols.
13 I turn then to the issues for determination today,
14 the second public hearing.
15 Firstly, in relation to the Health and Social
16 Services Department, known as the Department, the Panel
17 requires immediate compliance with the summons issued
18 against the Department and we require the documents in
19 the Historic Redress Scheme to be produced within
20 seven days.
21 Secondly, the Panel does approve the proposed
22 additional wording to paragraph 24.3 of the Data
23 Protection Freedom of Information and Redaction
24 Protocol, namely the addition of the following text at
25 the conclusion of that paragraph and I quote:

57

1 "... and has given the evidence provider five days'
2 notice of that decision so that it can be challenged by
3 the evidence provider, either by way of application to
4 the Inquiry Panel or through due process and for
5 the Inquiry to be notified of such a challenge."
6 Thirdly to be determined today, this: the Panel is
7 satisfied with the confidentiality undertakings in
8 relation to access to category 2 material on
9 the Inquiry's documents database by interested parties.
10 I turn now to other matters to be resolved today.
11 We grant interested party status to the Attorney General
12 now that it has been clarified that the application was
13 made on behalf of the Office of the Attorney General.
14 Next, as already indicated, we make it clear that if
15 interested parties want to make opening statements at
16 the opening of this Inquiry then they may do so.
17 Before I turn to the question of timetable and the
18 date for opening I say this, and again this has been
19 referred to in submissions this afternoon: any letters
20 written to the Inquiry must be on the understanding that
21 that correspondence may be made public. The Inquiry
22 will not deal with any individual, any Department, or
23 any organisation in an off the record basis.
24 Timetable. There will be a third preliminary
25 hearing on 2 July to consider any outstanding matters

58

1 before we formally open the Inquiry and that opening, as
2 was termed by me when I addressed the first public
3 hearing on 3 April, phase 1 of the Inquiry, will begin
4 on Tuesday, 22 July. As I explained on 3 April, we will
5 take evidence from those in phase 1 who have accounts of
6 abuse to give and from those who worked or were in
7 contact with child care. Phase 1 will also hear from
8 those accused of abuse.
9 We will begin phase 1 with expert evidence which
10 will set the scene, set the context of that which will
11 follow by way of witnesses' evidence.
12 That, ladies and gentlemen, is all I say today. The
13 details of that timetable will be published in advance
14 of 22 July so they will all know the exact dates and
15 times of the witnesses to be called. Thank you.

(4.18 pm)

(The Inquiry adjourned until 2 July 2014)

59

1 INDEX
2
3 Submissions by MS JERRAM1
4 Submissions by ADVOCATE LACEY31
5 Submissions by ADVOCATE MACRAE37
6 Submissions by MR SADD45
7 Decision by the Panel55

60

A	agreed (5) 13:15 38:18 44:23 45:6 51:6	arising (1) 30:2	bring (2) 31:20 46:4	15:7 21:12 30:9 44:7	48:1 56:21,22	convictions (2) 11:15 44:22
ability (3) 14:3 15:20 30:15	agreement (2) 44:18 57:2	arm (1) 53:11	bringing (1) 34:4	Church (1) 33:20	concerning (1) 32:11	cooperate (1) 20:3
able (5) 13:3 24:20 28:12 39:20 50:2	agreements (1) 18:17	arrangement (1) 31:25	brings (5) 7:16 19:18 30:7 32:13 57:6	circumstances (6) 8:8 10:21 12:11 27:8 43:1 46:24	concerns (21) 6:19 8:23 9:7 10:17 15:18 29:10 30:14 30:17 35:18 39:10 39:23 43:6 46:19 47:21,25 48:1 50:7 50:11 53:12,14 56:6	cooperation (2) 20:7 32:16
absence (1) 27:19	agrees (2) 17:13,19	Article (1) 21:24	broad (2) 9:19 30:13	claimant (1) 34:13	conclusion (2) 43:13 57:25	copies (2) 23:7 26:19
abuse (16) 6:20 7:15 7:21 8:11 11:13,14 11:15,19 30:9 32:10,15 38:1 44:7 48:14 59:6,8	Alan (2) 3:3 34:11	asked (7) 6:18,21 12:21 19:7 24:20 42:10 53:10	built (1) 15:17	claimants (15) 25:20 25:23 26:1 31:23 32:6,12 33:6,9 34:10,10,20 35:18 36:3,16,19	conduct (2) 6:14,21	copy (2) 13:5 26:2
abused (3) 6:17 11:13 15:7	albeit (1) 49:3	asking (1) 33:24	bundle (5) 10:1 22:22 25:23 39:11 41:24	business (1) 49:18	conducting (1) 55:21	correct (1) 37:15
abusers (1) 6:17	allegations (9) 32:17 38:1 44:11,14,17 53:17,20 54:3,5	aspect (1) 8:22	C		confidence (3) 32:18 34:17,24	correctly (1) 53:17
accept (6) 20:13 27:23 40:10 41:13,16 52:24	alleged (5) 6:17 7:21 11:13 32:15 44:7	assessment (1) 32:3	call (3) 15:3 40:1 45:23		confidential (5) 17:18 30:21 31:25 42:1 45:3	correspondence (13) 3:1 4:21 7:9 14:2 14:25 25:4,14 28:15 30:20,22 49:6,21 58:21
accepted (3) 8:8 21:20 44:24	allow (5) 4:19 5:7 10:20 14:22 40:24	assessments (1) 43:20	called (3) 15:24 32:13 59:15		confidentiality (19) 5:11,14 17:2,14,20 18:11,17 19:5 33:8 34:18 35:3,19 50:12,24 51:8 52:14 57:3,11 58:7	corroborating (2) 32:20,20
access (14) 16:22,25 17:8 18:21,23 19:1 32:7 33:22 41:6,22 42:5 46:25 51:21 58:8	allowed (3) 17:8 51:21 52:15	assist (3) 9:16 45:18 56:20	capable (3) 9:3 10:19 28:1		confirmed (1) 52:16	counsel (4) 1:10 42:9 42:24 45:23
accounts (1) 59:5	allowing (1) 47:20	assistants (1) 48:24	capacity (3) 2:4,23,23		confirming (1) 26:10	countenance (3) 54:10,11,17
accredited (1) 41:4	alluded (1) 5:16	assisted (1) 31:16	care (14) 1:4 6:8,10 8:6,9,9 23:1 29:25 32:14,15,15 35:6 44:8 59:7		confirms (1) 3:8	course (28) 2:8 4:8 5:10,15 7:1 11:16 13:3 24:17 25:3,18 27:11 37:9,16 38:2 39:13,23 41:5,13 41:14,16 42:16,24 42:24 44:6,9 49:6 54:25 55:11
accurate (1) 26:25	alongside (1) 7:6	assisting (3) 17:21,22 37:6	carer (1) 7:11		confused (1) 22:9	courtesy (1) 55:11
accused (3) 11:14,19 59:8	alternative (1) 21:22	assured (1) 31:25	Carey (2) 30:20,24		connected (1) 39:2	co-counsel (1) 1:15
achieve (1) 28:10	amended (2) 52:18,19	attend (1) 3:15	carry (1) 6:25		conscious (2) 8:16,17 34:11,13	created (1) 32:12
achieved (1) 56:5	amendment (4) 5:5 13:16 14:9 39:25	attention (1) 14:6	carrying (2) 6:1 7:1		consciously (1) 56:19	criminal (4) 11:15,19 44:19 45:4
acknowledgment (1) 46:9	amount (3) 1:8 32:11 56:18	Attorney (7) 2:3,20 3:17,25 5:17 58:11 58:13	case (3) 27:23 28:1 55:10		consent (31) 4:24 19:19 20:24,25 21:13,15,20 22:18 25:12,20 26:10,13 27:19 28:7 29:22 30:11 33:13,18 34:10 35:24 36:18 48:20 49:4,9,11,12 49:15,16 56:10,12 56:17	criteria (1) 52:1 criticism (1) 52:22 crucial (2) 7:16,25 crucially (2) 7:12 13:9
action (2) 6:18 8:12	analysing (1) 52:13	author (1) 13:13	categories (5) 11:23 12:6 16:4 23:8 30:15		consented (1) 33:25	Culture (1) 1:20
acutely (1) 8:16	and/or (3) 11:8 42:6 42:23	authorities (1) 20:12	categorised (1) 16:1		consents (4) 4:19 34:3 34:4 49:1	current (1) 34:20
add (1) 5:4	annexed (1) 23:10	automatic (2) 19:4 50:25	category (11) 16:4,12 16:18 26:11 27:2 40:21 41:13,15 43:14,14 58:8		consequence (1) 45:8	currently (1) 41:3
adding (1) 14:9	answer (4) 43:5,5,17 50:22	automatically (1) 17:13	categorisation (2) 15:24 16:3		consequencing (1) 45:8	custody (1) 23:11
addition (5) 3:3 32:6 34:20 44:10 57:24	anticipate (4) 19:25 20:15 29:19 40:4	available (7) 3:9 38:23 40:21 42:23 43:22 48:12,13	comes (5) 36:1,11 52:5,10 54:7		consider (17) 6:8,14 6:18,21 7:2,25 13:1 13:8 19:7 39:24 41:25 42:10 45:1 53:11,11 54:24 58:25	cut (1) 29:3
additional (4) 28:25 29:24 49:14 57:22	apart (1) 34:19	avoid (2) 20:14 33:4	coming (3) 38:1 54:3,5		considerable (1) 1:8	database (12) 12:25 14:23 16:16,22 17:1,4,9 18:21,23 30:18 50:20 58:9
address (5) 23:14 39:10 43:5 55:6 56:17	apologise (1) 55:7	aware (4) 8:3 20:5 35:5 49:23	committed (1) 37:5		consideration (1) 7:13	date (7) 1:11 6:9 14:24 15:4 44:13 56:15 58:18
addressed (1) 59:2	appear (5) 1:15 3:8 16:11 40:10 56:11	axiomatic (1) 19:4	Committee (1) 3:13		considerations (2) 20:6 29:19	dated (4) 3:17 22:23 25:23 47:16
addresses (2) 8:25 12:11	appeared (1) 21:19		Committees (1) 21:25		considered (2) 29:11 37:11	dates (3) 8:25 12:10 59:14
adequate (2) 6:13 55:25	appears (4) 1:18 16:2 43:16 46:25	B	common (1) 46:7		consisting (1) 56:25	daunting (1) 35:15
adjourned (1) 59:17	appended (1) 26:3	back (12) 1:25 15:23 19:18 30:7 34:3 36:1 46:4 48:19,19 53:12 54:7 55:4	community (2) 8:24 39:3		consists (1) 38:12	day (1) 40:15
adopt (1) 25:11	applicant (4) 7:17 12:4 32:8 56:13	background (4) 5:24 31:10 32:14 33:23	compel (1) 20:10		constable (1) 15:10	days (5) 14:15 20:18 24:1 57:20 58:1 de (2) 21:6 47:12
adoption (4) 21:17 33:14,16,18	applications (2) 24:14 57:1	balance (2) 56:4,5	compelling (1) 21:22 31:24 36:7		constantly (1) 57:7	deal (7) 2:7 9:9 10:6 25:2 44:6 46:2 58:22
adulthood (1) 49:25	applied (4) 12:4 33:19 42:19 54:15	based (1) 32:19	competing (1) 54:14		consulted (1) 33:14	dealing (3) 40:11 46:8 54:14
advance (3) 42:8 53:22 59:13	apply (4) 13:25 20:6 24:2 40:16	basis (5) 4:10 29:12 30:24 47:9 58:23	compile (1) 48:18		consuming (1) 21:7	deals (4) 17:7,24 18:6 19:11
advice (1) 55:10	apply (1) 2:22	bearing (2) 42:18 43:8	complainant (1) 38:24		contact (1) 59:7	dealt (5) 9:19 29:20 30:1,25 34:16
advised (1) 34:13	apply (1) 35:12	behalf (10) 1:18 3:4 4:5 6:2 9:4 20:20 21:8 25:10 30:20 58:13	complainants (6) 37:12,25,25 38:14 43:20 44:10		contain (2) 8:4 26:21	debate (2) 48:6,7
Advocate (48) 1:17 7:9 22:24 25:2,2,9 25:14,16,17 26:6 28:23 29:6,20 31:14,16,17,18,19 36:23,24,25 37:3,4 39:17 40:3 41:2 46:3,7,11 47:7,16 47:24,25 48:14,18 48:23 49:20 50:13 51:1 52:8,17,23 53:17 55:5 56:1,12 60:4,5	approved (1) 19:14 19:16,19,20 21:8,9 25:18 33:22	black (1) 9:21	complex (1) 47:21		contained (1) 8:1	decide (3) 1:23 29:21 48:4
advocated (1) 4:25	approve (1) 57:21	blacking (1) 9:21	complex (1) 47:21 4:24 12:15 57:17		content (1) 4:19	decision (6) 14:15
Advocates (5) 4:22,25 23:1 39:11 48:8	April (13) 1:5 9:8 19:22 21:19 22:23 23:24 25:8,9 56:7 56:18,20 59:3,4	blown (1) 34:19	complications (1) 49:17		context (2) 51:1 59:10 36:18	
afforded (2) 46:23 52:7	archive (5) 7:23 43:15 43:18 44:1 48:19	bodies (2) 20:2,4	complained (3) 23:25 24:11 48:5		control (4) 23:11 32:13,18 33:1	
afternoon (3) 1:3,14 58:19	area (2) 53:9,10	body (8) 7:24 10:11 17:12 18:15 23:23 35:8,17 48:15	complies (1) 19:5 24:11 48:5		convenient (2) 37:2 55:2	
agenda (3) 39:19 55:6 55:12	areas (2) 9:20 26:21	bound (4) 7:23 17:14 22:10 28:6	concern (21) 7:14,21 9:4,5 16:18 20:19 20:20 33:6 34:24 35:9 36:15 39:7 40:17,17 41:1,10 41:17 42:20 44:5 46:11 49:15		convicted (1) 37:13	
	arguments (2) 28:20 29:5	boxes (1) 34:5	concerned (13) 9:12 16:23 21:11 22:20 30:13 31:11 32:9 33:25 39:1 47:8		conviction (1) 11:20	
	arisen (1) 2:7	breach (3) 20:22 35:21 37:19	children's (5) 7:10			

40:4,5 55:15 58:2 60:7 decisions (2) 53:6,8 defeat (1) 51:22 delay (2) 20:14,16 delivered (1) 34:8 demand (1) 27:18 demonstrated (1) 37:7 Department (32) 1:19 1:20,21 2:12,12,24 3:1,20,22 4:4,6,17 4:19 5:12 6:15 18:23 19:13 22:22 23:3 24:11 25:10 27:8,12 28:5 29:11 30:13 34:22,23 57:16,18,18 58:22 Departments (4) 1:18 1:22 29:7 51:3 Department's (1) 29:10 dependent (1) 46:24 depending (2) 27:21 40:22 derogate (1) 45:16 descend (1) 29:18 described (3) 22:12 26:15 48:13 description (1) 26:25 designated (1) 17:12 designation (1) 17:13 designed (1) 15:13 desperate (1) 36:8 despite (1) 56:14 destroy (1) 18:10 detail (2) 28:14 29:18 details (1) 28:15 detailed (9) 8:11 11:11 11:17 15:9 30:3 39:3 43:19 45:4 59:13 determination (9) 2:10 4:8,13 5:4,8 14:4 39:16 51:20 57:13 determinations (1) 55:4 determined (2) 45:10 58:6 detract (1) 48:3 different (5) 7:3 16:12 53:9 54:14,16 difficult (1) 53:9 difficulties (3) 25:16 38:7 39:6 difficulty (1) 14:20 diminished (1) 44:22 direction (1) 18:8 discharge (2) 29:8 55:20 disciplinary (1) 7:5 disclose (5) 18:2 27:25 37:14 38:11 45:17 disclosed (9) 11:7,24 12:2 22:15 24:24 26:12,17 35:17 37:10 disclosing (2) 20:21 27:9 disclosure (18) 1:11 2:11,15 3:13 4:20 4:21 11:1 17:24 19:22 27:15,18 35:1 36:13 37:10 37:20,21 45:15 48:7 discourse (1) 53:14 discrete (1) 45:14 disposal (1) 21:22	disproportionate (1) 56:18 disputed (1) 25:17 dissatisfied (1) 13:24 disseminated (2) 8:20 16:17 dissemination (4) 17:25 31:7 40:23 50:18 disservice (1) 52:9 dissipated (1) 47:3 distill (1) 29:5 distills (1) 28:23 distress (3) 37:24 39:5 41:21 divider (2) 41:23 43:12 document (23) 4:11 11:18 13:6,11 15:23 18:4 21:1 22:14,14,16 26:4 27:21 28:25 33:1,3 38:22 39:13,17 40:20 41:19 42:2 42:17 43:3 documentary (2) 19:14,24 documentation (24) 4:20 7:2,4 8:2,2,4 9:12 10:8 18:9 19:17 20:4,21 21:4 21:10 22:5 24:18 24:22 28:9,11 47:23 49:1,7 56:16 56:23 documents (55) 1:12 2:13,17 7:7,13 8:7 8:11 9:1,21,23 10:9 10:20 12:18,21,22 15:25 16:1 17:9 19:22,25 20:7,8,9 20:15,16 21:23 22:10,11 23:7,8,8 23:11,17,19 25:12 26:11,17 27:7,9,25 36:6 38:13 40:6,14 40:16 43:2 48:10 48:11,11,17,17 49:10 50:1 57:18 58:9 doing (1) 1:7 domain (1) 41:7 doubt (6) 20:1 47:23 49:21,23 53:22 56:1 doubs (2) 50:15,16 downloaded (1) 42:17 drafted (1) 49:22 drawn (3) 9:9 14:5 41:12 due (10) 4:8 5:10,15 14:18 25:3 40:8 41:4 54:25 55:11 58:4 duties (1) 22:6 duty (1) 22:10	eliminated (1) 41:11 emerge (1) 53:18 emphasise (1) 40:12 enable (2) 27:5 42:5 encourage (1) 54:18 engage (3) 50:2 51:13 51:23 engaged (1) 48:8 enormous (2) 41:21 49:17 ensure (9) 8:19 9:12 9:13 12:15 26:22 38:21 45:10,18 57:10 ensuring (2) 24:24 33:6 entirely (3) 22:7 41:11 52:21 entirety (1) 14:11 entitled (6) 13:14 36:2 51:11,23 52:4,6 entity (1) 3:24 envisaged (2) 6:2 48:22 Equally (1) 29:8 especially (1) 5:24 essence (1) 2:21 evaluation (1) 35:13 event (1) 13:4 events (1) 55:18 evidence (51) 6:1,16 7:19,24,25 9:10 10:11,12,17 12:16 12:20 13:5,13,15 13:17,23 14:3,13 14:15,16 15:14,15 16:5,8,12,18 19:11 19:14,24 22:4,9 23:18 31:7 33:5 41:14 42:8,9 46:12 46:13,15,20,22 47:3,14 53:23 54:15 58:1,3 59:5,9 59:11 exact (1) 59:14 Exactly (3) 15:22 19:2 26:5 examine (1) 6:11 example (10) 8:7 15:6 18:22 21:5,5 41:17 42:14 45:2,2 46:11 examples (2) 52:11,12 exceptional (1) 27:7 excuse (1) 24:9 exemption (1) 22:2 exist (2) 50:23 51:14 existing (3) 37:25 38:2 44:10 exists (1) 48:16 expect (4) 3:12 20:17 36:2 37:5 expects (1) 10:9 experience (1) 35:14 expert (1) 59:9 explain (2) 9:18 38:6 explained (3) 1:6 42:20 59:4 explaining (2) 8:7 31:5 explanation (1) 5:10 explanations (1) 32:21 explicit (1) 14:7 explicitly (1) 50:8 exposes (1) 47:1 expressed (1) 9:4 expressions (1) 56:14 expressly (2) 5:7 36:20 extend (1) 12:8 extension (2) 24:3,14 extensive (1) 32:19	extent (8) 4:7 13:24 19:24 22:13 40:22 42:18 46:15 52:11	F faced (1) 47:12 facetiously (1) 46:3 facilitate (1) 56:21 facility (1) 5:7 fact (3) 8:17 37:8 48:16 facto (1) 47:12 factor (1) 56:25 facts (2) 27:5 55:22 fairly (1) 50:16 fall (2) 12:6 22:11 falling (2) 11:22 30:14 families (1) 32:9 family (2) 8:7 29:25 far (13) 9:11 16:22 21:10 22:20 25:1 30:13 31:11 34:3 36:11 42:14 47:7 47:25 51:5 fear (2) 49:7,8 fearless (1) 55:21 fearlessly (1) 29:8 feed (2) 32:17,22 files (9) 7:10,11,20 30:10 32:8,16 49:2 49:3 56:16 final (2) 29:4 44:5 finally (2) 3:11 5:18 financial (2) 31:24 36:7 find (2) 41:18,23 finds (1) 41:6 finished (1) 18:12 firm (3) 33:24 34:12 45:16 first (16) 1:6 2:10 4:16 9:20 24:23 29:16 29:22 31:22 37:4 39:7,9,10,13 46:3 46:15 59:2 firstly (5) 9:25 13:3 37:17 38:9 57:15 five (3) 14:15 40:15 58:1 flawed (1) 28:8 focus (2) 10:2 29:10 follow (3) 12:17 35:25 59:11 followed (1) 25:13 following (8) 11:6 12:17 16:4 17:14 19:23 43:13 56:10 57:24 follows (5) 12:20 13:20 25:4 27:3 49:15 forced (2) 35:1 36:12 forensic (2) 32:23 35:13 foreshadowed (1) 56:17 form (8) 13:14 26:3,9 34:6 36:5 37:19 43:15,19 formally (3) 27:18 34:12 59:1 forms (3) 18:15 34:14 48:20 forth (2) 7:6 30:1 fortunately (1) 21:21 forum (1) 54:11 forward (11) 29:4,16 31:23,24 33:9 36:3 37:1 38:1 47:17 52:23 54:5	foster (3) 6:10 7:11 44:8 found (1) 32:16 Four (1) 30:2 fourth (2) 5:16 51:5 Freedom (3) 5:6 10:3 57:23 fresh (1) 44:11 Friday (3) 3:1 34:2 39:12 Friday's (1) 29:2 friend (1) 37:16 friends (1) 54:20 full (5) 3:13 10:24 28:11 38:20 53:1 fullest (1) 27:4 fully (3) 28:13 29:7 41:13 fundamental (1) 36:2 fundamentally (1) 56:21 further (8) 5:10 29:13 34:4 37:21 44:6,11 44:13,21 Furthermore (2) 28:10 57:8 future (2) 30:24 38:2	H half (1) 54:25 hampered (1) 44:21 hand (1) 55:19 handed (4) 3:2,4 4:12 28:25 handled (1) 36:21 happen (1) 51:18 happened (1) 41:9 happens (1) 50:10 happy (1) 33:2 harm (2) 32:6,25 harmful (1) 29:14 harshly (1) 53:19 Haut (1) 21:6 health (8) 1:20 2:11 6:14 18:22 30:10 34:23,25 57:15 hear (7) 5:21 6:16 19:9 31:14 33:15 51:9 59:7 heard (9) 47:6,23,24 48:13 49:1 50:25 53:23 54:7 56:2 hearing (13) 1:6 2:6 4:12 10:12 25:8 30:25 31:16 39:16 39:19,20 57:14 58:25 59:3 hearings (3) 2:9 16:6 42:12 heart (3) 29:9 34:25 56:3 heavily (1) 43:8 heavy (1) 57:6 held (3) 7:14,19 8:18 help (4) 20:15 31:10 37:1 54:21 helpful (3) 5:23 10:23 25:7 helpfully (1) 48:9 high (2) 29:13 36:15 highlight (3) 12:23 26:16 53:20 highlighted (3) 13:4 26:21 28:2 highlighter (1) 38:18 highly (2) 42:1 43:25 historic (10) 7:15 22:25 30:9 31:22 32:4,10 48:14 56:13,15 57:19 history (1) 32:23 hold (4) 23:22 32:10 45:14 48:17 holds (1) 8:18 home (3) 12:10 15:7 21:12 homes (5) 6:9,10,12 7:4 44:8 honorary (1) 15:9 hope (14) 1:25 4:12 9:16 14:20 29:4 30:1 31:1,5 46:3 52:9 53:16,18 54:6 54:19 hoped (2) 14:23 15:17 hour (1) 55:1 housekeeping (1) 5:18 HSSD (3) 4:16 6:22 19:18 huge (3) 32:11 35:11 53:9	14:21 15:5,11 26:9 48:16 identifies (1) 51:2 identity (7) 10:17,18 15:14,15 23:18 26:18 38:24 identifying (4) 11:11 11:17 28:1 52:14 identities (2) 12:5 26:23 identity (3) 11:2,23 37:11 imagine (2) 20:25 51:4 immaterial (1) 16:19 immediate (3) 4:17 7:14 57:17 immediately (3) 47:1 51:4 53:5 immense (1) 6:25 Immunities (1) 21:25 impediments (1) 37:21 implementation (1) 53:15 implemented (1) 11:3 important (3) 27:4 41:25 56:25 Importantly (2) 17:20 18:11 inaction (1) 8:12 inadequate (1) 40:15 inadvertent (2) 9:14 50:17 inadvertently (1) 41:5 inappropriate (1) 29:11 inaudible (1) 32:5 include (4) 7:3 10:9 12:10 16:7 includes (1) 17:11 including (1) 23:7 indefinite (1) 44:2 indefinitely (1) 44:1 Independent (1) 1:4 INDEX (1) 60:2 indicated (7) 19:12 21:19,21 25:9,19 42:13 58:14 indicates (1) 3:10 indication (1) 2:22 individual (15) 10:10 11:18 13:12 18:15 21:2,14 25:6 35:12 36:2 41:18 46:18 46:19,22 47:2 58:22 individuals (28) 7:8 8:6 10:17 11:12,14 11:22 12:8 18:24 21:3,8 29:14 30:4 30:11 32:1,2 33:24 34:7,15 35:2 39:5 40:24 41:22 44:12 44:14 46:9 49:10 49:12 52:14 information (40) 1:9 5:6 8:15,17 9:2,11 9:22 10:4,18 11:2,4 11:6 12:7,12 14:22 15:3,3,12 16:3,5,10 16:10,13,15,19 23:21 24:24 26:21 28:1 29:12 32:18 35:10 50:14,18,19 50:23 51:19,21 55:24 57:23 informed (1) 30:22 initially (1) 48:15 inkling (1) 36:4 inquiries (1) 55:17
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Inquiry (143) 1:5,6,10 1:16 3:14 5:20 6:2 6:25 7:1,14,22 8:13 8:16,21,22 9:8,23 10:6,9,10,13,20,22 11:3,5,7,23 12:5,22 12:25 13:1,10,17 13:22,25 14:13,17 14:18 15:21 16:4 17:18,22,23 18:1,5 18:7,9,9 19:9,17,21 20:9,12 21:9,17,25 22:23 23:12,20 24:20 25:14,15 26:2,12,17,20,20 27:4,5,9,16,18,22 27:23 28:2,3,11,14 29:7,9 30:5,19 31:8 33:4,11,12,18 34:8 34:16 35:11,22,25 36:4,9,12,21 37:6 37:18 38:5,16,19 38:20 39:8,14 40:19 42:9,12,24 42:25 44:10,15 45:1,3,18 46:8,12 46:16,18 47:5 48:11,22 49:6,18 49:23 50:2 51:10 51:14 53:4 54:17 55:18 56:4,14,19 56:22 57:3 58:4,5 58:16,20,21 59:1,3 59:17	investigating (1) 24:21 investigation (4) 7:20 52:25 53:2 55:22 investigations (6) 38:2 38:15 44:19 45:4,8 45:11 investigative (1) 38:13 invite (4) 14:8 29:18 30:23 45:1 involved (2) 20:2 47:22 IP (1) 52:7 Ireland (1) 33:17 irrelevant (1) 16:19 irrespective (1) 22:16 island (5) 6:9 8:24 39:3 41:8,10 issue (41) 2:19 4:16 4:22 5:2,2,3,11,16 10:14 14:2 15:1,2 15:24 17:24 19:15 19:22 22:7,8 23:4 25:10 29:22,23 30:2,7,8,16 38:9 40:12 45:14,14 46:6 48:9 49:9,21 50:1,14 52:8,10 54:13,13 57:3 issued (9) 4:18 10:22 20:11 22:21 23:2 27:11 33:24 56:20 57:17 issues (24) 2:7,9 4:13 5:12,21 6:6 14:10 14:24 22:13,15,18 25:1 27:10 28:14 28:23 29:21 30:12 31:2,21 39:16 53:2 53:25 54:7 57:13	34:9 35:17 41:7 48:12,12 52:21,22 53:22 55:1 59:14 knowledge (1) 41:8 known (5) 23:16 26:24 44:9,11 57:16 knows (1) 38:16 <hr/> L la (1) 21:6 Lacey (34) 1:17 4:22 4:25 7:9 22:24 23:1 25:2,9,14,16,17 26:6 28:23 29:6,20 31:14,16,18,19 36:23 39:11 41:2 46:3,7,11 47:7,16 47:25 48:8,14,18 48:23 56:12 60:4 Lacey's (3) 28:15 49:20 56:1 ladies (2) 1:3 59:12 laid (1) 36:14 large (3) 7:7 35:8 43:22 late (1) 35:23 latest (1) 28:22 launch (1) 9:8 launched (1) 19:21 Laura (1) 2:4 law (5) 2:24 3:20 4:6 34:12 36:2 lawyer (1) 42:6 lawyers (3) 32:10 38:19 42:23 leading (1) 32:5 leakage (2) 35:9,22 learned (2) 37:16 54:20 Leavers (1) 35:6 left (1) 44:1 legal (4) 8:13 18:3 27:6 47:9 legally (1) 48:16 legislation (3) 7:4 20:24 22:4 legitimate (4) 47:21 50:11 52:21 53:13 letter (23) 3:2,3,6,7,16 22:23 25:9,22,25 26:1 27:14 28:16 28:22,24 29:2 31:20,21 34:2 36:14 39:11 47:16 47:19 56:12 letters (3) 25:6 33:24 58:19 level (1) 36:16 liable (3) 15:15 20:22 30:22 licences (1) 18:20 life (1) 36:3 light (1) 44:8 likewise (3) 7:19 24:7 24:13 limited (6) 2:3 18:20 18:24 38:23 46:16 51:2 list (4) 4:13 14:10 21:5 29:15 live (1) 22:19 long (2) 32:5 40:1 look (2) 50:19 53:6 looked (2) 8:10 44:23	36:25 37:3,4 39:15 39:17,25 40:3 45:21 47:24 51:1 52:8,17,23 53:17 55:5,8 60:5 Madam (58) 1:14,17 2:6 3:6 4:11 9:7 14:8 15:1,23 17:4 18:18 19:7,21 20:19 22:7,20 25:1 25:4,22,25 27:11 28:22 30:19 31:4,9 31:19,20 33:21 34:9,17 36:14,22 37:4 39:10,18 40:10,17 41:24 42:4 44:5 45:13,20 46:2,14 47:4 49:5 49:19 51:9,24 52:8 52:20 53:18,19 54:9,19 55:5,7 main (1) 19:15 major (1) 54:12 majority (1) 32:1 managed (3) 6:12 31:7 48:18 management (7) 9:10 38:22 40:20 41:19 42:3,17 43:3 mark (1) 26:16 marked (2) 26:13 30:21 mass (1) 42:1 material (33) 2:11 7:7 9:19 11:7 16:13 17:3,17,21 18:4 36:13 37:9,14 38:11,12 40:18,19 40:21 41:9,13,15 42:2,13,15,22 43:6 43:14,18,25 45:17 45:18 52:12 55:23 58:8 materials (2) 40:23 41:6 matter (9) 3:11 4:8 5:18 11:16 18:18 24:23 30:23 36:1 55:11 matters (10) 1:23 3:22 5:22 24:9 29:3,16 30:25 44:24 58:10 58:25 Mcrae's (1) 50:13 mean (4) 10:19 22:14 34:5 40:8 meaning (2) 20:10 22:4 means (3) 9:21 11:5 21:22 mechanism (4) 14:6 19:16 33:22 36:19 medical (5) 30:10 32:7 32:23 43:20 48:20 meet (4) 15:18 48:1 50:24 52:3 meeting (1) 39:22 meetings (1) 29:20 meets (1) 14:20 members (13) 6:3 8:3 9:16,25 19:15 28:19 29:17,25 31:12 35:9 51:6 52:1 53:20 mental (1) 30:10 mention (1) 21:11 mentioned (2) 15:2 35:19 merely (4) 40:3,7 44:16 45:5	merit (1) 16:24 met (7) 51:4,15,25 52:3 53:14 56:7,9 mind (4) 9:7 42:18 43:8 49:23 mindful (1) 8:22 minimise (1) 20:16 Minister (14) 27:20,24 33:2,13,15,21 36:17 46:8 47:8,10 48:1,5 50:5 56:9 minister's (2) 1:19 56:6 minor (1) 2:19 minutes (1) 39:14 mistreatment (1) 44:7 moment (5) 5:3 25:5 25:24 35:5 55:2 Monday (2) 1:1 3:9 months (1) 33:5 morning (1) 29:1 motivation (1) 50:6 move (3) 2:2 36:8 37:1	objections (2) 27:24 34:7 obligation (3) 48:2 51:12 54:1 obligations (4) 18:11 19:3 20:23 55:20 obscured (1) 39:3 observations (1) 40:3 obtain (1) 19:17 obtained (2) 48:20 49:4 obtaining (4) 6:1 20:25 44:21 56:16 obtains (1) 10:13 obviously (1) 35:7 occasion (1) 39:18 occupation (1) 15:9 offence (2) 11:19 24:8 offences (2) 30:3 53:21 office (2) 3:17 58:13 Officers (3) 2:24 3:20 4:6 Olsen (2) 30:20,24 once (5) 33:12 34:5 35:22 51:12 52:3 onerous (1) 24:18 ongoing (4) 34:21 45:4 48:6,7 onus (2) 23:18 57:6 onward (1) 30:17 onwards (1) 17:6 open (3) 11:25 30:24 59:1 opening (8) 5:20,20 55:7,9 58:15,16,18 59:1 opens (1) 53:9 operated (1) 34:18 Operation (2) 38:15 42:16 opportunity (1) 53:24 opposed (2) 33:13 40:6 oral (6) 2:9 10:12 16:6 16:8 42:9,12 order (10) 6:3 11:1 12:15 27:6,10,11 28:3,12 33:3 45:17 ordered (1) 27:25 orders (1) 33:20 organisation (7) 10:11 17:12 18:14,19,25 23:17 58:23 organisations (3) 20:2 20:5,13 organise (1) 48:7 original (1) 13:5 Ossa (1) 49:13 ostensibly (1) 46:25 ought (2) 11:23 52:15 outside (1) 17:23 outstanding (1) 58:25 overhaul (1) 54:12 oversight (1) 6:11 oversimplify (1) 31:1 owing (1) 39:1	57:16,21 58:4,6 60:7 Panel's (1) 54:1 Pannone (1) 34:12 paperwork (1) 7:17 paragraph (23) 5:5 10:5,8,16,22,25 12:9,14 13:7,9 14:9 16:2 17:6,9 19:3,23 41:24 42:4 43:11 47:17 55:6 57:22 57:25 paragraphs (3) 15:13 29:5 47:15 parish (1) 15:10 part (7) 18:16 20:8 28:7 31:25 32:12 38:12 51:11 particular (20) 6:7,21 7:20 8:19,23 10:18 12:1,11 15:10,15 16:2 18:13 20:19 29:24 36:15 40:12 43:2 46:18 53:24 54:13 particularly (3) 31:15 35:13 43:7 parties (41) 5:9,19,22 9:17 11:8 13:11 14:21 16:16 17:8 18:1,3 19:5,10 20:21,22 24:2 30:18 31:6 35:4,5 38:23 40:22 41:4,6 41:20,24 42:23 43:3 45:23 50:19 51:2,3,11,13 53:10 54:16 55:59 57:9 58:9,15 parts (3) 13:11 15:14 37:22 party (36) 2:21 3:19 3:21,23 4:4,9 5:18 11:25 13:12,23 16:23,24,25 17:1 17:13,18,19,22 18:2,8,14,16,20 35:10 42:6 51:5,17 51:20,22,24 53:21 56:25 57:1,4,5 58:11 party's (1) 57:2 pass (1) 18:2 passage (1) 28:4 passages (2) 9:18 12:24 pathway (1) 8:9 Patrick (1) 1:16 pausing (2) 11:16,25 Pelion (1) 49:13 people (2) 21:15 27:2 perform (2) 24:20 45:19 period (5) 21:18 24:4 28:10 40:15 44:2 permission (2) 26:3,9 permit (1) 41:5 person (9) 8:16 9:2 11:19 12:21 15:4,5 15:11,16 17:11 personal (7) 2:23 12:7 12:12 42:2,19 43:19,25 persons (6) 3:22 11:2 39:5 41:3,4,5 pertain (1) 8:23 phase (4) 59:3,5,7,9 phrase (1) 50:17 phrasing (2) 9:1 33:5 piecing (1) 49:13
inquiry (143) 1:5,6,10 1:16 3:14 5:20 6:2 6:25 7:1,14,22 8:13 8:16,21,22 9:8,23 10:6,9,10,13,20,22 11:3,5,7,23 12:5,22 12:25 13:1,10,17 13:22,25 14:13,17 14:18 15:21 16:4 17:18,22,23 18:1,5 18:7,9,9 19:9,17,21 20:9,12 21:9,17,25 22:23 23:12,20 24:20 25:14,15 26:2,12,17,20,20 27:4,5,9,16,18,22 27:23 28:2,3,11,14 29:7,9 30:5,19 31:8 33:4,11,12,18 34:8 34:16 35:11,22,25 36:4,9,12,21 37:6 37:18 38:5,16,19 38:20 39:8,14 40:19 42:9,12,24 42:25 44:10,15 45:1,3,18 46:8,12 46:16,18 47:5 48:11,22 49:6,18 49:23 50:2 51:10 51:14 53:4 54:17 55:18 56:4,14,19 56:22 57:3 58:4,5 58:16,20,21 59:1,3 59:17	investigating (1) 24:21 investigation (4) 7:20 52:25 53:2 55:22 investigations (6) 38:2 38:15 44:19 45:4,8 45:11 investigative (1) 38:13 invite (4) 14:8 29:18 30:23 45:1 involved (2) 20:2 47:22 IP (1) 52:7 Ireland (1) 33:17 irrelevant (1) 16:19 irrespective (1) 22:16 island (5) 6:9 8:24 39:3 41:8,10 issue (41) 2:19 4:16 4:22 5:2,2,3,11,16 10:14 14:2 15:1,2 15:24 17:24 19:15 19:22 22:7,8 23:4 25:10 29:22,23 30:2,7,8,16 38:9 40:12 45:14,14 46:6 48:9 49:9,21 50:1,14 52:8,10 54:13,13 57:3 issued (9) 4:18 10:22 20:11 22:21 23:2 27:11 33:24 56:20 57:17 issues (24) 2:7,9 4:13 5:12,21 6:6 14:10 14:24 22:13,15,18 25:1 27:10 28:14 28:23 29:21 30:12 31:2,21 39:16 53:2 53:25 54:7 57:13	34:9 35:17 41:7 48:12,12 52:21,22 53:22 55:1 59:14 knowledge (1) 41:8 known (5) 23:16 26:24 44:9,11 57:16 knows (1) 38:16 <hr/> L la (1) 21:6 Lacey (34) 1:17 4:22 4:25 7:9 22:24 23:1 25:2,9,14,16,17 26:6 28:23 29:6,20 31:14,16,18,19 36:23 39:11 41:2 46:3,7,11 47:7,16 47:25 48:8,14,18 48:23 56:12 60:4 Lacey's (3) 28:15 49:20 56:1 ladies (2) 1:3 59:12 laid (1) 36:14 large (3) 7:7 35:8 43:22 late (1) 35:23 latest (1) 28:22 launch (1) 9:8 launched (1) 19:21 Laura (1) 2:4 law (5) 2:24 3:20 4:6 34:12 36:2 lawyer (1) 42:6 lawyers (3) 32:10 38:19 42:23 leading (1) 32:5 leakage (2) 35:9,22 learned (2) 37:16 54:20 Leavers (1) 35:6 left (1) 44:1 legal (4) 8:13 18:3 27:6 47:9 legally (1) 48:16 legislation (3) 7:4 20:24 22:4 legitimate (4) 47:21 50:11 52:21 53:13 letter (23) 3:2,3,6,7,16 22:23 25:9,22,25 26:1 27:14 28:16 28:22,24 29:2 31:20,21 34:2 36:14 39:11 47:16 47:19 56:12 letters (3) 25:6 33:24 58:19 level (1) 36:16 liable (3) 15:15 20:22 30:22 licences (1) 18:20 life (1) 36:3 light (1) 44:8 likewise (3) 7:19 24:7 24:13 limited (6) 2:3 18:20 18:24 38:23 46:16 51:2 list (4) 4:13 14:10 21:5 29:15 live (1) 22:19 long (2) 32:5 40:1 look (2) 50:19 53:6 looked (2) 8:10 44:23	36:25 37:3,4 39:15 39:17,25 40:3 45:21 47:24 51:1 52:8,17,23 53:17 55:5,8 60:5 Madam (58) 1:14,17 2:6 3:6 4:11 9:7 14:8 15:1,23 17:4 18:18 19:7,21 20:19 22:7,20 25:1 25:4,22,25 27:11 28:22 30:19 31:4,9 31:19,20 33:21 34:9,17 36:14,22 37:4 39:10,18 40:10,17 41:24 42:4 44:5 45:13,20 46:2,14 47:4 49:5 49:19 51:9,24 52:8 52:20 53:18,19 54:9,19 55:5,7 main (1) 19:15 major (1) 54:12 majority (1) 32:1 managed (3) 6:12 31:7 48:18 management (7) 9:10 38:22 40:20 41:19 42:3,17 43:3 mark (1) 26:16 marked (2) 26:13 30:21 mass (1) 42:1 material (33) 2:11 7:7 9:19 11:7 16:13 17:3,17,21 18:4 36:13 37:9,14 38:11,12 40:18,19 40:21 41:9,13,15 42:2,13,15,22 43:6 43:14,18,25 45:17 45:18 52:12 55:23 58:8 materials (2) 40:23 41:6 matter (9) 3:11 4:8 5:18 11:16 18:18 24:23 30:23 36:1 55:11 matters (10) 1:23 3:22 5:22 24:9 29:3,16 30:25 44:24 58:10 58:25 Mcrae's (1) 50:13 mean (4) 10:19 22:14 34:5 40:8 meaning (2) 20:10 22:4 means (3) 9:21 11:5 21:22 mechanism (4) 14:6 19:16 33:22 36:19 medical (5) 30:10 32:7 32:23 43:20 48:20 meet (4) 15:18 48:1 50:24 52:3 meeting (1) 39:22 meetings (1) 29:20 meets (1) 14:20 members (13) 6:3 8:3 9:16,25 19:15 28:19 29:17,25 31:12 35:9 51:6 52:1 53:20 mental (1) 30:10 mention (1) 21:11 mentioned (2) 15:2 35:19 merely (4) 40:3,7 44:16 45:5	merit (1) 16:24 met (7) 51:4,15,25 52:3 53:14 56:7,9 mind (4) 9:7 42:18 43:8 49:23 mindful (1) 8:22 minimise (1) 20:16 Minister (14) 27:20,24 33:2,13,15,21 36:17 46:8 47:8,10 48:1,5 50:5 56:9 minister's (2) 1:19 56:6 minor (1) 2:19 minutes (1) 39:14 mistreatment (1) 44:7 moment (5) 5:3 25:5 25:24 35:5 55:2 Monday (2) 1:1 3:9 months (1) 33:5 morning (1) 29:1 motivation (1) 50:6 move (3) 2:2 36:8 37:1	objections (2) 27:24 34:7 obligation (3) 48:2 51:12 54:1 obligations (4) 18:11 19:3 20:23 55:20 obscured (1) 39:3 observations (1) 40:3 obtain (1) 19:17 obtained (2) 48:20 49:4 obtaining (4) 6:1 20:25 44:21 56:16 obtains (1) 10:13 obviously (1) 35:7 occasion (1) 39:18 occupation (1) 15:9 offence (2) 11:19 24:8 offences (2) 30:3 53:21 office (2) 3:17 58:13 Officers (3) 2:24 3:20 4:6 Olsen (2) 30:20,24 once (5) 33:12 34:5 35:22 51:12 52:3 onerous (1) 24:18 ongoing (4) 34:21 45:4 48:6,7 onus (2) 23:18 57:6 onward (1) 30:17 onwards (1) 17:6 open (3) 11:25 30:24 59:1 opening (8) 5:20,20 55:7,9 58:15,16,18 59:1 opens (1) 53:9 operated (1) 34:18 Operation (2) 38:15 42:16 opportunity (1) 53:24 opposed (2) 33:13 40:6 oral (6) 2:9 10:12 16:6 16:8 42:9,12 order (10) 6:3 11:1 12:15 27:6,10,11 28:3,12 33:3 45:17 ordered (1) 27:25 orders (1) 33:20 organisation (7) 10:11 17:12 18:14,19,25 23:17 58:23 organisations (3) 20:2 20:5,13 organise (1) 48:7 original (1) 13:5 Ossa (1) 49:13 ostensibly (1) 46:25 ought (2) 11:23 52:15 outside (1) 17:23 outstanding (1) 58:25 overhaul (1) 54:12 oversight (1) 6:11 oversimplify (1) 31:1 owing (1) 39:1	57:16,21 58:4,6 60:7 Panel's (1) 54:1 Pannone (1) 34:12 paperwork (1) 7:17 paragraph (23) 5:5 10:5,8,16,22,25 12:9,14 13:7,9 14:9 16:2 17:6,9 19:3,23 41:24 42:4 43:11 47:17 55:6 57:22 57:25 paragraphs (3) 15:13 29:5 47:15 parish (1) 15:10 part (7) 18:16 20:8 28:7 31:25 32:12 38:12 51:11 particular (20) 6:7,21 7:20 8:19,23 10:18 12:1,11 15:10,15 16:2 18:13 20:19 29:24 3

place (3) 9:13 36:5 45:7	31:4	14:13	24:9 28:9	relates (3) 2:10,15,19	55:20 57:6,9	secure (1) 18:6
placed (1) 43:7	procedurally (1) 24:15	provides (5) 16:3 17:9	reasonably (1) 8:24	relating (2) 7:8 32:4	restrict (1) 11:1	security (1) 30:16
plain (2) 33:2,10	procedure (3) 15:12	22:2 43:12 53:24	reasoned (1) 40:4	relation (43) 1:11 3:6	restricted (2) 36:25	see (24) 1:25 10:4,22
Plainly (1) 39:22	24:2 42:11	providing (3) 24:18	reasons (3) 12:2 52:21	3:16 4:16 5:24 6:19	38:22	13:3,7,14,19 17:16
please (5) 1:10 4:5,15	procedures (4) 5:25	37:8 55:25	56:19	6:20 7:17 10:14	result (4) 5:12 28:8,11	18:7 21:4 22:24
10:15 17:4	12:17 17:5 22:12	provision (10) 6:10	reassurances (2)	12:17,20 13:9	33:11	24:5 26:6 34:2
pm (4) 1:2 55:13,16	proceed (1) 26:16	9:10 13:19 19:11	27:22 36:19	19:24 20:24 21:1	resulted (1) 8:12	35:21 38:19,20
59:16	proceedings (1) 7:6	46:20,21 47:22	reassured (1) 33:7	23:4,15 24:15	return (3) 18:9 26:10	42:4,21 43:1,4
point (5) 30:7 40:11	process (18) 4:25	48:10 51:16,19	recall (1) 1:5	26:15 28:4 29:17	34:14	49:13 52:20 54:22
41:2 43:9 54:6	12:19 14:18 15:17	provisional (7) 5:8	receive (2) 10:9 20:17	29:23 30:12 31:2	returned (1) 34:6	seek (4) 4:23 19:25
points (5) 13:2 36:14	20:25 27:1 28:7	13:2,8,16 14:5	received (8) 16:3	31:22 32:8,16	revealed (2) 12:5	25:20 27:20
46:14 49:8 50:13	32:12 40:8 45:15	15:16 30:16	28:24 29:1 30:20	33:17 35:3,24 38:1	39:12	seeking (4) 14:1 25:12
police (33) 1:24 2:16	51:14,22,23 52:13	provisionally (2) 12:22	36:7 39:13 43:4	38:5,14 40:14 41:9	review (1) 57:7	28:7 31:23
3:12 6:22 7:20 8:2	52:13,15 56:10	13:10	56:15	42:13,15 43:10	reviewing (1) 36:9	seen (4) 25:13 39:9
19:13 30:21 31:2	58:4	provisions (2) 17:15	47:1	44:24 53:16 54:6	rhetorical (1) 43:16	49:5 54:10
32:19 35:6,7 37:5	processes (2) 26:14	22:3	psychiatric (5) 32:2	57:15 58:8	right (3) 2:4 51:6,12	sense (1) 55:3
37:13,17,23 38:3	32:1	psychiatrist (2) 32:24	35:13 46:12,15	relationships (1) 34:22	rightly (1) 51:1	sensitive (8) 8:5,15
38:10,14 39:1 41:1	produced (5) 10:1	47:1	47:1	relative (1) 42:6	rise (3) 39:4 54:24	9:18,22 32:11 43:6
42:15 43:4 44:4,9	20:17 36:6 49:8	psychiatrist (2) 32:24	psychiatrist (2) 32:24	release (3) 25:20	55:3	53:3 55:23
44:15,20 45:5,10	57:19	35:14	35:14	29:12 49:11	risk (7) 41:11 44:19	sensitively (2) 36:20
45:16 53:13 54:2,9	production (4) 20:10	public (20) 1:4,6 20:2	public (20) 1:4,6 20:2	released (2) 34:1 43:2	50:9,21,22,23 51:4	44:18
political (1) 6:11	21:23 27:20 28:9	20:4,12 26:19 28:3	20:4,12 26:19 28:3	relevant (19) 1:22	risks (2) 51:14,15	sensitivities (2) 49:24
politicians (1) 6:23	productive (1) 55:3	30:23 41:7 43:22	30:23 41:7 43:22	2:13,17 3:21 12:12	Robert (1) 1:25	49:25
position (1) 1:11	productively (1) 48:9	43:25 44:1,3 55:17	43:25 44:1,3 55:17	16:13 23:9,19 27:6	Roman (1) 33:20	sensitivity (4) 35:11
20:13 23:4 25:4	proper (4) 8:18,18	55:18,22 56:3	55:18,22 56:3	27:9,17,20,24	round (1) 14:24	49:22 52:12,13
30:5 31:4 47:7 50:5	9:13 50:6	57:14 58:21 59:2	57:14 58:21 59:2	32:22 42:8 45:17	route (22) 5:1 19:19	sent (1) 56:12
positive (1) 34:3	properly (2) 23:2 53:8	publication (5) 11:1	publication (5) 11:1	46:16,17 48:25	19:19,20,20 21:9	separate (2) 22:8 30:2
possession (2) 2:17	proposal (4) 39:9,21	12:25 17:23 26:22	12:25 17:23 26:22	reliability (4) 32:3,24	21:17,20 22:17,18	series (4) 6:8 9:9
23:10	39:22 52:24	38:21	38:21	57:2,5	29:23 33:13,13,16	25:13 52:1
possible (5) 15:5	proposals (1) 45:1	publicly (2) 26:24 38:8	publicly (2) 26:24 38:8	religious (1) 33:20	33:18 35:10,24	serious (2) 34:24
19:25 24:25 26:8	propose (2) 3:15	publish (1) 13:10	publish (1) 13:10	remain (2) 22:16	37:18 49:4,5,15	35:18
38:24	45:13	published (9) 9:24	published (9) 9:24	27:23	56:17	seriously (1) 57:4
potential (5) 29:13,15	proposed (5) 15:20	11:8,18 14:23	11:8,18 14:23	remainder (1) 24:5	rules (2) 35:22 45:6	served (4) 20:11 22:25
53:20,21 54:3	25:16 39:8,12	16:21 23:13 41:16	16:21 23:13 41:16	remember (1) 51:23	ruling (10) 10:23 11:3	27:12 48:15
potentially (4) 8:25	57:21	56:7 59:13	56:7 59:13	remind (1) 47:14	11:4,5 12:16 13:18	service (4) 30:10,10
33:4 34:4,19	proposes (1) 38:11	purported (1) 41:25	purported (1) 41:25	removal (1) 13:16	13:21,25 14:1,14	34:25 48:21
power (1) 27:6	prosecute (2) 53:7,7	purpose (5) 9:11 10:5	purpose (5) 9:11 10:5	removed (1) 26:22	run (1) 7:5	Services (7) 1:21 2:11
powers (2) 20:9 21:25	prosecuted (1) 30:4	17:21,23 42:5	17:21,23 42:5	repeat (1) 38:16		6:15 18:22 32:7
practical (3) 25:15	prosecutions (1) 45:11	26:15,25 38:9,21	26:15,25 38:9,21	repeating (1) 50:10		34:23 57:16
29:16,19	prospect (1) 44:21	39:4 52:11 54:7	39:4 52:11 54:7	reply (5) 25:17 27:3		session (1) 1:4
practicalities (2) 47:22	45:7 55:23	57:23	57:23	27:14,14 54:21		set (19) 5:14,23 6:4,6
48:3	protected (1) 52:15	redactions (12) 5:8	redactions (12) 5:8	report (4) 6:4 27:5		7:4 10:5 12:19
practicality (1) 18:19	protection (9) 5:6 10:3	6:1 13:2,9,17 14:5	6:1 13:2,9,17 14:5	35:16 47:1		14:10 15:12 23:12
precisely (3) 15:13	20:6,24 22:3,6	15:16 29:24 30:16	15:16 29:24 30:16	reports (1) 42:14		23:23 24:6,9 42:11
23:17 38:19	46:23,24 57:23	38:17 39:7 42:19	38:17 39:7 42:19	represent (2) 34:22		52:25 56:19 57:12
predecessor (2) 6:15	protections (1) 8:19	Redress (12) 7:15 8:1	Redress (12) 7:15 8:1	57:10		59:10,10
6:22	protective (9) 10:23	21:10 23:1 25:19	21:10 23:1 25:19	representative (1)		sets (3) 10:8 26:14
preferable (1) 4:25	11:3,5 12:16 13:18	25:22 31:23 32:10	25:22 31:23 32:10	57:10		54:15
prejudiced (1) 38:4	13:21,25 14:1,14	48:14 56:13,16	48:14 56:13,16	representatives (1)		setting (2) 26:7 29:5
preliminary (3) 2:6	13:21,25 14:1,14	57:19	57:19	18:3		seven (1) 57:20
39:15 58:24	protocol (15) 5:6 10:2	refer (3) 2:12,16 22:1	refer (3) 2:12,16 22:1	represented (3) 1:24		sewn (1) 46:10
preparation (1) 2:8	10:4,5 13:6 14:9	reference (19) 2:18	reference (19) 2:18	2:3 34:11		shape (1) 37:19
prepared (1) 34:10	17:6 23:13 41:23	6:4,7 12:13 16:14	6:4,7 12:13 16:14	represents (1) 3:10		share (2) 9:6 30:14
present (4) 42:9 47:7	42:12 43:11 44:23	16:20 23:9,19	16:20 23:9,19	request (5) 18:10 20:4		sheet (3) 32:13,18
47:8 51:1	52:18,18 57:24	24:22,22 29:8,24	24:22,22 29:8,24	20:16 30:2 39:18		33:1
presently (2) 52:16	protocols (26) 5:15,24	46:5 48:19,19 50:3	46:5 48:19,19 50:3	requested (1) 22:10		short (4) 29:3 37:23
56:9	9:9,11,18 19:12	53:1,5 55:21	53:1,5 55:21	requests (1) 42:9		39:25 55:14
preserve (1) 17:20	23:25 24:1 31:5	references (1) 26:18	references (1) 26:18	require (5) 6:7,11 53:1		shortly (4) 4:12 20:11
pretty (1) 35:15	37:22 41:12 44:25	referred (5) 8:4 16:5	referred (5) 8:4 16:5	56:23 57:18		25:8 38:7
prevent (1) 37:25	46:10,21 47:5	16:16 41:14 58:19	16:16 41:14 58:19	required (5) 3:13		showed (1) 47:17
prevented (1) 53:4	49:22 50:10 52:16	referring (2) 20:20	referring (2) 20:20	12:17 13:6 32:2		sign (2) 17:2 26:9
previous (1) 43:11	53:15 54:8,12,14	39:15	39:15	50:3		signed (2) 17:7 51:7
primary (1) 7:21	56:6,7,8 57:12	refusal (2) 47:13,14	refusal (2) 47:13,14	requirement (1) 57:12		significant (1) 7:24
principle (3) 4:22	proved (1) 37:7	57:4	57:4	requires (5) 2:22 4:17		signing (1) 35:4
29:21 48:3	provide (11) 12:21	refused (3) 13:17	refused (3) 13:17	6:13 53:6 57:17		similar (1) 43:9
prior (2) 4:21 9:8	19:14 20:3,8 22:10	regard (1) 45:2	regard (1) 45:2	research (1) 10:13		simply (8) 2:21 3:7
prioritising (1) 24:23	23:6 24:1 30:3	regarding (2) 47:21	regarding (2) 47:21	residential (1) 6:8		15:25 18:21 21:2
privacy (1) 33:6	50:11 55:24 56:8	50:11	50:11	residents (1) 21:5		21:13 23:20 29:11
private (9) 26:21 28:2	provided (15) 6:8	regret (1) 43:10	regret (1) 43:10	resolved (1) 58:10		single (2) 21:1,1
30:21 33:23 34:16	10:10 11:4 16:15	regulation (2) 24:7,13	regulation (2) 24:7,13	resolving (1) 56:4		sits (2) 1:25 2:4
35:2 36:3,5,13	17:17,21 20:1	regulations (3) 22:1,2	regulations (3) 22:1,2	respect (11) 2:20,25		situation (1) 27:19
privilege (1) 33:3	23:11 26:2,19	24:7	24:7	3:18 6:20 11:20		size (1) 39:2
privileged (1) 33:1	41:16 45:4 46:20	reiterated (1) 25:15	reiterated (1) 25:15	17:15 30:9,19		Slater (2) 3:3,7
privileges (4) 21:25	49:3,11	rejected (1) 39:8	rejected (1) 39:8	33:19 44:25 56:24		slightly (1) 2:2
52:5,5,7	provider (13) 12:21	rejection (1) 40:14	rejection (1) 40:14	respond (1) 45:24		small (2) 8:24 39:2
probably (1) 25:5	13:5,15,23 14:3,15	relate (2) 6:10 40:5	relate (2) 6:10 40:5	responded (1) 28:14		snippets (1) 9:2
probative (1) 16:14	14:16 15:14 22:4,9	related (1) 26:11	related (1) 26:11	response (3) 43:10,23		social (8) 1:20 2:11
problems (1) 54:4	23:18 58:1,3			49:19		6:14 18:22 32:7
procedural (3) 2:7 9:9	providers (1) 12:16			responsibility (6)		34:23 48:21 57:15
	provider's (2) 13:18			51:16 52:6 54:2		SOJP (8) 2:16 5:13 9:5

<p>19:18 23:16 24:11 30:13 53:22 solely (1) 17:21 Solicitor (1) 3:25 solution (3) 39:12 40:10,12 somebody (1) 15:6 someone's (1) 33:22 soon (2) 24:25 26:8 sort (6) 10:8 15:12 41:8,9 42:22 44:18 sought (3) 4:20 30:11 49:12 sources (1) 7:3 span (1) 49:24 speak (1) 38:3 specific (8) 30:3 32:15 34:6 40:6,13,14 42:10,25 specified (3) 12:9 13:24 35:21 spectre (1) 49:17 spending (1) 33:4 Sport (1) 1:19 spreading (1) 50:14 staff (1) 7:11 stage (5) 2:10 4:14 6:24 30:6 49:16 stand (1) 37:13 standards (1) 54:15 start (3) 7:25 15:20 21:17 starting (2) 10:16 40:11 State (1) 8:10 statement (2) 18:4 21:16 statements (10) 5:20 10:11 16:7 32:20 38:13 40:25 41:18 55:7,10 58:15 States (36) 1:18,24 2:15 3:12 6:5 7:19 9:5 19:13,13 21:24 24:21 27:8 35:6 37:4,13,17,23 38:3 38:10 39:1 41:1 42:14 43:4,15,18 44:3,9,15,20 45:5,9 45:16 50:4 53:13 54:2,9 status (19) 2:21 3:19 3:21,24 4:4,9 5:18 16:24,25 17:2 18:20 51:17,24 52:7 56:25 57:1,5,6 58:11 Stephenson (1) 2:4 steps (3) 17:19 37:24 38:4 stop (1) 49:3 storage (1) 18:6 stories (1) 32:4 story (1) 32:24 strongly (1) 54:11 struck (1) 56:4 struggle (1) 42:21 subject (1) 18:16 submission (8) 5:23 19:10 28:4 30:4 41:25 43:23 47:9 56:24 submissions (17) 1:13 10:3 31:18 36:23 37:3,17 45:20,22 46:1 49:20 54:21 54:24 58:19 60:3,4 60:5,6 submit (4) 12:22 15:16 28:7 44:2</p>	<p>submitted (1) 5:9 subpoenaed (1) 36:6 subsequently (1) 13:15 substantial (1) 54:8 success (1) 45:12 successfully (1) 12:4 suffered (4) 8:12 32:5 32:6,25 sufficient (1) 19:8 suggest (1) 7:9 suggested (3) 4:21 45:3,7 suggestion (2) 45:6 53:8 suggestions (1) 37:15 suggests (1) 52:17 summarise (2) 25:3 31:21 summarised (1) 12:19 summarises (1) 28:20 summarising (2) 50:5 52:9 summary (3) 6:24 25:7 32:13 summons (38) 4:18,24 19:20 20:9 21:23 22:11,17,21,25 23:10,24 24:5,6,8 24:10,10 25:11,18 27:12 28:6 29:12 29:22 30:8 33:13 33:16,19,21 34:19 37:18,20 47:11,13 48:2,5,15 50:9 56:20 57:17 summonses (4) 20:10 22:20 23:6,15 summonsing (1) 20:15 supplied (6) 18:4 22:16,17 32:18 40:19 42:14 supply (2) 22:5 27:6 support (1) 56:15 supports (1) 49:6 supposed (1) 40:8 sure (5) 8:14 10:2 15:25 19:9 35:11 suspect (1) 38:25 suspects (1) 37:12 system (8) 8:9 38:22 40:20 41:19 42:3 42:18 43:3,7</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>tab (4) 10:1 17:5,5 22:22 take (23) 4:14 5:15 7:24 9:17,25 10:15 17:19 21:5 22:21 24:19 25:5 29:4 36:5 37:24 38:5 39:20,23,25 47:18 50:25 51:11 57:4 59:5 taken (4) 6:18 16:8 32:14 37:18 takes (3) 15:6 19:4 56:18 talk (1) 31:22 task (2) 24:18 45:19 team (4) 8:13 33:4 47:5 48:18 telephone (3) 3:9 12:10 40:1 tell (1) 1:10 tenet (1) 17:17 tension (2) 55:19 56:5 term (3) 32:5 53:5 56:11</p>	<p>termed (1) 59:2 terms (17) 2:18 6:4,7 9:19 12:13 16:14 16:20 23:9,19 24:21 29:8 30:14 32:3 46:4 50:2 53:1 55:21 text (1) 57:24 thank (11) 1:14 3:5 28:18,20 31:12,19 36:23 45:21 46:2 54:23 59:15 therapeutic (1) 34:21 thereto (1) 26:3 thing (2) 41:9 55:5 things (2) 31:1 44:16 think (8) 28:18,23,24 29:1 31:15 36:25 45:22 54:6 thinks (1) 53:5 third (7) 2:19 5:11 18:2 41:20 44:5 45:14 58:24 Thirdly (1) 58:6 thorough (1) 55:21 thought (4) 21:8 35:16 36:9 42:22 thread (1) 46:9 three (5) 1:18 2:9 38:6 38:7 51:2 threshold (2) 52:3,4 tick (1) 34:5 tied (1) 53:11 time (14) 3:25 4:1 6:20 21:6,12 24:3 24:14,19 32:14 39:9,13 44:2 53:24 56:18 timeframe (1) 14:7 times (1) 59:15 timetable (3) 58:17,24 59:13 today (22) 1:3,9,17,23 3:15 4:13 7:13 10:1 10:3 16:18 19:15 23:4 24:10 31:5 38:3 47:12 48:4 52:24 57:13 58:6 58:10 59:12 told (2) 32:4 33:12 tomorrow (1) 49:2 touch (1) 38:9 translated (1) 54:19 transcribers (1) 55:1 transferred (3) 43:14 43:18,21 transmission (1) 30:17 treat (1) 4:5 treated (1) 44:17 tribunal (2) 42:21 45:9 tries (1) 50:24 troubles (1) 44:3 trust (1) 34:24 Tuesday (1) 59:4 turn (7) 15:23 17:4 25:24 56:24 57:13 58:10,17 Turning (2) 26:6 50:13 two (9) 9:20 11:17 13:2 14:21 29:16 35:7 37:15 46:14 51:6</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>ultimate (1) 40:23 ultimately (3) 33:19 40:24 41:6 unable (1) 24:3 unacceptable (1) 39:3 unclear (1) 35:20</p>	<p>uncontrolled (1) 41:21 unconvicted (1) 38:25 undergo (1) 32:2 underlying (1) 33:5 undermined (1) 35:1 understand (7) 7:16 23:2,3 24:12 26:1 26:20 57:11 understanding (5) 33:17 34:13,15 35:8 58:20 understands (2) 20:12 35:11 understood (7) 5:25 10:24 15:11 16:1 28:5 31:6 53:16 undertake (1) 18:1 undertakes (1) 17:14 undertaking (4) 17:17 35:3,19,21 undertakings (8) 5:11 5:14 17:3,7 19:6,8 30:17 58:7 unredacted (2) 13:13 13:14 unsatisfactory (1) 51:9 unworkable (2) 21:2,7 updated (1) 2:25 uploaded (2) 40:20 42:2 urge (1) 35:25 urges (1) 36:17 use (3) 17:3 31:7 47:2 usual (1) 22:12</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>validity (1) 24:13 variation (1) 14:1 versus (1) 29:22 victims (3) 29:9 35:15 44:7 view (5) 4:3 32:23 36:25 47:21 56:5 viewed (1) 33:21 virtue (2) 21:24 37:22 voluntarily (1) 20:1 vulnerability (3) 36:16 46:17 50:12 vulnerable (4) 8:5 46:8,23 56:3</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>waive (1) 33:3 want (12) 5:19 33:10 38:6,9 40:2 44:6 46:4 50:15 52:17 54:9,17 58:15 wanting (1) 44:25 warning (1) 53:23 warranted (1) 43:24 way (26) 4:23 14:17 15:19 22:12 23:20 28:8,21 29:4 31:9 37:6,19,21 38:4,17 41:7,16,19 43:7 45:15 47:16 52:10 52:18,19 54:4 58:3 59:11 ways (2) 29:15 39:22 website (4) 1:9 11:9 16:11 23:14 weekend (1) 39:11 weeks (1) 7:25 went (1) 26:1 whatsoever (2) 36:4 56:1 whilst (4) 7:23 8:10 22:9 32:15</p>	<p>wholly (2) 37:5 51:13 wide (2) 7:2 23:16 widely (2) 8:20 16:17 wide-ranging (2) 6:4,6 willingness (1) 20:7 wish (7) 5:4 9:15 20:3 36:22 37:23 38:4 55:9 wished (1) 25:11 wishes (1) 42:25 withdrawn (1) 49:16 witness (12) 10:11 11:13 13:12 16:7 18:4 21:14 32:19 38:24 41:14,18 46:23,24 witnesses (9) 10:12 21:11 28:2 37:12 42:11 43:1 56:3 59:11,15 wording (7) 5:5 14:20 17:16 22:24 23:6 23:15 57:22 words (3) 13:4 14:10 40:7 work (18) 1:7 2:14 6:2 6:25 7:1 8:1 17:15 18:12 20:3,14 21:18 24:20 27:17 43:13 45:9 48:21 49:9 56:21 workable (2) 21:20 40:11 worked (1) 59:6 worry (1) 35:16 write (1) 30:24 writing (2) 13:16 25:19 written (2) 13:22 58:20 wrote (2) 25:22 31:20</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>year (2) 21:6 56:7 yellow (3) 12:23 13:4 38:18 young (1) 8:5</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>1 (13) 4:16 11:10,11 13:12 16:4 22:22 41:15 43:14 59:3,5 59:7,9 60:3 11 (2) 25:9 47:18 12 (1) 3:17 12,000 (1) 7:10 13 (7) 3:7 10:16 28:24 31:20 36:15 47:16 53:5 132 (3) 31:23 33:9 56:12 133 (2) 7:17 26:1 14 (2) 20:18 24:1 15 (4) 17:6,9 19:3 50:2 15.1 (1) 17:16 15.2 (1) 17:24 15.3 (1) 18:6 15.4 (1) 18:7 16 (2) 1:1 18:11 17 (3) 10:22,25 18:13 17.1 (1) 12:9 17.2 (1) 12:7 18 (1) 12:14 1945 (1) 6:9 1960s (1) 15:8</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2 (16) 3:18 10:5 11:14 13:15 14:11 16:2</p>	<p>16:12 21:24 25:17 25:25 40:21 41:13 43:14 58:8,25 59:17 2,000 (1) 7:11 2,500 (1) 37:8 2.00 (1) 1:2 20.4 (2) 41:24 42:4 20.4.1 (1) 42:7 2007 (3) 22:1,2 24:7 2014 (2) 1:1 59:17 22 (2) 59:4,14 23 (1) 22:23 24 (2) 13:7,9 24.3 (4) 5:5 14:9,12 57:22 27 (1) 13:19</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>3 (16) 1:5 9:8 10:16 13:17 16:18 19:22 21:19 23:24 25:8 26:6,11 56:7,18,20 59:3,4 3,30 (2) 54:23 55:13 30 (1) 28:16 31 (1) 60:4 37 (1) 60:5</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>4 (4) 10:8 12:3 24:7,13 4.10 (1) 55:16 4.18 (1) 59:16 45 (1) 60:6 47 (1) 34:3 48 (1) 49:1</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>5 (2) 30:7 55:6 50 (1) 35:9 55 (2) 34:5 60:7</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>6 (2) 16:2 25:23</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>7 (2) 10:1 43:12</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p>8 (3) 17:5 41:23 43:11</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>96 (1) 19:23</p>
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