

<p>1 Friday, 2 November 2018</p> <p>2 (11.00 am)</p> <p>3 (Proceedings delayed)</p> <p>4 (11.08 am)</p> <p>5 IN PRIVATE</p> <p>6 SIR MARTIN MOORE-BICK: Good morning, everyone. Can I just</p> <p>7 begin by reminding you that reporting restrictions as in</p> <p>8 place on Wednesday continue to apply to this</p> <p>9 application.</p> <p>10 Now, Ms Felix, can I suggest you come and address me</p> <p>11 from the bench here. Thank you.</p> <p>12 Yes.</p> <p>13 Application on behalf of the Crown Prosecution Service</p> <p>14 by MS FELIX</p> <p>15 MS FELIX: Sir, may I begin with sincere apologies on behalf</p> <p>16 of the CPS for the lateness of this application, and the</p> <p>17 difficulties that we know have arisen as a result of</p> <p>18 that application being at the time it is.</p> <p>19 Can I set it out in this way -- and I don't want to</p> <p>20 engage in trying to attribute blame anywhere; I don't</p> <p>21 think it helps you, sir, in the task that we're inviting</p> <p>22 you to address today. But as soon as those instructing</p> <p>23 me became aware of the very real difficulty, which was</p> <p>24 on Tuesday, steps were immediately taken to try and deal</p> <p>25 with the issue.</p> <p>Page 1</p>	<p>1 morning observations, submissions, from a range of other</p> <p>2 parties. Have you seen them?</p> <p>3 MS FELIX: I have very briefly seen them.</p> <p>4 SIR MARTIN MOORE-BICK: Yes. You haven't had much time to</p> <p>5 digest them.</p> <p>6 MS FELIX: No, I haven't.</p> <p>7 SIR MARTIN MOORE-BICK: But I suspect much of what they</p> <p>8 say -- shall I put it like that -- doesn't come as any</p> <p>9 surprise.</p> <p>10 MS FELIX: No, it doesn't.</p> <p>11 SIR MARTIN MOORE-BICK: All right, thank you.</p> <p>12 MS FELIX: Much of what I have to say is in the written</p> <p>13 application. But it may be that I can assist to some</p> <p>14 degree with headlining, if you like, the four topics</p> <p>15 that I seek to address you upon, and then to go to each</p> <p>16 of those by reference to the written document that you</p> <p>17 have and just add a little to them, if I may.</p> <p>18 The application itself is addressed at paragraph 1</p> <p>19 of the document that I have submitted, and it seeks two</p> <p>20 alternative courses: one is the restriction order in</p> <p>21 respect of the evidence, and the other is to invite you,</p> <p>22 sir, to change the order of proceedings that's already</p> <p>23 been timetabled -- and I have no doubt whatsoever of the</p> <p>24 tremendous time and effort that has gone into ensuring</p> <p>25 that people are able to give evidence at the time that</p> <p>Page 3</p>
<p>1 But that is why, as I put it, we are where we are.</p> <p>2 SIR MARTIN MOORE-BICK: Yes. Well, some monitoring of the</p> <p>3 witness arrangements seems to have been going on,</p> <p>4 because looking at paragraph 8 of your application, you</p> <p>5 say that you didn't know when they were going to give</p> <p>6 evidence, but it was understood that the evidence was to</p> <p>7 be given after the trial had been completed. So someone</p> <p>8 seems to have been showing some interest in these</p> <p>9 things, although possibly not sufficient interest.</p> <p>10 MS FELIX: Yes. Well, I can tell you where that comes</p> <p>11 about, because I had a conference with the officers</p> <p>12 about two weeks ago, at which point I learned that they</p> <p>13 were to be giving evidence before this inquiry. But</p> <p>14 I walked away from that -- perhaps not having asked</p> <p>15 enough questions -- with the firm understanding that</p> <p>16 their evidence was to be given after our trial, so</p> <p>17 I didn't trouble myself at that point.</p> <p>18 SIR MARTIN MOORE-BICK: Right.</p> <p>19 MS FELIX: So that's where that comes from.</p> <p>20 SIR MARTIN MOORE-BICK: Yes, all right, thank you.</p> <p>21 MS FELIX: Can I turn to the application.</p> <p>22 SIR MARTIN MOORE-BICK: Yes.</p> <p>23 MS FELIX: You have, I hope, my written document.</p> <p>24 SIR MARTIN MOORE-BICK: Yes.</p> <p>25 Now, before you go any further, I've received this</p> <p>Page 2</p>	<p>1 they do -- and to invite you to move these two witnesses</p> <p>2 to the conclusion of the criminal trial, and what I mean</p> <p>3 by conclusion is the return of verdicts by the jury.</p> <p>4 SIR MARTIN MOORE-BICK: Whenever that may be.</p> <p>5 MS FELIX: My anticipation is -- the witness order at the</p> <p>6 moment is that the evidence will complete by Wednesday,</p> <p>7 and the summing-up, speeches and the jury out on</p> <p>8 Wednesday. That's what I see happening.</p> <p>9 SIR MARTIN MOORE-BICK: That's on the assumption you get</p> <p>10 a clean start on Monday morning; is that right?</p> <p>11 MS FELIX: We are fixed on Monday morning.</p> <p>12 SIR MARTIN MOORE-BICK: Right, good.</p> <p>13 MS FELIX: My witness timetable anticipates that at</p> <p>14 10 o'clock any legal issues as there are will be dealt</p> <p>15 with. I anticipate opening the case by about 11 o'clock</p> <p>16 in the morning. I don't anticipate being more than</p> <p>17 about half an hour opening the case, and then to begin</p> <p>18 calling witnesses.</p> <p>19 SIR MARTIN MOORE-BICK: Yes.</p> <p>20 MS FELIX: So I expect the Crown's case to close by Tuesday</p> <p>21 lunchtime.</p> <p>22 I accept of course the vagaries of a criminal trial</p> <p>23 mean that --</p> <p>24 SIR MARTIN MOORE-BICK: Well, you never quite know what will</p> <p>25 happen in litigation of any sort, do you? And sometimes</p> <p>Page 4</p>

<p>1 things run to plan and sometimes they don't.</p> <p>2 MS FELIX: Yes, and all the more so in the context of</p> <p>3 a criminal trial.</p> <p>4 Of the alternatives that I've advanced there at</p> <p>5 paragraph 1, for reasons that I'll come to, it's our</p> <p>6 submission that when you come to balance the competing</p> <p>7 interests of ensuring this inquiry progresses</p> <p>8 appropriately to its conclusion against the need for</p> <p>9 openness, which I know you are particularly keen to</p> <p>10 ensure, and the public interest in maintaining the</p> <p>11 administration of justice, which is what I say is at</p> <p>12 risk here, then the balance falls in favour of delaying</p> <p>13 evidence at this inquiry.</p> <p>14 If you are against me on that -- and of course</p> <p>15 I have to recognise --</p> <p>16 SIR MARTIN MOORE-BICK: When you say the balance falls in</p> <p>17 favour of delaying the evidence, do you mean that</p> <p>18 I should make a restriction order --</p> <p>19 MS FELIX: No. The restriction order obviously will</p> <p>20 restrict the press, and there must be a degree of</p> <p>21 openness for them and their right there, as well as</p> <p>22 others, and when you come to look at that openness, as</p> <p>23 well as maintaining the administration of justice, and</p> <p>24 you balance that against the difficulties that will be</p> <p>25 caused if these witnesses are put back, we say that the</p> <p style="text-align: center;">Page 5</p>	<p>1 SIR MARTIN MOORE-BICK: Right.</p> <p>2 MS FELIX: Can I turn to the background --</p> <p>3 SIR MARTIN MOORE-BICK: Are we ad idem to this extent: that</p> <p>4 you recognise that at root, however you get to this</p> <p>5 question, it involves a balance between the need for</p> <p>6 openness in the inquiry's proceedings -- or the public</p> <p>7 interest in the inquiry's proceedings being fully open</p> <p>8 and the public interest in the administration of</p> <p>9 justice, in this case the trial at Isleworth. Balancing</p> <p>10 those competing considerations. Is that right?</p> <p>11 MS FELIX: Yes, and how best that can be achieved.</p> <p>12 SIR MARTIN MOORE-BICK: All right.</p> <p>13 MS FELIX: So it's my submission that both of those can be</p> <p>14 achieved with a degree of delay.</p> <p>15 SIR MARTIN MOORE-BICK: But they both involve some degree of</p> <p>16 assessment of the risk of prejudice to the trial.</p> <p>17 MS FELIX: Yes.</p> <p>18 SIR MARTIN MOORE-BICK: Which might be a good place at which</p> <p>19 to start.</p> <p>20 MS FELIX: Which is where I'm turning now.</p> <p>21 SIR MARTIN MOORE-BICK: Right.</p> <p>22 MS FELIX: Paragraph 4 in the document that I've submitted</p> <p>23 sets out really in a nutshell what the criminal trial</p> <p>24 relates to. Unless you wish me to go any further on</p> <p>25 that --</p> <p style="text-align: center;">Page 7</p>
<p>1 balance falls in favour of the difficulties.</p> <p>2 SIR MARTIN MOORE-BICK: Right, yes.</p> <p>3 MS FELIX: If you're against me on that, then we submit the</p> <p>4 proportionate response is to make a limited restriction</p> <p>5 order as to publication of that evidence before this</p> <p>6 inquiry. I say "limited" -- limited to the extent that</p> <p>7 there should not be any publication until the verdicts</p> <p>8 from the jury.</p> <p>9 We submit that that is a proportionate response to</p> <p>10 the substantial risk.</p> <p>11 So that is the application.</p> <p>12 SIR MARTIN MOORE-BICK: So what is your principal</p> <p>13 application? I have to say that the way I'd read your</p> <p>14 written document, your primary submission was for</p> <p>15 a restriction order.</p> <p>16 MS FELIX: I know.</p> <p>17 SIR MARTIN MOORE-BICK: And failing that, that I should</p> <p>18 direct that their evidence be deferred.</p> <p>19 MS FELIX: No, I'm sorry. You'll appreciate there was some</p> <p>20 degree of rush trying to get this document together.</p> <p>21 That's our fault, I recognise that.</p> <p>22 When one comes to really look at it, and you are</p> <p>23 balancing restricting public access, and balancing how</p> <p>24 else the aim can be achieved, in my submission the</p> <p>25 proper course is to first seek to put the witnesses off.</p> <p style="text-align: center;">Page 6</p>	<p>1 SIR MARTIN MOORE-BICK: No, no. I have read this, but there</p> <p>2 is no need.</p> <p>3 MS FELIX: The evidence and the relevance of the evidence is</p> <p>4 at paragraphs 5 to 7.</p> <p>5 SIR MARTIN MOORE-BICK: You could help me on one thing,</p> <p>6 though.</p> <p>7 MS FELIX: Yes.</p> <p>8 SIR MARTIN MOORE-BICK: I can understand -- at least I think</p> <p>9 I understand -- the way it's put in relation to</p> <p>10 Mrs Wahabi and Mr Gomes. I'm not sure I understand</p> <p>11 quite so clearly how reading the evidence of</p> <p>12 Mr Chebiouni comes into the same category.</p> <p>13 MS FELIX: It's the reporting of that evidence. It's the</p> <p>14 extent to which it is reported widely.</p> <p>15 SIR MARTIN MOORE-BICK: Well, doesn't that depend on what</p> <p>16 he --</p> <p>17 MS FELIX: I have to say, I haven't seen the evidence of</p> <p>18 Zak Chebiouni --</p> <p>19 SIR MARTIN MOORE-BICK: If you don't know what he's going to</p> <p>20 say -- he's not going to appear giving his evidence,</p> <p>21 because I think what's envisaged for him is that his</p> <p>22 statement will be formally put into the record and parts</p> <p>23 of it may be read, not necessarily the whole of it.</p> <p>24 Now, unless you know what he is going to say in his</p> <p>25 statement, how can you possibly suggest that reading out</p> <p style="text-align: center;">Page 8</p>

<p>1 any part of it could have some prejudicial effect?</p> <p>2 MS FELIX: I'm only able to discern from the evidence of</p> <p>3 Hanan Wahabi, whose statements to this inquiry have been</p> <p>4 given to us on a confidential basis, describes precisely</p> <p>5 what he did on that night.</p> <p>6 SIR MARTIN MOORE-BICK: Well, maybe she does. I mean, as</p> <p>7 I understand it, the basis of your application is not</p> <p>8 what she may actually say in evidence, thereby affecting</p> <p>9 the jury's view of things, but how she will appear as</p> <p>10 a witness, or may appear as a witness.</p> <p>11 MS FELIX: It's not just how she may appear; it's the nature</p> <p>12 of her evidence and how that's likely to be reported in</p> <p>13 the press.</p> <p>14 SIR MARTIN MOORE-BICK: Well, we have two different things</p> <p>15 at work here, haven't we? I mean, in most cases,</p> <p>16 I would've thought, these sort of applications are put</p> <p>17 on the basis that the witness will say something which</p> <p>18 may be relevant to the issues in the trial, that what he</p> <p>19 or she says will be reported and read by the jury, and</p> <p>20 improperly taken into account as if it were part of the</p> <p>21 evidence in the trial.</p> <p>22 Now, that's a perfectly understandable way of</p> <p>23 putting it, and it depends on what the witness actually</p> <p>24 says.</p> <p>25 It strikes me that it's rather different if the</p> <p style="text-align: center;">Page 9</p>	<p>1 I know what my case is; that doesn't mean to say</p> <p>2 that the defendant isn't entitled to advance his, nor to</p> <p>3 invite the jury to reach a conclusion about it.</p> <p>4 SIR MARTIN MOORE-BICK: Of course.</p> <p>5 MS FELIX: So there are polar opposite between these</p> <p>6 witnesses and the defendant, my case and the defendant.</p> <p>7 The jury are going to have to assess the evidence of the</p> <p>8 defendant, as well as the evidence of the two witnesses</p> <p>9 who give evidence before them.</p> <p>10 In doing that, my concern is that they -- and</p> <p>11 I accept the judge will direct them that they must try</p> <p>12 this case on the evidence, that is the usual direction.</p> <p>13 SIR MARTIN MOORE-BICK: Mm.</p> <p>14 MS FELIX: The concern is that if there is widespread</p> <p>15 reporting and publication of what is -- and I mean no</p> <p>16 discourtesy, and I know there is some criticism in some</p> <p>17 of the documents in place before you, to Ms Wahabi or to</p> <p>18 Mr Gomes, nor do I seek to belittle the significance and</p> <p>19 importance of what they do say in those statements. We</p> <p>20 are concerned that when the jury come to weigh the</p> <p>21 evidence of both those, if there has been widespread,</p> <p>22 very dramatic, sympathetic coverage of that evidence</p> <p>23 from this inquiry, that may -- and we say there's</p> <p>24 a substantial risk -- colour their approach to assessing</p> <p>25 not only the witnesses' evidence, but significantly in</p> <p style="text-align: center;">Page 11</p>
<p>1 argument is -- and this is what I'd understood it to be,</p> <p>2 partly from what Ms Clarke said to me on Wednesday and</p> <p>3 partly from you've written here -- it's not the content</p> <p>4 of her evidence that troubles you, it's her appearance</p> <p>5 on the live stream, which may give members of the jury</p> <p>6 who see it, or indeed members of the jury who read press</p> <p>7 comment on it, the impression that she's a reliable</p> <p>8 witness, and thereby make it more difficult for the</p> <p>9 defendant to undermine her credibility.</p> <p>10 MS FELIX: It is in part that, but it's also the likely</p> <p>11 sympathy that's going to be generated.</p> <p>12 SIR MARTIN MOORE-BICK: I'm having difficulty with this one,</p> <p>13 because I don't at the moment understand what sympathy</p> <p>14 for her plight has to do with either what she says or</p> <p>15 how she'll be regarded in her capacity as a witness.</p> <p>16 MS FELIX: I've got to be very careful about what I say,</p> <p>17 because I know the defendant's case to be what it is.</p> <p>18 The issue in the case -- he claims, as revealed in the</p> <p>19 indictment, that he lived at the address and that he was</p> <p>20 related to this family. That is plainly disputed by the</p> <p>21 evidence the Crown seeks to call.</p> <p>22 SIR MARTIN MOORE-BICK: Of course.</p> <p>23 MS FELIX: So there is a central issue that this jury will</p> <p>24 have to determine as to who is telling the truth about</p> <p>25 that.</p> <p style="text-align: center;">Page 10</p>	<p>1 assessing the defendant's evidence, and we say we are</p> <p>2 concerned about a risk of prejudice against him.</p> <p>3 SIR MARTIN MOORE-BICK: All right.</p> <p>4 MS FELIX: So it's not just that they will say she's</p> <p>5 brilliant, she's very credible; it's taking it all into</p> <p>6 account in the round.</p> <p>7 SIR MARTIN MOORE-BICK: All right.</p> <p>8 MS FELIX: Sir, I don't know if I can assist any further on</p> <p>9 that.</p> <p>10 SIR MARTIN MOORE-BICK: Well, I think I understand more</p> <p>11 clearly, or a little more clearly, how it's put anyway.</p> <p>12 Thank you.</p> <p>13 MS FELIX: Thank you.</p> <p>14 The legal basis for the application, which is dealt</p> <p>15 with at paragraph 10 and onwards, of course predicated</p> <p>16 on the basis that I'm inviting, first of all, for these</p> <p>17 witnesses to be put back.</p> <p>18 SIR MARTIN MOORE-BICK: Yes.</p> <p>19 MS FELIX: Your power comes from section 19, of course, and</p> <p>20 the extent of the order is to be found in section 19(3),</p> <p>21 and so it's my submission that you must be concerned</p> <p>22 with whether it's necessary in the public interest for</p> <p>23 a restriction order preventing publication of that</p> <p>24 evidence.</p> <p>25 SIR MARTIN MOORE-BICK: Yes.</p> <p style="text-align: center;">Page 12</p>

<p>1 MS FELIX: We submit that there is a public interest, 2 clearly, in maintaining the administration of justice 3 and ensuring that there isn't any substantial risk of 4 prejudice to the trial. 5 Paragraph 11 of my document sets out section 4 of 6 the Contempt of Court Act, not because I submit you may 7 make an order under that section, because, in fact, in 8 my submission it doesn't allow you to do so, but 9 because, as I say in my document, it may be that you 10 find it instructive, the approach to that, in how you 11 might consider exercising your powers to make the order 12 under section 19. 13 SIR MARTIN MOORE-BICK: Yes. 14 MS FELIX: That provides for avoiding a substantial risk of 15 prejudice to the administration of justice. 16 SIR MARTIN MOORE-BICK: Mm. Well, it gives rise to 17 consideration of analogous principles, doesn't it? 18 MS FELIX: Sorry? 19 SIR MARTIN MOORE-BICK: It gives rise to consideration of 20 similar principles, we just have the benefit of quite 21 a lot of judicial exposition of section 4(2) when we 22 have no comparable exposition of the operation of 23 section 19. 24 MS FELIX: Yes. 25 I have had this morning -- and, as I said, I've</p> <p style="text-align: center;">Page 13</p>	<p>1 trial is next week, it's very proximate, particularly 2 if, as is inevitable now, the earliest is going to be 3 next week, it's going to be at the same time as the 4 trial. 5 I also have in mind -- well, I draw your attention 6 to sympathy that might be generated. 7 SIR MARTIN MOORE-BICK: I'm still not sure I quite 8 understand this argument. 9 Is it that the jury might feel sympathy for the 10 experiences of Ms Wahabi and Mr Gomes, and might 11 therefore say to themselves, "Well, we feel sorry for 12 these people and so we give their evidence greater 13 credence"? 14 MS FELIX: I can't put it in that way. 15 SIR MARTIN MOORE-BICK: I'm struggling to find the rational 16 connection, that's all. 17 MS FELIX: I can't put it in that way because it is 18 inevitable, is it not, that anybody, any reasonable 19 person, is going to feel a significant degree of 20 sympathy for anybody who was involved in that. 21 SIR MARTIN MOORE-BICK: Of course. 22 MS FELIX: So I can't put it in that way. 23 But what we are at risk of ending up in a situation 24 of is reporting of harrowing detail in relation to 25 a specific witness who I am inviting the jury to -- and</p> <p style="text-align: center;">Page 15</p>
<p>1 looked very briefly at significant authorities set out 2 in the skeleton arguments. I had a look at Archbold 3 this morning, which is, of course, for me, where one 4 turns in the Crown Court when we come to consider these 5 matters. 6 SIR MARTIN MOORE-BICK: Well, at the moment I am inclined to 7 think that most of the principles -- I wouldn't say all 8 because it's quite a complex area of the law -- but one 9 of the best summaries of the principles at play is to be 10 found in the decision of the Court of Appeal in Sarker, 11 isn't it? 12 MS FELIX: Yes. 13 SIR MARTIN MOORE-BICK: Because there, the Lord Chief 14 Justice summarised the effect of a number of earlier 15 decisions -- 16 MS FELIX: Yes. 17 SIR MARTIN MOORE-BICK: -- and explained how one should go 18 about it. 19 MS FELIX: I agree. 20 Can I just draw out a number of -- just four 21 principles. 22 SIR MARTIN MOORE-BICK: Yes. 23 MS FELIX: There is significance in the proximity in timing 24 between the publication and the proceedings, and that's 25 why I make the submission I do that, given that the</p> <p style="text-align: center;">Page 14</p>	<p>1 I will invite the jury to say, "This witness is telling 2 you the truth; you can act upon it and be sure that what 3 she's telling you is right." 4 Of course, counsel representing the defendant will 5 wish to say, "You shouldn't accept that", and the risk 6 is that because this particular witness is giving 7 evidence here, and if it's widely reported will attract 8 particular attention, then sympathy might play a part in 9 a way that it should not do so. 10 I acknowledge that directions are given to juries 11 that they must not allow themselves to be driven by 12 sympathy, and they must bring -- 13 SIR MARTIN MOORE-BICK: Well, that's usually sympathy for 14 the victim, isn't it? 15 MS FELIX: Yes. 16 SIR MARTIN MOORE-BICK: And that's a very immediate 17 consideration. Neither of these witnesses is a victim 18 in the ordinary sense. 19 MS FELIX: No, but it's inevitable in a case like this that 20 the judge is going to have to direct the jury that they 21 mustn't allow that sort of material to influence them. 22 SIR MARTIN MOORE-BICK: Of course. 23 MS FELIX: But we all recognise that juries can be 24 influenced, and that is why there is in existence the 25 power. So that is --</p> <p style="text-align: center;">Page 16</p>

<p>1 SIR MARTIN MOORE-BICK: My point is really this: if judges 2 routinely direct juries that they mustn't be swayed by 3 sympathy for the victim of the crime, who will almost 4 invariably have given evidence about the experience 5 itself, and that's not thought to be a problem, why is 6 it a greater problem in a case like this, where the 7 people giving evidence are not the victims of the 8 crime -- I mean, they might be described as victims in 9 another sense, but not victims of the crime -- so why is 10 it a greater problem in this case? 11 MS FELIX: There's a distinction, in my respectful 12 submission, and it's this: one, where you're talking 13 about: don't allow yourself to be driven by sympathy in 14 relation to the victim, you're talking about the 15 evidence with which you're dealing before that court, 16 whereas what we're dealing with here is reporting 17 extraneously. So there is a difference, in my 18 submission. 19 SIR MARTIN MOORE-BICK: Yes, all right. Thank you. 20 MS FELIX: I know it's likely to be said: well, there has 21 been publication, and, of course, this inquiry, rightly, 22 has been the subject of continual reporting and 23 interest. But what the authorities also make clear is 24 that the fact that there might have been some risk of 25 prejudice previously doesn't then preclude a finding</p> <p style="text-align: center;">Page 17</p>	<p>1 publication of evidence before this inquiry during the 2 course of the trial, whereas the defence may be put off 3 to a degree making any application because of previous 4 reporting, I venture to suggest there may be 5 an application. I don't know what the judge will rule. 6 SIR MARTIN MOORE-BICK: Well, an application of what kind? 7 MS FELIX: That this trial shouldn't go on at this stage 8 because of prejudice. I make clear -- 9 SIR MARTIN MOORE-BICK: There are two possible applications 10 that could be made, are there not? Well, there may be 11 others of which I haven't thought, but certainly I can 12 see there might be two. 13 One is an application to stay the indictment. That 14 would have to be made right at the outset, wouldn't it? 15 MS FELIX: And that is never going to succeed. 16 SIR MARTIN MOORE-BICK: Well, you saved me the trouble of 17 saying it. 18 MS FELIX: It isn't going to succeed, because the 19 authorities make clear that proceedings should only be 20 stayed as an abuse if there's no other means of 21 resolving the issue that gives rise to the application 22 to stay. And plainly -- 23 SIR MARTIN MOORE-BICK: Essentially, it goes to the ability 24 to have a fair trial. 25 MS FELIX: Yes.</p> <p style="text-align: center;">Page 19</p>
<p>1 that this latest publication might create a further 2 substantial risk. 3 So, in my submission, the fact that there has been 4 previous reporting shouldn't affect your 5 decision-making. 6 SIR MARTIN MOORE-BICK: All right. 7 MS FELIX: Can I then turn to the submissions. 8 SIR MARTIN MOORE-BICK: Yes. 9 MS FELIX: It's our submission -- and I've said it, really, 10 but may I just summarise it -- without restriction -- 11 I do have to start there before I move on -- 12 SIR MARTIN MOORE-BICK: Well, I think it is a helpful place 13 at which to start, to be honest, for all sorts of 14 reasons. 15 MS FELIX: Without restriction, given the likelihood of 16 widespread publicity and the proximity of the trial with 17 such publication, there is, in my submission, 18 a substantial risk of prejudice arising in the criminal 19 trial. 20 I should tell you that the defence are very 21 conscious of this inquiry, obviously, being ongoing. 22 I'm not troubled by the fact that the inquiry is 23 ongoing, nor that this inquiry has had evidence before 24 it that touches upon some of the matters in ours. But 25 I venture to suggest that if there is widespread</p> <p style="text-align: center;">Page 18</p>	<p>1 SIR MARTIN MOORE-BICK: Yes. 2 MS FELIX: And plainly, that can be achieved if there is 3 widespread publication by putting the trial off. 4 SIR MARTIN MOORE-BICK: Quite. So the only application that 5 you are really concerned about is an application for 6 an adjournment. 7 MS FELIX: Yes. 8 SIR MARTIN MOORE-BICK: Thank you. 9 MS FELIX: I have in mind that both of these witnesses, as 10 I understand it, have been supportive of the 11 prosecution, wish the prosecution to take place -- 12 SIR MARTIN MOORE-BICK: Yes. 13 MS FELIX: -- and would wish to see this defendant dealt 14 with in the way the Crown seeks to do so. So there is 15 an interest for them to get this on. 16 I have seen a victim impact statement which makes 17 clear that having these criminal proceedings waiting in 18 the wings, if you like, has been an added stress to 19 these witnesses, and so that is something that we would 20 wish to avoid in their interest. 21 So if there is any application to stay, we would 22 say: no, you can alleviate it by putting the trial off. 23 It's for that reason that I set out what I do at 24 paragraph 16. 25 May I make clear that I am not inviting you, sir, to</p> <p style="text-align: center;">Page 20</p>

<p>1 assist the Crown in any way with demonstrating we've</p> <p>2 acted with all due diligence to seek to assist us in</p> <p>3 extending custody time limits. I am not speculating</p> <p>4 about what may or may not happen. What I am trying to</p> <p>5 do is to set out what may be the consequences, because</p> <p>6 one has to look to see where this can end up. It seemed</p> <p>7 to me right that you should be told, and you ought to</p> <p>8 have in mind, what may happen.</p> <p>9 But that's not your primary concern, and our primary</p> <p>10 application is that there is a substantial risk of</p> <p>11 prejudice, and that's why we make the application.</p> <p>12 So delay the evidence of the witnesses, and failing</p> <p>13 which, exercise your powers, please, under section 19,</p> <p>14 and make the order --</p> <p>15 SIR MARTIN MOORE-BICK: Well, can we just tease out what you</p> <p>16 say in paragraph 16 a bit.</p> <p>17 MS FELIX: Yes.</p> <p>18 SIR MARTIN MOORE-BICK: The argument, as I understand it, is</p> <p>19 essentially that if the witnesses give their evidence in</p> <p>20 the ordinary course, and it is live streamed as it would</p> <p>21 ordinarily be, the defendant might be prompted to apply</p> <p>22 to the judge to adjourn the trial.</p> <p>23 That would be an application, what, that he would</p> <p>24 have to make at the outset or could that be made at any</p> <p>25 stage?</p> <p style="text-align: center;">Page 21</p>	<p>1 an extension of the custody time limit.</p> <p>2 MS FELIX: Yes.</p> <p>3 SIR MARTIN MOORE-BICK: And there's a risk that the judge</p> <p>4 might say no.</p> <p>5 MS FELIX: Yes.</p> <p>6 SIR MARTIN MOORE-BICK: But that's a risk which I am in no</p> <p>7 real position to evaluate because you've given me no</p> <p>8 basis for evaluating it, and I don't think you're</p> <p>9 standing there saying that the CPS or the Crown in some</p> <p>10 other guise has not been proceeding with due diligence</p> <p>11 and expedition.</p> <p>12 MS FELIX: I'm not saying that.</p> <p>13 SIR MARTIN MOORE-BICK: So why would the judge not be</p> <p>14 willing to extend the custody time limit?</p> <p>15 MS FELIX: I don't know what the defence might have to say</p> <p>16 about that.</p> <p>17 SIR MARTIN MOORE-BICK: No, but you know the what facts are</p> <p>18 about the prosecution.</p> <p>19 MS FELIX: I know what the facts are and I know that it</p> <p>20 would be my submission that we have acted with all due</p> <p>21 diligence and expedition.</p> <p>22 What we may be faced with is the defence saying</p> <p>23 that, "This has come about because you, the</p> <p>24 prosecution" -- and that involves not just the CPS but</p> <p>25 the police, because so far as the Crown Court is</p> <p style="text-align: center;">Page 23</p>
<p>1 MS FELIX: I think he can make it at any stage. It may</p> <p>2 require the discharge of a jury.</p> <p>3 SIR MARTIN MOORE-BICK: I was going to say, you would have</p> <p>4 to discharge the jury then.</p> <p>5 MS FELIX: Yes.</p> <p>6 SIR MARTIN MOORE-BICK: So the first question is the</p> <p>7 defendant might or might not make that application.</p> <p>8 Then the question is whether there is a significant</p> <p>9 risk that the judge might accede to it.</p> <p>10 MS FELIX: Yes.</p> <p>11 SIR MARTIN MOORE-BICK: Then the question is: when could the</p> <p>12 trial be refixed? I've no idea what the problems facing</p> <p>13 listing officers in Isleworth are, they are probably as</p> <p>14 great as they are everywhere else, but there would be</p> <p>15 a reason to bring this case back as soon as possible --</p> <p>16 as soon as it was safe to do so.</p> <p>17 MS FELIX: Yes, I was going to say, if the judge has already</p> <p>18 acceded to the proposition, then it would be difficult</p> <p>19 to --</p> <p>20 SIR MARTIN MOORE-BICK: So the argument then runs: if the</p> <p>21 judge were to adjourn the trial, or put the trial back</p> <p>22 in one form or another, it might go back beyond the</p> <p>23 custody time limit.</p> <p>24 MS FELIX: Yes.</p> <p>25 SIR MARTIN MOORE-BICK: Then the Crown would apply for</p> <p style="text-align: center;">Page 22</p>	<p>1 concerned, we are one -- "have not taken steps</p> <p>2 appropriately to ensure that this situation didn't come</p> <p>3 about, and the reason that we have now found ourselves</p> <p>4 in this position of having to make the application to</p> <p>5 either adjourn this trial or to discharge this jury is</p> <p>6 because you didn't act appropriately."</p> <p>7 SIR MARTIN MOORE-BICK: Well, now, how can I evacuate the</p> <p>8 prospect of the judge declining to extend custody time</p> <p>9 limits when the application is based on what's been</p> <p>10 going on here, for which you're not responsible? I just</p> <p>11 don't see how I can make an assessment of that.</p> <p>12 MS FELIX: You can't, and neither do I invite you to do so.</p> <p>13 SIR MARTIN MOORE-BICK: Well, you have to, don't you,</p> <p>14 because it's an integral step in your argument, which we</p> <p>15 haven't got to the end of yet, but that the judge may</p> <p>16 decide to adjourn the trial, but may not agree to extend</p> <p>17 the custody time limits.</p> <p>18 Well, now, that's a step in the argument that I have</p> <p>19 to consider, isn't it?</p> <p>20 MS FELIX: In my respectful submission, you don't need to</p> <p>21 embark on that.</p> <p>22 SIR MARTIN MOORE-BICK: Right.</p> <p>23 MS FELIX: What you need to be concerned with is whether you</p> <p>24 are satisfied that there is a substantial risk of the</p> <p>25 trial being prejudiced. All of those other matters are</p> <p style="text-align: center;">Page 24</p>

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<p>1 simply to inform you of what consequences might flow.</p> <p>2 You can't assess and second guess --</p> <p>3 SIR MARTIN MOORE-BICK: Well, just a minute. I mean,</p> <p>4 I think the question I have to ask myself is: will the</p> <p>5 administration of justice be prejudiced?</p> <p>6 Now, let's assume it were -- if it were clear that</p> <p>7 the trial could be put off without any adverse</p> <p>8 consequences of the kind you're suggesting, it would be</p> <p>9 quite difficult to say that the administration of</p> <p>10 justice was significantly prejudiced.</p> <p>11 Your argument, as I understand it, is leading to</p> <p>12 a conclusion which is the possibility that the defendant</p> <p>13 might abscond and, although he could be tried in his</p> <p>14 absence, would not be amenable to punishment unless he</p> <p>15 were caught.</p> <p>16 MS FELIX: I don't suppose he will come back.</p> <p>17 SIR MARTIN MOORE-BICK: I have personal experience of</p> <p>18 absconders having been tried in their absence and</p> <p>19 subsequently caught, but that's a different matter.</p> <p>20 But these are the steps in your argument leading to</p> <p>21 the punchline, which is: the defendant might abscond.</p> <p>22 MS FELIX: That is a possible end result.</p> <p>23 SIR MARTIN MOORE-BICK: Well, it's the only one you're</p> <p>24 concerned about, isn't it?</p> <p>25 MS FELIX: Well, no. What I am concerned about is trying to</p> <p style="text-align: center;">Page 25</p>	<p>1 ultimate success or failure of the trial going to its</p> <p>2 end, but the timing of the trial.</p> <p>3 MS FELIX: Well, yes --</p> <p>4 SIR MARTIN MOORE-BICK: I think it follows from what you've</p> <p>5 just been saying that you would be making exactly the</p> <p>6 same argument if the custody time limits for some reason</p> <p>7 didn't expire until, let's say, end of March next year</p> <p>8 so that there was obviously time to get the trial back</p> <p>9 on and completed before they expire.</p> <p>10 MS FELIX: Yes, I would.</p> <p>11 SIR MARTIN MOORE-BICK: So it's all about timing?</p> <p>12 MS FELIX: It is. It's about making sure that the trial, as</p> <p>13 it is about to begin, can take place without any risk of</p> <p>14 prejudice to the defendant. That's what I'm concerned</p> <p>15 with. Which is why I say although I set out at</p> <p>16 paragraph 16 what may happen, that's really just for the</p> <p>17 sake of completeness.</p> <p>18 SIR MARTIN MOORE-BICK: All right.</p> <p>19 MS FELIX: That's why I say, in my respectful submission,</p> <p>20 although it may cause difficulties, the best course to</p> <p>21 achieve all the necessary ends is to put these witnesses</p> <p>22 back until the conclusion of the trial.</p> <p>23 If I'm --</p> <p>24 SIR MARTIN MOORE-BICK: So do you have a submission to make</p> <p>25 about the balance between not just inconvenience but</p> <p style="text-align: center;">Page 27</p>
<p>1 ensure that this trial takes place next week in the</p> <p>2 interests of the witnesses.</p> <p>3 SIR MARTIN MOORE-BICK: Well -- yes, all right.</p> <p>4 MS FELIX: That's what I am concerned about, and that that</p> <p>5 trial should take place without a risk of prejudice to</p> <p>6 the defendant. That is what I am interested in.</p> <p>7 What comes thereafter, if that doesn't materialise,</p> <p>8 is simply to inform you of what may happen.</p> <p>9 In my submission, what you should be turning your</p> <p>10 mind to, sir, is whether there is a substantial risk of</p> <p>11 prejudice arising out of this evidence from this inquiry</p> <p>12 being widely publicised. If you are satisfied of that,</p> <p>13 then the next question is what you can and should do to</p> <p>14 avoid that.</p> <p>15 We submit that the best course, although it will</p> <p>16 cause untold difficulties for timetabling, when you</p> <p>17 balance -- if you come to the conclusion that there is</p> <p>18 a substantial risk, when you balance the interests of</p> <p>19 maintaining the administration of justice, and</p> <p>20 maintaining openness -- that's where I began -- then the</p> <p>21 balance falls in favour of the difficulties that will be</p> <p>22 caused in timetabling.</p> <p>23 SIR MARTIN MOORE-BICK: Well, we're now talking about</p> <p>24 timetabling on both sides of the equation, aren't we?</p> <p>25 Because you're now saying your concern is not one of</p> <p style="text-align: center;">Page 26</p>	<p>1 disruption and so on to the inquiry, and any potential</p> <p>2 delay to the trial process? And why is the trial more</p> <p>3 important than the inquiry's programme, which is very</p> <p>4 carefully constructed, involves a lot of different</p> <p>5 people giving evidence at certain stages, and might be</p> <p>6 seriously disrupted if I had to change the order of</p> <p>7 taking evidence?</p> <p>8 MS FELIX: I do not -- and I want to make it absolutely</p> <p>9 clear -- I am not suggesting for one moment that this</p> <p>10 isn't a most important and significant inquiry, and that</p> <p>11 there are most significant and important matters that</p> <p>12 it's turning its attention to.</p> <p>13 But we are also, balanced in that -- and we have to</p> <p>14 keep this in mind, no matter what the Crown's case may</p> <p>15 be against this defendant -- he is at the moment sitting</p> <p>16 in custody and presumed innocent. And until such time</p> <p>17 as that jury returns a verdict as to his guilt, he</p> <p>18 retains that.</p> <p>19 SIR MARTIN MOORE-BICK: Yes.</p> <p>20 MS FELIX: As difficult as it is, I come to this as</p> <p>21 prosecution counsel in a trial where a man risks losing</p> <p>22 his liberty for a considerable period of time. Thus</p> <p>23 far, the defendants who have been sentenced have pleaded</p> <p>24 guilty. The factual matrix of each of those cases, as</p> <p>25 I understand them, have been much less serious than this</p> <p style="text-align: center;">Page 28</p>

1 one, and sentences -- I think the lowest one I saw was
 2 some three-and-a-half years on a plea.
 3 SIR MARTIN MOORE-BICK: Yes.
 4 MS FELIX: I anticipate this defendant, were he convicted,
 5 would get a considerably longer period than that, and
 6 certainly any document I submit to the court will deal
 7 with that in that way.
 8 SIR MARTIN MOORE-BICK: Mm.
 9 MS FELIX: So it's a difficult submission I've just made.
 10 It's one I feel I must.
 11 SIR MARTIN MOORE-BICK: All right, thank you.
 12 MS FELIX: If you don't find favour for the reasons that
 13 you've just said, then we submit you can and you should
 14 exercise your powers under section 19.
 15 I know that, looking at the transcript from
 16 Wednesday, there was some concern about how it can be
 17 framed because of the nature of publications as they
 18 appear now, because we're not just talking about press
 19 and television; we all know people tweet, people blog,
 20 people engage in all sorts of social media. But in my
 21 submission, publication in any form -- and I note the
 22 wide definition of publication in the Contempt of Court
 23 Act -- you could properly say publication in any form,
 24 and that would cover everything.
 25 We submit it would be a proportionate response to

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1 restrict -- if you're not with me that the witnesses
 2 should be moved -- for a very limited period of time,
 3 which would be the conclusion of the trial.
 4 Now, just looking at this, I have on my witness
 5 order to call these witnesses on Monday. I anticipate,
 6 therefore, that the earliest they could come before this
 7 inquiry would be Tuesday. I anticipate, all going well,
 8 that we will have verdicts from the jury by Thursday, if
 9 not Friday.
 10 So, really, what I am inviting is a restriction
 11 order, if you feel you must go that way as opposed to
 12 putting the witnesses back, for a period of some
 13 72 hours, and, of course, whilst they're giving their
 14 evidence.
 15 SIR MARTIN MOORE-BICK: And you would be content, would you,
 16 for the reporting of their evidence to be permitted
 17 after they've given their evidence and before the jury
 18 has given a verdict?
 19 MS FELIX: No, that's why I'm saying until the conclusion of
 20 the trial.
 21 SIR MARTIN MOORE-BICK: Exactly. And in fact what you're
 22 asking me to do is to restrict publication of their
 23 evidence until there is a verdict, whenever that may be.
 24 MS FELIX: Well, I anticipate, given the length of time --
 25 SIR MARTIN MOORE-BICK: Well, you're assuming no hitches in

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1 the trial.
 2 MS FELIX: Yes, I am.
 3 SIR MARTIN MOORE-BICK: You're also assuming that the jury
 4 doesn't have to be discharged for some other reason
 5 completely extraneous to this, which has been known to
 6 happen, and you're also assuming the jury can agree,
 7 which again sometimes doesn't happen.
 8 MS FELIX: If the jury has to be discharged and the trial
 9 has to go off, then we will be in a situation where we
 10 can put it in at a time after a reasonable period of
 11 time after they've given evidence here.
 12 If --
 13 SIR MARTIN MOORE-BICK: Within the custody time limit or you
 14 would still have to extend that?
 15 MS FELIX: Well, no, because once the trial begins and the
 16 jury has to be discharged, the custody time limits don't
 17 apply in the same way.
 18 SIR MARTIN MOORE-BICK: Yes, of course, you're right.
 19 MS FELIX: So we won't have that problem then.
 20 If the jury can't reach a verdict and there has to
 21 be a retrial, and the Crown decides that's what it seeks
 22 to do, again, we can fix a trial at a time which we
 23 would submit any prejudice that might be can be
 24 alleviated by the passage of time.
 25 As I said, I don't say that the reporting of this

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1 inquiry throughout the time it has been running is such
 2 that there is prejudice; it's the proximity of these
 3 particular witnesses at the time of the trial which
 4 brings us here.
 5 SIR MARTIN MOORE-BICK: Well, it may be because we had to
 6 stand down Mrs Wahabi on Wednesday, and we've now got to
 7 find another date at which she can give evidence, and at
 8 the moment I don't know quite when that will be -- so
 9 I can't say for certain when we're going to hear from
 10 either her or Mr Gomes. So we may find it all happens
 11 after the event. But that's not the point at the
 12 moment.
 13 MS FELIX: No, because I don't know the answer.
 14 SIR MARTIN MOORE-BICK: Quite. The question is one of
 15 principle.
 16 MS FELIX: Can I assist you any further at this stage?
 17 SIR MARTIN MOORE-BICK: No, I think I now understand better
 18 than I did the nature of your application. Thank you
 19 very much.
 20 MS FELIX: Thank you, sir.
 21 SIR MARTIN MOORE-BICK: All right?
 22 Do you want to say anything about the case of
 23 Sarker?
 24 MS FELIX: No, I don't.
 25 SIR MARTIN MOORE-BICK: I've looked at it, I think

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<p>1 I understand what it says, but if there's anything you 2 need to say about it, now is the time. 3 MS FELIX: No, I don't. 4 SIR MARTIN MOORE-BICK: All right, thank you very much. 5 Sorry, there's one other thing you can help me with. 6 When the matter was before me on Wednesday, 7 Ms Clarke asked that I give my reasons for the decision 8 in writing. I imagine you would like that as well, 9 would you? 10 MS FELIX: I don't press it in the same way. I rather 11 suspect what may have got lost in translation was I said 12 that -- I was looking for some help to try and get this 13 case fixed, and I said if Mr Chairman has anything to 14 say about that, then that would help us. Because I'm 15 afraid what happened, for the reasons I still don't 16 understand -- again, I'm not going to examine it here -- 17 the case went into a warned list and not into a fixture, 18 and so we've been trying and trying to get it fixed. We 19 did manage to do that on Wednesday, which is why I was 20 able to then ring and pass the message through that it 21 is fixed for Monday. 22 Decision 23 SIR MARTIN MOORE-BICK: All right. Well, thank you very 24 much. 25 I would like to thank all those who provided</p> <p style="text-align: center;">Page 33</p>	<p>1 your help on this. 2 At the moment, this application is being conducted 3 under reporting restrictions. It occurred to me, and it 4 may have occurred to you, that you would wish those 5 restrictions at least to be maintained until the early 6 part of next week, because it would be unfortunate if 7 anything said here, when reported, put ideas into the 8 mind of the defendant. 9 MS FELIX: Yes. 10 SIR MARTIN MOORE-BICK: Subject to hearing anyone who wishes 11 to oppose what I'm now going to propose, I am minded to 12 direct that the reporting restrictions currently in 13 place should continue until further order. I would 14 envisage lifting them -- I think as soon as the 15 defendant has been put in charge of the jury, although 16 I will hear you if you want to address me on that, 17 because at that point the trial will be underway, the 18 trial will have started for the purposes of custody time 19 limits, any application, however ill-advised, to stay 20 the indictment will have been made, and the proceedings 21 will be running along. 22 MS FELIX: Insofar as the defendant is concerned -- I'm 23 thinking on my feet here -- I'm considering my 24 disclosure obligations, and I haven't given it thought. 25 But I will need to reflect on whether we must disclose</p> <p style="text-align: center;">Page 35</p>
<p>1 skeleton arguments -- perhaps not entirely skeletal in 2 some cases, but at least observations, submissions, in 3 relation to the application. I've read them all. I've 4 found them helpful and interesting. 5 I don't need to trouble any of you because I'm 6 afraid I've reached a conclusion, Ms Felix, that it 7 would not be right for me to make reporting restrictions 8 in this case, nor do I think it would be right for me to 9 direct that these witnesses should not give their 10 evidence before the jury's verdict is delivered, 11 although it may be that, in practice, that may not 12 happen in any event for reasons of the administration of 13 the inquiry. 14 So I'm afraid I'm not going to give you the relief 15 you're seeking, and I'll give my reasons in writing as 16 soon as I can, I hope on Monday. 17 MS FELIX: Thank you, sir. 18 SIR MARTIN MOORE-BICK: All right? Thank you for your 19 assistance. 20 Right. Is there anything else that needs to be 21 dealt with, Mr Millett? 22 MR MILLETT: No, Mr Chairman, not on this present 23 application. 24 SIR MARTIN MOORE-BICK: Ah, well, I think there is, 25 actually. I should have thought of this and invited</p> <p style="text-align: center;">Page 34</p>	<p>1 that this application has been made, the submissions 2 that have been made, and that may in and of itself -- 3 I don't know -- result in applications. I just don't 4 know what the defendant might do. 5 SIR MARTIN MOORE-BICK: Well -- 6 MS FELIX: But -- 7 SIR MARTIN MOORE-BICK: Go on. 8 MS FELIX: -- I do invite you to keep the restriction in 9 place because reporting of it may give rise to problems 10 in the trial. 11 SIR MARTIN MOORE-BICK: Yes, all right. 12 MS FELIX: So I'd ask, in fact, for that restriction to 13 continue until the conclusion of the trial. 14 SIR MARTIN MOORE-BICK: Well, what I am inclined to do is to 15 say it shall continue until further order. 16 MS FELIX: Thank you. 17 SIR MARTIN MOORE-BICK: I may allow it to run until the end 18 of the trial, but I think it's important that I be kept 19 closely informed of the course of the trial, please. 20 MS FELIX: And we shall do that. 21 SIR MARTIN MOORE-BICK: So that I can consider, if necessary 22 of my own motion, whether the restriction should be 23 lifted. 24 The press themselves who are present by counsel are 25 clearly interested in having them lifted as soon as</p> <p style="text-align: center;">Page 36</p>

<p>1 possible.</p> <p>2 MS FELIX: Yes.</p> <p>3 SIR MARTIN MOORE-BICK: If they want to address me now, I'll</p> <p>4 hear them. But they may wish to come back to me during</p> <p>5 the course of next week to argue that the time has come</p> <p>6 in any event.</p> <p>7 Now, Mr Friedman, you looked as though you wanted to</p> <p>8 make a submission.</p> <p>9 MR FRIEDMAN: I think I've set it out in our skeleton at</p> <p>10 paragraph 19, but we agree with the proposal you've just</p> <p>11 made. But I wanted to draw a distinction between that</p> <p>12 limited reporting restriction order until further notice</p> <p>13 and the situation of this hearing, which is a private</p> <p>14 hearing, which has at least two implications: one, what</p> <p>15 we as RLRs are allowed to discuss with the CPs; and,</p> <p>16 secondly, it has implications for open justice in</p> <p>17 section 18 under the Inquiries Act.</p> <p>18 My respectful submission remains the same as when</p> <p>19 I last addressed you, which is the norm in this kind of</p> <p>20 situation, and they can be very common, these kind of</p> <p>21 applications, at least in Crown Courts, dealing with</p> <p>22 extraordinarily prejudicial matters relating to the</p> <p>23 trial in front of the jury, where a judge will make</p> <p>24 an order like the one you've just proposed, but all of</p> <p>25 this would've gone on in public.</p> <p style="text-align: right;">Page 37</p>	<p>1 an ancillary matter, and it seems to me that, on</p> <p>2 balance, it's better to keep things as they are for</p> <p>3 a short time.</p> <p>4 MR FRIEDMAN: Yes.</p> <p>5 SIR MARTIN MOORE-BICK: We can discuss, maybe on another</p> <p>6 occasion, how far information about this application can</p> <p>7 be shared with your clients.</p> <p>8 MR FRIEDMAN: Yes.</p> <p>9 SIR MARTIN MOORE-BICK: It's important your clients</p> <p>10 understand that it's not to be disseminated.</p> <p>11 I nearly said you can make me an offer, but what</p> <p>12 I mean is you can put forward a suggestion as to how</p> <p>13 that can be framed and I shall consider it.</p> <p>14 MR FRIEDMAN: I understand, and we'll give it some thought.</p> <p>15 Can I say, I don't disagree with anything you've</p> <p>16 just said, sir, save to say that, in our respectful</p> <p>17 submission, that would not be good enough because there</p> <p>18 is always the possibility of people disregarding orders,</p> <p>19 and I wouldn't want, even if this is an ancillary</p> <p>20 matter, for particularly the core participants to have</p> <p>21 any sense that, ab initio or by some default position,</p> <p>22 they can't be trusted to comply with orders.</p> <p>23 I take the point that this is a short time, but</p> <p>24 I hope you don't feel it's remiss that I have said that,</p> <p>25 not least because, actually, a lot of people are coming</p> <p style="text-align: right;">Page 39</p>
<p>1 Now, we can't rewrite the book. I'm not suggesting</p> <p>2 necessarily that we need to release the transcripts that</p> <p>3 are available today. But I see no reason, if I can put</p> <p>4 it this way, why the responsible advocates in here</p> <p>5 cannot explain to their respective clients what has gone</p> <p>6 on, advising them and making clear, as you will do, that</p> <p>7 there is an order about any further publication within</p> <p>8 that sense.</p> <p>9 I also respectfully say -- not because I've got</p> <p>10 a brief to do so -- I see no reason why all other RLRs</p> <p>11 of all other CPs should not have their own access to the</p> <p>12 transcript of these proceedings, simply to make sure</p> <p>13 everybody is aware of what's gone on, because of course</p> <p>14 we're interested about the subject matter of this</p> <p>15 application, but it does have wider implications for how</p> <p>16 you approach the open justice, doesn't it?</p> <p>17 SIR MARTIN MOORE-BICK: I entirely accept that.</p> <p>18 The difficulty that I see is that reporting of this</p> <p>19 application and the submissions that have been made, and</p> <p>20 so on, might have adverse consequences for the trial</p> <p>21 which ought not to occur and which are less likely to</p> <p>22 occur if these proceedings are not reported for</p> <p>23 a limited period.</p> <p>24 Although they're part of the inquiry, they're not</p> <p>25 an integral part of the inquiry's work, they're</p> <p style="text-align: right;">Page 38</p>	<p>1 up to us and saying -- you know, some of them are</p> <p>2 saying, "We know fine well that there's a prosecution at</p> <p>3 Isleworth next week", and I said that to you last week</p> <p>4 because I had been approached by my clients who are</p> <p>5 related to this family. But, secondly, it unsteadies</p> <p>6 the nerves, and you know why, and we've worked hard,</p> <p>7 particularly in the last few weeks, to crystallise</p> <p>8 a quality of engagement with the inquiry.</p> <p>9 So I just ask you to bear that in mind, and perhaps</p> <p>10 we'll move on on this and think about it again. But</p> <p>11 thank you.</p> <p>12 SIR MARTIN MOORE-BICK: Well, thank you very much.</p> <p>13 Now, Ms De Wilde, you're here for the press. You've</p> <p>14 heard what's been said. Insofar as you're opposing the</p> <p>15 substantive application, I don't need to trouble you.</p> <p>16 MR DE WILDE: No.</p> <p>17 SIR MARTIN MOORE-BICK: Do you want to say anything about</p> <p>18 the point I've just been discussing?</p> <p>19 MR DE WILDE: I respectfully agree with Mr Friedman's</p> <p>20 analysis to the extent that there is a distinction to be</p> <p>21 drawn between privacy applying to this hearing and</p> <p>22 a reporting restriction order protecting the interests</p> <p>23 engaged at the criminal proceedings which you've heard</p> <p>24 submissions about this morning.</p> <p>25 It was an issue of slight concern to us that our lay</p> <p style="text-align: right;">Page 40</p>

<p>1 client, our journalist client, wasn't allowed into this</p> <p>2 hearing on the basis that it was private.</p> <p>3 SIR MARTIN MOORE-BICK: Well, no, you say your client; the</p> <p>4 only representative of the press who was present when</p> <p>5 the application was made on very short notice was here</p> <p>6 and was allowed to address me. She didn't have much to</p> <p>7 say for obvious reasons, but the press were invited to</p> <p>8 make submissions.</p> <p>9 MR DE WILDE: Yes.</p> <p>10 SIR MARTIN MOORE-BICK: Of course, I'm grateful for the fact</p> <p>11 that you've come here, again at quite short notice, to</p> <p>12 represent the interests of the press.</p> <p>13 MR DE WILDE: In my submission, it's simply illustrative of</p> <p>14 the fact that there is no need to exclude journalists</p> <p>15 generally from this hearing or for it to be in private</p> <p>16 where there is a reporting restriction order in place</p> <p>17 which prevents reporting of it. As Mr Friedman has</p> <p>18 eloquently explained, these types of applications are</p> <p>19 typically heard in open court. The fact that they're</p> <p>20 not in private does not mean that reporting and</p> <p>21 resulting prejudice ensues from them.</p> <p>22 SIR MARTIN MOORE-BICK: Well, the distinction between public</p> <p>23 and private and reporting restrictions and unrestricted</p> <p>24 reporting may be a bit more nuanced in the context of an</p> <p>25 inquiry, because section 19 contemplates either</p> <p style="text-align: center;">Page 41</p>	<p>1 (12.05 pm)</p> <p>2 (The hearing adjourned until Monday, 5 November 2018</p> <p>3 at 10.00 am)</p> <p>4 I N D E X</p> <p>5 Application on behalf of the Crown1</p> <p>6 Prosecution Service</p> <p>7 by MS FELIX</p> <p>8 Decision33</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">Page 43</p>
<p>1 excluding evidence from being disclosed to the public or</p> <p>2 excluding the public from the hearing, so it slightly</p> <p>3 crosses the boundary.</p> <p>4 But, anyway, we are where we are. I made an order</p> <p>5 on Wednesday as to the conduct of the proceedings then.</p> <p>6 I'm not minded to change that now, but I am very</p> <p>7 concerned to ensure that the restrictions are not in</p> <p>8 force for any longer than is necessary.</p> <p>9 MR DE WILDE: Yes. Well, we've heard what you've said about</p> <p>10 that and we're very grateful for those observations,</p> <p>11 yes.</p> <p>12 SIR MARTIN MOORE-BICK: Thank you very much.</p> <p>13 Now, you've heard all those exchanges. Is there</p> <p>14 anything you want to say about duration of restrictions</p> <p>15 or anything?</p> <p>16 MS FELIX: Only what I've already said.</p> <p>17 SIR MARTIN MOORE-BICK: All right.</p> <p>18 Well, I would be grateful if you could keep us</p> <p>19 closely informed about the course of the trial, and</p> <p>20 we'll see where things go.</p> <p>21 MS FELIX: Well do.</p> <p>22 SIR MARTIN MOORE-BICK: I'll say it again: thank you very</p> <p>23 much, all of you, for your submissions, which I found</p> <p>24 very helpful. I think that's all for the day.</p> <p>25 Thank you.</p> <p style="text-align: center;">Page 42</p>	

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