

Friday, 25 September 2026

(10.30 am)

CLERK: Good morning. This is an OPEN hearing of the Independent Inquiry into matters relating to Afghanistan.

Please could I ask you to ensure that all mobile telephones and other personal electronic devices are either switched off or in silent mode.

Please may I also draw your attention to the fact that the Chair of the Inquiry, the Right Honourable Lord Justice Haddon-Cave, has made a restriction order in relation to the conduct of those who are attending and/or viewing the hearing. The full order is displayed on the Inquiry website and on the door of this court but I will summarise its purpose.

The first part of the order prohibits any person from making an audio or video recording of the live Inquiry proceedings without the express permission of the Chair.

Furthermore, no person may take a photograph in any room in which the Inquiry proceedings are taking place and at a time the Inquiry is sitting without the express permission of the Chair.

The second part of the order which applies to this hearing arises as the live stream of these Inquiry

1 proceedings via YouTube will purposely be subject to a
2 ten-minute delay. It is prohibited that any person may
3 disclose, publish or broadcast in any form or by any
4 means anything that is said or done in the Inquiry
5 hearing room until ten minutes after it has taken place.

6 If an application is made for a restriction order
7 in relation to anything that has been said or done in
8 the Inquiry hearing room in the preceding ten minutes,
9 anything that was said or done during that period is
10 subject to a restriction order prohibiting its
11 disclosure, repetition or duplication until the Chair
12 has finally determined the application.

13 The above orders are subject to a penal notice.
14 This means that any breach of any element of these
15 restriction orders may be certified to the High Court
16 who will have the power to fine or imprison anyone found
17 to have been in breach of the order.

18 **Opening remarks by the CHAIR**

19 **SIR CHARLES HADDON-CAVE:** I have taken the exceptional step
20 of calling this OPEN hearing because of the recent
21 revelation that the Ministry of Defence have discovered
22 97 million documents which relate to the period covered
23 by the Inquiry's terms of reference which did not form
24 part of their search when answering the Inquiry's
25 previous requests for disclosure.

1 As I said in my statement published on the Inquiry
2 website on Tuesday, this is troubling and regrettable
3 and, if not rapidly addressed and managed, has the
4 capacity to delay the important work of this Inquiry.

5 The Secretary of State has charged me and my
6 Inquiry team to investigate allegations -- I reiterate
7 these remain allegations at this stage -- that UK
8 Special Forces deliberately executed Afghan males during
9 deliberate detention operations in Afghanistan between
10 mid-2010 and mid-2013, whether these acts were covered
11 up and whether the four-and-a-half year investigation by
12 the Royal Military Police was adequate.

13 This is not about split-second decisions taken in
14 the heat of combat. This is not about the fog of war.
15 This is about whether there was a practice of unlawful
16 killings by British Special Forces in Afghanistan. It
17 will be recalled that the allegations of unlawful
18 killings originated from within Special Forces
19 themselves.

20 For reasons of national security, the vast
21 majority of the Inquiry has had to be held in CLOSED.
22 But since we are in OPEN today, let me make three things
23 clear so that everyone can understand why these
24 revelations are so concerning to me.

25 First, whilst there remains important evidence to

1 come, the Inquiry is well advanced and has already
2 received evidence from a large number of witnesses and
3 considered a huge volume of documents.

4 Second, indeed as the MOD and core participants
5 have known since July, I have set a deadline for the
6 completion of the evidence relating to the allegations
7 of unlawful killings by 30 April next year. This must
8 be kept to.

9 Third, this Inquiry is highly complex and highly
10 sensitive. The terms of reference require the Inquiry
11 to examine hundreds of deliberate detention operations
12 carried out by British Special Forces over that
13 three-year period. The Inquiry also devotes exceptional
14 time and resources on a daily basis to ensure national
15 security, including the personal security of vulnerable
16 witnesses, is protected.

17 I am grateful for the continuing support of the
18 Heads of Service. I am also grateful for the support of
19 the Permanent Secretary, Jeremy Pocklington, on behalf
20 of the sponsor, in particular, in providing the Inquiry
21 with the resources it needs so far.

22 This matter requires urgent action to ensure that
23 this new tranche of documents is efficiently and
24 effectively sifted, de-duplicated, and any new relevant
25 material disclosed. Whether the Inquiry will need

1 further resources to deal with any influx remains to be
2 seen.

3 It would not be fair to all those awaiting answers
4 from this Inquiry, in particular the veterans, the
5 serving military, their families, all the Afghan
6 families, let alone the public, if the Inquiry was to be
7 held up yet further because of a failure by the MOD to
8 deal properly with disclosure. It will be recalled that
9 this is by far not the first time, first occasion when
10 the MOD have been held to account for serious delays in
11 disclosure.

12 I am bound to say that the somewhat casual way in
13 which the Inquiry was informed that 97 million further
14 documents had been unearthed did not give cause for
15 confidence. You will see from the correspondence which
16 is on the Inquiry website that the MOD corporate team
17 wrote on 6 August under the innocuous heading, "DAS
18 update", with the extraordinary news of 97 million
19 unsearched documents -- "DAS" being a Ministry of
20 Defence document repository.

21 The solicitor to the Inquiry, Piers Doggart,
22 responded on 18 August asking a number of obvious
23 questions, including how and why this had happened and
24 what was going to be done about it, and seeking a
25 response by 25 August through a series of questions

1 about the material. On 24 August, the Inquiry team
2 received an email saying that the relevant people were
3 on holiday but there would be a response as soon as
4 possible.

5 Despite chasers, nothing further was heard for
6 over three weeks and so Mr Doggart wrote again on
7 16 September in terms which would have left the reader
8 in no doubt as to the seriousness with which the Inquiry
9 regarded the situation. It finally elicited an initial
10 response from the MOD on 18 September.

11 I require assurances today from the Ministry of
12 Defence that: (1) sifting the new material for relevance
13 will not disrupt the Inquiry's timetable; (2) dealing
14 with this new problem won't distract the Ministry teams
15 from other ongoing workstreams; (3) there won't be a
16 repetition of a month-long failure to respond to
17 important correspondence; (4) there will be no further
18 similar revelations, and I can be reassured that the
19 Ministry of Defence is complying with its duty of
20 candour.

21 At 5.50 last night the Inquiry received a lengthy
22 letter from Elizabeth Mackie of the Government Legal
23 Service on behalf of the Ministry of Defence. I have
24 read Ms Mackie's letter and will want to consider it in
25 detail with my team. No doubt it will feature in

1 Mr Gray's submissions on behalf of the Ministry this
2 morning.

3 Mr Gray, I gather you are standing in for
4 Mr O'Connor, who is otherwise engaged today. What does
5 the Ministry have to say about all of this?

6 **Reply by Counsel on behalf of the MOD**

7 **MR GRAY:** Sir, thank you for your opening remarks. As you
8 know, I appear before you today on behalf of the
9 Ministry of Defence. I'm attended by, amongst many
10 others, Mr Nick Gurr, who sits to my right who as you
11 know, sir, is the director of the Afghanistan Inquiry
12 Response Unit, which is one of the organisations set up
13 by the Ministry of Defence to assist it in responding to
14 the needs and demands of the Inquiry.

15 Sir, there are, as we see it, essentially two
16 reasons for this hearing being directed today and the
17 first, sir, turning to what you have just said about the
18 exchanges of correspondence over recent weeks, is the
19 undoubtedly regrettable failure of the Ministry of
20 Defence to respond promptly to the Inquiry's
21 correspondence of 18 August.

22 Sir, in that regard, can I please, without
23 hesitation, reiterate the apology made on behalf of the
24 Ministry of Defence both in the 18 September letter and
25 also in yesterday's detailed letter sent to the Inquiry

1 by Ms Mackie, to which you have already referred. That
2 detailed letter of yesterday, as we understand it, was
3 shared with the Inquiry Core Participants yesterday and
4 will be published by the Inquiry following this hearing.

5 Sir, as I trust that letter makes clear, the
6 Ministry of Defence deeply regrets the failure to engage
7 more promptly with the important and urgent matters
8 raised in that letter from the Inquiry of 18 August.

9 Sir, I therefore do ask that you both accept the
10 Ministry of Defence's apology and, importantly, the
11 assurance regarding the third point on which you would
12 seek assurance to which you have just referred,
13 addressed in paragraphs 26 to 28 of yesterday's letter,
14 that the Ministry of Defence is determined that this be
15 an isolated episode.

16 Good working relations have, in our view, been
17 built between the Inquiry and the Ministry of Defence,
18 notwithstanding the challenges the Inquiry plainly
19 presents and the Ministry of Defence is determined that
20 remains the position.

21 However, sir, what I do wish to emphasise today,
22 in addition, is that this communication failure,
23 regrettable as it is, must not in any way be
24 misunderstood by anyone as being suggestive of a lack of
25 support for or commitment to the Inquiry's work on the

1 part of the Ministry of Defence.

2 Yesterday's letter, sir, details some aspects of
3 the very substantial support provided by the Ministry of
4 Defence for the Inquiry's work today on which you have
5 touched in your opening remarks, including premises,
6 people, IT systems, and access to the enormous amounts
7 of material to which you have referred.

8 The Ministry of Defence has established new
9 organisations to ensure both the Inquiry's work is
10 properly supported and, importantly, that the very many
11 individual witnesses approached by the Inquiry receive
12 appropriate and confidential advice and support. Sir,
13 as you know, the military witness legal team,
14 represented here today by Mr Altman King's Counsel, is
15 an example of that.

16 Regarding disclosure, the Ministry of Defence has
17 procured a bespoke e-disclosure platform specifically
18 for the benefit of the Inquiry's work and engaged an
19 external law firm to improve the review and disclosure
20 process. Sir, as you know, hundreds of thousands of
21 documents have been reviewed and very large volumes
22 provided to the Inquiry.

23 Sir, as was rightly acknowledged in Ms Mackie's
24 letter yesterday, this commitment and support is at a
25 time when an increasingly hostile global landscape and

1 UK budgetary pressures combine to present significant
2 challenges to UK national security and defence and there
3 should be no doubt, sir, that you and the Ministry of
4 Defence share a determination that the Inquiry's work be
5 concluded properly, swiftly and efficiently as possible.

6 Sir, the 6 August letter to which you have
7 referred was in one respect a commendable attempt to
8 bring difficult issues to the attention of the Inquiry
9 promptly. However, for the reasons you've touched on,
10 it was also clearly important that the Ministry of
11 Defence then engaged with the Inquiry promptly on the
12 important questions around what this development in fact
13 means for the work of the Inquiry.

14 I should emphasise, sir, that as the GLD letter of
15 18 September made clear, that background work was being
16 done. The failure here was one of communication, not of
17 application, and for that the Ministry of Defence is
18 deeply sorry.

19 Sir, turning to the second and substantive reason
20 for this hearing, namely, the understandable
21 consternation caused to you and no doubt the Inquiry
22 team generally by the 6 August 2026 letter. Sir, as
23 you've referenced, that letter -- and, we accept, in
24 perhaps unhelpfully simplistic terms at that stage --
25 did refer to the fact that there are now an additional

1 97 million unique records on the Ministry of Defence's
2 digital archive system, often simply referred to as the
3 DAS, dated based on file creation metadata between 2010
4 and 2013 and that is as a result of an upload to that
5 system in July of this year of a substantial historic
6 data records management system that was in use across
7 the Ministry of Defence for many years.

8 Sir, I emphasise at the outset the issue here is
9 not, as has been reported, a failure to disclose
10 97 million records to the Inquiry. Rather, the issue is
11 that this additional volume of data is now capable of
12 being searched for potentially relevant material.
13 Whether it will in fact materially assist the relatively
14 narrow focus of the Inquiry's work is a separate issue.

15 Sir, regarding that July 2026 upload, the details
16 of which are both referenced in the 18 September letter,
17 and in more detail in yesterday's more detailed letter,
18 may I emphasise three points, please. First, the
19 material recovered and uploaded on to the DAS from
20 Afghanistan does not include UK Special Forces IT
21 systems. Searches of historical and existing UK Special
22 Forces IT systems is a separate area of Ministry of
23 Defence work which is not affected by the July 2026 DAS
24 upload. It remains the case that the overwhelming
25 majority of potentially relevant UK Special Forces

1 documentation has been located through searches of those
2 UK Special Forces systems.

3 Sir, as you know, the Inquiry already holds a copy
4 of the server from the UK Special Forces-operated secret
5 IT system regarding the period covered by the terms of
6 reference referred to as ITS1 in the politics of the
7 Inquiry and the Inquiry is able to conduct its own
8 searches of that copy server independently of the
9 Ministry of Defence.

10 Secondly, the Hewlett Packard Records Manager, or
11 HPRM as it is referred to in places in the
12 correspondence, which is the dataset uploaded to the DAS
13 in July 2026, was an electronic document and records
14 management system used across the MOD. On that basis
15 alone, it is logical to assume that the vast majority of
16 this material will very likely be wholly irrelevant to
17 the Inquiry's work.

18 Third, less than 3 per cent of that HPRM material
19 uploaded was held on a secret system. Again, this in
20 itself tends to suggest that the vast majority of this
21 material will not concern the operations with which,
22 sir, you are concerned.

23 Nevertheless, as set out in yesterday's letter,
24 the Ministry of Defence has urgently sought to assess
25 the potential impact of this upload on the Inquiry's

1 deliberate detention operation investigation strategy
2 which, sir, as you have just explained, envisages the
3 completion of the evidence relating to the allegations
4 of unlawful killing by the end of April next year --

5 **SIR CHARLES HADDON-CAVE:** Mr Gray, could I ask you to keep
6 your voice up a bit?

7 **MR GRAY:** Yes, sorry.

8 **SIR CHARLES HADDON-CAVE:** I think those at the back may not
9 be hearing all of it. Thank you.

10 **MR GRAY:** -- and therefore the impact on the Inquiry's
11 current timetable. The results of that analysis as they
12 stand presently are set out in paragraphs 20 to 25 of
13 yesterday's letter. Sir, here we are addressing, in
14 effect, the first and second of the four issues on which
15 you seek reassurance.

16 Sir, so there is no confusion, the Government
17 Legal Department letter of 18 September -- and this is
18 at the bottom of page 2 of that letter for anybody
19 looking at that correspondence -- set out how at that
20 stage the Ministry of Defence was intending to approach
21 this scoping assessment. In fact, the Ministry of
22 Defence is pleased to report that it has been possible
23 to go further than expected in the time available before
24 this hearing, and it has been possible to rerun across
25 the newly enlarged DAS system the keyword searches which

1 were agreed with the Inquiry in respect of the
2 deliberate detention operations which are the subject of
3 phase 3 of the Inquiry's investigation strategy.

4 The result, for the various reasons explained in
5 yesterday's letter, which are based on relatively
6 conservative estimates at different stages of the
7 document analysis and review process, is the estimated
8 disclosure from these 97 million files to the Inquiry of
9 approximately, based on previous experience, 1,200
10 further documents, although we should stress that this
11 figure could end up being very much lower than that
12 given the assumptions applied.

13 In summary, therefore, sir, and in relation to
14 your first two requests for assurance from the MOD, the
15 Ministry of Defence's preliminary assessment is that the
16 volume of additional material to be reviewed for
17 relevance by the Ministry of Defence and, where
18 appropriate, disclosed to the Inquiry as a result of
19 this upload should be capable of being managed
20 efficiently, without impacting the Ministry of Defence's
21 ability to respond to the Inquiry's ongoing workstreams
22 and without imperiling the current timetable.

23 If the Inquiry agrees with the proposed way
24 forward, and we would encourage as much constructive
25 dialogue as possible on that, the Ministry of Defence

1 intends to initiate that work immediately.

2 Sir, there will need to be careful liaison, as
3 there often has been, between the Ministry of Defence
4 and the Inquiry as to what other further work may be
5 required. Whether any further disclosed documents are
6 ultimately, to use your term, sir, of real relevance to
7 the Inquiry's work will no doubt be important in
8 informing you and the Inquiry as to how it wishes to
9 proceed moving forwards.

10 Sir, that point links to the fourth and final
11 issue, as set out in your statement and which you have
12 repeated today, which is directed at making sure that
13 steps are taken to avoid any further similar revelations
14 during the remaining course of the Inquiry.

15 Sir, as to that, five brief points, if I may.

16 First, the Ministry of Defence has always
17 recognised and endeavored to make clear that the nature
18 and scale of the Inquiry's work presents significant
19 disclosure challenges. Principal amongst these is the
20 requirement to run extensive searches across multiple IT
21 systems, including historic decommissioned systems at
22 different classifications.

23 Secondly, as referenced in yesterday's letter and
24 in detail in Mr Gurr's recent witness statement to you,
25 this has given rise to a number of technical challenges

1 and document limitations. As the Inquiry also knows, an
2 enormous amount of work has been done by the Ministry of
3 Defence at huge expense to try to overcome those
4 challenges. As a result, a very large quantity of
5 material has been made available to the Inquiry in
6 response to the hundreds of requests received for
7 material.

8 Thirdly, it is, however, important to acknowledge,
9 again as the Inquiry is aware, and is also set out in
10 Mr Gurr's statement, that not all the disclosure
11 challenges have been or are likely to be capable of
12 being overcome. As set out in yesterday's letter, work
13 is ongoing in respect of some of those issues with
14 regular updates being provided to the Inquiry. The
15 Ministry of Defence will take all reasonable and
16 proportionate steps it can to supply potentially
17 relevant material to the Inquiry.

18 Fourthly, regarding the DAS, it is important to
19 make clear that there is substantial digital material,
20 including digital material returned from Afghanistan,
21 which is not, and in all likelihood will not be,
22 available to be searched by the Ministry of Defence
23 which has not been put on to the DAS system. Sir, this
24 is referenced in paragraph 18 of yesterday's letter.
25 But again, to be clear, that is not to say such material

1 relates to the work of the Inquiry.

2 Indeed, as a matter of basic fact, the scale and
3 duration of the Afghan campaign generally, the number of
4 personnel deployed across it, and the amount of data
5 generated as a result, inevitably dwarf the relatively
6 narrow focus of this Inquiry's work.

7 Sir, as I've also made clear already, it must be
8 borne in mind that the material recovered and uploaded
9 to the DAS from Afghanistan does not include UKSF IT
10 systems.

11 Fifthly, and finally in this context, it's no
12 doubt uncontroversial that what is required, as the
13 Inquiry has emphasised, in respect of disclosure is a
14 targeted and focused and proportionate approach. The
15 Ministry of Defence wishes to continue to work together
16 with the Inquiry to achieve that. To do so, as the
17 regrettable episode giving rise to this hearing
18 demonstrates, prompt and clear communication between the
19 Ministry of Defence and the Inquiry is clearly required.
20 The Ministry of Defence again apologises that it fell
21 short in that regard.

22 Sir, the Ministry of Defence continues to be
23 grateful for the collaborative working relationship
24 which has been fostered with the Inquiry. We very much
25 hope that this episode does not imperil that and that

1 there can be constructive and collaboration work moving
2 forwards as we seek to ensure the Inquiry can conclude
3 its important work.

4 Sir, unless I can assist any further.

5 **SIR CHARLES HADDON-CAVE:** Thank you, Mr Gray. Just on one
6 particular point that's arisen, it appears that since
7 6 August my team tell me that the MOD have uploaded on
8 to Relativity 470-odd documents, (correction) 4,750
 documents and
9 spreadsheets for Rule 9 disclosure requests which have
10 long since been considered complete. It's unclear as to
11 the origins of those documents.

12 I think the point is it's extremely important
13 going forward that, whatever documents are now
14 disclosed, there's absolute clarity as to the process of
15 the origin of those documents. It's unclear whether
16 those are new documents from the 97 million or whether
17 they are other documents which have since been found.

18 Is that clear?

19 **MR GRAY:** Sir, very clear and I will make sure that a prompt
20 explanation of those documents is supplied to the
21 Inquiry.

22 Sir, if I may, that serves simply to reinforce
23 what we have all recognised within the Ministry of
24 Defence about the essential need for clear, prompt and
25 effective communication moving forward.

1 **SIR CHARLES HADDON-CAVE:** Mr Gray, it is my intention
2 provisionally to direct that there should be a further
3 OPEN hearing, pencilled in at least, at 10 am on Friday,
4 16 October when we will be in OPEN session in any event.
5 I would like that pencilled in in the diary for the
6 moment, when I would require an update as to where we
7 are.

8 **MR GRAY:** Yes, sir. Well, I would very much expect that
9 well before then you will be receiving a detailed
10 written update in any event.

11 **SIR CHARLES HADDON-CAVE:** Indeed and I may issue written
12 directions meanwhile and I will be considering your
13 submissions and Ms Mackie's letter carefully with my
14 team.

15 **MR GRAY:** Of course, if there are any further requests for
16 information before now, we will do our best to assist
17 promptly.

18 **SIR CHARLES HADDON-CAVE:** Thank you, Mr Gray.

19 We've got the distinguished counsel present.

20 Mr Altman, on behalf of the witness team, are there any
21 brief observations that you would like to make?

22 **Remarks by Lead Counsel on behalf of the MOD WITNESS TEAM**

23 **MR ALTMAN:** Thank you, Chair. There are no further
24 observations we wish to make. We've heard what Mr Gray
25 has said and, sir, you are fixing provisionally another

1 hearing for 16 October. We will await developments.

2 Thank you.

3 **SIR CHARLES HADDON-CAVE:** Mr Goss, on behalf of RMP.

4 **Remarks by Counsel on behalf of the RMP**

5 **MR GOSS:** Thank you, sir. Very briefly for the RMP.

6 First of all, may I convey Mr Greaney KC's
7 apologies for his absence this morning.

8 Second, as you know, sir, the RMP's position has
9 always been and remains that it is committed to
10 supporting your and the Inquiry's work.

11 Third, important to be clear that this additional
12 material does not come from the RMP. The RMP is a
13 separate core participant in this Inquiry. It has a
14 separate disclosure process from the MOD, corporate and
15 military witness legal teams.

16 Fourth, there are of course a number of serving
17 and veteran RMP personnel who have now been waiting some
18 time to give evidence, in particular about Operation
19 Northmoor. I am very grateful for the indication that
20 we've received from your counsel that this issue of
21 further material is not going to delay their evidence.
22 That is of the utmost importance to them and to the RMP.

23 Unless I can assist any further, sir.

24 **SIR CHARLES HADDON-CAVE:** Thank you, Mr Goss. I think it
25 has been announced, but I will repeat it today, that we

1 will commence OPEN hearings in relation to the Royal
2 Military Police witnesses commencing on 12 October and
3 there will be further details posted on the website.

4 Thank you, Mr Goss.

5 Mr Craven, on behalf of the Afghan families.

6 **Remarks by Counsel on behalf of the AFGHAN FAMILIES**

7 **MR CRAVEN:** Thank you, sir. I am conscious this morning
8 that you won't be assisted by rhetoric, and I certainly
9 don't intend to engage in any rhetoric, but I would like
10 to briefly make some observations, if I may, on behalf
11 of the Afghan families.

12 In particular, I want to record our concern,
13 serious concern about the developments that have
14 prompted the need for this hearing and the serious
15 questions that those developments raise regarding the
16 MOD's engagement with the Inquiry. In your statement
17 earlier this week, sir, you described the developments
18 as both troubling and regrettable. We agree with that
19 description.

20 We would simply add that from the perspective of
21 the bereaved Afghan families, as well as being troubling
22 and regrettable, the developments are also difficult to
23 comprehend. Now, of course we're not privy to the ins
24 and outs of the MOD's various databases and electronic
25 record-keeping and nor do we really know anything about

1 the specific processes that the MOD follows for
2 responding to Rule 9 requests issued by the Inquiry.
3 But what we do know, sir, is that you have repeatedly
4 made clear that you expect and require maximum
5 co-operation and candour from the MOD as you go about
6 discharging your terms of reference in the important and
7 difficult work that you are required to undertake.

8 Your expectations, sir, could not have been more
9 clearly spelled out at the hearings we have attended and
10 in the communications that we have been privy to.

11 In response, you have received equally clear
12 repeated assurances from the Ministry of Defence as to
13 its commitment to the Inquiry and the importance of
14 maintaining a high level of co-operation and candour
15 and, of course, that's exactly as it ought to be given
16 the exceptional gravity of the subject matter of this
17 Inquiry.

18 Against that backdrop, sir, we simply don't
19 understand how it can have been the case that for three
20 years the Ministry of Defence has been conducting its
21 Rule 9 disclosure searches without reference to a
22 repository of almost 100 million documents from the
23 period covered by the Inquiry's terms of reference.
24 From our perspective, this week's revelations are
25 staggering and profoundly worrying.

1 Those concerns that we have are not concerns
2 simply born of the material that's been revealed this
3 week; they are reinforced by the MOD's casual and
4 nonchalant approach to the obviously important and
5 obviously urgent correspondence sent on behalf of the
6 Inquiry regarding this.

7 They are also heightened further by the experience
8 of my clients in the Judicial Review proceedings that
9 ultimately resulted in the establishment of this
10 Inquiry. As you may recall, in those proceedings
11 Mr Justice Swift was strongly critical of the MOD's
12 disclosure failures, referring to the MOD having
13 demonstrated what he called a "devil-may-care attitude"
14 to its compliance with its duty of candour and
15 describing the MOD as having failed to treat those
16 obligations with anything approaching the respect they
17 deserve.

18 Against that history, the bereaved Afghan families
19 are legitimately entitled to ask whether the MOD is
20 indeed treating its obligations to the Inquiry with the
21 respect and the diligence that they deserve.

22 There are obviously important questions about how
23 this situation has arisen but the most important
24 questions from our perspective concern what is to be
25 done about it. Sir, as you have identified in your

1 statement, there are two imperatives: the first is to
2 ensure that all relevant evidence is identified and
3 provided to the Inquiry by the Ministry of Defence; and
4 the second is to ensure that the Inquiry's progress in
5 discharging its terms of reference is not delayed by
6 these developments or by any similar developments of
7 this nature in the future.

8 We've heard today, and in Ms Mackie's letter from
9 last night, you have received assurances that the
10 Inquiry's timetable won't be derailed by these
11 developments. We obviously sincerely hope that that is
12 the case but, given the volume of this newly discovered
13 repository of material, and given our own experiences of
14 issues with MOD disclosure in the Inquiry and in the
15 preceding Judicial Review proceedings, we do feel a
16 degree of scepticism as to whether that is indeed going
17 to be the case.

18 It seems to us that there may at some point in the
19 near future be a tension between the imperative of
20 thoroughness and the imperative of timeliness. We
21 submit, sir, that if the Inquiry, through no fault of
22 its own, is placed in the invidious position of having
23 to choose between those two imperatives, the need for
24 speed and timely conclusion of this Inquiry will need to
25 yield to the need for all relevant evidence to be

1 obtained by the Inquiry.

2 We of course support all measures that facilitate
3 the Inquiry's ability to complete its work promptly, but
4 we submit respectfully that the Inquiry must not
5 countenance any measures that might lead to a situation
6 where potentially relevant and potentially important
7 evidence within this new cache of material is not
8 provided and identified. That's because, from the
9 perspective of those that I represent, what matters more
10 than anything else is that all relevant and important
11 evidence that casts light on the true circumstances of
12 their loved ones' deaths is identified and brought to
13 light. Anything less than that would fail to give
14 effect to their Article 2 right to a thorough
15 investigation into their relatives' deaths.

16 Sir, we submit that, in deciding what steps must
17 now be taken in response to these revelations, the
18 Inquiry's overriding priority must be to ensure that no
19 potentially relevant and important evidence is withheld
20 from the Inquiry and that the Inquiry obtains, in as
21 timely a manner as possible, all potentially relevant
22 important evidence.

23 In addition to that, sir, we would invite you to
24 direct the Ministry of Defence to provide an OPEN
25 witness statement from a suitably senior official which

1 explains: firstly, how this unfortunate state of affairs
2 has occurred; and, secondly, the specific measures (not
3 generalities, but specific steps) that are going to be
4 taken to ensure that all relevant and important evidence
5 is identified and disclosed and that there is no risk of
6 any further repositories of potentially relevant
7 material being overlooked or coming to light at an even
8 later stage in the Inquiry.

9 And that -- the provision of an OPEN witness
10 statement that contains that information -- will help
11 facilitate our understanding, and that of the public
12 more generally, about what went wrong and how it's going
13 to be put right. We submit that a measure along those
14 lines is necessary in order to help restore the
15 confidence that has been badly shaken by these
16 developments.

17 **SIR CHARLES HADDON-CAVE:** Thank you, Mr Craven.

18 Mr Gray, I haven't acknowledged Mr Gurr's presence
19 here today but can I thank Mr Gurr very much indeed for
20 coming along today. I know that he is going to be
21 retiring shortly but can I thank him for his
22 considerable assistance to the Inquiry and in the course
23 of his very distinguished public service.

24 Mr Gray, thank you for your assistance and
25 counsel, generally. We will adjourn now. The date

1 I hope everybody has a note of and pencilled in on
2 Friday 16th. My team will be in touch very shortly and
3 we will all have a laser focus, I hope, on driving the
4 Inquiry forward as fast as possible and as thoroughly as
5 possible.

6 All right. Thank you everybody for your
7 attention.

8 **(11.11 am)**

9 **(The OPEN hearing adjourned)**

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