

Tuesday, 24 June 2025

(10.00 am)

**LORD TURNBULL:** Good morning, Mr Greaney.

**MR GREANEY:** Good morning, sir. As you know, first today we will hear the opening statement on behalf of those represented by John McBurney solicitors, which will be delivered by Mr Kane.

**LORD TURNBULL:** Good morning, Mr Kane.

**Opening statement on behalf of Core Participants represented by John McBurney Solicitors by MR KANE KC**

**MR KANE:** Good morning, sir. This opening statement is made on behalf of the bereaved families and survivor Core Participants represented by John McBurney Solicitors. We represent the following Core Participants, whose loved ones were murdered by the Real IRA. Edwin, known as Eddie, Cartwright and Stephen Cartwright in respect of Debra-Anne Cartwright. Mandy Walker and Mark Hawkes in respect of Olive Hawkes, Helen Hughes and Richard Hughes in respect of Julia Hughes. Kevin Skelton, Tracey Skelton, Paula Huntley, Shauna Murphy and Roy Skelton in respect of Philomena Skelton, Gerald McFarland and Gerald McFarland in respect of Samantha McFarland; Marion Radford, Claire Hayes, Paul Radford, Elaine O'Reilly, Carol Radford, Lynne Mullen and Heather Lagan Radford in respect of Alan Radford; and Anne Wilson, Denise

1

to assist both you and the Inquiry and to deliver this opening statement on their behalf.

You have asked us to focus on areas of particular concern and interest for those whom we represent. We welcome that invitation and will identify those issues. In return, we invite you, sir, the Inquiry, to give special attention to them as your work progresses.

Preventability is the question that the Inquiry must explore. Whilst not explicitly stated in the terms of reference, our collective aim and your foremost objective must be to establish the entire truth relating to all relevant issues prior to 15 August 1998. In this task, the Inquiry must be guided by principles of transparency, openness, diligence, fairness, candour, and co-operation; all of which are laudable and achievable aspirations in the discharge of the public duty of this Inquiry.

Our clients' key principles were outlined by myself last July. In summary, I repeat those views.

First, it is important that we always keep in focus that it was republican terrorists under the name Real IRA who planned and planted the Omagh bomb, and they alone are responsible for the loss and hurt caused by it. Indeed, on hearing the accounts of so many at the commemorative hearings, it beggars all belief as to what else was intended other than murderous carnage by leaving

3

Kerrigan, Gary Wilson and Colin Wilson in respect of Lorraine Wilson.

I also appear on behalf of the following Core Participants who survived but were injured by the Real IRA on that occasion: Lorraine Anderson, Ray Campion, Wendy Graham, Rosemary Ingram, Stephen McKervy, Alan Palmer, Jim Sharkey and Robert Watson.

Before starting this opening statement, sir, it would be remiss of me not to acknowledge and refer to the commemorative hearings. Any comment elaborating on these would do those days a disservice. I say only that the tsunami of human emotion on those days overwhelmed all those present in the room and beyond. The width and depth of human loss, pain and suffering was overcome only by the courage and strength of those who gave their evidence, both orally and in written form.

On behalf of those we represent, could I thank you, sir, and all your Inquiry team, staff and support workers. In respect of our own clients, we are grateful for the invaluable assistance from the South East Fermanagh Foundation who we know as SEFF.

It is our privilege to represent a number of bereaved families and injured survivors whose names I have placed on record, both this morning and at the initial hearing. That privilege translates into an awesome responsibility

2

a bomb in a peaceful town's main street on a busy sunny Saturday afternoon, where so many innocent women, children and men were likely to be. The preventability of the murders and injuries was at all times within the absolute control of the Real IRA.

Secondly, our clients do not wish to include in any consideration of preventability those members of the RUC who, on the day at the scene, followed orders and used their initiative to try and make safe the area of the bomb, working as they were with false information from the bombers. Those same members of the RUC, as we have heard, valiantly fought at the scene to save lives and to help the injured, as did many others in rescuing and providing medical care.

Thirdly, our clients are of the clear belief that whatever aspects of preventability may lie at the door of the UK State authorities, blame, to a greater or lesser extent, rests with the state authorities in the Republic of Ireland. Our clients again renew their call for a parallel Inquiry to be immediately established by the Government of the Republic of Ireland; a call that they should not be required to repeat.

Fourthly, our clients remain greatly disappointed at the lack of any commitment on the part of the authorities in the Republic of Ireland to meaningfully assist this

4

Inquiry, and they regard the memorandum of understanding agreed with the Minister of Justice for the government of the Republic of Ireland as wholly unsatisfactory in that regard. Our clients wish to use this Inquiry to heap shame on the government of the Republic of Ireland for their failures.

They consider that there is a moral, human, and legal imperative on the government of the Republic of Ireland to establish a parallel inquiry into the deaths of people who were their own citizens, visitors to their country and those who would have been entitled to Irish citizenship under their laws. As a country with a professed European inclination, it is extremely regrettable that the Republic of Ireland continues to be in breach of Article 2 of the European Convention on Human Rights in failing to ensure that there has ever been any effective investigation into the death of the people to whom they owe that duty.

There are preventability issues which clearly arise from the territorial origin of the Omagh bomb and the cowardly refuge which its perpetrators enjoyed within the boundaries of the Republic of Ireland.

With respect to the work of the Inquiry, we do not underestimate the huge challenge that it faces when, unlike some other inquiries which have more quickly

5

in passing before addressing certain particular issues of concern raised by those whom we represent.

Some general areas of concern will fall to be considered within the upcoming evidence chapters, chapter 3, for instance, the bombing of Omagh, which will involve establishing the sequence of events leading to the bombing, and then chapter 4 which will deal with previous incidents. Can I say we welcome the relevant aspects of the recent ruling made by you on suspects in this regard.

There will be some overlap with the subsequent chapter, chapter 7, concerning intelligence relating to the Omagh bomb, but we can now highlight some questions in preparation for the initial evidence chapters. They include: what was done to establish a link between any of the incidents that occurred during the 18 months prior to the Omagh Bombing? Were there policing, security or intelligence failures in properly recognising any such links between those incidents? Did those failures contribute to the situation where the potential for prevention of the Omagh bomb was diminished or removed? What was the impact of political developments on the investigation of those 31 incidents?

Did political events or influences act as a brake on the investigation and detection of those incidents and the methods used for those purposes? Further, did that

7

succeeded the events which they were examining, your task is to undertake an historical investigation of facts, matters and circumstances in the period prior to 15 August 1998.

You face the task of exploring policing, security and intelligence, practices, processes and procedures within a country fighting against ongoing terrorism. Resources, technology, information storage and analysis, cultural attitudes and political dynamics have all changed so much since the events of 9/11 forever changed how the world viewed and dealt with terrorism.

Due to the considerable passage of time, there will inevitably be evidential hurdles for the Inquiry to overcome, in particular in relation to document retrieval, deceased witnesses and memories which have faded.

However, the John McBurney Core Participants caution that history must not be rewritten. They hope that the Inquiry will appreciate the grim reality of that particular time in history when republican terrorists continued to operate against a newly evolving political backdrop.

If I could turn then to areas of particular interest and concern. Could I say that there will be repetition of some matters by others, so I will refer to those only

6

have a negative knock-on effect upon the preventability of the Omagh bomb? Were the steps and processes of downgrading border security a consequence of political influence and considerations?

More broadly, now is perhaps not the time to examine in any detail all the many issues which have emerged over time and given our clients cause for concern, but it is perhaps appropriate at this stage to highlight two by way of example. They are, first, some of our clients have grave concern about the missing Threat Book. Their calls for an explanation of the disappearance of such an important document cannot continue to go unanswered.

Secondly, some of our clients have deep-seated concerns as to why British Army personnel were not deployed in the Omagh area either before, or on the day of, or after, the Omagh Bombing. They want to know whether this departure from normal security measures was deliberate.

I'm now going to deal with the Republic of Ireland and the issue of preventability. That is one of our clients' main areas of significant concern to which I have already referred and that is the responsibility of the government of the Republic of Ireland and their state authorities to have prevented the Omagh bomb. Kevin Skelton, whose wife Mena was murdered, gave evidence to

8

1 the Inquiry during the commemorative hearings and he  
2 reflected on this particular area of concern in his own  
3 perceptive and succinct Tyrone vernacular when he said,  
4 and I quote:

5 "But the British government I don't know -- sorry but  
6 Irish government -- I don't know, I don't see them  
7 playing ball with this Inquiry. And if they don't, then  
8 it's dead in the water because, at the end of the day,  
9 the bomb was made in the south, the people who built the  
10 bomb were from the south, the car was stolen in the  
11 south, and car was driv from the south and planted in  
12 Omagh and them boys driv back home again. And there's  
13 some of them still walking the streets."

14 That was how the families and the injured survivors  
15 whom we represent feel; that is a fundamental concern.

16 With the utmost respect to this Inquiry, our clients  
17 have likened the work of the Inquiry to the role of an  
18 MOT test centre where a vehicle has been taken for  
19 inspection. To their disbelief, our clients, the  
20 customer, are told that only the engine can be inspected.  
21 All that exists beyond the engine, including the body,  
22 the suspension and the brakes and the contents of the  
23 boot, cannot be examined. Such an MOT would clearly be  
24 unfit for purpose.

25 This Inquiry can only examine the parts of the car

9

1 However, there are, from even the most preliminary  
2 perusal of some of the documentation that has been made  
3 available by the Inquiry, issues which only intensify the  
4 concerns which I have indicated. I take only a small  
5 number of examples and will make some brief observations.

6 The report of the Smithwick Inquiry dated  
7 29 November 2013. The Smithwick Inquiry was quite  
8 prepared to make a finding that, and I quote:

9 "There was a failure on the part of the RUC to put  
10 all relevant information in its possession before An  
11 Garda Siochana, when requested by Deputy  
12 Commissioner Conroy to do so. The failure in this  
13 respect relates to the 1985 intelligence in its  
14 possession ..."

15 On 6 December 2013, Mr Michael Gallagher swore an  
16 affidavit in the judicial review proceedings in which he  
17 refers in paragraph 14 of that affidavit to an assurance  
18 given to the bereaved families by the Prime Minister of  
19 the Republic of Ireland, Bertie Ahern, that "no stone  
20 would be left unturned". However, that is a promise  
21 which has significance only for the ignoring and  
22 disregarding of it which has taken place over the almost  
23 27 years which have passed since the Omagh Bombing. The  
24 Bridger report, which was published in June 2012, states  
25 clearly on page 11 that:

11

1 made in the UK, as it were, the preventability. It  
2 cannot examine the rest of the car where there terrorists  
3 sat or the boot area where the deadly bomb was hidden.  
4 If this Inquiry could examine the whole car then it would  
5 also be able to identify any preventability issues that  
6 fall on the Republic of Ireland state authorities and all  
7 the faults and defects in the vehicle could be  
8 identified. The John McBurney Core Participants are very  
9 anxious to press the Inquiry to spend considerable time  
10 and effort dealing with paragraph 2(i) of the terms of  
11 reference. Paragraph 2(i) states that the Inquiry will  
12 investigate and I quote:

13 "(i) Any other matters which are relevant to whether  
14 the Omagh Bombing on 15 August 1998 could have been  
15 prevented by UK State Authorities. To the extent it is  
16 relevant to the issue of preventability by UK State  
17 Authorities, this may include information sharing and  
18 investigations with and by State Authorities in the  
19 Republic of Ireland."

20 End of that quotation.

21 The opening statements protocol in paragraph 18  
22 acknowledges that and I quote: "opportunities at this  
23 stage for submissions on the detail of the evidence" by  
24 ourselves are circumscribed by the limited material that  
25 has been made available to date.

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1 "Public confidence can go some way to being restored  
2 by both the British and Irish governments showing that  
3 they are willing to do their utmost to have perceived  
4 failures fully investigated and dealt with."

5 Without going into detail, a plethora of issues arise  
6 from reports over the years which warrant careful  
7 scrutiny by your Inquiry. They include the activities of  
8 Kevin Fulton in the Republic of Ireland, the activities  
9 of David Rupert in Republic of Ireland, the extent to  
10 which knowledge of those individual was in the possession  
11 of or attributable to the state authorities of the  
12 Republic of Ireland; the credibility of the information  
13 being supplied by Garda Detective Sergeant John White;  
14 the role of Dermot Jennings, Assistant Commissioner of  
15 the An Garda Siochana, with responsibility for security  
16 and intelligence; a clear allegation by Enda Kenny, the  
17 former Taoiseach of the Republic of Ireland as to and  
18 more generally, the inadequate nature of the Nally Report  
19 and its investigations; the interactions between An Garda  
20 Siochana and RUC senior officers, including intelligence  
21 sharing and the issue of mobile phones, tracking and the  
22 security services.

23 Our clients wish for the Inquiry in considering any  
24 material relating to interactions with authorities and  
25 the Republic of Ireland to explore any failures on the

12

1 part of those authorities which are explicitly or  
 2 implicitly demonstrated by such material.  
 3 Enda Kenny also stated during a debate in the Dáil on  
 4 20 February 2004 prior to his election, I quote:  
 5 "You will get your truth. You will get your truth  
 6 and so I will Ireland."  
 7 Sir, I have the authority of those I represent to say  
 8 that they are sick and tired of platitudes, false  
 9 assurances, broken promises and grand but empty words  
 10 from the state authorities of the Republic of Ireland.  
 11 Their resolute refusal to institute a parallel inquiry  
 12 and their ongoing failure to provide real and meaningful  
 13 co-operation with this Inquiry speaks far louder than  
 14 their words.  
 15 All of this leads to the consideration of the  
 16 memorandum of understanding dated 15 April 2025 between  
 17 the Inquiry and the Minister for Justice of the  
 18 government of Ireland entitled "Matters relating to  
 19 disclosure of materials". Mr Justice Horner, in the  
 20 judicial review proceedings brought by Michael Gallagher,  
 21 stated in paragraph 310 that an investigation, and  
 22 I quote:  
 23 "... will necessarily involve the scrutiny of both  
 24 OPEN and CLOSED material obtained on both sides of the  
 25 border. It is not within my power to order any type of

13

1 only relates to relevance concerning preventability by  
 2 the UK State Authorities. This is an unacceptable yet  
 3 significant escape clause for the Republic of Ireland.  
 4 Under the memorandum, the Republic of Ireland state  
 5 authorities and, therefore, any information that reflects  
 6 badly on them, could be determined by them to be  
 7 irrelevant.  
 8 The recitals to the memorandum of understanding state  
 9 that:  
 10 "The Government of Ireland's provision of assistance  
 11 to the Inquiry is solely within the grant of the  
 12 government of Ireland."  
 13 This voluntary statement of participation by the  
 14 Government of the Republic of Ireland lacks any degree of  
 15 real commitment and does nothing to give our clients any  
 16 degree of confidence in it.  
 17 Similarly, the memorandum relates only to  
 18 documentation, there is no power to compel the attendance  
 19 of witnesses. To take an example, in the recent  
 20 corporate witness statement provided on behalf of the  
 21 Police Service of Northern Ireland, to which I will  
 22 return, it is stated in paragraph 3 and 4 that:  
 23 "Assistant Commissioner ... Dermott Jennings, who was  
 24 in the Security and Intelligence Section of the [An Garda  
 25 Siochana] informed the Nally group that he was in

15

1 investigation to take place in the Republic of Ireland  
 2 but there is a real advantage in an Article 2 compliant  
 3 investigation proceeding in the Republic of Ireland  
 4 simultaneously with one in Northern Ireland."  
 5 It is against the background of defiance to such a  
 6 request and its continuance by successive governments of  
 7 the Republic of Ireland in ignoring the pain and plight  
 8 of the Omagh families and survivors that has led to their  
 9 signature on the memorandum of understanding. In  
 10 a cynical effort to appear to be assisting and  
 11 co-operating and to alleviate the pressure of the  
 12 commencement of this Inquiry on themselves, they grasped  
 13 this opportunity of a fig leaf.  
 14 Any analysis of the memorandum of understanding must  
 15 have the starting point that this Inquiry, by its terms  
 16 of reference, can only look at, and I quote "whether the  
 17 Omagh Bombing could have been prevented by UK State  
 18 authorities."  
 19 This limitation is then compounded by a further  
 20 limitation: the mere commitment of the government of the  
 21 Republic of Ireland to disclose what it considers to be  
 22 "potentially relevant materials."  
 23 These two limitations make the memorandum redundant.  
 24 First, because the assessment of relevance is in the  
 25 power of the Republic of Ireland. Secondly, because it

14

1 frequent contact with the RUC about operational matters  
 2 in and around the period of the Omagh Bombing."  
 3 Details as to how frequent this contact was, the  
 4 nature of the contact, the records of such contact, and  
 5 the personnel involved, and whether the phrase "in and  
 6 around the period of the Omagh Bombing" primarily means  
 7 after the event, among many other details, would all be  
 8 the sort of ideal sort of inquiry to be made seeking  
 9 documentary disclosure and cross-examination of  
 10 witnesses, such as Mr Jennings as part of a parallel  
 11 Inquiry, if it were to be held in the Republic of  
 12 Ireland. Such necessary inquisitorial demands cannot be  
 13 satisfied by the arrangements established under the  
 14 memorandum of understanding.  
 15 Even as to documents, the memorandum entitles the  
 16 authorities in the Republic of Ireland to act and react  
 17 only to specific disclosure requests. There is no  
 18 commitment to carrying out either any general, full or  
 19 comprehensive search for or any analysis of, documents  
 20 which may be within the possession of its state  
 21 authorities and of which this Inquiry might have no  
 22 knowledge. In fact, under the memorandum of  
 23 understanding, the authorities in the Republic of Ireland  
 24 may form the opinion that it is best, in its own  
 25 interests, not to look for anything at all unless

16

specifically asked to by this Inquiry.

To add insult to injury, even if inadvertently the existence of a relevant document is made known to this Inquiry and such a document is duly requested, the unilateral power of redaction remains with the government of the Republic of Ireland. This will be applied to all documents as the state authorities of the Republic of Ireland see fit before such documents even cross the border to this Inquiry.

Having regard to the previous experience of the Kingsmill families at their inquest into murders on purely sectarian grounds by Republican terrorists operating from the Republic of Ireland, our clients have no confidence whatsoever in the workings of section 3 of the Criminal Justice International Co-operation Act 2019.

Perhaps one of the most telling statements ever to have been made by the An Garda Síochána was that contained their written submissions to the Smithwick Inquiry. Under paragraph 17 of their written submission they stated:

"The RUC and Northern authorities were not obliged by the Tribunal to comply with Orders for Discovery. As such, they were able to decide themselves what they would disclose and what they could conceal."

Such an attitude and accusation does nothing to

17

which the Omagh Bombing was not preventable? This is a vast area, in relation to which our clients require the most intense and detailed investigation.

Were the political directions emanating from the governments of both the United Kingdom and Republic of Ireland such that interference with security measures, installations, surveillance techniques, mobilisation and deployment of manpower and other resources all led to a situation whereby preventability of the Omagh Bombing became an impossibility to a greater or lesser degree?

We wish to know to what extent there was diminishing activity against republican terrorists, lest such activity could disclose the involvement of well-known individuals in the Provisional IRA and Sinn Féin, all of which would have been very harmful to the ongoing peace process.

It may be of no small significance that the Intelligence and Security Committee in their annual report of 1997/1998 reporting on 31 July 1998, just days before the Omagh Bombing, stated at paragraph 16, and I quote:

"For the Security Service, the renewed ceasefires in Northern Ireland led directly to a drop of over 5% in the Service allocation of resources to Irish and domestic counter-terrorism work, from 24.8% to an anticipated

19

suggest that any better self-serving approach would prevail in the provision of assistance to this Inquiry by those authorities in the Republic of Ireland who may have this in mind.

Finally, in this regard, it may be of interest that the evidence of the Police Service of Northern Ireland in the recent corporate witness statement provided on its behalf is that the retired former senior officers who assisted with the statement have explained that the realities of the time were that, and I quote:

"... the provision of information by the [An Garda Síochána] to the RUC -- of the type which would allow for pre-emptive operational action by the RUC against subversives -- was very rare ..."

If I can now deal with the political context. The other significant area of concern for the families and injured whom we represent is the political background in the period leading up to the Omagh Bombing. This is part of Inquiry's investigation and will be covered in chapter 5 under the heading: The Peace Process and Security and Normalisation".

At this juncture, our clients have one basic question to pose to this Inquiry: could it be that the peace process, the Belfast/Good Friday Agreement and the political dynamics thereafter led to circumstances in

18

19.5% during the course of the year ... Despite the ceasefire and the Good Friday Agreement, there are clearly still elements in Northern Ireland who are intent on using terrorism to further their political aims ..."

I will turn shortly to give a brief and immediate response to the opening statements with which we have been provided from State Core Participants. However, at this stage I am compelled to highlight a most astonishing, shocking and incredible revelation. This is found in the corporate witness statement provided on behalf of the PSNI.

In the course of that statement, reference is made to what are called Security Policy Meetings attended by the Secretary of State and other senior representatives, including the Chief Constable, the General Officer commanding (of the army), the DCI (being the director and co-ordinator of intelligence within the Security Service) and the Permanent Secretary of the Northern Ireland Office.

At paragraph 251 of the witness statement, in response to the Inquiry's request for copies of the agenda, briefing paper and minutes of such meetings, the PSNI states:

"The PSNI has located agendas, briefings and minutes for SPMs for 1996, but none for 1997 and 1998."

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The reality of the above statement is as staggering as it is incredible. It is hard to imagine a more high-level set of meetings to discuss security and intelligence considerations and policy touching upon the lives of the citizens in Northern Ireland in the years 1997 and 1998, and yet no record of those meetings has to date been located. Such a revelation only serves to heighten the suspicions and fears of the Omagh families and survivors that there are views to be hidden and information to remain undisclosed, at the highest possible level, for deep-seated, but hugely embarrassing and difficult political reasons.

In dealing briefly with the disclosure and corporate opening statements, evidence chapters 3 to 7 will all require an analysis of policing, security and intelligence information. The families and injured we represent have come to this Inquiry, some with degrees of reluctance, given the passage of time, and the lack of any investigation which is adequate to date by the state authorities either in the UK or in the Republic of Ireland. Within the context of the present Inquiry, an imperative must be that there will be full and OPEN disclosure of material.

A general comment can be made that there is need for as much open material as possible to be disclosed to the

21

However, that has then to be compared against a further effort in desperation where, at paragraph 79 of the addendum statement, it is said that it cannot even be definitively stated "how often such meetings normally took place."

These are meetings between the highest level of security officials and politicians within Northern Ireland. Such responses to this Inquiry are astonishing and do nothing to inspire confidence. This Inquiry must pursue these matters with all possible diligence, determination and strength. It is wholly unacceptable that the mantra of "hear no evil, see no evil" and that includes "write no evil and keep no evil". I will restrain myself, sir, from alluding to the images which usually accompany such phrases. All I will say is that the families and the injured survivors deserve better. They deserve respect. This Inquiry also deserves better and it deserves respect.

It is also of deep concern to our clients that the corporate witness statements provided on behalf of the Police Service of Northern Ireland now reveal that not only have the most important documentary records of meetings in 1997 and 1998 not been located but, additionally, crucial intelligence documents, some of which have political and security policy development

23

bereaved families and injured survivors as Core Participants. That should be the starting point and should not be deviated from unless there is clear and compelling reason established with evidence for material to become closed.

We strongly urge you, sir, and this Inquiry, when applying the relevant test, to take a robust approach in support of the interests of the bereaved families and injured survivors and to disclose material or parts of material whenever it is possible to do so. Finely balanced judgments should fall in their favour.

Dealing then with the PSNI corporate witness statements, it was therefore with considerable dismay that we read the corporate witness statement provided on behalf of the PSNI and the addendum thereto. These documents were disclosed by the Inquiry two weeks ago.

I have already highlighted the appalling absence of the documents relating to the security policy meetings for the years 1997 and 1998. That position, however, is made all the more difficult to comprehend when, in the addendum witness statement at paragraph 30, a fallback position is a comment smacking of desperation: that any reports conveyed during higher level meetings, such as the Security Policy Meetings "may or may not have been written."

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aspects, also cannot be located. In total, eight categories of documents solely relating to Northern Ireland and the United Kingdom state authorities cannot be located and three additional categories of documentation relating to the RUC and An Garda Síochana cannot be located.

Additionally and regrettably, it appears that this malaise of being unable to locate important documents extends to documents relating to important regular cross-border meetings in the critical period. They are: first, monthly meetings between the Assistant Commissioner for Crime and Security in the An Garda Síochana and the head of Special Branch of the RUC and the Intelligence Management Group. In the corporate statement addendum, it is said in parenthesis as if to portray it as an acceptable aside that, I quote: "The PSNI has not been able to locate the minutes" of any of these meetings.

Secondly, regular Cross-border Senior Officer Meetings, chaired jointly by the Deputy Chief Constable of the RUC and the Deputy Commissioner of the An Garda Síochana. In paragraph 39(b) of the addendum statement it is said, again in parenthesis, that "The PSNI has not been able to locate the minutes" of any of these meetings.

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1 And then, thirdly, meetings between the RUC and any  
2 other organisations within the Republic of Ireland. At  
3 paragraph 39 of the main corporate statement provided on  
4 behalf of the police it is stated, and I quote:

5 "The PSNI has not located any record of the RUC  
6 engaging with any other organisations within the Republic  
7 of Ireland with responsibility for gathering intelligence  
8 about the activities of those engaged in acts of  
9 terrorism, other than [An Garda Síochána]."

10 Mr Chairman, may I just pause to say this, without  
11 further elaboration at this point: a critical question to  
12 which this Inquiry may wish to pay particular attention  
13 is any contact with the army intelligence services of the  
14 Republic of Ireland.

15 Such a profoundly serious state of affairs as to this  
16 asserted absence of documents represents to ourselves a  
17 disastrous commencement of the substantive work of this  
18 Inquiry and leaves our clients with a distinct lack of  
19 confidence and assurance in the co-operation of the State  
20 Core Participants, in particular the PSNI.

21 For ease of reference in addition to the professed  
22 absence of any documents from Security Policy Meetings  
23 (to which I have already referred), there are seven other  
24 categories of documents which also are stated as being  
25 unable to be located. We have specifically itemised

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1 hearts of our clients with considerable disquiet and bode  
2 ill for the efficacy of the work of the Inquiry, despite  
3 its best intentions, in the days ahead.

4 Could I say, sir, that we welcome the intensity of  
5 scrutiny and effort in relation to documents which have  
6 been declared as not able to be located from Mr Greaney  
7 in his brief opening yesterday. However, proof of the  
8 pudding will be in the eating.

9 We were greatly assisted by the structure of the  
10 corporate statements provided on behalf of the PSNI,  
11 which included the text of the relevant Rule 9 requests  
12 to which a response was being provided. In circumstances  
13 where the bereaved family and survivor Core Participants  
14 have not separately been provided with, or had visibility  
15 of, the Rule 9 requests issued to the State, and  
16 organisational Core Participants and the others who may  
17 have documents and evidence to give, we welcome this  
18 approach and ask that it be adopted by all who provide  
19 Rule 9 responses to this Inquiry.

20 Turning, then, to Sir Ronnie Flanagan's opening  
21 statement. Sir Ronnie Flanagan, in his opening statement  
22 in paragraph 31, appears to be very concerned about  
23 hindsight. He reminds the Inquiry of a quotation from  
24 Sir Anthony Hidden QC, a rather apt name in the  
25 circumstances, and suggests that there is, I quote: "a

27

1 those seven categories in our written opening statement  
2 which is available.

3 However, it is noted in passing (in paragraph 264 of  
4 the main corporate statement provided on behalf of the  
5 Police Service) that certain documentation relating to  
6 the minutes of lesser groups was classified as, I quote,  
7 "secret" and "kept either in [Special Branch  
8 headquarters] or in the Chief Constable's Office."

9 All of this is particularly regrettable in light of  
10 the criticism of the PSNI years ago in 2010 by  
11 Lord MacLean in the Billy Wright Inquiry report. He  
12 found the reasons given by the PSNI for failing to  
13 disclose information to be unconvincing, inconsistent  
14 with the evidence, unsatisfactory, and inadequate. He  
15 concluded with concern that there may have been, and  
16 I quote "deliberate malpractice" involving -- and again  
17 I quote, "The destruction of audit trails and the  
18 concealment of evidence which might have been damaging to  
19 the reputation of the RUC."

20 The question is being understandably asked whether  
21 anything has changed and why are the Omagh families and  
22 survivors being potentially subjected to similar  
23 treatment?

24 In summary, therefore, at this early stage of the  
25 Inquiry, these are initial responses which fill the

26

1 requirement for an Inquiry to remind itself of the danger  
2 of hindsight."

3 We would suggest that it is not hindsight itself  
4 which is dangerous. Instead, it is any wrong  
5 interpretation of what hindsight reveals. However, it  
6 would appear that the primary danger for this Inquiry  
7 might well be not hindsight but the absence of sight of  
8 crucial documentation held by State Authorities.

9 The Secretary of State also made an opening statement  
10 and it is disappointing to read a purported summary of  
11 the judicial review proceedings in which the decision of  
12 Mr Justice Horner is described at paragraph 18, as having  
13 been based on the fact that he -- that's a quotation from  
14 the opening statement of the Secretary of State: "found  
15 that the relatively low bar of plausible argument was  
16 made out in relation to four of the ten grounds" of  
17 challenge."

18 The John McBurney Core Participants consider that the  
19 plain insinuation being made is that this Inquiry exists  
20 only because a low bar was applied in judicial review  
21 proceedings. This wrongly, and unfairly, minimises the  
22 work of the Inquiry and the weight of the evidence  
23 already available to it. Indeed, it is especially bold  
24 for such loaded comments to be made in the context of the  
25 Secretary of State Core Participant group declining your

28

invitation for concessions to be made, given the substantial time which they (and the other organisational Core Participants) have already had to understand and investigate their role in relation to the Omagh Bombing.

In a similar vein, it is hoped that all restriction orders which may be sought will be limited to such materials as can properly be considered sensitive, whether on national security or on other grounds. However, again, the recent approach of the Secretary of State to the redaction of all names of junior civil servants from otherwise relevant material on which a ruling has now been given confirming that the Secretary of State's alleged assessment of relevance was erroneous, did little to reassure the John McBurney Core Participants that they will receive the standard of openness, candour and transparency that they can and do expect from State Core Participants.

Finally dealing with the Police Ombudsman's opening and corporate statement. On the matter of open and closed materials I wish to mention the approach of the Ombudsman. The Inquiry has recently disclosed a corporate witness statement provided on behalf of the Police Ombudsman. That statement is said to be offered in response to Rule 9 requests from the Inquiry.

The internal headings of the statement make clear

29

in the task which you are about to embark upon and which you have already carried out considerable work, and we hope that there will be positive outcomes and we will be here to assist but also to watch, observe and comment as this Inquiry proceeds. Thank you very much.

**LORD TURNBULL:** Thank you, Mr Kane.

**MR GREANEY:** Sir, could we take a short break, please, before we hear from Mr Southey.

(10.55 am)

(A short break)

(11.08 am)

**MR GREANEY:** As I said, we will now hear from Mr Southey.

**Opening Statement on behalf of the Core Participants**

**represented by Fox Law by MR SOUTHEY KC**

**MR SOUTHEY:** Chair, this opening statement is made on behalf of the following families who lost their loved ones in the Omagh bomb on Saturday, 15 August 1998 and whom I and the rest of the Fox Law legal team have the privilege to represent.

Michael Gallagher, Patsy Gallagher and Cat Wilkinson, who lost a son and brother, Aiden Gallagher, aged 21. Stanley McCombe, Clive McCombe and Colan McCombe, who lost a wife and mother, Ann McCombe aged 48.

Edith White and Linda White who lost a husband, and father, Fred White, aged 65 and a son and brother, Bryan

31

that the Rule 9 request had six parts. It is therefore difficult to understand, and disappointing, that the Police Ombudsman considered that the Rule 9 request merited a response in relation to only one of those parts, namely part A, which concerned general background as to the role and functions of the Police Ombudsman for Northern Ireland generally.

The other five parts of the Rule 9 request -- parts B to F -- related to the following important topics: engagement with the Republic of Ireland; knowledge of past attacks; Kevin Fulton; David Rupert; and Other Agent Reporting.

Each of those topics received no substantive response. Instead it was stated:

"This will be addressed within the closed version of my statement."

It seems to our clients difficult to believe that after 26 years there is nothing that could be said about any of these topics on an open basis. Such an approach serves to exclude the bereaved families and survivor Core Participants. The Inquiry should be cautious to guard against any narrow, lazy or obstructive approach by State Core Participants to the disclosure of relevant material, and must ensure that any closed material is minimised.

Sir, those are our opening remarks. We wish you well

30

White, aged 27.

Michael Monaghan, Patrick Monaghan, Aoibheann Monaghan, Elisha Monaghan, who lost a wife and mother, Avril, aged 30, the daughter and sister, Maura, aged 20 months and Avril's unborn twins.

Michael Doherty, Bernadette Doherty, Amanda Doherty, Caoimhe Doherty, Cillian Doherty, Aisling Doherty, Lisa Dylan, Gearoid Doherty, Oisín Doherty, who lost a son and brother, Oran Doherty, aged 8.

John and Patricia McLaughlin, who lost their son, Shaun McLaughlin, aged 12.

Joe Marlow, Bridie Marlow and Nikki Lucas, who lost a daughter and a sister, Jolene Marlow, aged 17.

Victor Barker, who lost his son, James Barker, aged 12.

Bernadette McCrory, Louise McCrory, Colin McCrory and Brian McCrory, who lost a son and father, Brian McCrory, aged 54.

Jose Abad Esquivel, Paloma Abad Ramos and Ana Abad Ramos, who lost a daughter and a sister, Rocio Abad Ramos, aged 23.

Nuala McGrath, Conor McGrath, Gavin McGrath, Noeleen McGrath and Caragh McGrath, who lost a husband and a father, Sean McGrath, aged 61.

Gareth McCrystal and Rosemary Cooney, who lost a

32



mother and a sister, Geraldine Breslin, aged 43.  
 Patrick Grimes and Fearghal Grimes who lost their  
 mother, Mary Grimes, aged 66.  
 Elizabeth Gibson and Caroline Martin, who lost their  
 sister, Esther Gibson, aged 36.

This statement is also on behalf of the following  
 survivors who were injured as a result of this atrocity  
 and who again I, and the rest of the Fox Law legal team,  
 have the privilege to represent.

Donna Marie McGillion, Garry McGillion, Jaime  
 McGlinn, Michelle McCullagh, Suzanne Travis, Mary  
 Christina Kelly, Giles McCourt, Ronan McGrory, Nikki  
 Lucas, Sandy Marcus-Smith and Monica Taggart.

At the outset, it must be clearly stated that there  
 is no doubt who is to blame for the bomb. Responsibility  
 for that atrocity rests firmly with the dissident  
 Republican terrorists who planned, resourced and planted  
 this bomb in the knowledge that it had the potential to  
 cause mass destruction and have such devastating  
 consequences as evidenced during the commemorative  
 hearings. Nothing that follows is intended to suggest  
 that responsibility is shared with anyone other than  
 dissident republican terrorists or that their guilt is  
 mitigated in some way. As was said during the  
 commemorative hearings by Suzanne Travis on 13 February

33

The sun was shining and in all it was ideal for a summer  
 carnival in Omagh."

That was the statement of Jaime McGlinn.

That joy, essentially, was joy in the knowledge  
 essentially or the belief that there was effective State  
 protection available.

Society's expectations of protection are reflected in  
 the recognition of the importance of the right to life  
 found in Human Rights instruments such as Article 2 of  
 the European Convention on Human Rights. That has been  
 said by the European Court of Human Rights:

"... ranks one of the most fundamental provisions in  
 the Convention, one which, in peace time, admits of no  
 derogation under Article 15 ... it enshrines one of the  
 [most] basic values of the democratic societies making up  
 the Council of Europe."

A key aspect of that right to life is the duty  
 imposed on states to provide effective protection such as  
 that found in the judgment of the European Court in  
 Osman.

The duty to provide protection is in part made  
 effective by the duty that is imposed on the state to  
 investigate potential breaches of Article 2. That duty  
 gave rise to this Inquiry, as is clear from the judgment  
 of Mr Justice Horner, as he then was. That duty exists

35

this year, this was a:

"... cowardly, wicked act that took so much away."

However, without in any way wanting to detract from  
 the unqualified statements I've just made, the guilt -- I  
 don't want to detract in any way from the unqualified  
 statements I have just made about the guilt of dissident  
 Republican terrorists. What I've just said does not mean  
 it is not legitimate and important for questions to be  
 raised about possible failings by the State in relation  
 to protection.

In a modern democracy, there will always be,  
 unfortunately, people who seek to disrupt society. Both  
 individuals and society collectively expect the State to  
 protect its citizens from the threat of violence and the  
 risk of harm. That is why the State funds security  
 services such as the police and enacts special powers to  
 enable those services to be effective.

The reality is that nobody would have been in Omagh  
 enjoying a beautiful summer day had there not been an  
 expectation of effective state protection. As described  
 during the commemorative hearings:

"The town was busy and I distinctly recall the  
 chatter of many of the visitors as they conversed in  
 Spanish. There were children running about and the town  
 was expecting the procession of a parade in a short time.

34

in part, as was held by the Supreme Court or the House of  
 Lords in the Amin judgment because those who have lost  
 their relatives may at least have the satisfaction of  
 knowing that lessons learned from this death may save the  
 lives of others.

These matters demonstrate that it is legitimate for  
 questions to be raised about whether state agencies took  
 steps that we expect them to take to protect and that the  
 law obliges them to take. As Michael Gallagher said to  
 the Northern Ireland Affairs Committee on 16 March 2009:

"We will not remove the blame from those who are  
 responsible, and that is the Real IRA. They took  
 responsibility for it. They are the people who created  
 an extremely lethal and dangerous situation in Omagh and  
 expected others to deal with it. Our call for an inquiry  
 is not to shift blame from those who rightly should  
 receive that blame, but to see what went wrong and what  
 should be done to put it right."

So what do the families seek? The families wish to  
 put on record, firstly, their gratitude to the Inquiry  
 for the dignified and considered manner in which the  
 commemorative hearings were approached and managed. It  
 highlighted the place of the families and survivors at  
 the centre of the process and demonstrates the importance  
 that they should remain the focus of the Inquiry at each

36

1 and every stage. The hearings allowed the families of  
2 the deceased to remember their loved ones and convey  
3 their loss through their Pen Portraits and for the  
4 survivors to tell their experiences and describe the  
5 impact that the bomb has had on their lives.

6 The hearings also provided the first responders with  
7 an opportunity to communicate their own experiences of  
8 the harrowing situation that they faced and the difficult  
9 tasks they had to undertake.

10 Several themes are clear from the evidence heard  
11 during the commemorative hearings. First, it is clear  
12 there is a desire for the Inquiry to conduct a thorough  
13 and comprehensive review of the circumstances surrounding  
14 the Omagh bomb. For example, Paloma Abad Ramos said, on  
15 28 January:

16 "... learning about the Inquiry has filled us with  
17 hope, the hope that a lot of the unanswered questions  
18 will finally be dealt with in a thorough and robust  
19 manner. The hope that all those who lost loved ones and  
20 survived can find out the whole story as to what  
21 happened."

22 Second, one reason why it is important that there is  
23 a thorough and comprehensive review of the circumstances  
24 surrounding the Omagh bomb is that the families need to  
25 heal. For example, Gareth McCrystal said on 30 January:

37

1 "[The Inquiry] is about making sure that something as  
2 barbaric and heinous as the Omagh bomb is not allowed to  
3 happen again. It is about learning lessons and standing  
4 up for truth and justice."

5 Fourthly, it is clear that an extraordinary level of  
6 suffering has resulted from the Omagh bomb. For example,  
7 you, Chair, said in responding to the evidence of  
8 Fearghal Grimes that:

9 "Mr Fearghal Grimes mentioned the words of the  
10 coroner spoken that inquests into the killings, which  
11 took place in the year 2000, when the coroner mentioned  
12 that he could not recall any one family suffering such a  
13 loss in the history of The Troubles. 26 years later  
14 those words still resonate as a powerful measure of the  
15 extent of the cruelty inflicted upon this family."

16 These matters demonstrate why it is so important that  
17 the Inquiry undertakes its role with rigour, thoroughness  
18 and in a manner that has the confidence of the victims  
19 and survivors at its heart. An important aspect of this  
20 is that the Inquiry does not rule out issues too early.  
21 For example, it's important not to rule out issues  
22 relating to the warning calls and the response to those  
23 calls at this stage for a number of reasons.

24 First, the victims and survivors argue that there is  
25 a need for -- or there was a need rather -- all

39

1 " ... people in the wider community have questions  
2 that remain outstanding and that they want answers to and  
3 I sincerely hope they find the answers. I hope I find  
4 the answers I'm looking for and I hope this is a  
5 cathartic process for those who involve themselves in  
6 it."

7 Similarly, Nicola Marlow said:

8 "I hope some people get the closure they need to  
9 overcome some of the challenges they have faced in the  
10 past 26 years."

11 In a real sense this may be a last opportunity for a  
12 cathartic/healing process. As Donna Marie McGillion  
13 said, on 12 February:

14 "And I'm not too sure that we can keep doing this.  
15 I mean, this is really hard. It's really hard to -- you  
16 know, you build yourself up in a way where you are --  
17 it's never away but you build yourself up in a way where  
18 you're coping and then you have to do this again, and  
19 I just don't particularly -- I just can't do this again."

20 Thirdly, another reason why the victims seek a  
21 thorough and comprehensive review of the circumstances  
22 surrounding the bomb is consistent with, what I've  
23 already said about the judgment in Amin, a desire -- the  
24 victims have a desire to prevent repeats of any failures.  
25 As Stanley McCombe said on 4 February:

38

1 intelligence and information suggesting a threat to be  
2 considered by a single body with responsibility for  
3 protecting the public. This would have allowed a clear  
4 view to be formed of the threat, which may have enabled a  
5 more effective response to the warning calls. For  
6 example, a recognised codeword was used. There was  
7 available intelligence that the time between a bomb  
8 warning being given and detonation had been shortened by  
9 dissident Republicans. There is a need to investigate  
10 and assess if this information about a reduced time to  
11 respond (particularly when combined with other  
12 intelligence) should have impacted on the response and  
13 evacuation procedures implemented on the day of the bomb.

14 Second, there's a need to investigate what I will  
15 describe as differential policing, and what I mean by  
16 that is whether the policing of terrorism in Northern  
17 Ireland was as effective as that in England.  
18 Preparedness for warning calls is an aspect of this. Did  
19 England have more effective procedures to respond to bomb  
20 threats?

21 Third, the army had regularly been called upon during  
22 bomb alerts as it possessed a range of expertise,  
23 including bomb disposal expertise. However, on  
24 15 August 1998, they were not deployed into Omagh  
25 following the warnings being issued. At the

40

1 commemorative hearings, Kevin Skelton commented that for  
2 every bomb scare up to 14 and after 16 August 1998, the  
3 army had been brought onto the streets to clear the town.  
4 This raises the question of why the army were not  
5 deployed on the day of the bomb and what was the protocol  
6 governing their attendance. The victims and survivors  
7 submitted that an aspect of preventability is whether the  
8 decision not to deploy the army was or should have been  
9 influenced by intelligence and other materials suggesting  
10 a threat. I will come to that evidence about  
11 intelligence later.

12 Further, in terms of issues that shouldn't be ruled  
13 out, although it is accepted that investigation of the  
14 bomb is not directly related to preventability, it  
15 potentially needs to be considered for the following  
16 reasons among others.

17 Firstly, it may shed light on issues of  
18 preventability. For example, it may shed light on the  
19 extent to which there were effective mechanisms to ensure  
20 that intelligence was shared.

21 Secondly, it may shed light on the likely approach to  
22 the investigation of the prior incidents such as  
23 Banbridge.

24 Finally, it may be relevant to the weight that can be  
25 placed on the conclusions of the contemporaneous

41

1 Report which details what was said during those calls:

2 "David Cox, former head of PSNI [Historical Enquiries  
3 Team said - they [meaning PSNI intelligence] always gave  
4 me a limited version of the truth -- they invariably did  
5 not and will not give up information.

6 "Lord Stevens, [when] referring to the security  
7 forces said 'I was misled deliberately, I was criminally  
8 obstructed from doing by job by the RUC and the military,  
9 whilst MI5 failed to disclose information'.

10 "Judge Pomerance, Senior Counsel to the Cory Inquiry  
11 [said] - 'we could not compel material being provided -  
12 others controlled what we received and when and how we  
13 received it and the conditions in which we received it.

14 They [meaning] (MI5) made the entire process  
15 uncomfortable. The state viewed itself as above the law.

16 "Mary Laverty, Senior Counsel to Judge Smithwick -  
17 said: 'They (the security forces) [meaning the security  
18 forces] made it incredibly hard - when will they decide  
19 they can reveal the information?'"

20 Moving on from Kenova to the Billy Wright report,  
21 that states:

22 "The evidence which the Inquiry has heard from  
23 several witnesses, and the clear indication in the Alpass  
24 report of 2000 of the enormous number of hard copy files  
25 which were in existence mean that it is very puzzling

43

1 investigation.

2 In light of the matters above, or the matters I have  
3 just outlined, although it is accepted that the terms of  
4 reference mean that there are limits to what the Inquiry  
5 consider, it is the position of the families and  
6 survivors who I represent that it is important to the  
7 credibility of the Inquiry that issues are only ruled out  
8 after a review of the evidence demonstrated that it's  
9 clear that there is an evidential basis for ruling the  
10 issues out. That evidential basis needs to be explained  
11 to the victims and survivors.

12 One aspect of rigour that is particularly important  
13 to the victims and survivors is the need to investigate  
14 with care claims that the Inquiry has been provided with  
15 full disclosure and full evidence. There is a  
16 significant body of material that demonstrates that  
17 relevant evidence has been withheld from official  
18 investigations in the past. This material includes the  
19 interim Kenova report which states, and I quote:

20 "In advance of my evidence to the [Northern Ireland  
21 Affairs Committee] in September 2020, I telephoned  
22 a number of my predecessors to inform them that I was  
23 giving evidence and to ask if there was anything they  
24 might wish me to pass on to the Committee."

25 I am now about to read out the passage of the Kenova

42

1 that the PSNI has been unable to produce any significant  
2 hard copy intelligence records from 1997. Where they  
3 are; or if and when they were destroyed, remains a  
4 mystery."

5 Finally, the Police Ombudsman report, entitled  
6 Investigation by Police of the Murder of Mr Sean Brown on  
7 12 May 1997", states:

8 "The Box file was not available on 23rd and  
9 24th May 2001, and was formally declared missing on  
10 26th July 2002. The inability of the Police Service of  
11 Northern Ireland to produce this document had massive  
12 consequences for this investigation."

13 The experience and learning from these investigations  
14 and reports demonstrates a need for the Inquiry to probe  
15 with care material provided to it to ensure that it is  
16 complete and accurate.

17 At this early stage of the Inquiry, it is concerning  
18 that it is already being indicated on behalf of the  
19 Police Service of Northern Ireland that potentially  
20 relevant documents connected to the intelligence  
21 community, some from the highest level, cannot be  
22 located. These include any reports provided by the Royal  
23 Ulster Constabulary to the Secretary of State for  
24 Northern Ireland; agendas and briefings and minutes of  
25 the Security Policy Meetings held in 1997 and 1998,

44

1 despite 1996 being available; relevant Northern Ireland  
2 Intelligence Reports which had been created by the  
3 Assessment Group, part of the Security Service. There  
4 are further examples of documents that appear to be  
5 missing in the written submissions submitted on behalf of  
6 Fox Law.

7 It is accepted there has never been a successful  
8 conviction of anyone in relation to the Omagh bomb.  
9 However, in the time since the bomb there have been  
10 related criminal trials, civil trials, investigative  
11 reports, a judicial review that resulted in this Inquiry.  
12 Therefore, given this continual review and assessment,  
13 there should be an expectation -- and there is an  
14 expectation on the part of victims and survivors -- that  
15 all relevant material is available and that any reason  
16 proffered for a document being lost or destroyed is fully  
17 investigated. The documents I've already identified are  
18 all ones that one might expect to have been retained in  
19 light of the investigations and reviews.

20 The victims and survivors who I represent also submit  
21 that there should be no delay in the provision of the  
22 materials from the State Core Participants. A  
23 significant period of time has already passed since  
24 proceedings were issued in 2013 challenging the decision  
25 of the then Secretary of State for Northern Ireland not

45

1 relevant documentation.

2 It is also regretted that there has been little  
3 engagement by the State Core Participants with the  
4 substantive issues raised by the Inquiry. This means  
5 that this opening statement is made without knowledge of  
6 the state's position.

7 Further, at the time this statement is being made,  
8 full disclosure and oral evidence is still to be  
9 provided. All of these matters have several  
10 consequences.

11 First, in the same way that the victims and survivors  
12 expect and believe that the Inquiry should not prejudice  
13 matters, the victims and survivors that I represent do  
14 not want to prejudice matters.

15 Second, and in light of the foot point I just made,  
16 this opening statement will identify themes and issues  
17 that are important to the victims and survivors  
18 I represent. However, these submissions cannot be  
19 complete. Issues may arise as further evidence is  
20 disclosed. It's noted that the Inquiry may provide the  
21 opportunity for opening statements at the commencement of  
22 some or all of the various chapters. This approach is  
23 welcomed given the limited disclosure of material to  
24 date.

25 The matters I have just outlined mean that the

47

1 to hold a public inquiry and it's been four years since  
2 that decision was overturned.

3 It is the position of the victims and survivors who  
4 I represent that state bodies have been on notice since  
5 at least 2021 that all relevant documentation would be  
6 sought for the purposes of an Article 2 compliant  
7 investigation.

8 The submissions that I have just made are not  
9 intended to cast down on the good faith of any current  
10 state official. The victims and survivors appreciate the  
11 commitments of the State Core Participants to this  
12 Inquiry. What the submissions are, however, intended to  
13 demonstrate is why the victims and survivors I represent  
14 are concerned that the culture of nonco-operation with  
15 investigations may need to be challenged and why claims  
16 that material cannot be discovered must be examined with  
17 care.

18 Can I then turn to the issue of the timing of this  
19 opening statement. It is regretted that State Core  
20 Participants have concluded they are unable to make any  
21 concessions at this stage. In particular, the Secretary  
22 of State has been alert to the issues raised since 2013  
23 at the latest in light of the judicial review  
24 proceedings. The duty of candour in the judicial review  
25 proceedings should have required a full review of the

46

1 victims and survivors I represent have not focussed on  
2 particular chapters. Instead, what they have sought to  
3 do and what I will seek to do going forward is address  
4 two things. Firstly, I intend to make some submissions  
5 about the overall approach; and, secondly, I intend to  
6 identify some themes that perhaps need to be considered.

7 In terms of the overall approach, there's been  
8 reference in written submissions and earlier during this  
9 hearing to the need for a holistic approach. When I can  
10 make submissions later this morning, I will highlight  
11 a number of particular issues and the preliminary issue,  
12 list of issues, also identifies a number of issues. That  
13 is to some extent inevitable. However, there is a danger  
14 in it. While the chapters provide a structure, it is  
15 essential not to consider any particular piece of  
16 evidence in isolation, but rather to approach the  
17 evidence in a holistic manner in order to identify any  
18 interconnectedness that may exist. This may prove  
19 particularly challenging, we acknowledge, when there will  
20 be evidence held in open and closed.

21 To give an example, though, of how a holistic  
22 approach is important, it is important not to assess any  
23 particular piece of intelligence in isolation without  
24 considering the potential that it could be related to  
25 other intelligence information. It is the full picture

48

that enables an assessment of risk to be conducted.

For example, intelligence may be obtained from an unreliable source. Corroboration for that intelligence may allow an assessment to be reached that it is more reliable than initially appears to be the case.

To use a concrete example of this, the fact that dissidents were carrying out a series of bomb attacks potentially corroborated intelligence showing a desire and intent to carry out further attacks, indicating a risk.

The importance of the points that I have just made is clear from evidence heard in a Commission of Inquiry into the Republic of Ireland into the fatal shooting in May 1998 of Ronan McLaughlin in Ashford, County Wicklow. During that hearing a former detective sergeant, now Chief Superintendent Peter Kirwan stated that:

"Operational intelligence involved identifying a picture. The analogy often used is that of a jigsaw; the more pieces of the jigsaw you have, the more discernible the picture. If you have only one piece, it is unlikely you will be able to say whether it's a landscape or a still life. Once that picture is complete, or even if only some of the pieces are available it is disseminated to the relevant superintendents."

Further, when reviewing the response of the state,

49

Commander was not informed of this call until 15 August 2000, contrary to force order 99/91, which required the Sub-Divisional Commander to be informed immediately when a threat is received. The Ombudsman was firmly of the view that this significant information was not handled correctly.

Even assuming, which is not accepted, that on its own the call could be dismissed, the significance of it is potentially greater when linked with other material, such as that obtained from an agent, Kevin Fulton, suggesting that an attack might be planned. I will come back to Mr Fulton's material later.

This demonstrates two matters need to be considered. Firstly, whether anyone within the state forces was in a position to carry out an assessment of the overall intelligence position and what that said about risk and, secondly, whether the overall intelligence picture required greater action from the state.

Another topic that's already been touched upon is the issue of hindsight. In particular, several of the State Participants warn against applying hindsight. The need to avoid hindsight is particularly important when considering the issue of preventability. The issue that arises, we submit, by reason of Article 2 is not whether the bomb would have actually been prevented by any

51

it's easy to focus on the conduct of particular officers.

By doing that, one risks failing to address the overall response of the state. For example, individual officers may have handled discrete pieces of information appropriately. That, however, does not mean the overall response was effective as there may have been no assessment of the overall picture. That concern about the failure to assess the overall picture is supported by submissions I will make later about the failure to share intelligence.

One example of the need for a holistic approach arises in relation to the handling of the anonymous telephone call that was made on 4 August 1998. It explicitly identified Omagh as a target. The caller spoke for at least ten minutes and stated that an unspecified attack would be made on police on 15 August 1998. Three individuals were named and a fourth referred to by a nickname and two addresses were provided. The caller stated that weapons, including AK 47s and rocket launchers were to be brought on a given date and to be moved from a given address to an unknown address 2 to 3 miles from Omagh.

This call was investigated by the Ombudsman. It was reported that the call was dismissed by Special Branch as a fall out between smugglers. The police Sub-Divisional

50

particular steps. Such an approach is objectionable as it involves the application of hindsight. The issue that arises, we submit, as a matter of law, based on a judgment of the English Court of Appeal in a case called Sarjantson, is whether there was a real and immediate risk that the state failed to take reasonable steps to address.

Linked to the issue of hindsight, the PSNI opening statement indicates or argues that there is a need to consider other issues and threats the RUC was dealing with. In principle, this is not disputed. However, two matters need to be taken into consideration when considering the other challenges the RUC was dealing with.

For reasons that I will come to and probably obvious anyway, this was a time when the security challenges had reduced. This was not a situation when the state was dealing with a sudden unpredictable upsurge in violence.

Second, the UK is obliged to ensure that it has put the resources in place to comply with its obligations under Article 2 of the European Convention to provide protection. We refer in relation to that to another judgment of the English Court of Appeal Noorkoiv. Therefore, the issue is not whether the actual resources available to the state could cope with the demands on

52

1 them, the issue is whether the state put in place  
2 sufficient resources. In this context, it's noted from a  
3 report at the time for the Intelligence and Security  
4 Committee that it was said:  
5 "For the security services, the renewed ceasefires in  
6 Northern Ireland led directly to a drop of over  
7 5 per cent in the Service allocation of resources to  
8 Irish and domestic counter-terrorism ..."  
9 Therefore, an issue that potentially arises is  
10 whether the resources in fact were adequate to deal with  
11 the challenges that continued to be faced in Northern  
12 Ireland.  
13 That leads on to a topic I want to spend some time on  
14 which is the security context at the relevant time.  
15 Obviously, everyone present will be aware that the bomb  
16 was planted after the Good Friday Agreement which brought  
17 to an end the period which has become known as The  
18 Troubles. That is important as it means the bomb was  
19 preceded by almost 30 years of terrorist violence. That  
20 was so intense at times that what had emerged by 1972 was  
21 described by one of the experts in their expert report as  
22 being an effective civil war. Although those 30 years  
23 were horrific and traumatic for the people of Northern  
24 Ireland, they did allow the state to develop powers,  
25 resources and experiences that were valuable in

53

1 There were attempts to address this complexity, for  
2 example, through the Walker Review, but what emerged was,  
3 and I quote an:  
4 "unhelpful separation between the intelligence  
5 gathering and law enforcement sides of policing in  
6 Northern Ireland' and this 'resulted in the routine  
7 practice of intelligence not being shared with those  
8 investigating Troubles related crimes, on the basis that  
9 to share such information would risk exposing where it  
10 came from."

11 The complexities were compounded by the fact that  
12 throughout the period of The Troubles, the pursuit of  
13 gathering intelligence and the management of agents was  
14 not governed by statute but by non-statutory guidance and  
15 direction.

16 At the time of the bomb, RUC Special Branch had lead  
17 responsibility for gathering and exploiting intelligence  
18 on Republican and terrorist activity in Northern Ireland.  
19 It was structured into regions which reported into  
20 Special Branch headquarters where units had  
21 responsibility for the assessment and dissemination of  
22 intelligence. Special Branch, it was said, was of:

23 "Critical importance in the sphere of intelligence  
24 and ran the majority of agents in all terrorist groups."

25 Special Branch's structure and workings had been

55

1 addressing the risks posed by terrorism.

2 I'm about to address those resources and powers, but  
3 before doing it it is important to notice that the Good  
4 Friday Agreement meant that the demands placed on those  
5 resources and powers were likely to be less than they had  
6 been for many years.

7 Turning first to the resources. Until 2001, and the  
8 establishment of the Police Service of Northern Ireland,  
9 law enforcement in Northern Ireland had been carried out  
10 by the RUC since 1922. However, in 1969, due to the  
11 level of civil unrest, the British army were also  
12 deployed in Northern Ireland to support the RUC and  
13 continued to have a role in the security and protection  
14 of the civilian population of Northern Ireland until the  
15 period of normalisation after the Good Friday Agreement.

16 While the structure of law enforcement was at all  
17 material times relatively clear, the responsibility for  
18 intelligence gathering was more complex. That, in part,  
19 reflected history. In a 2002 briefing paper of the  
20 Security Service, it was said:

21 "The complex intelligence machinery in Northern  
22 Ireland was grown out of the history of security  
23 emergencies and the different, complimentary and  
24 supportive roles played in them over the years by the  
25 intelligence agencies and the security forces."

54

1 reviewed in 1996 by Sir Gerald Warner as a result of  
2 concerns raised by the UK Government about its  
3 operations. The implementation of that review had also  
4 been reviewed. That has two implications.

5 Firstly, there should have been no structural reason  
6 why intelligence was not handled effectively by the RUC  
7 at the time of the Omagh bomb.

8 Secondly, findings of other investigations and  
9 inquiries touching on the workings of Special Branch,  
10 such as Kenova Inquiry that considered the period before  
11 Warner, need to be viewed with caution.

12 Despite the RUC's role at the time of the bomb, at  
13 the commencement of The Troubles the RUC was not in  
14 a position to lead intelligence collection, which  
15 prompted the British Army to intervene and forced it and  
16 other intelligence agencies to take the lead in obtaining  
17 their own intelligence. This resulted in a multitude of  
18 intelligence units from military, law enforcement and  
19 intelligence agencies all becoming involved and  
20 undertaking substantial roles. It has been reported that  
21 the organisational landscape with responsibility for  
22 intelligence gathering included some 20 units that formed  
23 or evolved between 1969 and 1983.

24 While the British Army acted in support of the RUC,  
25 it was also involved in many aspects of intelligence,

56

including the recruitment and handling of agents through various units, including the force representation unit, which operated with the headquarters and four regional units.

"The ... role of the FRU was explained by a former Commanding Officer as being ... to obtain intelligence from secretly penetrating terrorist organisations in Northern Ireland by recruiting and running agents and informants. The role is vital to counter terrorist operations because only the 'inside knowledge' can lead to a true understanding of the terrorists and their intention."

Similarly, 14 Intelligence Company played a role in gathering intelligence.

In addition, the Security Service MI5, the security intelligence service and Government Communications Headquarters, GCHQ, also played a role in intelligence gathering. These services are high quality and have played an important role in disrupting intelligence.

For example, MI5's website states:

"Despite devastating bomb attacks on the Baltic Exchange and NatWest Tower, PIRA failed to achieve its aim. A Whitehall report commented 'Only a combination of good intelligence, good policing and good luck prevented several more incidents of such scale'. Among other

57

their handlers within the intelligence community.

The running of agents has been viewed in Northern Ireland as, and I quote:

"One of the most effective methods by which the security forces could frustrate terrorist activity and save lives."

And that, and again I quote:

"The most valuable agents during The Troubles were undoubtedly those positioned deep within the terrorist groups themselves."

The state did not merely receive information from its own resources. Material was also received from the Republic of Ireland. In 1998, in the Republic of Ireland, the Crime and Security Branch was responsible for the National Surveillance Unit and the intelligence service within the Garda. While it worked within the Garda structures, the NSU was a covert intelligence-gathering unit which conducted its work separately. In 1998, most NSU duties involved following suspected members of terrorist organisations with team leaders compiling a daily report after each tour of duty which were entered into a ledger.

The function of the intelligence service was to analyse information and intelligence about national security issues which was received from various sources,

59

counter-terrorism successes was Operation AIRLINES which, in the summer of 1996, defeated a well-planned PIRA attempt to disrupt the whole of Greater London's electricity supply."

It may be of some significance that the highlighted successes appear related to London, as already noted, a significant issue is whether a differential and inferior approach was adopted to terrorism in Northern Ireland.

With particular reference to GCHQ, it is known that they had the capacity and expertise to use electronic monitoring to track electronic devices and listen to telephone calls, and that the legislation would have allowed for the collection of that information, whether or not it was inside or outside the United Kingdom.

When I am come to some submissions about legal powers it demonstrates that there does not appear to have been any effective restrictions on that material being passed to the police if it was in furtherance of GCHQ's functions and could be justified on the grounds of national security or to protect against a threat of a terrorist attack.

One particular feature of the state's response to The Troubles was the use of agents such as Kevin Fulton and David Rupert who had infiltrated terrorist organisations and were gathering intelligence to communicate back to

58

including the NSU. National security in this context largely referred to counter-terrorism policing or policing of any group which threatened the state.

The emergency response unit, which operated under the umbrella of the Special Detective Unit, also worked closely with the NSU in 1998 and had responsibility for counter-terrorism work. As a general rule, and this is a quote:

"NSU stayed in the background as an undercover unit, while the ERU was called in if there was a need to intercept or interrupt potential offences, or to make arrests."

The ERU was, as I've just made clear, used as a front line or intervention unit and was established to combat armed crime and many of their operations in the late 1990s were counter-terrorist operations. However, the ERU did not generally have access to intelligence files.

All of this demonstrates that the Garda had plainly had the capacity to gather valuable intelligence. For example, it is reported that Garda intelligence maintained an internal report containing the names and addresses of those believed to hold senior positions within the IRA.

The issue of the effectiveness of cross-border co-operation in relation to intelligence will be

60

something I return to.

Overall, though, at this stage I want to make clear that there is evidence of the effectiveness of intelligence gathering by the state. For example, as already noted, intelligence operations had successes. One example that you have already heard about was Operation Airlines. Another example of intelligence gathering being valuable relates to the Canary Wharf bomb. The Canary Wharf bomb is highlighted as an example of cross-border co-operation. However, it is - and I will come back to this - unfortunately the case that it appears that cross-border co-operation may not always have been as effective as might have been hoped.

The matters that I have just outlined I have outlined to demonstrate that within Northern Ireland and the Republic of Ireland there were an exceptional level of resources available to protect the public from terrorism. However, the resources, particularly those in relation to intelligence, were distributed across a number of organisations and units. That, we submit, inherently undermined the ability of any organisation to form an overall picture of the risks posed and the action required as a result of that risk. That, we submit, is an important issue for the Inquiry to investigate.

Turning, then, to the legal powers available to the

61

exceptional powers to use against suspected terrorists. In summary, these included the following: the powers to initiate a road check; powers to wholly or partially close a road; powers to stop a person for so long as necessary for the purpose of ascertaining that person's identity or involvement or movements or their knowledge of any recent explosion or any other recent incident concerning life or injury to life; to stop and search a personal vehicle if there are reasonable grounds for suspecting the presence of stolen or prohibited articles; or to stop and search anyone who appeared to be liable for arrest in relation to terrorism; to enter and search premises under warrant or without a warrant; to arrest without a warrant and detain a person initially for 48 hours with a further extension of five days.

John Wadham, in his expert report, makes clear that these policing powers were exceptional. He states that the Northern Ireland (Emergency Provisions) Act 1996 and the Prevention of Terrorism (Temporary Provisions) Act 1989 gave the police and the army exceptional powers to use against suspected terrorists in Northern Ireland.

These Acts provided police officers and others with a wide remit to use their already significant powers under Police and Criminal Evidence (Northern Ireland) Order 1989 to disrupt, question, search and arrest those

63

security services and security forces at the time of the bomb. Since the origins of The Troubles with the continuing and developing methods of terrorist activities that followed, there was a requirement to ensure that appropriate legal authorities were available to the state authorities in Great Britain and Northern Ireland. As John Wadham has set in his expert report these were needed:

"... to seek to keep under surveillance, prevent or disrupt and/or detect the activities of those suspected of being engaged in the planning of and/or the preparation for and/or the carrying out a terrorist attack."

At the time of the Omagh bomb, the most important legislation was the Northern Ireland Emergency Powers Act 1996 which encompassed most of the powers included in earlier emergencies legislation of 1973, 1978 and 1991. In addition, powers were found in the Police and Criminal Evidence (Northern Ireland) Order 1988 and the Prevention of Terrorism (Temporary Provisions) Act 1989 which preserved most of the powers for the Prevention of Terrorism (Temporary Provisions) Act 1974 which applied throughout the United Kingdom.

The 1989 Order and the 1989 and 1996 Acts provided the police and, in some instances, the army with

62

suspected of acts of terrorism.

These Acts also created a number of special substantive criminal offences, including wearing uniforms and possessing information or articles where there was only suspicion that they were possessed for terrorist purposes. Those extensive wide-ranging substantive offences extended the range of all of the other policing powers because the threshold for their use was based on the investigation of criminal activity.

Further, while police powers would now be constrained by the Human Rights Act 1998 so that wide powers of detention would be restricted, as is demonstrated by the case of *Beghal v United Kingdom*, this was not true at the time of the bomb.

The powers available were not restricted to those relating to the policing of suspects. There was also a wide range of the steps that could be taken to gather intelligence. According to the report prepared by John Wadham, covert investigations by law enforcement agencies were largely unregulated and could have included:

"... the surveillance of suspects or others; following a person or observing their movements or tracking them using electronic devices or by the collection of geographic telephone cell site data (subject to that being technically possible); listening

64



to conversations using listening devices placed in homes, buildings and vehicles; collecting data about telephone calls from telecom suppliers; accessing the content of emails and other messages (at least by accessing the computer terminal); watching or recording computer or other devices' keystrokes, (subject to that being technically possible); using covert human intelligence sources, [in other words] (informers and undercover agents)."

The bomb occurred prior to the enactment of the Regulation of Investigatory Powers Act 2000 which now regulates surveillance in the United Kingdom. Therefore, in 1997 and 1998, in the absence of legislation there were no general restrictions regarding the use of surveillance by law enforcement agencies. Some restrictions did exist for MI5, the Secret Intelligence Service, and GCHQ. Telephone interception and property interference were two techniques that were regulated for all law enforcement agencies.

In relation to the interception of telecommunications, there were restrictions, but a warrant could be obtained from the Secretary of State for the required interception to be initiated with the provision applying equally to calls made from public telephone boxes or from an individual's home phone.

65

and/or damage another person's property. These are further powers that could be used to obtain intelligence.

At the time of the bomb, an individual's right to privacy would have been considered very weak under common law. That was significant as the Human Rights Act had not come into force. In many situations, the law would not have prevented most activities regarding law enforcement because simply their activities would not have been deemed unlawful. The courts had previously decided in a case that there was no right to privacy in law, including any particular right of privacy in relation to telephone calls.

Therefore, it appears that during the time leading up to the Omagh bomb in 1997 and 1998, there were few protections or controls on surveillance and that the real limitations were not legal or regulatory, but rather technical or scientific limitations at the time.

The key points about the powers I've just been outlining are: firstly, many of these powers appear to be exceptional powers directed at the challenges posed by terrorism in Northern Ireland. That is demonstrated by the name of the legislation and the fact that equivalent powers were not enacted in England.

Secondly, although no legislative scheme can eliminate the threat of terrorism, the experience

67

While the Interception of Communication Act 1985 created a number of safeguards, there were also allegations made that between 1990 and 1997 GCHQ was intercepting all telephone traffic from the United Kingdom to the Republic of Ireland.

There were restrictions in relation to the passing on of information about the existence of intercepts or the material derived from those intercepts, but this did not include a recording that took place in a telephone box and that which could have been relevant in the Omagh bomb when one considers the content of the cell site analysis.

Furthermore, those restrictions on sharing the product of the interceptions did not apply where the disclosure was necessary for the purposes set out in section 2(2) of the 1985 Act which included national security, preventing or detecting serious crime, or safeguarding the economic well-being of the United Kingdom. Essentially, this could well have allowed the product of an intercept to be shared with any law enforcement agency when necessary to prevent terrorism.

Law enforcement agencies would have had access to public and private CCTV systems and automatic number plate recognition camera systems.

The Police and Intelligence Service could have been authorised by the Secretary of State to trespass on land

66

gathered by The Troubles is likely to mean that the state had all powers that it needed and that were consistent with human rights, with the human rights of the civilian population.

Thirdly, these powers potentially enabled significant steps to be taken to disrupt terrorism. For example, suspect terrorists could be repeatedly stopped to both make it clear they were of interest and also to potentially obtain intelligence regarding that person's movements and their associates.

Finally, the powers also potentially enabled significant steps to be taken to gather intelligence. Indeed, as already noted, intelligence gathering was a key part of the state's response to The Troubles.

The knowledge and experience gathered and developed by the British intelligence services has been well documented. To quote one author:

"... the British tried almost every conceivable form of emergency power to quell the violence in Northern Ireland over [the] 30-year period."

Having considered the state powers, can I then go on to the -- and addressed them as part of the context, can I go on to the political context.

**LORD TURNBULL:** Mr Southey, it will be important for us to take a break for the assistance of the stenographer,

68

1 apart from anything else. You are just about to touch on  
 2 your next heading. You have been speaking for an hour.  
 3 Would this be a suitable point to break?  
 4 **MR SOUTHEY:** This would be a very suitable moment.  
 5 **LORD TURNBULL:** We will take a short break at this stage.  
 6 **(12.06 pm)**  
 7 **(A short break)**  
 8 **(12.24 pm)**  
 9 **MR SOUTHEY:** When we broke, I'd concluded some submissions  
 10 about the security context and I was looking to move on  
 11 to the political context. Certainly the victims and  
 12 survivors that I represent would submit the political  
 13 context is relevant for at least three reasons. Firstly,  
 14 we submit it is possible that politics had an influence  
 15 on security activities. In simple terms, there is a  
 16 concern that the need to promote a narrative of peace may  
 17 have resulted in a light touch being adopted to terrorist  
 18 activity.  
 19 Equally, it's possible that intelligence did or  
 20 should have had an influence on political decisions. For  
 21 example, intelligence did or should have had an influence  
 22 on the security resources deployed in Northern Ireland.  
 23 Finally, the peace process certainly did cause the  
 24 number of people engaged in terrorism to reduce. That  
 25 may have meant that it was easier to act against those

69

1 Northern Ireland most weeks during the relevant period to  
 2 discuss security and political issues. He attended the  
 3 most important strategic security meetings, some of which  
 4 were chaired by the Secretary of State and included the  
 5 military General Officer Commanding in Northern Ireland,  
 6 to include the Province Executive Committee ... and  
 7 Security Policy Meetings. From these meetings strategic  
 8 decisions in respect of the approach to security issues  
 9 cascaded down through the hierarchy of committees for  
 10 implementation."  
 11 As the brief for the Chief Constable was prepared by  
 12 Special Branch, Special Branch also had an input at the  
 13 highest possible levels in terms of the government of  
 14 Northern Ireland.  
 15 The Security Service was also a member of the Joint  
 16 Intelligence Committee within the government's Cabinet  
 17 Office which is and was responsible for intelligence  
 18 assessment and co-ordination within the United Kingdom.  
 19 While it's not known if there is or was a specific Joint  
 20 Intelligence Committee subcommittee for Northern Ireland  
 21 in 1998, it is known that the security service operated  
 22 an assessments group in Northern Ireland and they were  
 23 responsible for receiving intelligence from Special  
 24 Branch, the Security Service and the FRU and using it to  
 25 produce intelligence reports and assessments for the

71

1 still involved in terrorism.  
 2 The potential for political influence on security  
 3 decisions and vice versa is clear from the fact that  
 4 there were clear formal organisational ties between the  
 5 state's political decision-makers and the security  
 6 forces.  
 7 After direct rule was introduced in 1972, the  
 8 Secretary of State for Northern Ireland had  
 9 constitutional responsibility for the administration of  
 10 law and order. The Northern Ireland Office advised  
 11 government ministers on security policy issues, including  
 12 legal and resourcing issues and information strategy.  
 13 The Secretary of State was supported by the Northern  
 14 Ireland's Permanent Secretary and three primary security  
 15 advisers: these were the Chief Constable of the RUC, the  
 16 General Officer commanding the army, and the director and  
 17 co-ordinator of Intelligence, a senior officer within the  
 18 Security Services.  
 19 There were Security Policy Meetings between these  
 20 people which were described as the most important  
 21 meeting. Some sense of the frequency of the contact  
 22 between the Secretary of State and the Chief Constable  
 23 can be obtained from the opening statement of Sir Ronnie  
 24 Flanagan which appears to accept that, and I quote:  
 25 "Sir Ronnie met with the Secretary of State for

70

1 intelligent community and the Government of Northern  
 2 Ireland.  
 3 Within Special Branch, the Intelligence Management  
 4 Group formed in 1997 was a central point responsible for  
 5 collating, analysing and distributing intelligence and  
 6 ensuring it was passed on to the assessments groups.  
 7 The director and co-ordinator of intelligence who was  
 8 based in Stormont, but also had representation in RUC HQ  
 9 and army headquarters, was concerned with the provision  
 10 of an intelligence reporting service to ministers and  
 11 officials in the Northern Ireland office and in Whitehall  
 12 primarily through reports prepared by his staff in the  
 13 assessment group. The DCI also chaired the weekly  
 14 Intelligence Review Committee meetings which were  
 15 considered strategic -- which considered strategic  
 16 intelligence requirements and priorities and was attended  
 17 by senior representatives of the assessments group,  
 18 Special Branch and the army.  
 19 At the material time, obviously the most significant  
 20 political development was the Good Friday Agreement.  
 21 Unlike other atrocities, the bomb occurred after the Good  
 22 Friday Agreement was signed in April 1998. The Good  
 23 Friday Agreement was obviously endorsed overwhelmingly by  
 24 the people of Northern Ireland and the Republic of  
 25 Ireland who were pursuit of a peaceful society. As a

72

1 consequence, the bomb can be viewed as distinct from The  
2 Troubles. However, The Troubles are obviously part of  
3 its background.

4 During The Troubles, the Provisional IRA had engaged  
5 in a campaign of violence with a goal of achieving a  
6 united Ireland and removing any involvement in Britain in  
7 Northern Ireland. However, in 1993, meetings commenced  
8 between the SDLP leader, John Hume, and the leader of  
9 Sinn Féin, Gerry Adams, in an effort to bring an end to  
10 Provisional IRA violence with the focus on achieving a  
11 political solution.

12 The talks were criticised, but there was also  
13 confirmation that secret talks had taken place between  
14 the British government and Sinn Féin. In December 1993,  
15 the British and Irish governments issued a joint  
16 statement which became known as the Downing Street  
17 Declaration which initiated a peace process around the  
18 principle of self-determination. This initiative  
19 ultimately resulted in the IRA declaring a ceasefire on  
20 31 August 1994 with a complete cessation of military  
21 operations and the belief that an opportunity to secure a  
22 just and lasting settlement has been created and urging  
23 "everyone to approach this new situation with energy,  
24 determination and patience".

25 The declaration of a ceasefire by the combined

73

1 April 1997 and shot dead two police officers in Lurgan on  
2 16 June 1997.

3 While a ceasefire was subsequently called by the IRA  
4 on 20 July 1997, the matters already highlighted, along  
5 with divisions within unionism, Loyalist terrorist  
6 activities and dissident Republican activity, clearly  
7 highlight the fragility of the peace process around that  
8 time, which continued after the signing of the Good  
9 Friday Agreement.

10 The Good Friday Agreement was signed on 10 April 1998  
11 and, as I've already said, was endorsed by an  
12 overwhelming majority of the people of Northern Ireland.  
13 However, a significant minority of the people of Northern  
14 Ireland subsequently did vote against the Good Friday  
15 Agreement and issues remained outstanding, particularly  
16 around the issue of decommissioning.

17 The IRA issued a statement on 30 April 1998 in  
18 relation to the Good Friday Agreement and decommissioning  
19 which stated that the Good Friday Agreement:

20 "falls short of presenting a solid basis for a  
21 lasting settlement".

22 And which also stated:

23 "Let us make it clear that there will be no  
24 decommissioning by the IRA."

25 The issue of decommissioning continued to cause

75

1 Loyalist military command followed on 13 October 1994  
2 which described "a new and exciting beginning with our  
3 battles in future being political battles".

4 However, the peace process encountered a number of  
5 issues with a particular deadlock ensuing over the issue  
6 of decommissioning of weapons which resulted in both  
7 governments agreeing a twin-track approach in order to  
8 make parallel progress on the issue of decommissioning  
9 and on all-party negotiations.

10 The issues with the peace process resulted in the IRA  
11 exploding a bomb in the Docklands area of London, killing  
12 two people and causing injury to others, which marked the  
13 end of the ceasefire. Despite this development, however,  
14 political discussions and efforts continued and  
15 multiparty talks, the Mitchell talks, commenced on  
16 10 June 1996.

17 In the intervening period, however, prior to the  
18 signing of the Good Friday Agreement, the IRA exploded a  
19 bomb in Manchester, injury 20 people, that was on 15 June  
20 1996, exploded two bombs in the British Army headquarters  
21 in Lisburn on 7 October 1996, shot dead a British soldier  
22 in Bessbrook on 12 February 1997, caused widespread  
23 disruption on motorways in England with bomb warnings on  
24 3 April 1997, issued bomb treats which forced the  
25 postponement of the Grand National horse race on 5

74

1 issues after the bomb. The history set out above  
2 demonstrates the need to -- demonstrates that the need to  
3 effectively police, deter and disrupt terrorism and the  
4 terrorist threat continued despite the Good Friday  
5 Agreement. The Good Friday Agreement was fragile at the  
6 date of the bomb. In addition, as is considered in  
7 greater detail later in my submissions, there remained  
8 opponents of peace, some of those who were willing to  
9 engage in violence.

10 Although the fragility of the Good Friday Agreement  
11 meant, in our submission, there was a need to maintain  
12 the security response to the IRA, there is also evidence  
13 that suggests that the security response was, in fact,  
14 relaxed. Mr Norman Baxter a former RUC Detective Chief  
15 Superintendent stated in his evidence to the Northern  
16 Ireland Affairs Committee:

17 "In the post-1998 settlement, there was a drive by  
18 the Northern Ireland Office to ensure that security was  
19 reduced in certain areas and, as a serving police  
20 officer, I was aware that that was happening, so we had  
21 Cloghogue and other border checkpoints where the soldiers  
22 were moved off the road, not stopping cars. We had  
23 soldiers not allowed to patrol areas. The security  
24 policy was a failure and these people were coming freely  
25 into Northern Ireland and carrying out attacks."

76

1 He also stated that the Government had their eye off  
2 the ball.

3 In light of the matters above, a key issue was  
4 whether there was a decision to relax security that was  
5 inappropriate and contributed to the bomb. There is a  
6 linked issue as to whether any flawed decision was  
7 political. Mr Baxter expressly stated in his evidence  
8 that:

9 "I am saying that you would have to be naive to  
10 believe that the Secretary of State and his officials, or  
11 her officials, in the past did not directly intervene in  
12 policing."

13 The concern that politicians may have influenced  
14 security decisions is consistent with the evidence  
15 regarding demilitarisation. Mr Baxter stated that he was  
16 at meetings when commanders were disputing with their  
17 senior officers about the removal of troops from areas  
18 because they felt it was leaving people vulnerable.  
19 Similarly, the former Chief Constable, Sir Ronnie  
20 Flanagan, said in the context of demilitarisation and the  
21 reduction/removal of army patrols, that "he could not be  
22 seen to be working to an overt political agenda involving  
23 decommissioning for de-escalation, although he recognised  
24 that [no-one] 'is working in a vacuum and there is a  
25 wider political context'."

77

1 by Sinn Féin to discontinue its abstentionist policy from  
2 taking seats in Dáil Éireann.

3 This has been referred to as very much an uneven  
4 split with the new Adams-McGuinness leadership bringing  
5 the vast majority of Republicans with them and which  
6 would go on to lead the provisional politicisation  
7 process into the peace process. A key point about this  
8 split is that it didn't demonstrate how any engagement  
9 with democratic processes risk dissent among those  
10 committed to armed conflict.

11 The Provisional IRA leadership retained significant  
12 support at this time and the Continuity IRA did not have  
13 the capabilities to threaten its position and faced  
14 obstacles in attaining any weaponry for any serious  
15 arming campaign. It was not until the mid-1990s that the  
16 continuity IRA were able to mount any paramilitary  
17 offensive.

18 A more significant split occurred in 1997 with the  
19 formation of the Real IRA and the 32 County Sovereignty  
20 Committee. Although the IRA convention in Gweedore,  
21 Donegal, in October 1997 is regarded as the formal point  
22 of the split, it is generally accepted that the origins  
23 of the divergence had actually commenced around the time  
24 of the first IRA ceasefire with a growing discontentment  
25 by some members of their involvement in the peace

79

1 Linked into this, the history of violence in the  
2 context of The Troubles set out that I've just described  
3 suggests that there may have been greater tolerance of  
4 terrorism than that found in other jurisdictions. The  
5 Inquiry has identified a significant number of incidents  
6 that preceded the bomb. The legitimate question to ask  
7 is whether a more intensive police response would have  
8 followed an equivalent pattern of violence in England.

9 One feature of the political context was dissident  
10 Republicans. As part of the peace process the political  
11 parties committed to, adhered to, what were known as the  
12 Mitchell Principles while participating in talks which  
13 included a commitment to democratic and exclusively  
14 peaceful means of resolving political issues. This  
15 resulted in Republican and loyalist organisations  
16 entering into periods of ceasefires, as I've already  
17 described. In principle, however, while the Good Friday  
18 Agreement then cemented the peace process, there remained  
19 those who opposed the process.

20 There has been a history of splits within  
21 republicanism and in particular within armed republican  
22 groups. In particular, splits occurred over  
23 participation in democratic processes. For example, an  
24 important split occurred in 1986 with the formation of  
25 Republican Sinn Féin and Continuity IRA over the decision

78

1 process. This discontentment had resulted from the  
2 belief that the negotiations were not progressing the  
3 Republican cause while the British government were  
4 standing firm on the need for decommissioning and the IRA  
5 executive were being excluded from the process.

6 However, ultimately it was the endorsement of the  
7 Mitchell Principles that was viewed by some members  
8 within the IRA executive as unconstitutional and could be  
9 considered as accepting the legitimacy of the Northern  
10 Irish state and if they were to sign up to disarmament  
11 process, there would be no opening for them to return to  
12 the armed struggle.

13 Following the IRA convention, five members of the IRA  
14 executive subsequently resigned. Michael McKevitt,  
15 Seamus McGrane, Liam Campbell, Frank McGuinness, whose  
16 true identity is unknown, and Pascal Burke. They went on  
17 to form the Real IRA.

18 While the split also saw the establishment of the 32  
19 Sovereignty Committee, it was the division within the  
20 paramilitary wing of the provisional Republican movement  
21 that was most significant. However, it was not a major  
22 split in terms of the number of members leaving the  
23 provisionals as the vast majority remained within the  
24 Adams-McGuinness leadership.

25 While only a small number left the Provisional IRA,

80

1 the majority of the Real IRA membership came from within  
2 the quartermaster and engineering departments. This  
3 included the Belfast and southern command's quarter  
4 masters with many of those joining being from the border  
5 counties. Their existing skill set and expertise enabled  
6 them to launch a near immediate paramilitary campaign.

7 In particular, in his role as Quartermaster General,  
8 McKevitt had control and access to the Provisional IRA's  
9 explosives, artillery and weaponry for 14 years. As  
10 a result, the Real IRA were able to obtain a small number  
11 of small arms, a small amount of Semtex alongside  
12 detonators and timing devices. Included within these  
13 weapons were IRECO detonators like the one used in the  
14 Omagh bomb.

15 In their paramilitary campaign, the Real IRA Council  
16 followed the direction proposed by Liam Campbell. That  
17 was to the focus on the use of car bombs against  
18 commercial premises for the purpose of disrupting and  
19 putting pressure on the peace process. This was intended  
20 to make it difficult for Sinn Féin and the Provisional  
21 IRA and unionists to remain within talks. In light of  
22 the small numbers within the Real IRA and the powers and  
23 capacity of the state, there is every reason to believe  
24 that the state forces will have known who was playing an  
25 active role within the Real IRA and their intention and

81

1 dissident Republicans, the Smithwick Tribunal refers to  
2 the active surveillance of Michael McKevitt by the Garda  
3 going back as far as 1990 through intercepted telephone  
4 conversations.

5 Fourth, a surveillance operation by the NSU had  
6 targeted Pascal Burke which resulted in his arrest in  
7 May 1998 following a foiled attempt at a robbery of a  
8 Securicor van. He had previous convictions for explosive  
9 offences. He was known to the Garda as an engineer,  
10 having been involved in the explosives department of the  
11 Provisional IRA. Mr Burke was among a number of people,  
12 but he was by no means the most important target of the  
13 Garda.

14 Fifth, David Rupert was initially recruited by the  
15 FBI and later became an agent for the British Secret  
16 Security Services in 1997. He was jointly operated and  
17 managed by both organisations at the time of the bomb.  
18 Over a period of time, he had infiltrated dissident  
19 Republicans at leadership level within the organisations.  
20 During the trial of McKevitt, David Rupert gave evidence  
21 as the main prosecution witness. He stated that he had  
22 met McKevitt and other Republicans such, as Michael  
23 Donnelly, Phil Kent, Seamus McGrane in Monaghan, and that  
24 the Omagh bombing had been discussed.

25 Sixth, the Garda also appears to have developed

83

1 capacity to cause serious violence.

2 That submission is supported by a number of items of  
3 evidence. Firstly, during a meeting on 16 August 1998  
4 between Taoiseach Bertie Ahern and Prime Minister  
5 Tony Blair following the bomb, the Taoiseach stated that:

6 "Putting matters in context, the Taoiseach said those  
7 in the splinter group numbered perhaps 90 in all,  
8 including those who stole cars, did lookout, etc.  
9 Perhaps only a third or less were dangerous activists."

10 Secondly, during a telephone conversation on  
11 20 August 1998 between Taoiseach Bertie Ahern and Prime  
12 Minister Tony Blair following the bomb, Taoiseach stated  
13 in relation to 32 Sovereignty Committee:

14 "I think we can break the 32 County totally ...  
15 I think we can disintegrate them. There might remain a  
16 little kind of a political group talking about stuff, but  
17 I think the militant end of it, we can break it."

18 In relation to Continuity IRA, the Taoiseach stated:

19 "... now I'm trying to make some overtures to them,  
20 they're not that significant, as I told you before, ...  
21 I'd just be afraid that the rump might move to them ...  
22 because the rump will move somewhere but if we can ...  
23 keep hunting the rump ... I think we're having major hits  
24 if we just keep at it."

25 Thirdly, as another example of the knowledge of

82

1 intelligence regarding the Real IRA. It is known that  
2 the NSU of the Garda had been developing intelligence on  
3 the Real IRA since the end of 1997. There were obvious  
4 reasons for the Garda to gather this intelligence. For  
5 example, there is evidence that after the Good Friday  
6 Agreement in relation to the Real IRA there was real  
7 concern within the Irish state and even indeed within the  
8 IRA who were on the ceasefire as to who was leaking to  
9 this new organisation.

10 Further evidence from a Garda stated that:

11 "... this embryonic group did not appear to have  
12 defined political objectives, but wanted to commit 'some  
13 kind of terrorist outrage' as he put it, as soon as  
14 possible."

15 Seventh, the Garda placed tracking devices on two  
16 vans in 1998 which it was believed were going to be used  
17 by the Real IRA with the speculation that explosives were  
18 involved. That was because there had been two previous  
19 incidents involving car bombs in April in Dun Laoghaire  
20 and Dundalk.

21 Eighth, according to his evidence to the Smithwick  
22 Tribunal, Kevin Fulton enlisted in the British Army in  
23 1979 and was recruited by British Army intelligence. It  
24 was arranged that he would be falsely discharged from the  
25 Royal Irish Rangers. When he returned to Northern

84

1 Ireland, he worked for the FRU and continued to work for  
2 army intelligence until early 1990 and was jointly  
3 handled by MI5. In his evidence, he stated that while he  
4 worked for Special Branch -- while he never worked for  
5 Special Branch, he sometimes attended these meetings.

6 As noted elsewhere, Kevin Fulton provided  
7 intelligence that may have been relevant to the bomb.

8 All of these matters demonstrate that there was clear  
9 state intelligence regarding the activities of the Real  
10 IRA.

11 In light of the matters that I have just described  
12 about the overall context, it is submitted that there is  
13 every reason to believe that the state's resources  
14 enabled it to know that there was a serious risk of  
15 attacks by dissident Republicans and the identity of the  
16 individuals who posed that risk.

17 Further, the state and the powers to disrupt those  
18 individuals. Whether this is correct is obviously a  
19 matter that will need to be considered when the evidence  
20 is reviewed. However, if it is correct, it raises very  
21 important questions regarding why there was a failure to  
22 disrupt the bombers. The overlap between the political  
23 elements of the state and the security forces means that  
24 both parts of the state must be considered. That is the  
25 context in which what follows should be viewed.

85

1 "The relationship between the FRU and the RUC  
2 sometimes lacked co-ordination and clarity. This  
3 confusion was exacerbated by institutional rivalry  
4 between the different organisations and parts of the  
5 intelligence community. This rivalry became most  
6 apparent in the often strained relationship between the  
7 FRU and the RUC Special Branch."

8 In addition, MI5 at that time operated only a small  
9 number of agents and only sought to recruit agents who  
10 could provide strategic intelligence about threats  
11 against Great Britain and British interests overseas.  
12 MI5 provided technical support to the RUC, but the RUC  
13 owned the intelligence produced, whether strategic or  
14 tactical, and controlled its exploitation and  
15 dissemination.

16 In the superior provision in the intelligence  
17 network, while running its own agents and collecting  
18 information from external agencies, the RUC was  
19 responsible for determining what, if any, action should  
20 be taken as a result of the information received and  
21 therefore assumed a degree of primacy in matters of  
22 intelligence. However, it would appear unclear whether  
23 any part of the RUC was charged with undertaking  
24 overarching assessment of intelligence or assessing what  
25 actions needed to be taken to protect the public.

87

1 What follows is a list of areas where there may have  
2 been failures. For the reasons already given, it is not  
3 comprehensive and obviously no final conclusions  
4 regarding these issues can be reached at this stage.

5 The first of these issues is intelligence sharing.  
6 As I've already mentioned, there was a complex  
7 intelligence machinery in Northern Ireland. The lead for  
8 intelligence in relation to Irish Republican  
9 Paramilitaries was Special Branch, although this was not  
10 without difficulties even within the RUC as the CID also  
11 had collectors of intelligence and issues arose about the  
12 exchange of this information and that resulted in, as  
13 I've already mentioned, the review by Sir Patrick Walker.

14 The PSNI corporate statement appears to recognise  
15 that CID intelligence gathering continued at the time of  
16 the bomb, albeit it was focussed largely on non-terrorist  
17 crime.

18 In addition, as I've already set out, the army had  
19 developed its own intelligence capacities, including the  
20 recruitment of running agents, which, from 1982, had been  
21 centralised into the FRU. Many in the RUC believed there  
22 was no requirement for the army to have its own  
23 intelligence gathering operation which perhaps  
24 contributed to a difficult relationship as highlighted in  
25 the Kenova Report. I quote:

86

1 Therefore, this would appear to suggest that there  
2 were silos of information within the RUC and the  
3 intelligence community rather than a cohesive and  
4 co-ordinated approach that would allow for consistent  
5 gathering, assessment and sharing of intelligence.

6 I've already made submissions that there is every  
7 reason to believe that intelligence was being gathered in  
8 relation to key dissidents associated with the bomb.  
9 Specific intelligence may include, firstly, the  
10 intelligence provided by Kevin Fulton, which was  
11 considered to be of such significance that the Police  
12 Ombudsman carried out an investigation into the  
13 information that he provided. The Police Ombudsman was  
14 satisfied that Mr Fulton was a reliable source and that  
15 he had passed information on to the police on five  
16 occasions between June and August 1998 and that contact  
17 sheets for each meeting were passed on to Special Branch.  
18 Notably, the information provided by Fulton included  
19 intelligence on 12 August that the Real IRA was to move  
20 something north over the next few days.

21 Secondly, there are allegations regarding the conduct  
22 of Garda officers that have been identified in the work  
23 of the Police Ombudsman. Paddy Dixon was providing  
24 intelligence in the Republic of Ireland to the Garda  
25 claiming that he provided cars to dissident Republicans

88

for the purposes of the bombings. This information provided to Detective John White enabled the Garda to intercept cars containing bomb equipment which were destined for Northern Ireland.

Third, the BBC and Daily Telegraph had published allegations that GCHQ had monitored mobile telephone conversations on the day of the bombing live and that at least one phone had been monitored from at least July 1998.

Fourth, there is evidence of an intelligence gathering operation in the South Armagh border area as reported in the 2014 report of the Police Ombudsman. Mr Baxter gave evidence also supporting this when he gave evidence to the Northern Ireland Affairs Committee.

Fifth, there is evidence of anonymous phone call being made to the Omagh police station on 4 August 1998 stating that an attack would take place in Omagh on 15 August 1998.

Finally, there have been emails obtained that demonstrate that David Rupert was supplying relevant intelligence in advance of the bombing.

This material would therefore appear to have been gathered by different parts of the police and the security services that were managing their own intelligence sources. For example, David Rupert was

89

understanding of the language which emanates from intelligence community. People within the intelligence and investigation community speak in term of information, intelligence and evidence, and in respect of those three things they are distinctly different from a professional's perspective. Information is regarded as almost raw data which is received. Intelligence is information which is analysed and produces what is known as intelligent product, which can either be predictive which forecasts something which may happen, or reflective, which helps investigators deal with something in the past. Evidence is the translation of information through witnesses and documents to something which can be placed before the court.

"I would have to say to the committee that when statements are made that all intelligence has been passed to the police, it cannot be assumed, nor is it the case, that all information has been passed to the police because the information that is used to develop the intelligence which has been discarded as of no intelligence value will not be disseminated, and information which has formed part of the intelligence part will also not accompany the intelligence part. So when people speak about 'all' intelligence being shared, that is not declaring or stating everything has been

91

handled by MI5 and the FBI, Kevin Fulton, after initially being recruited by army intelligence was jointly handled by MI5 and with Special Branch sometimes attending his briefings. He then worked for RUC CID. All of this raises questions about whether intelligence was being shared so that an overall picture could be developed. The existence of multiple bodies collating and disseminating intelligence supports the points already made.

There was, we submit, a risk of silos. Three points support these concerns. First, as I will come to later, there were no rules or guidance gathering (*sic*) the handling of intelligence. As a result, it appears clear that individual officers and units of the security forces had considerable discretion as to how to handle intelligence. It would appear that there may have been no expectation of intelligence sharing.

Secondly, as I will come to later, there have clearly been issues with record-keeping. That made it and makes it and made in the past more difficult to hold people to account for a failure to share intelligence.

Finally, when giving evidence to the Northern Ireland Affairs Committee, Mr Baxter made the following opening comments in relation to the sharing of intelligence:

"... I think there has been a blurring of

90

shared. From a police investigator's [point of view], investigators try to turn information into evidence, not intelligence into evidence. Intelligence should point investigators to where information which can be translated into evidence can be found."

It should be noted that this evidence supports the submission that claims by state parties to have provided full material to the Inquiry should be viewed with caution.

So far these submissions have focused on intelligence sharing within the state authorities operating within Northern Ireland. However, the problems with intelligence sharing were obviously enhanced by the need to ensure intelligence was shared cross-border. Following the Omagh bomb, the Taoiseach stated in relation to co-operation between the Garda and the RUC:

"The big problem with me trying to get these two, the Guards and the RUC, to co-operate on the ground is that there is all these old bits on trust ..."

PSNI's corporate statement states:

"... the provision of information by the An Garda Síochána to the RUC -- of the type which would allow for pre-emptive operational action by RUC against subversives -- was very rare. However, this improved after the Omagh bombing."

92

1 I will return to the issue of cross-border  
2 co-operation later.

3 The submissions that I have just made about the  
4 importance of linking intelligence raises concerns that  
5 are relevant on the facts. There is reason to believe  
6 that relevant information or, rather, material relevant  
7 to the bomb was not shared. First, it is known that  
8 David Rupert sent an email dated 11 April 1998 to MI5  
9 which identified Omagh as a potential target. It said:  
10 "Since he is involved with the present operation we  
11 are speaking of and last known location of the car  
12 (Letterkenny) Derry or Omagh would be two suspect viable  
13 targets."

14 While this intelligence may not have been of the  
15 greatest significance on its own, the suggestion that  
16 Omagh might be a target might inform the response to  
17 subsequent intelligence, such as that from Kevin Fulton,  
18 suggesting that something was to be moved north.  
19 However, it is unclear whether this intelligence from  
20 David Rupert was ever linked with other material.

21 Second, it has been accepted by former Chief  
22 Constable Sir Ronnie Flanagan that intelligence obtained  
23 from Kevin Fulton was not passed by RUC Force  
24 Intelligence to Special Branch.

25 Third, the 2001 Ombudsman's report was critical that  
93

1 detonation of car bombs to 20 minutes, and that this  
2 would apply in future. This information was not passed  
3 to the RUC. This information, as I've already suggested,  
4 may have suggested a need to adjust the response to  
5 threats such as that received in Omagh.

6 Sixth, in 2008 the team investigating the Omagh bomb  
7 stated that:  
8 "... intelligence indicating Omagh as a potential  
9 target before August 1998 should have been passed to the  
10 RUC and thereafter to the Sub-Divisional Commander. That  
11 would probably have changed the response of the police to  
12 the coded message they received on 15 August 1998 ...  
13 military resources were not deployed to assist [the]  
14 police in evacuation because there was nothing known  
15 prior to August 1998 indicating Omagh was a [significant]  
16 target."

17 I've already mentioned in this context the potential  
18 relevance of the cross-border co-operation. The  
19 potential importance of that cross-border co-operation is  
20 one reason why the memorandum of understanding between  
21 the Inquiry and the Government of Ireland is particularly  
22 important. Although it is accepted that the Tribunal's  
23 jurisdiction does not allow it to criticise the actions  
24 of the Government of Ireland or any of its security  
25 services, the adequacy of the response of the United  
95

1 significant intelligence was not shared by Special Branch  
2 and which may have had the potential to make a difference  
3 in the investigation that followed the bomb. While it is  
4 accepted that this intelligence was not directly related  
5 to preventability, it is further evidence of silos of  
6 information not being shared. If even after the atrocity  
7 of the bomb intelligence was not being shared, there's  
8 every reason to believe it was not shared before the  
9 bomb.

10 Fourth, when giving evidence to the Northern Ireland  
11 Affairs Committee, Mr Baxter stated:  
12 "... I am not laying blame with any particular  
13 organisation. There seems to have been a policy and that  
14 policy was not to disseminate."

15 Consistent with this, he made it clear that relevant  
16 intelligence relating to earlier incidents that preceded  
17 the bomb had not been shared. He said that intelligence  
18 was potentially useful, and I quote:  
19 "... to ensure that the investigators after those  
20 incidents we had an opportunity to look at suspects and  
21 to have them arrested prior to the Omagh bomb."

22 Fifth, the day following the bomb in Banbridge on  
23 1 August 1996 (*sic*), information was received within the  
24 intelligence community that the Continuity IRA had  
25 reduced the warning time given in relation to the  
94

1 Kingdom Security Forces must depend upon matters such as  
2 whether the United Kingdom had taken all reasonable steps  
3 to obtain all relevant material from the Republic of  
4 Ireland. That implies a need to consider, among other  
5 matters, whether more information could have been  
6 obtained.

7 It's not yet known if the memorandum of understanding  
8 will result in full disclosure of all documentation and  
9 the attendance of all relevant witnesses, but this will  
10 become clear within a relatively short period of time.  
11 The victims and survivors that I represent urge the  
12 Inquiry to keep the effectiveness of the memorandum of  
13 understanding under review. The credibility of the  
14 Inquiry's work does, at least to some extent, depend on  
15 the memorandum of understanding.

16 I should add in relation to that that the victims and  
17 survivors I represent continue to press for a parallel  
18 inquiry in the Republic of Ireland that will enable  
19 findings to be made in relation to the actions of the  
20 Government of the Republic of Ireland and its forces.

21 They welcome the fact that a meeting has been  
22 arranged for today to discuss the position of the  
23 government of the Republic of Ireland.

24 Can I then turn to a topic linked to what I've just  
25 been addressing, which is the absence of rules and  
96



1 guidelines on the use of intelligence.  
2 **LORD TURNBULL:** Can we perhaps just break there for lunch  
3 then, Mr Southey?  
4 **MR SOUTHEY:** Certainly.  
5 **LORD TURNBULL:** So we will sit again just after 2.00.  
6 (1.07 pm)  
7 (Luncheon Adjournment)  
8 (2.06 pm)  
9 **LORD TURNBULL:** So when you are ready Mr Southey.  
10 **MR SOUTHEY:** Thank you, Chair. When we broke, I had made  
11 a number of submissions about intelligence and, in  
12 particular the issues that related to intelligence  
13 sharing.  
14 Linked to that is another topic I just wanted to  
15 touch on which is the absence of rules and guidelines  
16 regarding the use of intelligence.  
17 At the material time, it appears to the victims and  
18 survivors I represent that, despite various requests and  
19 reports that sought a proper set of bespoke guidelines  
20 for the management and use of agents in Northern Ireland,  
21 there was no formal protocol in place. As was stated in  
22 the interim report of the Kenova Inquiry:  
23 "The use of agents by the security forces in Northern  
24 Ireland was not the subject of any meaningful, effective  
25 or enforceable legal or policy framework during the  
97

1 said in the Kenova interim report that:  
2 "... the operational priority for security forces was  
3 the continued acquisition of counter-terrorist  
4 intelligence and this meant the protection of established  
5 agents from compromise. If acting on intelligence about  
6 a risk to life might bring its source under suspicion or  
7 blow their cover, the intelligence would often be  
8 withheld or, at least, not acted upon."  
9 The victims and survivors I represented are not in  
10 a position to know, on the state of the evidence, where  
11 it is arguable that any inaction in relation to  
12 intelligence was motivated by a desire to protect state  
13 agents. However, the victims and survivors that  
14 I represent submit that the evidence regarding  
15 prioritising agent safety over public protection is  
16 potentially relevant because, firstly, it demonstrates  
17 that there is a need to subject any apparent inaction to  
18 careful scrutiny. It cannot be assumed that state agents  
19 were always primarily motivated by a desire to protect  
20 the public. For example, the evidence regarding the  
21 handling of intelligence from Kevin Fulton should be  
22 considered taking account of the possibility that the  
23 protection of Kevin Fulton was seen as a priority.  
24 More generally, the material about inactivity or  
25 desire to prioritise the protection of state agents  
99

1 course of The Troubles."  
2 Similarly, the corporate statement of PSNI states:  
3 "There were no [Special Branch] guidelines for  
4 Northern Ireland issued by the executive arm of [Her  
5 Majesty's Government], which would include guidance on  
6 gathering and managing intelligence in a Northern Ireland  
7 terrorist-related policing context. This was an issue  
8 repeatedly raised by the RUC with [Her Majesty's  
9 Government]. In particular, the absence of guidelines  
10 and/or legislation on agent handling. It is clear the  
11 RUC was unhappy with the situation as it stood at the  
12 time, and that it continued to raise the issue with [Her  
13 Majesty's Government] ..."  
14 The absence of any rules or guidance governing the  
15 use of informers potentially had two consequences. These  
16 were it potentially permitted, firstly, the development  
17 of intelligence silos based on intelligence that wasn't  
18 shared. In addition, it potentially allowed risks to be  
19 taken with public safety despite intelligence suggesting  
20 risk.  
21 The submission that risk could be taken with public  
22 safety is supported by clear findings in the past that  
23 the focus of intelligence handling was on protecting  
24 agents and that, as a consequence, there was a degree of  
25 tolerance to terrorist activity. For example, it was  
98

1 demonstrates that there may have been motives for  
2 declining to share key intelligence.  
3 A further issue linked to intelligence that the  
4 victims and survivors I represent would wish to raise is  
5 that relating to loss of records. I've already drawn  
6 attention to the fact that Kevin Fulton provided  
7 intelligence on 12 August that the Real IRA was to move  
8 something north over the following few days. The contact  
9 sheet for this meeting and for the meeting on 23 July  
10 1998 could not be located in Special Branch records.  
11 In his response to the Police Ombudsman's report, the  
12 former Chief Constable Sir Ronnie Flanagan admitted that  
13 due to, and I quote, "an unacceptable breakdown in  
14 procedure" and "an administrative error", two of the five  
15 intelligence reports based on information from Kevin  
16 Fulton in the period from June to August 1998 were never  
17 passed by RUC Force Intelligence Bureau to Special  
18 Branch.  
19 Although the implication of Sir Ronnie Flanagan's  
20 statement was that material had been lost accidentally,  
21 there are possible motives for it being deliberately  
22 destroyed. A detective sergeant in RUC CID, referred to  
23 as W71, who was Fulton's handler at the time of the Omagh  
24 bomb, gave evidence to the Smithwick Tribunal that he was  
25 informed by Special Branch on 20 August 1998, five days  
100

1 after the Omagh bomb, and by Sir Ronnie Flanagan during a  
2 telephone call, that Keeley, or Fulton, was an  
3 intelligence nuisance. That raises issues as to whether  
4 Fulton's intelligence was discounted wrongly. If that is  
5 the case, records may have demonstrated that and there  
6 was an incentive to withhold them.

7 W71 also gave evidence that:

8 "I also phoned intelligence through to various  
9 departments."

10 It would be surprising if the various departments had  
11 not kept records. It is surprising, therefore, that it  
12 appears that all records have been lost.

13 The victims and survivors I represent have also  
14 raised questions pertaining to the whereabouts of the  
15 Threat Book which has never been located and which should  
16 have contained all information about threats received,  
17 including the content of an anonymous phone call on  
18 4 August 1998.

19 As noted already, there are good reasons to believe  
20 that sensitive material has been withheld in the past  
21 from official investigations. It has already been  
22 submitted that this means that claims to have provided  
23 full disclosure should be scrutinised with care. That is  
24 supported by the fact that material has apparently been  
25 mislaid in this case in the past.

101

1 Provisional IRA when Semtex-based detonating cord and two  
2 IRECO detonators were found in a 230-kilogram bomb  
3 defused at Banbridge and attributed to the IRA. These  
4 matters demonstrate the importance of adopting an  
5 inclusive approach to prior incidents. Prior incidents  
6 should be considered even if not attributed to the Real  
7 IRA.

8 It's recognised that the evidence gathering in  
9 relation to these earlier incidents is at an earlier  
10 stage. The victims and survivors I represent are  
11 grateful to the priority that is being given to that  
12 evidence gathering by PSNI. At this early stage, the  
13 victims and survivors highlight the following matters as  
14 being potentially indicative of the fact that earlier  
15 incidents needed to be fully investigated or need to be  
16 fully investigated by the Inquiry and/or may demonstrate  
17 that the bomb could have been prevented.

18 Firstly -- and the issues arise we submit are as  
19 following -- firstly, an issue that I have already raised  
20 at other points of these submissions is the issue of  
21 whether there was differential policing and/or greater  
22 tolerance of terrorist violence in Northern Ireland.  
23 That means that there is a need to consider whether the  
24 prior incidents would have resulted in greater action had  
25 they occurred in Great Britain.

103

1 Overall in relation to intelligence, it is submitted  
2 on behalf of the victims and survivors that I represent  
3 that the material I've just drawn attention to  
4 demonstrates how it's important to investigate with  
5 rigour: firstly, the extent to which intelligence was  
6 gathered before the bomb; secondly, the extent to which  
7 intelligence was properly shared; thirdly, the extent to  
8 which there was an appropriate response to that  
9 intelligence. That includes whether the response to bomb  
10 threats was adequately updated in light of intelligence.

11 A separate topic that is of importance to the Core  
12 Participants I represent is the issue of the linked  
13 incidents. The Omagh bomb was clearly not a one-off  
14 isolated incident and followed a series of linked attacks  
15 in 1997 and 1998 with an increase -- which was part of an  
16 increase in violent dissident republican activity.

17 While publicly it may have been claimed that these  
18 attacks were undertaken by separate entities, the experts  
19 would suggest that there was active co-operation and  
20 co-ordination between the dissident groups. It has been  
21 suggested in his role as Director of Operations of the  
22 Real IRA Liam Campbell had developed an operational  
23 coalition with the Continuity IRA and the INLA. It has  
24 also been suggested that following the split there was  
25 evidence of co-operation between the Real IRA and the

102

1 The concerns that I've just expressed are supported  
2 by the fact that in his evidence to the Northern Ireland  
3 Affairs Committee, Mr Baxter, who was in charge of the  
4 bomb investigation from 2000, stated that the Omagh bomb  
5 might have been prevented had earlier action been taken  
6 against those involved in other incidents. He said:

7 "... there could have been opportunities to arrest  
8 this gang after Lisburn, after bombs in May, June and  
9 July even after Banbridge ... If we take Lisburn, which  
10 is one of the linked incidents, a car bomb, there was an  
11 opportunity, had the investigators been given the  
12 identities of the bomb team, to carry out searches of the  
13 properties or the homes of suspects."

14 He also stated that:

15 "... certainly disruption could have prevented it."

16 Those remarks need to be considered in light of the  
17 submissions that I already made that the state had both  
18 powers and resources necessary to gather relevant  
19 intelligence and then take disruptive action.

20 Another topic that the Core Participants that  
21 I represent would wish to raise is the need for an  
22 overall assessment. Depending upon the evidence that is  
23 heard regarding the issues, one of the concerns that is  
24 raised on behalf of the Core Participants I represent is  
25 whether there was a need for a designated decision-maker

104

1 with responsibility for assess all of the material that  
2 may have been available in order to assess what steps  
3 needed to be taken to protect the public. For example,  
4 was there a need to develop a better response plan to  
5 threats such as the threat received in Omagh before the  
6 bomb?

7 A further issue I have touched upon already but  
8 I just want to highlight again is the issue of  
9 differential policing. In his evidence to the Northern  
10 Ireland Affairs Committee, Mr Baxter stated:

11 "I think it is inconceivable on mainland United  
12 Kingdom if you have a series of bombs happening every  
13 week or two that there would not have been arrests and  
14 there would not have been government intervention to  
15 ensure that this team was disrupted."

16 One reason to be concerned about differential  
17 policing is that as I've already indicated, MI5, for  
18 example, appeared to claim particular success in relation  
19 to the disruption of terrorism in London.

20 A further reason to be concerned about this issue is  
21 that PSNI's corporate statement appears to suggest that a  
22 different approach may have been adopted to the handling  
23 of intelligence in Britain to that adopted in Northern  
24 Ireland. All of these matters raise concerns that it is  
25 submitted are legitimate concerns that need to be

105

1 assessed that this information should have been passed on  
2 to the RUC at the time, bearing in mind the number of  
3 terrorist bombs and attempted bombs in 1997.

4 In addition to that, following an operation by the  
5 Garda in April 1998 to disrupt a dissident operation, a  
6 generalised document was provided to the RUC which was  
7 said to lack sufficient detail.

8 More generally, there appear to have been mixed  
9 descriptions of the co-operation between the police  
10 forces on both sides of the border. The Smithwick  
11 Tribunal suggests that there was close co-operation at a  
12 local level across the border, particularly between  
13 police forces in Newry and Dundalk. The Nally Report  
14 refers to close counter-terrorism co-operation, both  
15 formally and on a personal basis and that co-operation  
16 was excellent. However, as I've already outlined, in the  
17 corporate statement of PSNI there are statements that  
18 suggest preventative material in particular was not  
19 shared.

20 Although findings regarding the conduct of Irish  
21 state authorities are not a matter for the Inquiry, there  
22 are clearly findings open to the Inquiry. These include  
23 whether information of value was received from the  
24 Republic of Ireland, whether more could have been done to  
25 improve the supply of information from the Republic of

107

1 examined with particular care.

2 The final topic that I want to raise in this opening  
3 is the issue of co-operation with the Republic of  
4 Ireland. There is little or no doubt that dissident  
5 Republic activity linked to the bomb took place in the  
6 Republic of Ireland. That suggests that effective  
7 protection of the bomb potentially required the  
8 assistance of the Republic of Ireland's authorities. The  
9 victims and survivors encourage the Government of the  
10 Republic of Ireland, as I've already indicated, to  
11 establish a procedure that will enable findings to be  
12 reached regarding any failings that may have occurred  
13 within the south of Ireland.

14 There is reason to believe that intelligence was  
15 known by the Garda but not the RUC. The Omagh bomb  
16 investigation team presented a briefing paper to some of  
17 the families of the bereaved and injured, the Omagh  
18 Support and Self-help Group, on 22 February 2008 which  
19 stated, among other matters: firstly, that intelligence  
20 material indicated that in November 1997, dissident  
21 Republicans discussed the military and police bases in  
22 Omagh. That information was not passed on to the RUC and  
23 therefore the Sub-Divisional Commander in Omagh was not  
24 made aware of this information regarding the military  
25 bases or his own station. The investigation team

106

1 Ireland, and whether any information of value received  
2 from the Republic of Ireland was effectively deployed.

3 That covers the issues that we want to highlight or  
4 that the Core Participants I represent want to highlight  
5 at this stage.

6 As I've already noted, the victims and survivors  
7 I represent are not seeking at this stage to argue that  
8 particular findings should be made. The victims and  
9 survivors I represent believe that it's important the  
10 Inquiry keeps an open mind. However, the victims and  
11 survivors argue that it's clear that there are difficult  
12 and important issues that arise in relation to a range of  
13 matters that need to be considered with care. The  
14 victims and survivors I represent appreciate the  
15 commitment of the Inquiry to get to the truth.

16 The range and importance of the issues, though, mean,  
17 among other matters, that: firstly, it is important that  
18 victims and survivors are able to participate fully in  
19 the questioning of witnesses, including by asking  
20 questions directly; secondly, victims and survivors'  
21 interests are advanced in CLOSED by special advocates;  
22 and, thirdly, there is full engagement by the Irish  
23 government.

24 Thank you. That concludes the opening statement on  
25 behalf of the victims and survivors I represent.

108

1 **LORD TURNBULL:** Thank you, Mr Southey.  
 2 **MR GREANEY:** Sir, would you rise for about five minutes,  
 3 following which we will hear the final opening statement  
 4 delivered by Mr Mansfield who, as I said at the beginning  
 5 of yesterday, will be appearing via video link.  
 6 **LORD TURNBULL:** Yes.  
 7 (2.24 pm)  
 8 (A short break)  
 9 (2.34 pm)  
 10 **LORD TURNBULL:** Mr Greaney.  
 11 **MR GREANEY:** Sir, we will now hear from Mr Mansfield who  
 12 will address you on behalf of the Rush family.  
 13 **LORD TURNBULL:** Good afternoon, Mr Mansfield.  
 14 **MR MANSFIELD:** Am I being heard loud and clear and can  
 15 everybody see; is that all right?  
 16 **LORD TURNBULL:** You are, yes, thank you.  
 17 **Opening statement on behalf of the Rush family by**  
 18 **MR MANSFIELD KC**  
 19 **MR MANSFIELD:** I wanted you to also thank you to allowing me  
 20 to do it this way. As you know, I had an injury, but by  
 21 the next hearing I hope to be in person because I prefer  
 22 that.  
 23 As you know, I appear together with Nicola Rountree  
 24 and we're instructed by Desmond Doherty on behalf of  
 25 Libby Rush, who died in this atrocity, her husband who

109

1 Inquiry, particularly the last set of hearings which were  
 2 commemorative.  
 3 The terms of reference are set out in the key areas  
 4 of analysis for the Inquiry, but the issue of greatest  
 5 concern to the Rush family and it is of course -- and  
 6 I have the terms of reference in front of me I will come  
 7 back to them in a moment -- but it's quite clear that the  
 8 core issue for the Inquiry is preventability and that is  
 9 what is of the greatest concern to the Rush family and  
 10 requires rigorous investigation, which they are perfectly  
 11 satisfied you will provide.  
 12 Often described as the worst atrocity of The  
 13 Troubles, the Omagh bombing on 15 August 1998 altered the  
 14 trajectory of life for so many. What was set to be a  
 15 peaceful time, in the aftermath of the Good Friday  
 16 Agreement, descended into confusion, chaos and utter  
 17 devastation for the Rush family, and so many others. It  
 18 was a trauma which shaped so many generations. The  
 19 grief, the unimaginable loss, has been compounded by the  
 20 long and arduous path to get to the truth. Being met  
 21 with a wall of silence, the self-protection of the state  
 22 authorities, the lack of accountability, the closing down  
 23 of ranks, has only further intensified the unresolved  
 24 allegations which have become corrosive over the past  
 25 26 years.

111

1 died later in 2012, and her daughter Siobhan, who I think  
 2 may be there today, and her two brothers Anthony and  
 3 Andrew.  
 4 So what I intend to do, as you will see, we've done a  
 5 relatively short open written statement and I am going to  
 6 read it, but I will break off occasionally -- hopefully  
 7 not too much and not at length -- to incorporate  
 8 observations on matters that have been put before you  
 9 yesterday and again some today.  
 10 The reason for reading and using this statement in  
 11 the way -- and it's quite probably different to some of  
 12 the others -- is because it does provide for you -- and  
 13 you know a lot already -- but it provides for the public  
 14 a narrative and a genesis, in a sense, of this whole  
 15 Inquiry. It also explains, this particular statement,  
 16 not only Laurence Rush's concerns, were he to be here to  
 17 make observations, but also the rest of the family,  
 18 explains their concerns about observations that were made  
 19 yesterday and a few more today as to why they hold these  
 20 worries, sentiments and undoubtedly a long-standing,  
 21 deeply-held belief that the truth is the object and they  
 22 are going to help you and your team.  
 23 The Rush family wish to extend their continued  
 24 gratitude to you, the Chair, and the Inquiry team for  
 25 their professionalism, courtesy, commitment to the

110

1 Turning now to the inquest, which I attended with my  
 2 instructing solicitor, that occurred in the year 2000.  
 3 Now, these are important events in the terms of not only  
 4 providing a backdrop but actually providing you with  
 5 necessary inquisitive -- as essentially it is an  
 6 inquisitorial process, as you know -- questions that  
 7 might need to be asked and after a section I will just  
 8 stop and suggest where we're going in the light of what  
 9 has been said yesterday and today.  
 10 So the inquest happened in the year 2000, so there  
 11 has been a gap of almost two years from the incident  
 12 itself. The Rush family, Laurence Rush, adopted a  
 13 position over two decades ago that the bomb could have  
 14 been prevented.  
 15 In the year 2000, Laurence Rush took a stand at the  
 16 inquest -- a lonely figure in the inquest -- he asked  
 17 difficult questions and gently probed at sensitive issues  
 18 which others sought to shy away from. He was  
 19 criticised -- at times ridiculed -- but his family lived  
 20 in a state of fear in case matters escalated beyond  
 21 words, but he remained steadfast in his suspicions that  
 22 the full picture was being airbrushed and the truth  
 23 withheld from the families and the public. This is now  
 24 the very subject matter that this Inquiry is tasked to  
 25 deal with, two and a half decades later.

112

1 You, sir, acknowledged the unique and difficult path  
2 the Rush family took at the commemorative hearings.  
3 Describing Laurence Rush as a campaigner for truth and  
4 justice from a very early stage who sought to cast light  
5 on the circumstances surrounding the bombing and tried to  
6 learn about previous attacks, what was done and not done.  
7 You acknowledged that he was the first to raise some of  
8 the questions the Inquiry has to determine and not  
9 deterred from speaking them loudly and publicly. These  
10 questions are still uncomfortable for so many.

11 Laurence Rush may not have known the full truth about  
12 how or why the Omagh bombing happened before he died,  
13 that was in 2012, but he had a genuine and honest belief  
14 that the state narrative about the bombing didn't make  
15 sense, and at the time of the inquest he was convinced  
16 there was more to it. His daughter and two sons still  
17 view the state narrative about the circumstances of the  
18 bombing as illogical.

19 The stance adopted by Laurence Rush drew virtually no  
20 support from any quarter in society and this had a  
21 profound effect on him, impact on him. He was very much  
22 alone in his search for truth and accountability. It was  
23 a fact, and of course acknowledged by everyone, the Real  
24 IRA murdered his wife. They claimed responsibility for  
25 the bomb and that's how it should remain. He had to

113

1 reality in this, once this happened on 15 August 1998,  
2 are we to imagine that state authorities didn't  
3 immediately have meetings? These meetings are important.  
4 I don't know how they all happened. There are various  
5 different ways you can have meetings and the meetings  
6 they must have had which should have ensured the  
7 preservation not "oh we only got notice yesterday", the  
8 state had known since this incident.

9 This was an incident, termed as I've already  
10 indicated, the worst atrocity in peacetime, an incident  
11 which comes after the Good Friday Agreement. Therefore,  
12 there are going to be massive questions and not just  
13 asked within the United Kingdom but asked in the  
14 United States because of their participation in it, not  
15 only at the intelligence level but at a higher level as  
16 well which I will come back to a little later.

17 So what they must have done -- and if they didn't  
18 I think there will have to be confessions fairly soon --  
19 and I will come back to that as well -- this all bears on  
20 observations made yesterday. The difficulties that they  
21 are facing not -- well, in a sense indirectly, but are  
22 facing the state are of their own making because if they  
23 didn't sit down at that time or whatever they do and ask  
24 the basic questions -- and on this, may I say, that the  
25 terms of reference are extremely apposite and very well

115

1 grapple with this extremely distressing fact, whilst also  
2 trying to understand how something like this could have  
3 happen without state authorities having any suspicion; or  
4 worse, actual intelligence about the bomb. He had great  
5 difficulty articulating and arguing that he felt that the  
6 bombing could have been prevented by authorities of the  
7 state and at times did not want to believe this himself.  
8 He challenged himself many times because of the doubt and  
9 of course because of hostility from others. However,  
10 ultimately his determination did not wane and fuelled by  
11 the love for his wife and the family she had left behind,  
12 he continued to search for answers.

13 If I may, I am going to pause at that moment because  
14 what I want to do is, just bearing in mind the two pages  
15 I have read, deal with a question of the response by the  
16 state authorities yesterday and they are really  
17 indicating that, you know, we should be sympathetic,  
18 which we are with the difficulties of amassing  
19 information. This is an important job.

20 However, it cannot be said that they were not aware.  
21 I don't mean the individuals now concerned, I am talking  
22 obviously of continuity here, it cannot be said that  
23 government departments were not on notice the date that  
24 has been specified today, 2021, I'm sorry it's much  
25 earlier than that. If I tried to put an element of

114

1 focused. I'm not going to read them all out, but is it  
2 to be believed that the state on 16 August 1998 didn't  
3 ask themselves -- and this is the scope part of the terms  
4 of reference and (a) the assessment by UK State  
5 Authorities of the threat posed in Northern Ireland by  
6 dissident Republican terrorists from 1 December 1997 to  
7 the date the Omagh Bombing. This shall include the  
8 consideration of any change in (unclear).

9 That is absolutely crucial. Are we to believe nobody  
10 asked themselves that question and where are the records  
11 relating to that? And if they are being preserved, we  
12 need an explanation now and I come back to it under the  
13 concessions. These are basic questions that must have  
14 been asked then. They don't need to be getting a letter  
15 or a writ or a summons before they ask these questions.

16 So the state, I'm not holding them responsible for  
17 the bombing in the sense that the Real IRA are, but we  
18 are saying that they have a responsibility, a  
19 responsibility for safety. So if they did ask about  
20 these questions, what were the answers? Of course risk  
21 assessment is at the centre of this and it's already  
22 been explained what the risk -- terms of the risk might  
23 be implied by the European Convention and Article 2  
24 itself.

25 That's the first question.

116

1 The second question these are all basic. The  
2 adequacy of measures taken by the authorities to disrupt  
3 the dissident Republicans. At the end, you don't have  
4 to be at a university level to work these questions out.  
5 They are not borne from hindsight. If you were sitting  
6 there, I was sitting there and I had relatives killed in  
7 the High Street at Omagh, just as we heard yesterday  
8 very movingly from counsel, you would ask that question:  
9 who did this? Who claimed it? What have they done  
10 before? Where were they? Where were we?

11 I mean, one is trying to introduce an element of  
12 realism into this that it's all very well relying  
13 on it's a long time since it happened. Sorry, I'm  
14 talking about then. What happened then? What were they  
15 doing then about these questions which are entirely  
16 proper?

17 This is the third one which is obvious again: the  
18 adequacy of policies and practice of the UK State  
19 Authorities, including the police, security forces and  
20 intelligence and security agencies in sharing  
21 intelligence? Well, again, it's a question you are  
22 bound to ask. Did we know about this? If we didn't  
23 know, why didn't we know?

24 These are questions that need to be asked in your  
25 Inquiry and I am absolutely confident -- and so are the

117

1 the risk here is you have got a dissident group who have  
2 made their part very clear over the previous year. So  
3 if there's any information coming in and you have got  
4 somebody who is inside the organisation, you have a  
5 precautionary approach, particularly in the aftermath of  
6 the Good Friday Agreement when so much was at stake.

7 So these linked incidents were asked about, Banbury  
8 particularly, the ones before that we didn't have all  
9 the information that you now have.

10 So we say when the authority is saying, as they did  
11 yesterday, "sorry, sorry, it's going to take a long time  
12 to get there and actually we've lost a lot of documents  
13 anyway, some of which have been outlined today" --  
14 horrific, shocking, was the description given, that the  
15 meetings at a certain level, which were happening  
16 regularly, which I suggest were happening on 16 and  
17 possibly 15 August 1998, that we don't have the records.  
18 Well, if we don't have the records, they had better have  
19 a very watertight explanation other than "well, we can't  
20 tell you".

21 So I pause there because this question of notice and  
22 disclosure and concessions -- because what I'm going to  
23 read now from the statement that we make is the struggle  
24 that Laurence Rush had after the inquest to try and make  
25 his point wider than just the questions asked at the

119

1 Rush family -- that your counsel will be asking them and  
2 on sometimes occasionally you will be asking them  
3 yourself. So they have been on notice since 1998.

4 However, it gets more specific in the year 2000 and  
5 I can say this because obviously I was there at the  
6 inquest. They were absolutely put on notice in the year  
7 2000, not 2021, but 2000. May I just list the issues  
8 that arose in the inquest and why Laurence was isolated  
9 in the way I've described?

10 The issues that were -- one main issue which arose in  
11 the inquest is: Why was the army -- we've heard it  
12 today from Mr Southey before me -- why was the army not  
13 deployed that day? They were there in Omagh. They  
14 could have been deployed. So why weren't they?

15 First topic.

16 Second topic: warnings. We went through that. We  
17 didn't have all the information we now have, but we  
18 understood there were warnings, including the one on the  
19 fourth. So that was an issue then. Intelligence was an  
20 issue then, general intelligence, if there was any  
21 relating to Omagh.

22 The possibility of disruption. What we were talking  
23 about then was roadblocks intercepting vehicles and so  
24 forth. Fairly basic. So even if you don't know which  
25 vehicle, you close it down. Yes, it's a risk. However,

118

1 inquest.

2 I'm on paragraph 6 if you are following the copy of  
3 it. Baroness Nuala O'Loan's Police Ombudsman report  
4 dated 12 December 2001, so that is one year after the  
5 inquest, raised some potential issues about the use of  
6 and dissemination of intelligence between various  
7 agencies within the police at the time. She criticised  
8 the police for their response following the event and  
9 missed opportunities to properly investigating the  
10 bombing.

11 Laurence Rush had been struggling with doubts and  
12 unease about the circumstances surrounding the bomb.  
13 This report gave him hope and, in a sense, of  
14 vindication for his feelings. He felt that there was  
15 finally a light being cast on the actions of the  
16 authorities. These findings acted as a catalyst for  
17 further investigation.

18 Over the course of the next few years, others began  
19 to see what Laurence had seen from the start: gaps in  
20 the narrative, obscured facts, evasive answers and  
21 things that simply didn't make sense.

22 The Rush family are indebted to Baroness O'Loan for  
23 exposing some of the issues their father sought to bring  
24 to the fore and extend their gratitude and respect to  
25 her. Given the political landscape at that time and the

120

controversial issues raised, her courage should be recognised and will not be forgotten.

I move to the litigation that Laurence Rush was driven to initiate. You recognised also that Laurence Rush was the first to issue litigation against the police and the British government. This was not action which was taken lightly, but rather after many legal consultations and after much deliberation. It was the view of Laurence Rush that this was a necessary step to uncover the truth. Previous enquiries actioned by him and others had resulted in many dead ends and the family were running out of road.

Laurence Rush litigated in the High Court against the Chief Constable of the PSNI, formerly RUC, and the British government on 17 July 2002. So here's another date in the chronology, as it were, whereby the idea that they can only -- they need to get things together now when in fact they must have been getting things together much earlier and here's another stepping stone in that, some 23 years ago and one year following the publication of the report of the Police Ombudsman.

The cause of action itself that Libby Rush, this is words taken from the cause of action, Laurence's wife, was murdered on 15 August 1998 by reason of the negligence, misfeasance in public office, and breach of

121

record for the Inquiry reminding everyone that these issues were raised by him 25 years ago. He said from the beginning, and I quote from the pleadings referred to:

"A proscribed organisation the so-called Real IRA planted the bomb in Omagh.

"That proscribed organisation had been infiltrated by an informer, one Kevin Fulton [who you have heard a lot about today] who fed to the security forces information sufficient to have prevented the bombing."

Of course documents which have gone missing mentioned by Hugh Southey moments ago are particularly pertinent, the one on August 12, so-called missing.

"The police and government or one of them had sufficient quality of information to apprehend the perpetrators or prevent the planting of the bomb. The police, in particular failed to take such steps as would have prevented the loss of life by failing to stop the bombers or apprehend them in time or at all as a consequence of not acting on intelligence to ensure that no car bomb was planted in Omagh on 15 August 1998".

Throughout the years of litigation the Rush family answered every question asked of them. There was much back and forth in the pleadings and ultimately the Rush family named a number of individuals and agent handlers

123

the statutory duties of the police and the Government in their failures in the apprehension, detection and pre-emptive arrest of members of a criminal terrorist conspiracy, namely the Real IRA, who planted the bomb which led to the explosion in which Libby Rush was murdered.

In other words, he was saying, firstly, that the bombing could have been prevented by the relevant authorities and his wife's right to life was not protected by the state.

Secondly, in addition, he said that her murder was never properly investigated. This has always been, and remains, the Rush family position.

The litigation was a difficult chapter in the Rush family history. The mental toll of controversial litigation had an obvious impact on Laurence Rush. There was fierce resistance by the authorities to information being disclosed into the public domain and the Rush family feel strongly that this resistance was deliberate to prevent difficult questions being asked.

We would ask this to be borne in mind now in relation to disclosure by the authorities even at this stage.

Laurence Rush through this litigation, 2002, presented to the court an alternative narrative. As part of his legacy we wish to put this formally on the

122

in the course of their answers on 2 April 2004 and 12 October 2004. The full set of pleadings has been provided to the Inquiry and we would ask you, sir, to analyse these closely. We say there is evidence which is capable of suggesting that the state authorities could have and should have prevented the bomb.

Another important turning point for the rush family was the Panorama documentary aired on 15 September 2008. Following this documentary, the civil pleadings were expanded as follows: firstly, that the defendants in the action, through their agents or servants, namely GCHQ Communications Centre at Cheltenham Gloucester, had contemporaneous intercept of the bombers' mobile phone communication on the afternoon of 15 August 1998. The said communications centred had actual knowledge of the route of the bombers and their target being Omagh.

This information was not acted upon to either apprehend the bombers or put into operation a comprehensive evacuation strategy of Omagh, mindful of the intent of the Real IRA which had demonstrated some weeks previously when a bomb was planted and exploded in Banbridge. The threat and the capacity of the Real IRA were known to the police and government in consequence of that previous bombing.

The circumstances of the transportation of the bomb

124

1 to Omagh could not have been more serious and the  
2 defendants failed to react, either in time or at all to  
3 prevent the loss of life to Libby Rush. There was a  
4 failure to have in place a clear, precise and expeditious  
5 method for transmitting the intelligence received by GCHQ  
6 to the police that would have prevented the bombing.

7 The context and timing of these submissions made by  
8 the Rush family is important. This was unpopular  
9 litigation and many struggled to support Laurence Rush.

10 There was a complete blanket denial by the  
11 authorities. This we say is an important paragraph  
12 because, as you will see in a moment -- and I am going to  
13 pause again -- a reflection on how the authorities are  
14 dealing with it now. Efforts were made by the  
15 authorities to strike the litigation out in 2009. The  
16 case was described by the police had government as  
17 frivolous and vexatious, even unarguable and  
18 unsustainable. Strong and confronting words for any  
19 family to hear. We are yet to hear a retraction on the  
20 part of government, which I will come to in a moment.

21 The application to strike the litigation out was a  
22 private *in camera* hearing before the High Court at which  
23 only Laurence Rush and his legal team were permitted to  
24 be present. Later he was permitted to bring a family  
25 friend in view of his failing health and the requirement

125

1 information. The Rush family had to obtain a court order  
2 to secure discovery. That is why I pause for a moment.  
3 The family find it difficult, they want to believe they  
4 are going to get co-operation, it's difficult to believe  
5 that we're going to get full disclosure or, rather, you  
6 are going to get it because some of it plainly will not  
7 be available to us, although we hope and endorse those  
8 sentiments that as much in open should be made.

9 The initial writ of summons issued in the High Court  
10 was dated 2002 and the Gillen judgment is dated 2011.  
11 There was a discovery order for documents dated 2014. It  
12 all moved at a glacial pace.

13 Some documents were eventually disclosed. These have  
14 been provided to assist the Inquiry. Sensitive  
15 documentation was not provided. These civil proceedings  
16 were ongoing at the time of the litigation commenced by  
17 Michael Gallagher and together these two sets of legal  
18 proceedings complemented each other. Two men, two  
19 families, searching for truth and accountability.

20 In the civil litigation there was a blanket denial of  
21 everything pleaded by Laurence Rush. In the initial  
22 Statement of Claim on 21 January 2004, Laurence Rush  
23 pleaded that:

24 "The defendants, that is RUC/PSNI or government or  
25 one of them, had sufficient quality of information to

127

1 to travel. There was no public element to the hearings  
2 in that initial process, which is in stark contrast to  
3 the public and open nature of this Inquiry which we know  
4 will be transparently conducted by you.

5 The initial application was struck out on 18 May 2010  
6 and we give the reference. Another setback for the Rush  
7 family and other families perhaps in similar situations  
8 might have just given up, but he didn't. But later  
9 reinstated on the appeal. 2011, Lord Justice Gillen in  
10 his judgment did not accept that the position adopted by  
11 Laurence Rush was unsustainable. Towards the end of his  
12 judgment he said:

13 "I've come to the conclusion that it is neither plain  
14 nor obvious that the cause of action in this matter has  
15 no chance of success. In short, I do not consider that  
16 on the pleadings the case made by the plaintiff is  
17 unarguable."

18 By this time, Laurence Rush was in a nursing home  
19 and, sadly, his health was deteriorating rapidly. He was  
20 comforted by the words of Lord Justice Gillen, but there  
21 was still a long road ahead.

22 The litigation had many twists and turns. The  
23 process again of obtaining disclosure and documentation  
24 was tiresome and frustrating. There was inordinate and  
25 unjustifiable delay by the authorities in providing

126

1 apprehend the perpetrators or prevent the planting of the  
2 bomb at Omagh on 15 August 1998 which directly caused the  
3 death of Libby Rush."

4 In the defence to this litigation served on behalf of  
5 the police and government, dated 8 December 2004, the  
6 first named defendant was:

7 "... [the Chief Constable of the police], further  
8 says that he and his servants or agents are not  
9 responsible in law for the operational decisions, acts or  
10 omissions of the second named defendant, the Government,  
11 in respect of crime prevention and/or crime  
12 detection/investigation and none of the allegations of  
13 negligence properly are to be viewed as within his area  
14 of responsibility."

15 The Rush family ask you, sir, to conduct a root and  
16 branch review of the practices and the oversight of the  
17 police and government agencies. Now, this is the kernel  
18 of our statement.

19 The Rush family do not seek to criticise or blame  
20 officers on the ground in Omagh -- and I think none of  
21 the families want to do that -- on 15 August 1998, but  
22 rather those who had oversight of decision-making. Those  
23 involved in accessing information/intelligence, agents  
24 who were making high level decisions in both police and  
25 government agencies. We know now they were meeting

128



1 regularly and there was regular contact, but we don't  
2 have the record.  
3 Those are the people that the family of Libby Rush  
4 wish to have questioned at least in terms of, if they are  
5 still alive, the documentation that is available. Who  
6 made the decision about the distance of evacuation for  
7 the explosion? Who made the decision to deplete the  
8 number of officers Omagh on that particular morning? Who  
9 made the decision not to act on intelligence received,  
10 not to pass on information? Just a sample of the  
11 questions to be answered.

12 The officers who were there on that day were clearly  
13 doing their best in horrific circumstances and the Rush  
14 family extend their gratitude to those who tried to help  
15 the bereaved and the injured. Laurence Rush died on  
16 4 March 2012; he died without answers. That is a source  
17 of great regret for his family.

18 Now I'm going to pause again at this stage to deal  
19 with another observation and, sir, we take this  
20 particular matter, it's not just a procedural matter, it  
21 is absolutely vital we say for the transparency, the  
22 alacrity and scope of this Inquiry. I was just about to  
23 talk about inquest which it overlaps.

24 You asked in the protocol and set out very clearly  
25 that you:

129

1 they are now saying to you yesterday it's too early, too  
2 early because we haven't heard any evidence. Excuse me,  
3 this sounds very much like a process whereby a defendant  
4 waits to see what is produced before they say anything.  
5 These are not criminal proceedings. We say the state  
6 authorities must be pressed now, not next week, not next  
7 year, they must be in a position otherwise it's more than  
8 serious negligence if they don't know where they stand on  
9 some of these basic questions. There's quite a lot they  
10 can already, we say, concede.

11 For example, if it's going to be missing documents,  
12 let's concede that straightaway and that's why something  
13 didn't happen with an explanation. It will make life  
14 for everyone, including obviously yourself, far easier  
15 and of course far more transparent and the idea that  
16 they don't say anything and they keep their mouths shut  
17 until the first witness we say is a disgrace. That  
18 should not happen.

19 Also, may I just add an extra part of the protocol  
20 which we say is important:

21 "In the event there are mistakes or failings which  
22 the state Core Participant considers can only be  
23 acknowledged in CLOSED due to the risk to national  
24 security, an account of those failings must be provided  
25 in writing to the Inquiry legal team in a CLOSED

131

1 "Expect the State Core Participants to understand and  
2 exhibit the principles of the Hillsborough charter and  
3 the Hillsborough law. You expect openness, candour and  
4 transparency. In the event, any State Core Participants  
5 has identified mistakes or failings going in the terms of  
6 reference, three of which I have read -- there are in  
7 fact 9, but I'm not reading them all about -- has  
8 identified mistakes or failings going to those terms of  
9 reference, these must be fully and clearly acknowledged  
10 in plain language cross-referring to the terms of  
11 reference and the provisional list of issues."

12 You go on to state:

13 "Core Participants can expect scrutiny of their  
14 opening statements in the context of what subsequently  
15 emerges."

16 Now, I know your counsel opened these matters and  
17 I wish on behalf of the Rush family to endorse them  
18 because both he and I have appeared in previous matters  
19 one of which was the Hillsborough inquest, as opposed to  
20 Inquiry, and I appeared in the Grenfell Inquiry as well.

21 These are not -- it's obvious and you have said it  
22 many times -- adversarial, these are inquisitorial  
23 processes and it is extremely important that those who  
24 have the material, which of course is the state  
25 authorities here, in fact have had them for 25 years and

130

1 environment at the same time as OPEN written statement.  
2 Any CLOSED document should be accompanied by an  
3 application for a restriction order and justify why  
4 these concessions cannot be made in OPEN. The Chairman  
5 expects both OPEN and CLOSED versions of any restriction  
6 order applications or clear justification for why there  
7 is no restriction order application being made in the  
8 CLOSED application and then upon the receipt of these  
9 documents."

10 Now, the question we have on behalf of the Rush  
11 family: have you had anybody, or particularly state  
12 authorities, providing you -- and obviously we don't  
13 want to know what the information is, that obviously  
14 would be completely counter-productive -- but has there  
15 been any CLOSED -- we get a hint of it obviously with  
16 the Ombudsman's statement yesterday -- but has anybody  
17 else provided you with a CLOSED statement as to why they  
18 concede certain things but they can't and you have had  
19 to, as it were, consider these matters and decide they  
20 stay CLOSED they should be OPEN.

21 So I'm not asking for an answer obviously at this  
22 stage, but we say this protocol is extremely important  
23 because the problem faced in Hillsborough, which was  
24 inquest, in Grenfell was exactly the same. What  
25 happened in Hillsborough was that the learned High Court

132

1 judge dealing with the inquest insisted that the state  
2 authorities make a position statement of what their  
3 position, otherwise we wouldn't have known where they  
4 were coming from or what they were trying to say, or  
5 what the point was, what they accept, what they didn't.  
6 So they were each made to do that. It was the first one  
7 I've known where that actually happen.

8 In Grenfell, it was expected and happened that when  
9 the openings occurred, state authorities would make  
10 clear what they accepted and interestingly what happened  
11 in Grenfell was the state authorities accepted certain  
12 aspects of responsibility, but the private corporations  
13 didn't. But I don't go into it any more than that,  
14 other than to say what you set out in this protocol is  
15 vital to the lifeblood of this Inquiry that we know now,  
16 the families know now, they have waited long enough,  
17 what they are prepared to concede.

18 If the answer coming back within 28 days or the time  
19 of the next hearing in July, if they are still unable to  
20 do that, then I think there has to be far more -- well,  
21 it speaks for itself, may I say, *res ipsa loquitur* as  
22 they say.

23 So that's a pause I have made. I am sorry I have  
24 taken a little longer on that. Coming to the end of  
25 this statement.

133

1 family, alongside other families, have a lot of  
2 information which they have accumulated over the years  
3 and hope for maximum participation.

4 May I say just at this stage, the issue raised by  
5 Hugh Southey moments ago about special advocates and  
6 direct questioning we defer to the next hearing on 21  
7 and 22 of July.

8 They ask for as much transparency in open hearings as  
9 possible. The Rush family request that everyone who has  
10 been involved in any way should co-operate fully with  
11 the Inquiry on both sides of the Irish border. The Rush  
12 family had hoped there may be a parallel Inquiry in the  
13 Republic of Ireland, but that is not the case and that  
14 is obviously supporting the others who have made that  
15 same proposition to you. They welcome the memorandum of  
16 understanding with the Republic of Ireland and hope this  
17 is sufficiently robust to ensure transparency and  
18 exchange of information across the two jurisdictions.

19 There are clearly many important questions which must  
20 be answered by the Irish government relating to, the  
21 lead-up to, time and aftermath of the Omagh bomb. These  
22 are amplified because of the overlap of terrorist  
23 activity and involvement of identified individuals  
24 across both jurisdictions.

25 The following assumptions can be made, even at this

135

1 When he died, that's Laurence Rush, in 2012, the  
2 family made a decision to await the outcome of the other  
3 legal processes to see if they could make progress  
4 regarding the provision of documentation. It was clear  
5 from the decision of Mr Justice Gillen that the Rush  
6 litigation could only properly proceed once there was  
7 full discovery of documentation. The litigation has  
8 been paused pending the outcome of the public inquiry.

9 A public investigation into the Omagh bombing and its  
10 preventability, which is what the Rush civil action  
11 would have become, is not frivolous nor vexatious. This  
12 establishment of the Inquiry is evidence of that.

13 The truth about the preventability of the Omagh  
14 bombing is uncomfortable. The Rush family view, this  
15 public inquiry is an important moment in history and  
16 trying to uncover the truth and providing some answers  
17 for all of the families. They ask you, Mr Chairman, to  
18 now carry the baton they have tirelessly carried for  
19 years to help them find the answers they have been  
20 searching for.

21 The terms of reference are not all encompassing;  
22 however they are sufficiently wide to reflect the  
23 concerns of Laurence Rush. No one knows, Mr Chairman,  
24 where the evidence will lead you and the Rush family  
25 hope that all avenues will be explored. The Rush

134

1 preliminary stage, that in all probability some element  
2 of planning of the bomb was carried out in the Republic  
3 of Ireland; that in all probability some perpetrators  
4 came from or were involved with individuals from the  
5 republic; that in all probability information which  
6 identifies and concerns the perpetrators still exists in  
7 the Republic of Ireland; that in all probability there  
8 will be information relating to the issues in the terms  
9 of reference in relation to the Omagh Bombing which is  
10 in the Republic; that in all probability there will be  
11 relevant witnesses in respect of the bombing who reside  
12 in the Republic.

13 The Rush family says that it is therefore imperative  
14 that there is full co-operation on both sides of border.

15 There is a risk that if the commitments provided by  
16 the Irish government and other state authorities in the  
17 North are not honoured, this could grind the Inquiry  
18 process to a halt. The Rush family make a plea that  
19 this Inquiry does not become a further endurance test of  
20 their strength and courage. Each of the bereaved  
21 families have suffered enough.

22 In an affidavit on 18 May 2005, 20 years ago,  
23 Laurence Rush said:

24 "It is my honest belief that in particular as a  
25 result of all the information contained in the Police

136

1 Ombudsman report with particular reference to the  
2 pre-warnings about an attack on Monday, 15 August 1998  
3 that the murder of my wife may have been prevented by  
4 the defendants."

5 There is significantly more information available now  
6 which the Rush family says supports their belief that the  
7 Omagh bombing was preventable.

8 The Rush family are embarking on this chapter of  
9 Omagh with positivity and hope. They, along with the  
10 other families, have demonstrated remarkable strength of  
11 courage. The Rush family hope that this Public Inquiry  
12 represents the beginning of the end of the story of the  
13 Omagh Bombing.

14 If I may be permitted just to add a tiny postscript,  
15 but given what is going on globally at the moment, it is  
16 important to remember the words of the President of the  
17 United States on the first anniversary of the Good Friday  
18 Agreement in 1999. I am quoting, it's very little, I  
19 just want to quote from this because of its significance  
20 in terms of the status of this Inquiry and the important  
21 role this Inquiry plays in the rule of law and adherence  
22 to a judicial process. This is what he said:

23 "As we approach the first anniversary of the Good  
24 Friday Agreement we can all take heart at how far we've  
25 come in a year.

137

1 "But the response to Omagh showed that, despite the  
2 pain, there is deep determination in both the North and  
3 the South that peace is the only path."

4 We say to you, sir, you are part of that path towards  
5 truth because, as has been said so many times, there can  
6 be no lasting peace without truth.

7 Thank you.

8 **LORD TURNBULL:** Thank you, Mr Mansfield. We hope you might  
9 be able to join us in person at the next hearing of the  
10 Inquiry.

11 **MR MANSFIELD:** Yes, I will be there.

12 **LORD TURNBULL:** Thank you very much. Mr Greaney.

13 **MR GREANEY:** I was about to ask Mr Mansfield to turn off his  
14 camera and his microphone, but he is ahead of me.

15 Sir, that then concludes the opening statements of  
16 the Core Participants. Many important questions have  
17 been raised by the bereaved families and survivors over  
18 the course of the last two days. We expect that no-one  
19 would expect the Inquiry Legal Team to be in a position  
20 to answer all of those questions at this stage, but there  
21 are two issues upon which we do feel we can provide a  
22 degree of further clarification.

23 First, in the course of our opening observations  
24 yesterday, we acknowledged the concerns of the bereaved  
25 families and survivors about missing documentation and we

139

1 "The Agreement has provided the basis for two  
2 traditions to work together, both in Northern Ireland and  
3 on the island as a whole, for the first time in  
4 200 years."

5 I pause: I hope that the Republic will respond to  
6 what is being said here.

7 "Democratically endorsed by an emphatic majority of  
8 people in both the North and the South, it gives a unique  
9 opportunity for peace and reconciliation in which all the  
10 signatories can take pride."

11 And, of course, that includes the Republic.

12 "It has rightly been acknowledged as an example to  
13 the rest of the world how dialogue can bring an end to  
14 conflict."

15 These are acute and singular resonance, these words,  
16 now, today in the present circumstances where the rule of  
17 law is being ignored and processes in institutions  
18 upholding it are being ignored. What is happening here  
19 with your Inquiry is continuing exactly what was set out  
20 in 1998.

21 The President went on to reference Omagh in this  
22 statement in 1999:

23 "Despite the progress, Omagh demonstrated that the  
24 peace has not been a perfect peace."

25 He goes on:

138

1 made plain the rigorous approach that the Inquiry intends  
2 to take to any claims that are made that relevant  
3 materials cannot be located.

4 In his opening statement, Mr Kane gave an example of  
5 a category of missing documentation. He referred to the  
6 fact that it was the Inquiry which had identified the  
7 relevance of the agenda and briefing papers for and  
8 minutes of the Security Policy Meetings and he  
9 identified, too, that the Inquiry had sought these  
10 materials from the Police Service of Northern Ireland.

11 Mr Kane, as we all heard, went on to express the  
12 serious concerns of those that he represents about the  
13 failure of PSNI to locate any such documents for the  
14 years 1997 and 1998. Those concerns, in our view, sir,  
15 are understandable but there is more to the story.

16 The bereaved families and survivors can be assured of  
17 this, that in accordance with the approach we set out  
18 yesterday, the Inquiry Legal Team will not simply accept  
19 at face value that PSNI cannot locate these documents.  
20 Explanations have been sought and those explanations will  
21 be tested.

22 Furthermore, it's important to emphasise that the  
23 Inquiry's search for these documents has not been limited  
24 to a request of PSNI. As Mr Kane set out, the Security  
25 Policy Meetings were attended not only by senior police

140

officers but also by a range of other senior figures involved in security policy within Northern Ireland and that range of persons included the Permanent Secretary in the Northern Ireland Office.

As a result, at the same time as seeking the material relating to the Security Policy Meetings from PSNI, the Inquiry also sought that material from the Northern Ireland Office. Initially the Northern Ireland Office asserted that it had destroyed those records. The Inquiry pressed the NIO hard for an explanation of why those important records had been destroyed and in what circumstances and the Inquiry required further searches to be undertaken for that material.

Sir, the upshot is that on undertaking such further searches, the Northern Ireland Office has now located most of the documents that PSNI was unable to locate and the Inquiry's actively taking steps to locate the balance.

Sir, we hope that this single, albeit small, example will provide reassurance to the bereaved families and survivors and indeed the wider public as to the rigour with which the Inquiry will seek the documentation it requires for its work.

Sir, that is the first issue upon which we are able offer some clarification.

141

Those opening statements contained, as all have observed, no concessions and gave reasons for that position. It is a fact that no CLOSED opening statements were submitted. So, sir, where we reach is that no concessions have been made.

That, sir, is all we propose to say at the end of Chapter 2 of the Inquiry's work, save to thank those who have attended or who have viewed the proceedings online and save to thank the legal representatives for the positive and co-operative way in which they have engaged with this process.

Sir, we believe that finally you have something that you wish to say.

**Closing comments by LORD TURNBULL**

**LORD TURNBULL:** Thank you, Mr Greaney.

I would wish to say that I am grateful to all of the counsel for setting out and delivering their respective opening statements. Each has contributed in a helpful and informative manner. Hearing the State Core Participants explain the processes which they are engaged in will help all of us to understand the challenges which some of them face in providing disclosure to the Inquiry.

I do not doubt that these challenges are significant. In the case of the Secretary of State for Northern Ireland, he, as a Core Participant, represents not just

143

The second issue relates to concessions, a topic upon which Mr Mansfield, of course, has just addressed you. Mr Mansfield has noted that in our opening observations yesterday we referred to the requirement that State Core Participants make concessions where they recognise failings have been made. Mr Mansfield noted, too, that against that background we said the following yesterday:

"In their written opening statements, the State Core Participants have not made any such concessions."

Today, indeed this afternoon, Mr Mansfield has highlighted that the Inquiry's protocol on opening statements says this:

"In the event there are mistakes or failings which [a] state Core Participant considers can only be acknowledged in CLOSED due to the risk to national security, an account of those failings must be provided in writing to the Inquiry Legal Team in a CLOSED environment at the same time as the OPEN written [opening] statement."

In those circumstances, entirely understandably the question that has been posed by Mr Mansfield in effect is this: was our comment yesterday that the State Core Participants have not made concessions deliberately unequivocal? The answer is it was. The State Core Participants supplied their opening statements in OPEN.

142

his own department but all of the other departments across government who hold material that is of interest and value to the Inquiry.

So that adds to the complexities for the legal team he has instructed. It also raises issues concerning two matters, in particular. First, the management of the requests from the Inquiry and, second, the resourcing needed to comply with those requests.

Regardless of the efforts now being made, such as were outlined by Ms Fee in her opening statement, the fact remains that two years have already passed since the Secretary of State announced that there was to be an inquiry.

Many times since that point the progress towards setting up the Inquiry and then of trying to move towards evidential hearings has appeared to be frustratingly slow. Difficulties over providing disclosure, of course, impact on the ability to schedule evidential hearings. Many of the complications which make that disclosure such a slow and difficult process are inherent in the task of trying to trace documents and information from so many years ago.

Whilst all of us will understand the reality of those difficulties, some of those listening to what was said may have been thinking to themselves that if the various

144

1 Secretaries of State and other ministers involved had not  
2 so staunchly set their face against a Public Inquiry over  
3 the very many years and very many times that such  
4 requests were made, the problems now being grappled with  
5 would not be so acute.

6 Of course, I also recognise that the government  
7 departments with whom the Inquiry liaises have many other  
8 demands placed upon them and that is perhaps particularly  
9 the case for the Secretary of State of Northern Ireland.

10 So I recognise that we are where we are in regard to  
11 the timing of the Inquiry and the progress to date.  
12 I have one observation to make, though, in that regard.  
13 Having opposed the setting up of an Inquiry so long,  
14 there is a plain duty on the Secretary of State and  
15 others in government to remedy that now by making  
16 available whatever resources are necessary to ensure that  
17 full disclosure can be swiftly made available.

18 I say that not just because of the passage of time.  
19 My experience to date has caused me to have some  
20 concerns. I have not been convinced that some of those  
21 with whom the Inquiry has to depend upon to provide it  
22 with the materials it seeks have always been in  
23 a position properly to engage with the Inquiry or to  
24 dedicate the necessary resources to those tasks.  
25 I therefore trust that after all that's been said over

145

1 an examination of, and I quote:

2 "The UK State's response to the two telephone calls  
3 made on 15 August 1998 to Ulster Television and the  
4 single call made to Samaritan's Service, sometimes  
5 referred to as the warning calls. The attempts made to  
6 evacuate people from the location the bomb was believed  
7 to be in and the emergency response to the Omagh Bombing  
8 more generally."

9 As is stated in the list of issues, an analysis of  
10 these matters is not within the Inquiry's terms of  
11 reference.

12 A further aspect of the value which emerged from the  
13 opening statements presented on behalf of the family Core  
14 Participants was to learn of the concerns which they  
15 harbour. One matter which emerged very plainly was the  
16 ability to obtain relevant documentation after so many  
17 years have passed? The family Core Participants have  
18 rightly drawn attention to the concerns which they hold  
19 over statements made by state bodies about apparent  
20 inability to locate relevant documents.

21 The Inquiry shares those concerns.

22 What I would say is that, while I recognise that the  
23 passage of time brings with it challenges, as Mr Greaney  
24 has emphasised, the Inquiry will simply not accept  
25 statements that what appear to it to be important

147

1 today and yesterday that my remarks and concerns will be  
2 passed on to the relevant ministers and others who manage  
3 the responses to the Inquiry's requests.

4 Separately it was, of course, most informative to  
5 hear from the family Core Participants and to learn of  
6 the areas which they are most interested in seeing the  
7 Inquiry explore. For the most part, these areas of  
8 interest seem to be shared across the differently  
9 represented groups and, again, for the most part, the  
10 matters which the Core Participants wished to see being  
11 explored are reflective of what the Inquiry Legal Team  
12 has in mind as is foreshadowed in the provisional list of  
13 issues.

14 Having had the benefit of listening to the  
15 submissions, I and the Inquiry Legal Team will reflect  
16 further on everything that has been said.

17 However, there's one point which I would like to  
18 revisit. As was acknowledged in the submissions  
19 presented by Mr Southey, the terms of reference for the  
20 Inquiry mean that there are limits to what it can  
21 consider. That is self-evidently correct. Some of what  
22 flows from that boundary to the Inquiry's jurisdiction is  
23 set out in the list of issues. It is noted there that  
24 there are several issues which fall beyond an analysis of  
25 preventability. The first of those specified matters is

146

1 documents have been destroyed or cannot be found.

2 As the families have pointed out, claims of this sort  
3 have bedevilled some previous inquiries. As it happens,  
4 I do not even need to look to experience in other  
5 inquiries to vouch the importance of assessing such  
6 claims with care.

7 I have already seen for myself an example of how  
8 assertions that documents have been destroyed can turn  
9 out to be unreliable. Where claims are made that  
10 documents of importance have been destroyed or cannot be  
11 located, material providers can expect such assertions to  
12 be subjected to the most rigorous scrutiny. Accordingly,  
13 the Inquiry will expect to hear detailed evidence as to  
14 the nature of the efforts made to locate any such  
15 documents and the processes around their storage and  
16 retention.

17 Having done so, the Inquiry will draw such inferences  
18 as seem appropriate in light of the nature and importance  
19 of the documents concerned alongside the quality of any  
20 evidence given by way of explanation for their absence.

21 Another area of concern which emerged clearly from  
22 the opening statements of the family Core Participants  
23 was that of co-operation between the Inquiry and the  
24 authorities in the Republic of Ireland. These are  
25 understandable concerns even if some are expressed in

148

1 more trenchant language than others.  
 2 I have no doubt that the more strongly worded and  
 3 sceptical remarks passed concerning co-operation were  
 4 formulated through the lens of long previous experience.  
 5 But by way of contrast, I come to these proceedings  
 6 unburdened by any previous experience of contact,  
 7 negotiation or communication with the authorities in the  
 8 Republic of Ireland. Some may consider that an  
 9 advantage; others a disadvantage. However, it allows me  
 10 the luxury of an open mind. I therefore take the various  
 11 assurances which have repeatedly been made by senior  
 12 members of the Government of Ireland at face value and  
 13 I assume that they are made in good faith.  
 14 That is the approach which I will continue to take,  
 15 unless and until I am given reason to think differently.  
 16 The Inquiry will now adjourn still its next hearing,  
 17 which will take place on Monday, 21 July.

18 (3.40 pm)

19 (Adjourned until Monday, 21 July 2025)

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149

1 I N D E X

2		
3	Opening statement on behalf of Core .....	1
4	Participants represented by John McBurney	
5	Solicitors by MR KANE KC	
6		
7	Opening Statement on behalf of the Core .....	31
8	Participants represented by Fox Law by	
9	MR SOUTHEY KC	
10		
11	Opening statement on behalf of the Rush .....	109
12	family by MR MANSFIELD KC	
13		
14	Closing comments by LORD TURNBULL .....	143
15		
16		
17		

18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

150

<p><b>LORD TURNBULL:</b> [16] 1/3 1/8 31/6 68/24 69/5 97/2 97/5 97/9 109/1 109/6 109/10 109/13 109/16 139/8 139/12 143/15 <b>MR GREANEY:</b> [6] 1/4 31/7 31/12 109/2 109/11 139/13 <b>MR KANE:</b> [1] 1/11 <b>MR MANSFIELD:</b> [3] 109/14 109/19 139/11 <b>MR SOUTHEY:</b> [5] 31/15 69/4 69/9 97/4 97/10</p> <hr/> <p>' <b>'all'</b> [1] 91/24 <b>'I</b> [1] 43/7 <b>'I was</b> [1] 43/7 <b>'inside</b> [1] 57/10 <b>'is</b> [1] 77/24 <b>'Only</b> [1] 57/23 <b>'resulted</b> [1] 55/6 <b>'some</b> [1] 84/12 <b>'They</b> [1] 43/17 <b>'unhelpful</b> [1] 55/4 <b>'we</b> [1] 43/11</p> <hr/> <p>. ... [6] 13/23 18/11 34/2 38/1 104/7 104/15 ... <b>certainly</b> [1] 104/15 ... <b>cowardly</b> [1] 34/2 ... <b>people</b> [1] 38/1 ... <b>the</b> [1] 18/11 ... <b>there</b> [1] 104/7 ... <b>will</b> [1] 13/23</p> <hr/> <p><b>1</b> <b>1 August 1996</b> [1] 94/23 <b>1 December 1997</b> [1] 116/6 <b>1.07 pm</b> [1] 97/6 <b>10 April 1998</b> [1] 75/10 <b>10 June 1996</b> [1] 74/16 <b>10.00</b> [1] 1/2 <b>10.55</b> [1] 31/9 <b>11</b> [2] 6/10 11/25 <b>11 April 1998</b> [1] 93/8 <b>11.08</b> [1] 31/11 <b>12</b> [3] 32/11 32/15 123/13 <b>12 August</b> [2] 88/19 100/7 <b>12 December</b> [1]</p>	<p>120/4 <b>12 February</b> [1] 38/13 <b>12 February 1997</b> [1] 74/22 <b>12 May 1997</b> [1] 44/7 <b>12 October 2004</b> [1] 124/2 <b>12.06 pm</b> [1] 69/6 <b>12.24 pm</b> [1] 69/8 <b>13 February</b> [1] 33/25 <b>13 October 1994</b> [1] 74/1 <b>14</b> [3] 11/17 41/2 57/13 <b>14 years</b> [1] 81/9 <b>15</b> [1] 35/14 <b>15 April 2025</b> [1] 13/16 <b>15 August 1998</b> [18] 3/12 6/4 10/14 31/17 40/24 50/17 89/18 95/12 111/13 115/1 119/17 121/24 123/21 124/14 128/2 128/21 137/2 147/3 <b>15 August 2000</b> [1] 51/2 <b>15 June</b> [1] 74/19 <b>15 September 2008</b> [1] 124/8 <b>16</b> [2] 19/20 119/16 <b>16 August 1998</b> [3] 41/2 82/3 116/2 <b>16 June 1997</b> [1] 75/2 <b>16 March</b> [1] 36/10 <b>17</b> [2] 17/19 32/13 <b>17 July 2002</b> [1] 121/15 <b>18</b> [2] 10/21 28/12 <b>18 May 2005</b> [1] 136/22 <b>18 May 2010</b> [1] 126/5 <b>18 months</b> [1] 7/15 <b>19.5</b> [1] 20/1 <b>1922</b> [1] 54/10 <b>1969</b> [2] 54/10 56/23 <b>1972</b> [2] 53/20 70/7 <b>1973</b> [1] 62/17 <b>1974</b> [1] 62/22 <b>1978</b> [1] 62/17 <b>1979</b> [1] 84/23 <b>1982</b> [1] 86/20 <b>1983</b> [1] 56/23 <b>1985</b> [3] 11/13 66/1 66/15 <b>1986</b> [1] 78/24 <b>1988</b> [1] 62/19 <b>1989</b> [5] 62/20 62/24 62/24 63/20 63/25 <b>1990</b> [3] 66/3 83/3</p>	<p>85/2 <b>1990s</b> [2] 60/16 79/15 <b>1991</b> [1] 62/17 <b>1993</b> [2] 73/7 73/14 <b>1994</b> [2] 73/20 74/1 <b>1996</b> [11] 20/25 45/1 56/1 58/2 62/16 62/24 63/18 74/16 74/20 74/21 94/23 <b>1997</b> [25] 20/25 21/6 22/19 23/23 44/2 44/7 44/25 65/13 66/3 67/14 72/4 74/22 74/24 75/1 75/2 75/4 79/18 79/21 83/16 84/3 102/15 106/20 107/3 116/6 140/14 <b>1997/1998</b> [1] 19/19 <b>1998</b> [59] 3/12 6/4 10/14 19/19 19/19 20/25 21/6 22/19 23/23 31/17 40/24 41/2 44/25 49/14 50/13 50/17 59/13 59/19 60/6 64/11 65/13 67/14 71/21 72/22 75/10 75/17 76/17 82/3 82/11 83/7 84/16 88/16 89/9 89/16 89/18 93/8 95/9 95/12 95/15 100/10 100/16 100/25 101/18 102/15 107/5 111/13 115/1 116/2 118/3 119/17 121/24 123/21 124/14 128/2 128/21 137/2 138/20 140/14 147/3 <b>1999</b> [2] 137/18 138/22</p> <hr/> <p><b>2</b> <b>2 April 2004</b> [1] 124/1 <b>2.00</b> [1] 97/5 <b>2.06 pm</b> [1] 97/8 <b>2.24 pm</b> [1] 109/7 <b>2.34 pm</b> [1] 109/9 <b>20</b> [3] 56/22 74/19 95/1 <b>20 August</b> [1] 82/11 <b>20 August 1998</b> [1] 100/25 <b>20 February 2004</b> [1] 13/4 <b>20 July 1997</b> [1] 75/4 <b>20 months</b> [1] 32/5 <b>20 years</b> [1] 136/22 <b>200 years</b> [1] 138/4 <b>2000</b> [11] 39/11 43/24 51/2 65/11 104/4 112/2 112/10 112/15 118/4 118/7</p>	<p>118/7 <b>2001</b> [4] 44/9 54/7 93/25 120/4 <b>2002</b> [5] 44/10 54/19 121/15 122/23 127/10 <b>2004</b> [5] 13/4 124/1 124/2 127/22 128/5 <b>2005</b> [1] 136/22 <b>2008</b> [3] 95/6 106/18 124/8 <b>2009</b> [2] 36/10 125/15 <b>2010</b> [2] 26/10 126/5 <b>2011</b> [2] 126/9 127/10 <b>2012</b> [5] 11/24 110/1 113/13 129/16 134/1 <b>2013</b> [4] 11/7 11/15 45/24 46/22 <b>2014</b> [2] 89/12 127/11 <b>2019</b> [1] 17/15 <b>2020</b> [1] 42/21 <b>2021</b> [3] 46/5 114/24 118/7 <b>2025</b> [3] 1/1 13/16 149/19 <b>21</b> [2] 31/21 135/6 <b>21 January</b> [1] 127/22 <b>21 July</b> [1] 149/17 <b>21 July 2025</b> [1] 149/19 <b>22</b> [1] 135/7 <b>22 February 2008</b> [1] 106/18 <b>23</b> [1] 32/21 <b>23 July</b> [1] 100/9 <b>23 years</b> [1] 121/20 <b>230-kilogram</b> [1] 103/2 <b>23rd</b> [1] 44/8 <b>24 June 2025</b> [1] 1/1 <b>24.8% to</b> [1] 19/25 <b>24th May 2001</b> [1] 44/9 <b>25 years</b> [2] 123/2 130/25 <b>251</b> [1] 20/20 <b>26</b> [1] 38/10 <b>26 years</b> [3] 30/18 39/13 111/25 <b>264</b> [1] 26/3 <b>26th July 2002</b> [1] 44/10 <b>27</b> [1] 32/1 <b>27 years</b> [1] 11/23 <b>28</b> [1] 133/18 <b>28 January</b> [1] 37/15 <b>29 November 2013</b> [1] 11/7</p> <hr/> <p><b>3</b> <b>3 April 1997</b> [1]</p>	<p>74/24 <b>3 miles</b> [1] 50/22 <b>3.40 pm</b> [1] 149/18 <b>30</b> [2] 22/21 32/4 <b>30 April 1998</b> [1] 75/17 <b>30 January</b> [1] 37/25 <b>30 years</b> [2] 53/19 53/22 <b>30-year</b> [1] 68/20 <b>31</b> [2] 7/22 27/22 <b>31 August 1994</b> [1] 73/20 <b>31 July 1998</b> [1] 19/19 <b>310</b> [1] 13/21 <b>32</b> [4] 79/19 80/18 82/13 82/14 <b>36</b> [1] 33/5 <b>39</b> [2] 24/22 25/3</p> <hr/> <p><b>4</b> <b>4 August 1998</b> [3] 50/13 89/16 101/18 <b>4 February</b> [1] 38/25 <b>4 March 2012</b> [1] 129/16 <b>43</b> [1] 33/1 <b>47s</b> [1] 50/20 <b>48</b> [1] 31/23 <b>48 hours</b> [1] 63/15</p> <hr/> <p><b>5</b> <b>5 per cent</b> [1] 53/7 <b>54</b> [1] 32/18</p> <hr/> <p><b>6</b> <b>6 December 2013</b> [1] 11/15 <b>61</b> [1] 32/24 <b>65</b> [1] 31/25 <b>66</b> [1] 33/3</p> <hr/> <p><b>7</b> <b>7 October 1996</b> [1] 74/21 <b>79</b> [1] 23/2</p> <hr/> <p><b>8</b> <b>8 December 2004</b> [1] 128/5</p> <hr/> <p><b>9</b> <b>9/11</b> [1] 6/10 <b>90</b> [1] 82/7 <b>91</b> [1] 51/2 <b>99/91</b> [1] 51/2</p> <hr/> <p><b>A</b> <b>Abad</b> [5] 32/19 32/19 32/19 32/20 37/14 <b>ability</b> [3] 61/21 144/18 147/16 <b>able</b> [11] 10/5 17/23</p>
--	--	---	---	--

<b>A</b>			
<b>able...</b> [9] 24/17 24/24 27/6 49/21 79/16 81/10 108/18 139/9 141/24	<b>account</b> [4] 90/21 99/22 131/24 142/16	145/5	36/10 42/21 76/16 89/14 90/23 94/11 104/3 105/10
<b>about</b> [73] 8/10 16/1 25/8 27/22 30/18 31/1 34/6 34/9 34/24 36/7 37/16 38/23 39/1 39/3 40/10 41/10 42/25 48/5 50/7 50/9 51/16 54/2 56/2 58/15 59/24 61/6 65/2 66/7 67/18 69/1 69/10 77/17 79/7 82/16 85/12 86/11 87/10 90/5 91/24 93/3 97/11 99/5 99/24 101/16 105/16 105/20 109/2 110/18 113/6 113/11 113/14 113/17 114/4 116/19 117/14 117/15 117/22 118/23 119/7 120/5 120/12 123/9 129/6 129/22 129/23 130/7 134/13 135/5 137/2 139/13 139/25 140/12 147/19	<b>accountability</b> [3] 111/22 113/22 127/19	<b>Adams</b> [3] 73/9 79/4 80/24	<b>affidavit</b> [3] 11/16 11/17 136/22
<b>above</b> [5] 21/1 42/2 43/15 76/1 77/3	<b>accounts</b> [1] 3/23	<b>Adams-McGuinness</b> [2] 79/4 80/24	<b>afraid</b> [1] 82/21
<b>absence</b> [10] 22/17 25/16 25/22 28/7 65/13 96/25 97/15 98/9 98/14 148/20	<b>accumulated</b> [1] 135/2	<b>add</b> [4] 17/2 96/16 131/19 137/14	<b>after</b> [30] 8/16 16/7 30/18 41/2 42/8 53/16 54/15 59/21 70/7 72/21 75/8 76/1 84/5 90/1 92/25 94/6 94/19 97/5 101/1 104/8 104/8 104/9 112/7 115/11 119/24 120/4 121/7 121/8 145/25 147/16
<b>absolute</b> [1] 4/5	<b>accurate</b> [1] 44/16	<b>addendum</b> [5] 22/15 22/21 23/3 24/15 24/22	<b>aftermath</b> [3] 111/15 119/5 135/21
<b>absolutely</b> [4] 116/9 117/25 118/6 129/21	<b>achievement</b> [1] 3/15	<b>addition</b> [9] 25/21 57/15 62/18 76/6 86/18 87/8 98/18 107/4 122/11	<b>afternoon</b> [4] 4/2 109/13 124/14 142/10
<b>abstentionist</b> [1] 79/1	<b>achievable</b> [1] 57/22	<b>address</b> [8] 48/3 50/2 50/21 50/22 52/7 54/2 55/1 109/12	<b>again</b> [19] 4/19 9/12 24/23 26/16 29/9 33/8 38/18 38/19 39/3 59/7 97/5 105/8 110/9 117/17 117/21 125/13 126/23 129/18 146/9 14/5 18/13 19/12 23/1 30/22 51/21 58/20 63/1 63/21 69/25 75/14 81/17 87/11 92/23 104/6 121/5 121/13 142/7 145/2
<b>accept</b> [5] 70/24 126/10 133/5 140/18 147/24	<b>achieving</b> [2] 73/5 73/10	<b>addressed</b> [3] 30/15 68/22 142/2	<b>aged</b> [16] 31/21 31/23 31/25 32/1 32/4 32/4 32/9 32/11 32/13 32/14 32/18 32/21 32/24 33/1 33/3 33/5
<b>acceptable</b> [1] 24/16	<b>across</b> [6] 61/19 107/12 135/18 135/24 144/2 146/8	<b>addresses</b> [2] 50/18 60/22	<b>agencies</b> [13] 36/7 54/25 56/16 56/19 64/19 65/15 65/19 66/21 87/18 117/20 120/7 128/17 128/25
<b>accepted</b> [10] 41/13 42/3 45/7 51/7 79/22 93/21 94/4 95/22 133/10 133/11	<b>act</b> [16] 7/23 16/16 17/15 34/2 62/15 62/20 62/22 63/18 63/19 64/11 65/11 66/1 66/15 67/5 69/25 129/9	<b>addressing</b> [3] 7/1 54/1 96/25	<b>agency</b> [1] 66/20
<b>accepting</b> [1] 80/9	<b>acted</b> [4] 56/24 99/8 120/16 124/17	<b>adds</b> [1] 144/4	<b>agenda</b> [3] 20/22 77/22 140/7
<b>access</b> [3] 60/17 66/21 81/8	<b>acting</b> [2] 99/5 123/20	<b>adequacy</b> [3] 95/25 117/2 117/18	<b>agendas</b> [2] 20/24 44/24
<b>accessing</b> [3] 65/3 65/4 128/23	<b>action</b> [14] 18/13 51/18 61/22 87/19 92/23 103/24 104/5 104/19 121/6 121/22 121/23 124/11 126/14 134/10	<b>adequate</b> [2] 21/19 53/10	<b>agent</b> [6] 30/11 51/10 83/15 98/10 99/15 123/25
<b>accidentally</b> [1] 100/20	<b>actioned</b> [1] 121/10	<b>adequately</b> [1] 102/10	<b>agents</b> [22] 55/13 55/24 57/1 57/8 58/23 59/2 59/8 65/9 86/20 87/9 87/9 87/17 97/20 97/23 98/24 99/5 99/13 99/18 99/25 124/11 128/8 128/23
<b>accompanied</b> [1] 132/2	<b>actions</b> [4] 87/25 95/23 96/19 120/15	<b>adhered</b> [1] 78/11	<b>ago</b> [9] 22/16 26/10 112/13 121/20 123/2 123/12 135/5 136/22 144/22
<b>accompany</b> [2] 23/15 91/23	<b>active</b> [3] 81/25 83/2 102/19	<b>adherence</b> [1] 137/21	<b>agreed</b> [1] 5/2
<b>accordance</b> [1] 140/17	<b>actively</b> [1] 141/17	<b>adjoin</b> [1] 149/16	<b>agreeing</b> [1] 74/7
<b>according</b> [2] 64/18 84/21	<b>activists</b> [1] 82/9	<b>adjourn</b> [1] 149/16	
<b>Accordingly</b> [1] 148/12	<b>activities</b> [10] 12/7 12/8 25/8 62/3 62/10 67/7 67/8 69/15 75/6 85/9	<b>Adjourned</b> [1] 149/19	
	<b>activity</b> [11] 19/12 19/13 55/18 59/5 64/9 69/18 75/6 98/25 102/16 106/5 135/23	<b>Adjournment</b> [1] 97/7	
	<b>acts</b> [6] 25/8 62/24 63/22 64/1 64/2 128/9	<b>adjust</b> [1] 95/4	
	<b>actual</b> [3] 52/24 114/4 124/15	<b>administration</b> [1] 70/9	
	<b>actually</b> [5] 51/25 79/23 112/4 119/12 133/7	<b>administrative</b> [1] 100/14	
	<b>acute</b> [2] 138/15	<b>admits</b> [1] 35/13	
		<b>admitted</b> [1] 100/12	
		<b>adopted</b> [8] 27/18 58/8 69/17 105/22 105/23 112/12 113/19 126/10	
		<b>adopting</b> [1] 103/4	
		<b>advance</b> [2] 42/20 89/21	
		<b>advanced</b> [1] 108/21	
		<b>advantage</b> [2] 14/2 149/9	
		<b>adversarial</b> [1] 130/22	
		<b>advised</b> [1] 70/10	
		<b>advisers</b> [1] 70/15	
		<b>advocates</b> [2] 108/21 135/5	
		<b>affairs</b> [9] 25/15	



<b>A</b>	31/11 42/25 58/15 77/9 94/12 109/14 110/5 114/13 114/21 117/25 125/12 133/23 137/18 143/16 149/15	48/22 51/25 58/17 60/3 61/21 63/7 63/7 66/19 67/11 73/6 77/6 79/8 79/14 79/14 79/16 87/19 87/23 94/12 95/24 97/24 98/14 99/11 99/17 106/12 108/1 113/20 114/3 116/8 118/20 119/3 125/18 130/4 131/2 132/2 132/5 132/15 133/13 135/10 140/2 140/13 142/9 148/14 148/19 149/6	<b>approach [28]</b> 18/1 22/7 27/18 29/9 29/20 30/19 30/22 41/21 47/22 48/5 48/7 48/9 48/16 48/22 50/11 52/1 58/8 71/8 73/23 74/7 88/4 103/5 105/22 119/5 137/23 140/1 140/17 149/14	142/13 143/20 143/23 144/20 145/10 145/10 145/16 146/6 146/11 146/20 146/24 148/9 148/24 148/25 149/13
<b>allow [6]</b> 18/12 49/4 53/24 88/4 92/22 95/23	<b>Amanda [1]</b> 32/6 <b>amassing [1]</b> 114/18 <b>Amin [2]</b> 36/2 38/23 <b>among [8]</b> 16/7 41/16 57/25 79/9 83/11 96/4 106/19 108/17	<b>anybody [2]</b> 132/11 132/16 <b>anyone [4]</b> 33/22 45/8 51/14 63/11 <b>anything [6]</b> 16/25 26/21 42/23 69/1 131/4 131/16 <b>anyway [2]</b> 52/16 119/13	<b>approached [1]</b> 36/22 <b>appropriate [4]</b> 8/8 62/5 102/8 148/18 <b>appropriately [1]</b> 50/5 <b>April [10]</b> 13/16 72/22 74/24 75/1 75/10 75/17 84/19 93/8 107/5 124/1 <b>April 1997 [1]</b> 75/1 <b>April 1998 [2]</b> 72/22 107/5 <b>apt [1]</b> 27/24 <b>arduous [1]</b> 111/20 <b>are [144]</b> 2/19 3/15 3/22 4/15 5/19 8/9 9/20 10/8 10/13 10/24 11/1 12/3 13/1 13/8 20/2 20/3 20/13 21/9 23/6 23/8 24/10 25/23 25/24 26/21 26/25 30/25 31/1 35/7 36/11 36/13 37/10 38/16 42/4 42/7 44/3 45/4 45/17 46/8 46/12 46/14 46/20 47/17 49/23 57/18 63/9 67/1 67/19 69/1 73/2 88/21 91/5 91/16 93/5 93/11 97/9 99/9 100/21 101/19 103/10 103/18 104/1 105/25 107/17 107/21 107/22 108/7 108/11 108/18 108/21 109/16 110/22 111/3 111/10 112/3 113/10 114/16 114/18 115/2 115/3 115/4 115/12 115/21 115/21 115/22 115/25 116/9 116/10 116/11 116/13 116/17 116/18 117/1 117/5 117/15 117/21 117/24 117/25 120/2 120/22 123/12 125/13 125/19 127/4 127/6 128/8 128/13 129/3 129/4 130/6 130/21 130/22 131/1 131/5 131/21 133/17 133/19 134/21 134/22 135/19 135/22 136/17 137/8 138/15 138/18 139/4 139/21 140/2 140/15 141/24	<b>area [10]</b> 4/9 8/15 9/2 10/3 18/16 19/2 74/11 89/11 128/13 148/21 <b>areas [11]</b> 3/3 6/23 7/3 8/21 76/19 76/23 77/17 86/1 111/3 146/6 146/7 <b>arguable [1]</b> 99/11 <b>argue [3]</b> 39/24 108/7 108/11 <b>argues [1]</b> 52/9 <b>arguing [1]</b> 114/5 <b>argument [1]</b> 28/15 <b>arise [5]</b> 5/19 12/5 47/19 103/18 108/12 <b>arises [4]</b> 50/12 51/24 52/3 53/9 <b>arm [1]</b> 98/4 <b>Armagh [1]</b> 89/11 <b>armed [4]</b> 60/15 78/21 79/10 80/12 <b>arming [1]</b> 79/15 <b>arms [1]</b> 81/11 <b>army [25]</b> 8/14 20/16 25/13 40/21 41/3 41/4 41/8 54/11 56/15 56/24 62/25 63/20 70/16 72/9 72/18 74/20 77/21 84/22 84/23 85/2 86/18 86/22 90/2 118/11 118/12 <b>arose [3]</b> 86/11 118/8 118/10 <b>around [7]</b> 16/2 16/6 73/17 75/7 75/16 79/23 148/15 <b>arranged [2]</b> 84/24 96/22 <b>arrangements [1]</b> 16/13 <b>arrest [6]</b> 63/12 63/13 63/25 83/6 104/7 122/3 <b>arrested [1]</b> 94/21 <b>arrests [2]</b> 60/12 105/13 <b>Article [9]</b> 5/15 14/2 35/9 35/14 35/23 46/6 51/24 52/21 116/23 <b>Article 15 [1]</b> 35/14 <b>Article 2 [8]</b> 5/15 14/2 35/9 35/23 46/6 51/24 52/21 116/23 <b>articles [2]</b> 63/10 64/4 <b>articulating [1]</b> 114/5 <b>artillery [1]</b> 81/9 <b>as [214]</b>
<b>allocation [2]</b> 19/24 53/7 <b>allow [6]</b> 18/12 49/4 53/24 88/4 92/22 95/23 <b>allowed [7]</b> 37/1 39/2 40/3 58/13 66/18 76/23 98/18 <b>allowing [1]</b> 109/19 <b>allows [1]</b> 149/9 <b>alluding [1]</b> 23/14 <b>almost [5]</b> 11/22 53/19 68/18 91/7 112/11 <b>alone [2]</b> 3/21 113/22 <b>along [2]</b> 75/4 137/9 <b>alongside [3]</b> 81/11 135/1 148/19 <b>Alpass [1]</b> 43/23 <b>already [43]</b> 8/22 22/17 25/23 28/23 29/3 31/2 38/23 44/18 45/17 45/23 51/19 58/6 61/5 61/6 63/23 68/13 75/4 75/11 78/16 86/2 86/6 86/13 86/18 88/6 90/8 95/3 95/17 100/5 101/19 101/21 103/19 104/17 105/7 105/17 106/10 107/16 108/6 110/13 115/9 116/21 131/10 144/11 148/7 <b>also [53]</b> 2/3 10/5 13/3 23/17 23/19 24/1 25/24 28/9 31/4 33/6 37/6 45/20 47/2 48/12 54/11 56/3 56/25 57/17 59/12 60/5 64/2 64/16 66/2 68/8 68/11 71/12 71/15 72/8 72/13 73/12 75/22 76/12 77/1 80/18 83/25 86/10 89/13 91/23 101/7 101/8 101/13 102/24 104/14 109/19 110/15 110/17 114/1 121/4 131/19 141/1 141/7 144/5 145/6 <b>altered [1]</b> 111/13 <b>alternative [1]</b> 122/24 <b>although [12]</b> 41/13 42/3 53/22 67/24 76/10 77/23 79/20 86/9 95/22 100/19 107/20 127/7 <b>always [7]</b> 3/19 34/11 43/3 61/12 99/19 122/12 145/22 <b>am [18]</b> 1/2 20/8 31/9	<b>amount [1]</b> 81/11 <b>amplified [1]</b> 135/22 <b>Ana [1]</b> 32/19 <b>analogy [1]</b> 49/18 <b>analyse [2]</b> 59/24 124/4 <b>analysed [1]</b> 91/8 <b>analysing [1]</b> 72/5 <b>analysis [8]</b> 6/8 14/14 16/19 21/15 66/11 111/4 146/24 147/9 <b>Anderson [1]</b> 2/5 <b>Andrew [1]</b> 110/3 <b>Ann [1]</b> 31/23 <b>Anne [2]</b> 1/17 1/25 <b>anniversary [2]</b> 137/17 137/23 <b>announced [1]</b> 144/12 <b>annual [1]</b> 19/18 <b>anonymous [3]</b> 50/12 89/15 101/17 <b>another [14]</b> 38/20 51/19 52/22 61/7 67/1 82/25 97/14 104/20 121/15 121/19 124/7 126/6 129/19 148/21 <b>answer [4]</b> 132/21 133/18 139/20 142/24 <b>answered [3]</b> 123/23 129/11 135/20 <b>answers [10]</b> 38/2 38/3 38/4 114/12 116/20 120/20 124/1 129/16 134/16 134/19 <b>Anthony [2]</b> 27/24 110/2 <b>anticipated [1]</b> 19/25 <b>anxious [1]</b> 10/9 <b>any [87]</b> 2/10 4/6 4/24 5/17 7/14 7/17 8/6 10/5 10/13 12/23 12/25 13/25 14/14 15/5 15/14 15/15 16/18 16/19 18/1 21/19 22/22 24/17 24/24 25/1 25/5 25/6 25/13 25/22 28/4 30/19 30/22 30/24 34/3 34/5 38/24 39/12 44/1 44/22 45/15 46/9 46/20 48/15 48/17	<b>appeal [3]</b> 52/4 52/23 126/9 <b>appear [15]</b> 2/3 14/10 28/6 45/4 58/6 58/16 67/19 84/11 87/22 88/1 89/22 90/16 107/8 109/23 147/25 <b>appeared [5]</b> 63/11 105/18 130/18 130/20 144/16 <b>appearing [1]</b> 109/5 <b>appears [12]</b> 24/7 27/22 49/5 61/12 67/13 70/24 83/25 86/14 90/13 97/17 101/12 105/21 <b>application [6]</b> 52/2 125/21 126/5 132/3 132/7 132/8 <b>applications [1]</b> 132/6 <b>applied [3]</b> 17/6 28/20 62/22 <b>apply [2]</b> 66/13 95/2 <b>applying [3]</b> 22/7 51/21 65/24 <b>apposite [1]</b> 115/25 <b>appreciate [3]</b> 6/19 46/10 108/14 <b>apprehend [4]</b> 123/15 123/19 124/18 128/1 <b>apprehension [1]</b> 122/2	<b>approach [28]</b> 18/1 22/7 27/18 29/9 29/20 30/19 30/22 41/21 47/22 48/5 48/7 48/9 48/16 48/22 50/11 52/1 58/8 71/8 73/23 74/7 88/4 103/5 105/22 119/5 137/23 140/1 140/17 149/14 <b>approached [1]</b> 36/22 <b>appropriate [4]</b> 8/8 62/5 102/8 148/18 <b>appropriately [1]</b> 50/5 <b>April [10]</b> 13/16 72/22 74/24 75/1 75/10 75/17 84/19 93/8 107/5 124/1 <b>April 1997 [1]</b> 75/1 <b>April 1998 [2]</b> 72/22 107/5 <b>apt [1]</b> 27/24 <b>arduous [1]</b> 111/20 <b>are [144]</b> 2/19 3/15 3/22 4/15 5/19 8/9 9/20 10/8 10/13 10/24 11/1 12/3 13/1 13/8 20/2 20/3 20/13 21/9 23/6 23/8 24/10 25/23 25/24 26/21 26/25 30/25 31/1 35/7 36/11 36/13 37/10 38/16 42/4 42/7 44/3 45/4 45/17 46/8 46/12 46/14 46/20 47/17 49/23 57/18 63/9 67/1 67/19 69/1 73/2 88/21 91/5 91/16 93/5 93/11 97/9 99/9 100/21 101/19 103/10 103/18 104/1 105/25 107/17 107/21 107/22 108/7 108/11 108/18 108/21 109/16 110/22 111/3 111/10 112/3 113/10 114/16 114/18 115/2 115/3 115/4 115/12 115/21 115/21 115/22 115/25 116/9 116/10 116/11 116/13 116/17 116/18 117/1 117/5 117/15 117/21 117/24 117/25 120/2 120/22 123/12 125/13 125/19 127/4 127/6 128/8 128/13 129/3 129/4 130/6 130/21 130/22 131/1 131/5 131/21 133/17 133/19 134/21 134/22 135/19 135/22 136/17 137/8 138/15 138/18 139/4 139/21 140/2 140/15 141/24	142/13 143/20 143/23 144/20 145/10 145/10 145/16 146/6 146/11 146/20 146/24 148/9 148/24 148/25 149/13 <b>area [10]</b> 4/9 8/15 9/2 10/3 18/16 19/2 74/11 89/11 128/13 148/21 <b>areas [11]</b> 3/3 6/23 7/3 8/21 76/19 76/23 77/17 86/1 111/3 146/6 146/7 <b>arguable [1]</b> 99/11 <b>argue [3]</b> 39/24 108/7 108/11 <b>argues [1]</b> 52/9 <b>arguing [1]</b> 114/5 <b>argument [1]</b> 28/15 <b>arise [5]</b> 5/19 12/5 47/19 103/18 108/12 <b>arises [4]</b> 50/12 51/24 52/3 53/9 <b>arm [1]</b> 98/4 <b>Armagh [1]</b> 89/11 <b>armed [4]</b> 60/15 78/21 79/10 80/12 <b>arming [1]</b> 79/15 <b>arms [1]</b> 81/11 <b>army [25]</b> 8/14 20/16 25/13 40/21 41/3 41/4 41/8 54/11 56/15 56/24 62/25 63/20 70/16 72/9 72/18 74/20 77/21 84/22 84/23 85/2 86/18 86/22 90/2 118/11 118/12 <b>arose [3]</b> 86/11 118/8 118/10 <b>around [7]</b> 16/2 16/6 73/17 75/7 75/16 79/23 148/15 <b>arranged [2]</b> 84/24 96/22 <b>arrangements [1]</b> 16/13 <b>arrest [6]</b> 63/12 63/13 63/25 83/6 104/7 122/3 <b>arrested [1]</b> 94/21 <b>arrests [2]</b> 60/12 105/13 <b>Article [9]</b> 5/15 14/2 35/9 35/14 35/23 46/6 51/24 52/21 116/23 <b>Article 15 [1]</b> 35/14 <b>Article 2 [8]</b> 5/15 14/2 35/9 35/23 46/6 51/24 52/21 116/23 <b>articles [2]</b> 63/10 64/4 <b>articulating [1]</b> 114/5 <b>artillery [1]</b> 81/9 <b>as [214]</b>

<b>A</b>	<b>assurances [2]</b> 13/9 149/11	71/2 72/16 85/5 112/1 140/25 143/8	76/20 106/24 114/20	135/22 137/19 139/5 145/18
<b>ascertaining [1]</b> 63/5	<b>assured [1]</b> 140/16	<b>attending [1]</b> 90/3	<b>away [3]</b> 34/2 38/17 112/18	<b>become [6]</b> 22/5
<b>Ashford [1]</b> 49/14	<b>astonishing [2]</b> 20/9 23/8	<b>attention [5]</b> 3/7 25/12 100/6 102/3 147/18	<b>awesome [1]</b> 2/25	53/17 96/10 111/24 134/11 136/19
<b>aside [1]</b> 24/16	<b>at [129]</b> 2/24 3/23 4/4 4/8 4/12 4/16 4/23 8/8 9/8 10/22 14/16 16/25 17/11 18/22 19/20 20/7 20/20 21/10 22/21 23/2 25/2 25/11 26/24 28/12 33/14 36/3 36/23 36/25 39/19 39/23 40/25 44/17 46/5 46/21 46/23 47/7 47/21 50/15 53/3 53/14 53/20 54/16 55/16 56/7 56/12 56/12 61/2 62/1 62/14 64/13 65/4 67/3 67/17 67/20 69/5 69/13 71/12 72/19 76/5 77/16 79/12 82/24 83/7 83/17 83/19 86/4 86/15 87/8 89/7 89/8 94/20 96/14 97/17 98/11 99/8 100/23 103/3 103/9 103/12 103/20 107/2 107/11 108/5 108/7 109/4 110/7 112/15 112/17 112/19 113/2 113/15 114/7 114/13 115/15 115/15 115/23 116/21 117/3 117/4 117/7 118/5 119/6 119/15 119/25 120/7 120/25 122/22 123/19 124/12 125/2 125/22 127/12 127/16 128/2 129/4 129/18 132/1 132/21 135/4 135/25 137/15 137/24 139/9 139/20 140/19 141/5 142/18 143/6 149/12	<b>attitude [1]</b> 17/25	<b>back [11]</b> 9/12 51/11 58/25 61/11 83/3 111/7 115/16 115/19 116/12 123/24 133/18	<b>becoming [1]</b> 56/19
<b>ask [15]</b> 27/18 42/23 78/6 115/23 116/3 116/15 116/19 117/8 117/22 122/21 124/3 128/15 134/17 135/8 139/13	<b>atrocities [1]</b> 72/21	<b>attributable [1]</b> 12/11	<b>backdrop [2]</b> 6/22 112/4	<b>bedevilled [1]</b> 148/3
<b>asked [15]</b> 3/3 17/1 26/20 112/7 112/16 115/13 115/13 116/10 116/14 117/24 119/7 119/25 122/20 123/23 129/24	<b>atrocious [6]</b> 33/7 33/16 94/6 109/25 111/12 115/10	<b>attributed [2]</b> 103/3 103/6	<b>background [6]</b> 14/5 18/17 30/5 60/9 73/3 142/7	<b>been [156]</b>
<b>asking [4]</b> 108/19 118/1 118/2 132/21	<b>attack [6]</b> 50/16 51/11 58/21 62/13 89/17 137/2	<b>audit [1]</b> 26/17	<b>badly [1]</b> 15/6	<b>before [23]</b> 2/8 7/1 8/15 11/10 17/8 19/20 31/8 54/3 56/10 82/20 91/14 94/8 95/9 102/6 105/5 110/8 113/12 116/15 117/10 118/12 119/8 125/22 131/4
<b>aspect [6]</b> 35/17 39/19 40/18 41/7 42/12 147/12	<b>attacks [9]</b> 30/11 49/7 49/9 57/21 76/25 85/15 102/14 102/18 113/6	<b>August [36]</b> 3/12 6/4 10/14 31/17 40/24 41/2 50/13 50/17 51/2 73/20 82/3 82/11 88/16 88/19 89/16 89/18 94/23 95/9 95/12 95/15 100/7 100/16 100/25 101/18 111/13 115/1 116/2 119/17 121/24 123/13 123/21 124/14 128/2 128/21 137/2 147/3	<b>balance [1]</b> 141/18	<b>began [1]</b> 120/18
<b>aspects [5]</b> 4/16 7/8 24/1 56/25 133/12	<b>attain [1]</b> 79/14	<b>August 12 [1]</b> 123/13	<b>balanced [1]</b> 22/11	<b>beggars [1]</b> 3/24
<b>aspirations [1]</b> 3/15	<b>attempt [2]</b> 58/3 83/7	<b>August 1998 [4]</b> 88/16 95/9 95/15 100/16	<b>ball [2]</b> 9/7 77/2	<b>Beghal [1]</b> 64/13
<b>asserted [2]</b> 25/16 141/9	<b>attempted [1]</b> 107/3		<b>Baltic [1]</b> 57/21	<b>beginning [4]</b> 74/2 109/4 123/3 137/12
<b>assertions [2]</b> 148/8 148/11	<b>attempts [2]</b> 55/1 147/5		<b>Banbridge [5]</b> 41/23 94/22 103/3 104/9 124/22	<b>behalf [33]</b> 1/5 1/9 1/12 2/3 2/17 3/2 15/20 18/8 20/11 22/15 23/20 25/4 26/4 27/10 29/22 31/13 31/15 33/6 44/18 45/5 102/2 104/24 108/25 109/12 109/17 109/24 128/4 130/17 132/10 147/13 150/3 150/7 150/11
<b>assess [5]</b> 40/10 48/22 50/8 105/1 105/2	<b>attendance [3]</b> 15/18 41/6 96/9	<b>author [1]</b> 68/17	<b>Banbury [1]</b> 119/7	<b>being [55]</b> 12/1 12/13 20/16 24/8 25/24 26/20 26/22 27/12 28/19 40/8 40/25 43/11 44/18 45/1 45/16 47/7 51/11 53/22 55/7 57/6 58/17 61/8 62/11 64/25 65/6 66/17 69/17 74/3 80/5 81/4 88/7 89/16 90/2 90/5 91/24 94/6 94/7 100/21 103/11 103/14 109/14 111/20 112/22 116/11 120/15 122/18 122/20 124/16 132/7 138/6 138/17 138/18 144/9 145/4 146/10
<b>assessed [1]</b> 107/1	<b>attended [7]</b> 20/13	<b>authorised [1]</b> 66/25	<b>bar [2]</b> 28/15 28/20	<b>Belfast [2]</b> 18/24 81/3
<b>assessing [2]</b> 87/24 148/5		<b>authorities [55]</b> 4/17 4/18 4/24 8/24 10/6 10/15 10/17 10/18 12/11 12/24 13/1 13/10 14/18 15/2 15/5 16/16 16/21 16/23 17/7 17/21 18/3 21/20 24/3 28/8 62/5 62/6 92/11 106/8 107/21 111/22 114/3 114/6 114/16 115/2 116/5 117/2 117/19 120/16 122/9 122/17 122/22 124/5 125/11 125/13 125/15 126/25 130/25 131/6 132/12 133/2 133/9 133/11 136/16 148/24 149/7	<b>barbaric [1]</b> 39/2	<b>Belfast/Good [1]</b> 18/24
<b>assessment [16]</b> 14/24 29/13 45/3 45/12 49/1 49/4 50/7 51/15 55/21 71/18 72/13 87/24 88/5 104/22 116/4 116/21		<b>authority [2]</b> 13/7 119/10	<b>Barker [2]</b> 32/14 32/14	<b>belief [9]</b> 3/24 4/15 35/5 73/21 80/2 110/21 113/13 136/24 137/6
<b>assessments [4]</b> 71/22 71/25 72/6 72/17		<b>automatic [1]</b> 66/22	<b>Baroness [2]</b> 120/3 120/22	<b>believe [16]</b> 30/17 47/12 77/10 81/23 85/13 88/7 93/5 94/8 101/19 106/14 108/9 114/7 116/9 127/3 127/4 143/12
<b>assist [5]</b> 3/1 4/25 31/4 95/13 127/14		<b>available [21]</b> 10/25 11/3 26/2 28/23 35/6 40/7 44/8 45/1 45/15 49/23 52/25 61/17 61/25 62/5 64/15 105/2 127/7 129/5 137/5 145/16 145/17	<b>based [7]</b> 28/13 52/3 64/8 72/8 98/17 100/15 103/1	<b>believed [5]</b> 60/22
<b>assistance [5]</b> 2/20 15/10 18/2 68/25 106/8		<b>avenues [1]</b> 134/25	<b>bases [2]</b> 106/21 106/25	
<b>Assistant [3]</b> 12/14 15/23 24/11		<b>avoid [1]</b> 51/22	<b>basic [7]</b> 18/22 35/15 115/24 116/13 117/1 118/24 131/9	
<b>assisted [2]</b> 18/9 27/9		<b>Avril [1]</b> 32/4	<b>basis [7]</b> 30/19 42/9 42/10 55/8 75/20 107/15 138/1	
<b>assisting [1]</b> 14/10		<b>Avril's [1]</b> 32/5	<b>baton [1]</b> 134/18	
<b>associated [1]</b> 88/8		<b>await [1]</b> 134/2	<b>battles [2]</b> 74/3 74/3	
<b>associates [1]</b> 68/10		<b>aware [4]</b> 53/15	<b>Baxter [8]</b> 76/14 77/7 77/15 89/13 90/23 94/11 104/3 105/10	
<b>assume [1]</b> 149/13			<b>BBC [1]</b> 89/5	
<b>assumed [3]</b> 87/21 91/17 99/18			<b>be [242]</b>	
<b>assuming [1]</b> 51/7			<b>bearing [2]</b> 107/2 114/14	
<b>assumptions [1]</b> 135/25			<b>bears [1]</b> 115/19	
<b>assurance [2]</b> 11/17 25/19			<b>beautiful [1]</b> 34/19	

<p><b>B</b></p> <p><b>believed... [4]</b> 84/16 86/21 116/2 147/6</p> <p><b>benefit [1]</b> 146/14</p> <p><b>bereaved [14]</b> 1/12 2/22 11/18 22/1 22/8 27/13 30/20 106/17 129/15 136/20 139/17 139/24 140/16 141/20</p> <p><b>Bernadette [2]</b> 32/6 32/16</p> <p><b>Bertie [3]</b> 11/19 82/4 82/11</p> <p><b>bespoke [1]</b> 97/19</p> <p><b>Bessbrook [1]</b> 74/22</p> <p><b>best [3]</b> 16/24 27/3 129/13</p> <p><b>better [5]</b> 18/1 23/16 23/17 105/4 119/18</p> <p><b>between [32]</b> 7/14 7/18 12/19 13/16 23/6 24/11 25/1 40/7 50/25 55/4 56/23 66/3 70/4 70/19 70/22 73/8 73/13 82/4 82/11 85/22 87/1 87/4 87/6 88/16 92/16 95/20 102/20 102/25 107/9 107/12 120/6 148/23</p> <p><b>beyond [4]</b> 2/13 9/21 112/20 146/24</p> <p><b>big [1]</b> 92/17</p> <p><b>Billy [2]</b> 26/11 43/20</p> <p><b>bits [1]</b> 92/19</p> <p><b>Blair [2]</b> 82/5 82/12</p> <p><b>blame [7]</b> 4/17 33/15 36/11 36/16 36/17 94/12 128/19</p> <p><b>blanket [2]</b> 125/10 127/20</p> <p><b>blow [1]</b> 99/7</p> <p><b>blurring [1]</b> 90/25</p> <p><b>bode [1]</b> 27/1</p> <p><b>bodies [3]</b> 46/4 90/7 147/19</p> <p><b>body [3]</b> 9/21 40/2 42/16</p> <p><b>bold [1]</b> 28/23</p> <p><b>bomb [104]</b> 3/21 4/1 4/10 5/20 7/12 7/20 8/2 8/24 9/9 9/10 10/3 31/17 33/15 33/18 37/5 37/14 37/24 38/22 39/2 39/6 40/7 40/13 40/19 40/22 40/23 41/2 41/5 41/14 45/8 45/9 49/7 51/25 53/15 53/18 55/16 56/7 56/12 57/21 61/9 61/9 62/2 62/14 64/14 65/10 66/10 67/3 67/14 72/21 73/1 74/11 74/19 74/23</p>	<p>74/24 76/1 76/6 77/5 78/6 81/14 82/5 82/12 83/17 85/7 86/16 88/8 89/3 92/15 93/7 94/3 94/7 94/9 94/17 94/21 94/22 95/6 100/24 101/1 102/6 102/9 102/13 103/2 103/17 104/4 104/4 104/10 104/12 105/6 106/5 106/7 106/15 112/13 113/25 114/4 120/12 122/4 123/6 123/16 123/21 124/6 124/21 124/25 128/2 135/21 136/2 147/6</p> <p><b>bombers [5]</b> 4/11 85/22 123/19 124/16 124/18</p> <p><b>bombers' [1]</b> 124/13</p> <p><b>bombing [38]</b> 7/5 7/7 7/16 8/16 10/14 11/23 14/17 16/2 16/6 18/18 19/1 19/9 19/20 29/4 83/24 89/7 89/21 92/25 111/13 113/5 113/12 113/14 113/18 114/6 116/7 116/17 120/10 122/8 123/10 124/24 125/6 134/9 134/14 136/9 136/11 137/7 137/13 147/7</p> <p><b>bombings [1]</b> 89/1</p> <p><b>bombs [8]</b> 74/20 81/17 84/19 95/1 104/8 105/12 107/3 107/3</p> <p><b>Book [2]</b> 8/10 101/15</p> <p><b>boot [2]</b> 9/23 10/3</p> <p><b>border [19]</b> 8/3 13/25 17/9 24/10 24/19 60/24 61/10 61/12 76/21 81/4 89/11 92/14 93/1 95/18 95/19 107/10 107/12 135/11 136/14</p> <p><b>borne [2]</b> 117/5 122/21</p> <p><b>both [24]</b> 2/16 2/24 3/1 12/2 13/23 13/24 19/5 34/12 68/7 74/6 83/17 85/24 104/17 107/10 107/14 128/24 130/18 132/5 135/11 135/24 136/14 138/2 138/8 139/2</p> <p><b>bound [1]</b> 117/22</p> <p><b>boundaries [1]</b> 5/22</p> <p><b>boundary [1]</b> 146/22</p> <p><b>box [2]</b> 44/8 66/9</p> <p><b>boxes [1]</b> 65/25</p> <p><b>boys [1]</b> 9/12</p> <p><b>brake [1]</b> 7/23</p> <p><b>brakes [1]</b> 9/22</p>	<p><b>branch [26]</b> 24/13 26/7 50/24 55/16 55/20 55/22 56/9 59/14 71/12 71/12 71/24 72/3 72/18 85/4 85/5 86/9 87/7 88/17 90/3 93/24 94/1 98/3 100/10 100/18 100/25 128/16</p> <p><b>Branch's [1]</b> 55/25</p> <p><b>breach [2]</b> 5/15 121/25</p> <p><b>breaches [1]</b> 35/23</p> <p><b>break [11]</b> 31/7 31/10 68/25 69/3 69/5 69/7 82/14 82/17 97/2 109/8 110/6</p> <p><b>breakdown [1]</b> 100/13</p> <p><b>Breslin [1]</b> 33/1</p> <p><b>Brian [2]</b> 32/17 32/17</p> <p><b>Bridger [1]</b> 11/24</p> <p><b>Bridie [1]</b> 32/12</p> <p><b>brief [4]</b> 11/5 20/5 27/7 71/11</p> <p><b>briefing [4]</b> 20/22 54/19 106/16 140/7</p> <p><b>briefings [3]</b> 20/24 44/24 90/4</p> <p><b>briefly [1]</b> 21/13</p> <p><b>bring [5]</b> 73/9 99/6 120/23 125/24 138/13</p> <p><b>bringing [1]</b> 79/4</p> <p><b>brings [1]</b> 147/23</p> <p><b>Britain [5]</b> 62/6 73/6 87/11 103/25 105/23</p> <p><b>British [19]</b> 8/14 9/5 12/2 54/11 56/15 56/24 68/16 68/18 73/14 73/15 74/20 74/21 80/3 83/15 84/22 84/23 87/11 121/6 121/15</p> <p><b>British Army [5]</b> 8/14 56/15 56/24 74/20 84/23</p> <p><b>broadly [1]</b> 8/5</p> <p><b>broke [2]</b> 69/9 97/10</p> <p><b>broken [1]</b> 13/9</p> <p><b>brother [3]</b> 31/21 31/25 32/9</p> <p><b>brothers [1]</b> 110/2</p> <p><b>brought [4]</b> 13/20 41/3 50/20 53/16</p> <p><b>Brown [1]</b> 44/6</p> <p><b>Bryan [1]</b> 31/25</p> <p><b>build [2]</b> 38/16 38/17</p> <p><b>buildings [1]</b> 65/2</p> <p><b>built [1]</b> 9/9</p> <p><b>Bureau [1]</b> 100/17</p> <p><b>Burke [3]</b> 80/16 83/6 83/11</p> <p><b>busy [2]</b> 4/1 34/22</p> <p><b>but [70]</b> 2/4 7/12 8/7</p>	<p>9/5 9/5 13/9 14/2 20/25 21/11 23/23 28/7 31/4 36/17 38/17 48/16 54/2 55/2 55/14 65/21 66/8 67/16 72/8 73/12 82/16 82/22 83/12 84/12 87/12 96/9 105/7 106/15 109/20 110/6 110/13 110/17 111/4 111/7 112/4 112/19 112/21 113/13 115/13 115/15 115/21 116/1 116/17 118/7 118/17 121/7 126/8 126/8 126/20 128/21 129/1 130/7 132/14 132/16 132/18 132/22 133/12 133/13 135/13 137/15 139/1 139/14 139/20 140/15 141/1 144/1 149/5</p> <p><b>C</b></p> <p><b>Cabinet [1]</b> 71/16</p> <p><b>call [12]</b> 4/19 4/21 36/15 50/13 50/23 50/24 51/1 51/8 89/15 101/2 101/17 147/4</p> <p><b>called [7]</b> 20/13 40/21 52/4 60/10 75/3 123/5 123/13</p> <p><b>caller [2]</b> 50/14 50/19</p> <p><b>calls [12]</b> 8/10 39/22 39/23 40/5 40/18 43/1 58/12 65/3 65/24 67/12 147/2 147/5</p> <p><b>came [3]</b> 55/10 81/1 136/4</p> <p><b>camera [3]</b> 66/23 125/22 139/14</p> <p><b>campaign [4]</b> 73/5 79/15 81/6 81/15</p> <p><b>campaigner [1]</b> 113/3</p> <p><b>Campbell [3]</b> 80/15 81/16 102/22</p> <p><b>Campion [1]</b> 2/5</p> <p><b>can [52]</b> 7/8 7/12 9/20 9/25 12/1 14/16 18/15 21/24 29/7 29/16 37/20 38/14 41/24 43/19 46/18 48/9 57/10 67/24 68/21 68/22 70/23 73/1 82/14 82/15 82/17 82/22 86/4 91/9 91/13 92/4 92/5 96/24 97/2 109/14 115/5 118/5 121/17 130/13 131/10 131/22 135/25 137/24 138/10 138/13 139/5 139/21 140/16 142/14 145/17 146/20 148/8 148/11</p>	<p><b>can't [3]</b> 38/19 119/19 132/18</p> <p><b>Canary [2]</b> 61/8 61/9</p> <p><b>Canary Wharf [1]</b> 61/8</p> <p><b>candour [4]</b> 3/14 29/16 46/24 130/3</p> <p><b>cannot [20]</b> 8/12 9/23 10/2 16/12 23/3 24/1 24/3 24/6 44/21 46/16 47/18 91/17 99/18 114/20 114/22 132/4 140/3 140/19 148/1 148/10</p> <p><b>Caoimhe [1]</b> 32/7</p> <p><b>capabilities [1]</b> 79/13</p> <p><b>capable [1]</b> 124/5</p> <p><b>capacities [1]</b> 86/19</p> <p><b>capacity [5]</b> 58/10 60/19 81/23 82/1 124/22</p> <p><b>car [11]</b> 9/10 9/11 9/25 10/2 10/4 81/17 84/19 93/11 95/1 104/10 123/21</p> <p><b>Caragh [1]</b> 32/23</p> <p><b>care [8]</b> 4/14 42/14 44/15 46/17 101/23 106/1 108/13 148/6</p> <p><b>careful [2]</b> 12/6 99/18</p> <p><b>carnage [1]</b> 3/25</p> <p><b>carnival [1]</b> 35/2</p> <p><b>Carol [1]</b> 1/24</p> <p><b>Caroline [1]</b> 33/4</p> <p><b>carried [5]</b> 31/2 54/9 88/12 134/18 136/2</p> <p><b>carry [4]</b> 49/9 51/15 104/12 134/18</p> <p><b>carrying [4]</b> 16/18 49/7 62/12 76/25</p> <p><b>cars [4]</b> 76/22 82/8 88/25 89/3</p> <p><b>Cartwright [3]</b> 1/16 1/16 1/17</p> <p><b>cascaded [1]</b> 71/9</p> <p><b>case [14]</b> 49/5 52/4 61/11 64/13 67/10 91/17 101/5 101/25 112/20 125/16 126/16 135/13 143/24 145/9</p> <p><b>cast [3]</b> 46/9 113/4 120/15</p> <p><b>Cat [1]</b> 31/20</p> <p><b>catalyst [1]</b> 120/16</p> <p><b>categories [4]</b> 24/2 24/4 25/24 26/1</p> <p><b>category [1]</b> 140/5</p> <p><b>cathartic [2]</b> 38/5 38/12</p> <p><b>cathartic/healing [1]</b> 38/12</p> <p><b>cause [9]</b> 8/7 33/19 69/23 75/25 80/3 82/1 121/22 121/23 126/14</p>
---	---	---	--	--

<b>C</b>	124/12 <b>Chief</b> [13] 20/15 24/20 26/8 49/16 70/15 70/22 71/11 76/14 77/19 93/21 100/12 121/14 128/7 <b>children</b> [2] 4/3 34/24 <b>Christina</b> [1] 33/12 <b>chronology</b> [1] 121/16 <b>CID</b> [4] 86/10 86/15 90/4 100/22 <b>Cillian</b> [1] 32/7 <b>circumscribed</b> [1] 10/24 <b>circumstances</b> [15] 6/3 18/25 27/12 27/25 37/13 37/23 38/21 113/5 113/17 120/12 124/25 129/13 138/16 141/12 142/20 <b>citizens</b> [3] 5/10 21/5 34/14 <b>citizenship</b> [1] 5/12 <b>civil</b> [8] 29/10 45/10 53/22 54/11 124/9 127/15 127/20 134/10 <b>civilian</b> [2] 54/14 68/3 <b>claim</b> [2] 105/18 127/22 <b>claimed</b> [3] 102/17 113/24 117/9 <b>claiming</b> [1] 88/25 <b>claims</b> [8] 42/14 46/15 92/7 101/22 140/2 148/2 148/6 148/9 <b>Claire</b> [1] 1/23 <b>clarification</b> [2] 139/22 141/25 <b>clarity</b> [1] 87/2 <b>classified</b> [1] 26/6 <b>clause</b> [1] 15/3 <b>clear</b> [35] 4/15 12/16 22/3 29/25 35/24 37/10 37/11 39/5 40/3 41/3 42/9 43/23 49/12 54/17 60/13 61/2 63/16 68/8 70/3 70/4 75/23 85/8 90/13 94/15 96/10 98/10 98/22 108/11 109/14 111/7 119/2 125/4 132/6 133/10 134/4 <b>clearly</b> [14] 5/19 9/23 11/25 20/3 33/14 75/6 90/18 102/13 107/22 129/12 129/24 130/9 135/19 148/21 <b>clients</b> [20] 2/19 4/6 4/15 4/19 4/23 5/4 8/7 8/9 8/13 9/16 9/19 12/23 15/15 17/13	18/22 19/2 23/19 25/18 27/1 30/17 <b>clients'</b> [2] 3/17 8/21 <b>Clive</b> [1] 31/22 <b>Cloghogue</b> [1] 76/21 <b>close</b> [4] 63/4 107/11 107/14 118/25 <b>closed</b> [18] 13/24 22/5 29/20 30/15 30/24 48/20 108/21 131/23 131/25 132/2 132/5 132/8 132/15 132/17 132/20 142/15 142/17 143/3 <b>closely</b> [2] 60/6 124/4 <b>closing</b> [3] 111/22 143/14 150/14 <b>closure</b> [1] 38/8 <b>co</b> [33] 3/14 13/13 14/11 17/15 20/17 25/19 60/25 61/10 61/12 70/17 71/18 72/7 87/2 88/4 92/16 92/18 93/2 95/18 95/19 102/19 102/20 102/25 106/3 107/9 107/11 107/14 107/15 127/4 135/10 136/14 143/10 148/23 149/3 <b>co-operate</b> [2] 92/18 135/10 <b>co-operating</b> [1] 14/11 <b>co-operation</b> [22] 3/14 13/13 17/15 25/19 60/25 61/10 61/12 92/16 93/2 95/18 95/19 102/19 102/25 106/3 107/9 107/11 107/14 107/15 127/4 136/14 148/23 149/3 <b>co-operative</b> [1] 143/10 <b>co-ordinated</b> [1] 88/4 <b>co-ordination</b> [3] 71/18 87/2 102/20 <b>co-ordinator</b> [3] 20/17 70/17 72/7 <b>coalition</b> [1] 102/23 <b>coded</b> [1] 95/12 <b>codeword</b> [1] 40/6 <b>cohesive</b> [1] 88/3 <b>Colan</b> [1] 31/22 <b>Colin</b> [2] 2/1 32/16 <b>collating</b> [2] 72/5 90/7 <b>collecting</b> [2] 65/2 87/17 <b>collection</b> [3] 56/14 58/13 64/24 <b>collective</b> [1] 3/10 <b>collectively</b> [1] 34/13	<b>collectors</b> [1] 86/11 <b>combat</b> [1] 60/14 <b>combination</b> [1] 57/23 <b>combined</b> [2] 40/11 73/25 <b>come</b> [17] 21/17 41/10 51/11 52/15 58/15 61/11 67/6 90/11 90/18 111/6 115/16 115/19 116/12 125/20 126/13 137/25 149/5 <b>comes</b> [1] 115/11 <b>comforted</b> [1] 126/20 <b>coming</b> [5] 76/24 119/3 133/4 133/18 133/24 <b>command</b> [1] 74/1 <b>command's</b> [1] 81/3 <b>Commander</b> [4] 51/1 51/3 95/10 106/23 <b>commanders</b> [1] 77/16 <b>commanding</b> [4] 20/16 57/6 70/16 71/5 <b>commemorative</b> [11] 2/10 3/24 9/1 33/20 33/25 34/21 36/22 37/11 41/1 111/2 113/2 <b>commenced</b> [4] 73/7 74/15 79/23 127/16 <b>commencement</b> [4] 14/12 25/17 47/21 56/13 <b>comment</b> [5] 2/10 21/24 22/22 31/4 142/22 <b>commented</b> [2] 41/1 57/23 <b>comments</b> [4] 28/24 90/24 143/14 150/14 <b>commercial</b> [1] 81/18 <b>Commission</b> [1] 49/12 <b>Commissioner</b> [5] 11/12 12/14 15/23 24/12 24/21 <b>Commissioner</b> <b>Conroy</b> [1] 11/12 <b>commit</b> [1] 84/12 <b>commitment</b> [7] 4/24 14/20 15/15 16/18 78/13 108/15 110/25 <b>commitments</b> [2] 46/11 136/15 <b>committed</b> [2] 78/11 79/10 <b>committee</b> [19] 19/18 36/10 42/21 42/24 53/4 71/6 71/16 71/20 72/14 76/16	79/20 80/19 82/13 89/14 90/23 91/15 94/11 104/3 105/10 <b>committees</b> [1] 71/9 <b>common</b> [1] 67/4 <b>communicate</b> [2] 37/7 58/25 <b>communication</b> [3] 66/1 124/14 149/7 <b>communications</b> [3] 57/16 124/12 124/15 <b>community</b> [9] 38/1 44/21 59/1 72/1 87/5 88/3 91/2 91/3 94/24 <b>Company</b> [1] 57/13 <b>compared</b> [1] 23/1 <b>compel</b> [2] 15/18 43/11 <b>compelled</b> [1] 20/8 <b>compelling</b> [1] 22/4 <b>compiling</b> [1] 59/21 <b>complemented</b> [1] 127/18 <b>complete</b> [5] 44/16 47/19 49/22 73/20 125/10 <b>completely</b> [1] 132/14 <b>complex</b> [3] 54/18 54/21 86/6 <b>complexities</b> [2] 55/11 144/4 <b>complexity</b> [1] 55/1 <b>compliant</b> [2] 14/2 46/6 <b>complications</b> [1] 144/19 <b>complimentary</b> [1] 54/23 <b>comply</b> [3] 17/22 52/20 144/8 <b>compounded</b> [3] 14/19 55/11 111/19 <b>comprehend</b> [1] 22/20 <b>comprehensive</b> [6] 16/19 37/13 37/23 38/21 86/3 124/19 <b>compromise</b> [1] 99/5 <b>computer</b> [2] 65/5 65/5 <b>conceal</b> [1] 17/24 <b>concealment</b> [1] 26/18 <b>concede</b> [4] 131/10 131/12 132/18 133/17 <b>conceivable</b> [1] 68/18 <b>concern</b> [19] 3/4 6/24 7/2 7/3 8/7 8/10 8/21 9/2 9/15 18/16 23/19 26/15 50/7 69/16 77/13 84/7 111/5 111/9 148/21
----------	---	--	---	--

<p><b>C</b></p> <p><b>concern in [1]</b> 9/2</p> <p><b>concerned [8]</b> 27/22 30/5 46/14 72/9 105/16 105/20 114/21 148/19</p> <p><b>concerning [6]</b> 7/11 15/1 44/17 63/8 144/5 149/3</p> <p><b>concerns [22]</b> 8/14 11/4 56/2 90/11 93/4 104/1 104/23 105/24 105/25 110/16 110/18 134/23 136/6 139/24 140/12 140/14 145/20 146/1 147/14 147/18 147/21 148/25</p> <p><b>concessions [11]</b> 29/1 46/21 116/13 119/22 132/4 142/1 142/5 142/9 142/23 143/2 143/4</p> <p><b>concluded [3]</b> 26/15 46/20 69/9</p> <p><b>concludes [2]</b> 108/24 139/15</p> <p><b>conclusion [1]</b> 126/13</p> <p><b>conclusions [2]</b> 41/25 86/3</p> <p><b>concrete [1]</b> 49/6</p> <p><b>conditions [1]</b> 43/13</p> <p><b>conduct [5]</b> 37/12 50/1 88/21 107/20 128/15</p> <p><b>conducted [3]</b> 49/1 59/18 126/4</p> <p><b>confessions [1]</b> 115/18</p> <p><b>confidence [6]</b> 12/1 15/16 17/14 23/9 25/19 39/18</p> <p><b>confident [1]</b> 117/25</p> <p><b>confirmation [1]</b> 73/13</p> <p><b>confirming [1]</b> 29/12</p> <p><b>conflict [2]</b> 79/10 138/14</p> <p><b>confronting [1]</b> 125/18</p> <p><b>confusion [2]</b> 87/3 111/16</p> <p><b>connected [1]</b> 44/20</p> <p><b>Conor [1]</b> 32/22</p> <p><b>Conroy [1]</b> 11/12</p> <p><b>consequence [5]</b> 8/3 73/1 98/24 123/20 124/23</p> <p><b>consequences [4]</b> 33/20 44/12 47/10 98/15</p> <p><b>consider [11]</b> 5/7 28/18 42/5 48/15</p>	<p>52/10 96/4 103/23 126/15 132/19 146/21 149/8</p> <p><b>considerable [6]</b> 6/12 10/9 22/13 27/1 31/2 90/15</p> <p><b>consideration [4]</b> 4/7 13/15 52/12 116/8</p> <p><b>considerations [2]</b> 8/4 21/4</p> <p><b>considered [22]</b> 7/4 29/7 30/3 36/21 40/2 41/15 48/6 51/13 56/10 67/4 68/21 72/15 72/15 76/6 80/9 85/19 85/24 88/11 99/22 103/6 104/16 108/13</p> <p><b>considering [4]</b> 12/23 48/24 51/23 52/13</p> <p><b>considers [4]</b> 14/21 66/11 131/22 142/14</p> <p><b>consistent [5]</b> 38/22 68/2 77/14 88/4 94/15</p> <p><b>conspiracy [1]</b> 122/4</p> <p><b>Constable [10]</b> 20/15 24/20 70/15 70/22 71/11 77/19 93/22 100/12 121/14 128/7</p> <p><b>Constable's [1]</b> 26/8</p> <p><b>Constabulary [1]</b> 44/23</p> <p><b>constitutional [1]</b> 70/9</p> <p><b>constrained [1]</b> 64/10</p> <p><b>consultations [1]</b> 121/8</p> <p><b>contact [10]</b> 16/1 16/3 16/4 16/4 25/13 70/21 88/16 100/8 129/1 149/6</p> <p><b>contained [4]</b> 17/18 101/16 136/25 143/1</p> <p><b>containing [2]</b> 60/21 89/3</p> <p><b>contemporaneous [2]</b> 41/25 124/13</p> <p><b>content [3]</b> 65/3 66/11 101/17</p> <p><b>contents [1]</b> 9/22</p> <p><b>context [21]</b> 18/15 21/21 28/24 53/2 53/14 60/1 68/22 68/23 69/10 69/11 69/13 77/20 78/2 78/9 82/6 85/12 85/25 95/17 98/7 125/7 130/14</p> <p><b>context' [1]</b> 77/25</p> <p><b>continual [1]</b> 45/12</p> <p><b>continuance [1]</b> 14/6</p> <p><b>continue [3]</b> 8/12</p>	<p>96/17 149/14</p> <p><b>continued [13]</b> 6/21 53/11 54/13 74/14 75/8 75/25 76/4 85/1 86/15 98/12 99/3 110/23 114/12</p> <p><b>continues [1]</b> 5/14</p> <p><b>continuing [2]</b> 62/3 138/19</p> <p><b>continuity [7]</b> 78/25 79/12 79/16 82/18 94/24 102/23 114/22</p> <p><b>contrary [1]</b> 51/2</p> <p><b>contrast [2]</b> 126/2 149/5</p> <p><b>contribute [1]</b> 7/19</p> <p><b>contributed [3]</b> 77/5 86/24 143/18</p> <p><b>control [2]</b> 4/5 81/8</p> <p><b>controlled [2]</b> 43/12 87/14</p> <p><b>controls [1]</b> 67/15</p> <p><b>controversial [2]</b> 121/1 122/15</p> <p><b>convention [7]</b> 5/15 35/10 35/13 52/21 79/20 80/13 116/23</p> <p><b>conversation [1]</b> 82/10</p> <p><b>conversations [3]</b> 65/1 83/4 89/7</p> <p><b>conversed [1]</b> 34/23</p> <p><b>convey [1]</b> 37/2</p> <p><b>conveyed [1]</b> 22/23</p> <p><b>conviction [1]</b> 45/8</p> <p><b>convictions [1]</b> 83/8</p> <p><b>convinced [2]</b> 113/15 145/20</p> <p><b>Cooney [1]</b> 32/25</p> <p><b>cope [1]</b> 52/25</p> <p><b>copies [1]</b> 20/21</p> <p><b>coping [1]</b> 38/18</p> <p><b>copy [3]</b> 43/24 44/2 120/2</p> <p><b>cord [1]</b> 103/1</p> <p><b>core [47]</b> 1/9 1/12 1/14 2/3 6/17 10/8 20/7 22/1 25/20 27/13 27/16 28/18 28/25 29/3 29/14 29/17 30/20 30/23 31/13 45/22 46/11 46/19 47/3 102/11 104/20 104/24 108/4 111/8 130/1 130/4 130/13 131/22 139/16 142/4 142/8 142/14 142/22 142/24 143/19 143/25 146/5 146/10 147/13 147/17 148/22 150/3 150/7</p> <p><b>coroner [2]</b> 39/10 39/11</p> <p><b>coroner mentioned [1]</b> 39/11</p>	<p><b>corporate [18]</b> 15/20 18/7 20/10 21/13 22/12 22/14 23/20 24/14 25/3 26/4 27/10 29/19 29/22 86/14 92/20 98/2 105/21 107/17</p> <p><b>corporations [1]</b> 133/12</p> <p><b>correct [3]</b> 85/18 85/20 146/21</p> <p><b>corrected [1]</b> 51/6</p> <p><b>corroborated [1]</b> 49/8</p> <p><b>Corroboration [1]</b> 49/3</p> <p><b>corrosive [1]</b> 111/24</p> <p><b>Cory [1]</b> 43/10</p> <p><b>Cory Inquiry [1]</b> 43/10</p> <p><b>could [50]</b> 2/17 6/23 6/24 10/4 10/7 10/14 14/17 15/6 17/24 18/23 19/13 27/4 30/18 31/7 39/12 43/11 48/24 51/8 52/25 58/19 59/5 64/17 64/20 65/22 66/10 66/18 66/24 67/2 68/7 77/21 80/8 87/10 90/6 96/5 98/21 100/10 103/17 104/7 104/15 107/24 112/13 114/2 114/6 118/14 122/8 124/5 125/1 134/3 134/6 136/17</p> <p><b>Council [2]</b> 35/16 81/15</p> <p><b>counsel [6]</b> 43/10 43/16 117/8 118/1 130/16 143/17</p> <p><b>counter [10]</b> 19/25 53/8 57/9 58/1 60/2 60/7 60/16 99/3 107/14 132/14</p> <p><b>counter-productive [1]</b> 132/14</p> <p><b>counter-terrorism [6]</b> 19/25 53/8 58/1 60/2 60/7 107/14</p> <p><b>counter-terrorist [2]</b> 60/16 99/3</p> <p><b>counties [1]</b> 81/5</p> <p><b>country [3]</b> 5/10 5/12 6/7</p> <p><b>County [3]</b> 49/14 79/19 82/14</p> <p><b>courage [4]</b> 2/15 121/1 136/20 137/11</p> <p><b>course [19]</b> 20/1 20/12 98/1 111/5 113/23 114/9 116/20 120/18 123/11 124/1 130/24 131/15 138/11</p>	<p>139/18 139/23 142/2 144/17 145/6 146/4</p> <p><b>court [12]</b> 35/11 35/19 36/1 52/4 52/23 91/14 121/13 122/24 125/22 127/1 127/9 132/25</p> <p><b>courtesy [1]</b> 110/25</p> <p><b>courts [1]</b> 67/9</p> <p><b>cover [1]</b> 99/7</p> <p><b>covered [1]</b> 18/19</p> <p><b>covers [1]</b> 108/3</p> <p><b>covert [3]</b> 59/17 64/19 65/7</p> <p><b>cowardly [2]</b> 5/21 34/2</p> <p><b>Cox [1]</b> 43/2</p> <p><b>created [5]</b> 36/13 45/2 64/2 66/1 73/22</p> <p><b>credibility [3]</b> 12/12 42/7 96/13</p> <p><b>crime [7]</b> 24/12 59/14 60/15 66/16 86/17 128/11 128/11</p> <p><b>crimes [1]</b> 55/8</p> <p><b>criminal [8]</b> 17/15 45/10 62/18 63/24 64/3 64/9 122/3 131/5</p> <p><b>criminally [1]</b> 43/7</p> <p><b>critical [4]</b> 24/10 25/11 55/23 93/25</p> <p><b>criticise [2]</b> 95/23 128/19</p> <p><b>criticised [3]</b> 73/12 112/19 120/7</p> <p><b>criticism [1]</b> 26/10</p> <p><b>cross [12]</b> 16/9 17/8 24/10 24/19 60/24 61/10 61/12 92/14 93/1 95/18 95/19 130/10</p> <p><b>cross-border [9]</b> 24/10 24/19 60/24 61/10 61/12 92/14 93/1 95/18 95/19</p> <p><b>cross-examination [1]</b> 16/9</p> <p><b>cross-referring [1]</b> 130/10</p> <p><b>crucial [3]</b> 23/24 28/8 116/9</p> <p><b>cruelty [1]</b> 39/15</p> <p><b>cultural [1]</b> 6/8</p> <p><b>culture [1]</b> 46/14</p> <p><b>current [1]</b> 46/9</p> <p><b>customer [1]</b> 9/20</p> <p><b>cynical [1]</b> 14/10</p>
--	--	--	---	---

<b>D</b>	41/8 45/24 46/2 70/5 77/4 77/6 78/25 104/25 128/22 129/6 129/7 129/9 134/2 134/5	<b>demands [4]</b> 16/12 52/25 54/4 145/8 <b>demilitarisation [2]</b> 77/15 77/20 <b>democracy [1]</b> 34/11 <b>democratic [4]</b> 35/15 78/13 78/23 79/9 <b>Democratically [1]</b> 138/7 <b>demonstrate [9]</b> 36/6 39/16 46/13 61/15 79/8 85/8 89/20 103/4 103/16 <b>demonstrated [8]</b> 13/2 42/8 64/12 67/21 101/5 124/20 137/10 138/23 <b>demonstrates [11]</b> 36/24 42/16 44/14 51/13 58/16 60/18 76/2 76/2 99/16 100/1 102/4 <b>denial [2]</b> 125/10 127/20 <b>Denise [1]</b> 1/25 <b>department [2]</b> 83/10 144/1 <b>departments [6]</b> 81/2 101/9 101/10 114/23 144/1 145/7 <b>departure [1]</b> 8/17 <b>depend [3]</b> 96/1 96/14 145/21 <b>Depending [1]</b> 104/22 <b>deplete [1]</b> 129/7 <b>deploy [1]</b> 41/8 <b>deployed [9]</b> 8/15 40/24 41/5 54/12 69/22 95/13 108/2 118/13 118/14 <b>deployment [1]</b> 19/8 <b>depth [1]</b> 2/14 <b>Deputy [3]</b> 11/11 24/20 24/21 <b>derived [1]</b> 66/8 <b>Dermot [1]</b> 12/14 <b>Dermott [1]</b> 15/23 <b>derogation [1]</b> 35/14 <b>Derry [1]</b> 93/12 <b>descended [1]</b> 111/16 <b>describe [2]</b> 37/4 40/15 <b>described [11]</b> 28/12 34/20 53/21 70/20 74/2 78/2 78/17 85/11 111/12 118/9 125/16 <b>Describing [1]</b> 113/3 <b>description [1]</b> 119/14 <b>descriptions [1]</b> 107/9 <b>deserve [2]</b> 23/16	23/17 <b>deserves [2]</b> 23/17 23/18 <b>designated [1]</b> 104/25 <b>desire [7]</b> 37/12 38/23 38/24 49/8 99/12 99/19 99/25 <b>Desmond [1]</b> 109/24 <b>desperation [2]</b> 22/22 23/2 <b>despite [11]</b> 20/1 27/2 45/1 56/12 57/21 74/13 76/4 97/18 98/19 138/23 139/1 <b>destined [1]</b> 89/4 <b>destroyed [8]</b> 44/3 45/16 100/22 141/9 141/11 148/1 148/8 148/10 <b>destruction [2]</b> 26/17 33/19 <b>detail [5]</b> 8/6 10/23 12/5 76/7 107/7 <b>detailed [2]</b> 19/3 148/13 <b>details [3]</b> 16/3 16/7 43/1 <b>detain [1]</b> 63/14 <b>detect [1]</b> 62/10 <b>detecting [1]</b> 66/16 <b>detection [3]</b> 7/24 122/2 128/12 <b>detection/investigati on [1]</b> 128/12 <b>detective [6]</b> 12/13 49/15 60/5 76/14 89/2 100/22 <b>detention [1]</b> 64/12 <b>deter [1]</b> 76/3 <b>deteriorating [1]</b> 126/19 <b>determination [5]</b> 23/11 73/18 73/24 114/10 139/2 <b>determine [1]</b> 113/8 <b>determined [1]</b> 15/6 <b>determining [1]</b> 87/19 <b>deterred [1]</b> 113/9 <b>detonating [1]</b> 103/1 <b>detonation [2]</b> 40/8 95/1 <b>detonators [3]</b> 81/12 81/13 103/2 <b>detract [2]</b> 34/3 34/5 <b>devastating [2]</b> 33/19 57/21 <b>devastation [1]</b> 111/17 <b>develop [3]</b> 53/24 91/19 105/4 <b>developed [5]</b> 68/15 83/25 86/19 90/6	102/22 <b>developing [2]</b> 62/3 84/2 <b>development [4]</b> 23/25 72/20 74/13 98/16 <b>developments [1]</b> 7/21 <b>deviated [1]</b> 22/3 <b>devices [5]</b> 58/11 64/23 65/1 81/12 84/15 <b>devices' [1]</b> 65/6 <b>dialogue [1]</b> 138/13 <b>did [28]</b> 4/13 7/18 7/23 7/25 29/14 40/18 43/4 53/24 59/11 60/17 65/16 66/8 66/13 69/19 69/21 69/23 75/14 77/11 79/12 82/8 84/11 114/7 114/10 116/19 117/9 117/22 119/10 126/10 <b>didn't [15]</b> 79/8 113/14 115/2 115/17 115/23 116/2 117/22 117/23 118/17 119/8 120/21 126/8 131/13 133/5 133/13 <b>died [6]</b> 109/25 110/1 113/12 129/15 129/16 134/1 <b>difference [1]</b> 94/2 <b>different [7]</b> 54/23 87/4 89/23 91/5 105/22 110/11 115/5 <b>differential [5]</b> 40/15 58/7 103/21 105/9 105/16 <b>differently [2]</b> 146/8 149/15 <b>difficult [16]</b> 21/12 22/20 30/2 30/17 37/8 81/20 86/24 90/20 108/11 112/17 113/1 122/14 122/20 127/3 127/4 144/20 <b>difficulties [5]</b> 86/10 114/18 115/20 144/17 144/24 <b>difficulty [1]</b> 114/5 <b>dignified [1]</b> 36/21 <b>diligence [2]</b> 3/14 23/10 <b>diminished [1]</b> 7/20 <b>diminishing [1]</b> 19/11 <b>direct [2]</b> 70/7 135/6 <b>directed [1]</b> 67/20 <b>direction [2]</b> 55/15 81/16 <b>directions [1]</b> 19/4 <b>directly [7]</b> 19/23
----------	--	---	---	---

<b>D</b>	<b>disrupt</b> [10] 34/12 58/3 62/10 63/25 68/6 76/3 85/17 85/22 107/5 117/2 <b>disrupted</b> [1] 105/15 <b>disrupting</b> [2] 57/19 81/18 <b>disruption</b> [4] 74/23 104/15 105/19 118/22 <b>disruptive</b> [1] 104/19 <b>disseminate</b> [1] 94/14 <b>disseminated</b> [2] 49/23 91/21 <b>disseminating</b> [1] 90/8 <b>dissemination</b> [3] 55/21 87/15 120/6 <b>dissent</b> [1] 79/9 <b>disservice</b> [1] 2/11 <b>dissident</b> [18] 33/16 33/23 34/6 40/9 75/6 78/9 83/1 83/18 85/15 88/25 102/16 102/20 106/4 106/20 107/5 116/6 117/3 119/1 <b>dissidents</b> [2] 49/7 88/8 <b>distance</b> [1] 129/6 <b>distinct</b> [2] 25/18 73/1 <b>distinctly</b> [2] 34/22 91/5 <b>distressing</b> [1] 114/1 <b>distributed</b> [1] 61/19 <b>distributing</b> [1] 72/5 <b>divergence</b> [1] 79/23 <b>division</b> [1] 80/19 <b>Divisional</b> [4] 50/25 51/3 95/10 106/23 <b>divisions</b> [1] 75/5 <b>Dixon</b> [1] 88/23 <b>do</b> [26] 2/11 4/6 5/23 11/12 12/3 22/10 23/9 29/16 36/19 38/18 38/19 47/13 48/3 48/3 109/20 110/4 114/14 115/23 126/15 128/19 128/21 133/6 133/20 139/21 143/23 148/4 <b>Docklands</b> [1] 74/11 <b>document</b> [8] 6/14 8/12 17/3 17/4 44/11 45/16 107/6 132/2 <b>documentary</b> [4] 16/9 23/22 124/8 124/9 <b>documentation</b> [17] 11/2 15/18 24/5 26/5 28/8 46/5 47/1 96/8 126/23 127/15 129/5 134/4 134/7 139/25 140/5 141/22 147/16 <b>documented</b> [1]	68/17 <b>documents</b> [36] 16/15 16/19 17/7 17/8 22/16 22/18 23/24 24/2 24/8 24/9 25/16 25/22 25/24 27/5 27/17 44/20 45/4 45/17 91/13 119/12 123/11 127/11 127/13 131/11 132/9 140/13 140/19 140/23 141/16 144/21 147/20 148/1 148/8 148/10 148/15 148/19 <b>does</b> [10] 15/15 17/25 34/7 39/20 50/5 58/16 95/23 96/14 110/12 136/19 <b>Doherty</b> [10] 32/6 32/6 32/6 32/7 32/7 32/7 32/8 32/8 32/9 109/24 <b>doing</b> [6] 38/14 43/8 50/2 54/3 117/15 129/13 <b>domain</b> [1] 122/18 <b>domestic</b> [2] 19/24 53/8 <b>don't</b> [18] 9/5 9/6 9/6 9/7 34/5 38/19 114/21 115/4 116/14 117/3 118/24 119/17 119/18 129/1 131/8 131/16 132/12 133/13 <b>done</b> [9] 7/14 36/18 107/24 110/4 113/6 113/6 115/17 117/9 148/17 <b>Donegal</b> [1] 79/21 <b>Donna</b> [2] 33/10 38/12 <b>Donnelly</b> [1] 83/23 <b>door</b> [1] 4/16 <b>doubt</b> [5] 33/15 106/4 114/8 143/23 149/2 <b>doubts</b> [1] 120/11 <b>down</b> [5] 46/9 71/9 111/22 115/23 118/25 <b>downgrading</b> [1] 8/3 <b>Downing</b> [1] 73/16 <b>draw</b> [1] 148/17 <b>drawn</b> [3] 100/5 102/3 147/18 <b>drew</b> [1] 113/19 <b>driv</b> [2] 9/11 9/12 <b>drive</b> [1] 76/17 <b>driven</b> [1] 121/4 <b>drop</b> [2] 19/23 53/6 <b>due</b> [5] 6/12 54/10 100/13 131/23 142/15 <b>duly</b> [1] 17/4 <b>Dun</b> [1] 84/19 <b>Dundalk</b> [2] 84/20 107/13	<b>during</b> [22] 7/15 9/1 13/3 20/1 22/23 33/20 33/24 34/21 37/11 40/21 43/1 48/8 49/15 59/8 67/13 71/1 73/4 82/3 82/10 83/20 97/25 101/1 <b>duties</b> [2] 59/19 122/1 <b>duty</b> [10] 3/16 5/18 35/17 35/21 35/22 35/23 35/25 46/24 59/21 145/14 <b>Dylan</b> [1] 32/8 <b>dynamics</b> [2] 6/9 18/25 <b>Dáil</b> [2] 13/3 79/2	<b>election</b> [1] 13/4 <b>electricity</b> [1] 58/4 <b>electronic</b> [3] 58/10 58/11 64/23 <b>element</b> [4] 114/25 117/11 126/1 136/1 <b>elements</b> [2] 20/3 85/23 <b>eliminate</b> [1] 67/25 <b>Elisha</b> [1] 32/3 <b>Elizabeth</b> [1] 33/4 <b>else</b> [3] 3/25 69/1 132/17 <b>elsewhere</b> [1] 85/6 <b>email</b> [1] 93/8 <b>emails</b> [2] 65/4 89/19 <b>emanates</b> [1] 91/1 <b>emanating</b> [1] 19/4 <b>embark</b> [1] 31/1 <b>embarking</b> [1] 137/8 <b>embarrassing</b> [1] 21/11 <b>embryonic</b> [1] 84/11 <b>emerged</b> [6] 8/6 53/20 55/2 147/12 147/15 148/21 <b>emergencies</b> [2] 54/23 62/17 <b>emergency</b> [5] 60/4 62/15 63/18 68/19 147/7 <b>emerges</b> [1] 130/15 <b>emotion</b> [1] 2/12 <b>emphasise</b> [1] 140/22 <b>emphasised</b> [1] 147/24 <b>emphatic</b> [1] 138/7 <b>emptive</b> [3] 18/13 92/23 122/3 <b>empty</b> [1] 13/9 <b>enable</b> [3] 34/17 96/18 106/11 <b>enabled</b> [6] 40/4 68/5 68/11 81/5 85/14 89/2 <b>enables</b> [1] 49/1 <b>enacted</b> [1] 67/23 <b>enactment</b> [1] 65/10 <b>enacts</b> [1] 34/16 <b>encompassed</b> [1] 62/16 <b>encompassing</b> [1] 134/21 <b>encountered</b> [1] 74/4 <b>encourage</b> [1] 106/9 <b>end</b> [13] 9/8 10/20 53/17 73/9 74/13 82/17 84/3 117/3 126/11 133/24 137/12 138/13 143/6 <b>Enda</b> [2] 12/16 13/3 <b>endorse</b> [2] 127/7 130/17 <b>endorsed</b> [3] 72/23
----------	---	---	---	---



<b>E</b>	69/19	48/20 49/12 61/3	<b>existing [1]</b> 81/5	<b>expressly [1]</b> 77/7
<b>endorsed... [2]</b> 75/11 138/7	<b>equipment [1]</b> 89/3	62/19 63/24 76/12	<b>exists [4]</b> 9/21 28/19 35/25 136/6	<b>extend [3]</b> 110/23 120/24 129/14
<b>endorsement [1]</b> 80/6	<b>equivalent [2]</b> 67/22 78/8	76/15 77/7 77/14 82/3 83/20 84/5 84/10	<b>expanded [1]</b> 124/10	<b>extended [1]</b> 64/7
<b>ends [1]</b> 121/11	<b>erroneous [1]</b> 29/13	84/21 85/3 85/19	<b>expect [12]</b> 29/17 34/13 36/8 45/18	<b>extends [1]</b> 24/9
<b>endurance [1]</b> 136/19	<b>error [1]</b> 100/14	89/10 89/13 89/14	47/12 130/1 130/3	<b>extension [1]</b> 63/15
<b>energy [1]</b> 73/23	<b>ERU [3]</b> 60/10 60/13 60/17	89/15 90/22 91/4 91/12 92/2 92/3 92/5	130/13 139/18 139/19	<b>extensive [1]</b> 64/6
<b>enforceable [1]</b> 97/25	<b>escalated [1]</b> 112/20	92/6 94/5 94/10 99/10	148/11 148/13	<b>extent [11]</b> 4/18 10/15 12/9 19/11
<b>enforcement [10]</b> 54/9 54/16 55/5 56/18	<b>escalation [1]</b> 77/23	99/14 99/20 100/24	<b>expectation [4]</b> 34/20 45/13 45/14	39/15 41/19 48/13 96/14 102/5 102/6
64/19 65/15 65/19	<b>escape [1]</b> 15/3	101/7 102/25 103/8	90/17	102/7
66/20 66/21 67/8	<b>especially [1]</b> 28/23	103/12 104/2 104/22	<b>expectations [1]</b> 35/7	<b>external [1]</b> 87/18
<b>engage [2]</b> 76/9 145/23	<b>Esquivel [1]</b> 32/19	105/9 124/4 131/2	<b>expected [2]</b> 36/15 133/8	<b>extra [1]</b> 131/19
<b>engaged [6]</b> 25/8	<b>essential [1]</b> 48/15	134/12 134/24 148/13	<b>expecting [1]</b> 34/25	<b>extraordinary [1]</b> 39/5
62/11 69/24 73/4	<b>essentially [4]</b> 35/4 35/5 66/18 112/5	148/20	<b>expects [1]</b> 132/5	<b>extremely [6]</b> 5/13 36/14 114/1 115/25
143/10 143/20	<b>establish [4]</b> 3/11 5/9 7/14 106/11	<b>evidenced [1]</b> 33/20	<b>expeditious [1]</b> 125/4	130/23 132/22
<b>engagement [4]</b> 30/10 47/3 79/8	<b>established [5]</b> 4/20 16/13 22/4 60/14 99/4	<b>evidential [5]</b> 6/13 42/9 42/10 144/16	<b>experience [8]</b> 17/10 44/13 67/25 68/15	<b>eye [1]</b> 77/1
108/22	<b>establishing [1]</b> 7/6	144/18	145/19 148/4 149/4 149/6	<b>F</b>
<b>engaging [1]</b> 25/6	<b>establishment [3]</b> 54/8 80/18 134/12	<b>evidently [1]</b> 146/21	<b>experiences [3]</b> 37/4 37/7 53/25	<b>face [5]</b> 6/5 140/19 143/22 145/2 149/12
<b>engine [2]</b> 9/20 9/21	<b>Esther [1]</b> 33/5	<b>evil [4]</b> 23/12 23/12 23/13 23/13	<b>expert [3]</b> 53/21 62/7 63/16	<b>faced [5]</b> 37/8 38/9 53/11 79/13 132/23
<b>engineer [1]</b> 83/9	<b>etc [1]</b> 82/8	<b>evolved [1]</b> 56/23	<b>expertise [4]</b> 40/22 40/23 58/10 81/5	<b>faces [1]</b> 5/24
<b>engineering [1]</b> 81/2	<b>Europe [1]</b> 35/16	<b>evolving [1]</b> 6/21	<b>experts [2]</b> 53/21 102/18	<b>facing [2]</b> 115/21 115/22
<b>England [5]</b> 40/17	<b>European [7]</b> 5/13 5/15 35/10 35/11	<b>exacerbated [1]</b> 87/3	<b>explain [1]</b> 143/20	<b>fact [21]</b> 16/22 28/13 49/6 53/10 55/11
40/19 67/23 74/23	35/19 52/21 116/23	<b>exactly [2]</b> 132/24 138/19	<b>explained [4]</b> 18/9 42/10 57/5 116/22	67/22 70/3 76/13
78/8	<b>evacuate [1]</b> 147/6	<b>examination [2]</b> 16/9 147/1	<b>explains [2]</b> 110/15 110/18	96/21 100/6 101/24
<b>English [2]</b> 52/4 52/23	<b>evacuation [4]</b> 40/13 95/14 124/19 129/6	<b>examine [4]</b> 8/5 9/25 10/2 10/4	<b>explanation [6]</b> 8/11 116/12 119/19 131/13	103/14 104/2 113/23
<b>enhanced [1]</b> 92/13	<b>evasive [1]</b> 120/20	<b>examined [3]</b> 9/23 46/16 106/1	141/10 148/20	114/1 121/18 130/7
<b>enjoyed [1]</b> 5/21	<b>even [18]</b> 11/1 16/15 17/2 17/8 23/3 49/22	<b>examining [1]</b> 6/1	<b>explanations [2]</b> 140/20 140/20	130/25 140/6 143/3 144/11
<b>enjoying [1]</b> 34/19	51/7 84/7 86/10 94/6	<b>example [35]</b> 8/9 15/19 37/14 37/25	<b>explicitly [3]</b> 3/9 13/1 50/14	<b>facts [3]</b> 6/2 93/5 120/20
<b>enlisted [1]</b> 84/22	103/6 104/9 118/24	39/6 39/21 40/6 41/18	<b>exploded [3]</b> 74/18 74/20 124/21	<b>faded [1]</b> 6/16
<b>enormous [1]</b> 43/24	122/22 125/17 135/25	48/21 49/2 49/6 50/3 50/11 55/2 57/20	<b>exploding [1]</b> 74/11	<b>failed [5]</b> 43/9 52/6 57/22 123/17 125/2
<b>enough [2]</b> 133/16 136/21	148/4 148/25	60/20 61/4 61/6 61/7 61/9 68/6 69/21 78/23	<b>exploitation [1]</b> 87/14	<b>failing [5]</b> 5/16 26/12 50/2 123/18 125/25
<b>enquiries [2]</b> 43/2 121/10	<b>event [5]</b> 16/7 120/8 130/4 131/21 142/13	82/25 84/5 89/25 98/25 99/20 105/3	<b>exploiting [1]</b> 55/17	<b>failings [9]</b> 34/9 106/12 130/5 130/8
<b>enshrines [1]</b> 35/14	<b>events [5]</b> 6/1 6/10 7/6 7/23 112/3	105/18 131/11 138/12 140/4 141/19 148/7	<b>explore [3]</b> 3/9 12/25 146/7	131/21 131/24 142/6 142/13 142/16
<b>ensuing [1]</b> 74/5	<b>eventually [1]</b> 127/13	<b>examples [2]</b> 11/5 45/4	<b>explored [2]</b> 134/25 146/11	<b>failure [10]</b> 11/9 11/12 13/12 50/8 50/9
<b>ensure [13]</b> 5/16 30/24 41/19 44/15	<b>ever [3]</b> 5/16 17/16 93/20	<b>excellent [1]</b> 107/16	<b>exploring [1]</b> 6/5	76/24 85/21 90/21 125/4 140/13
52/19 62/4 76/18	<b>every [9]</b> 37/1 41/2 68/18 81/23 85/13	<b>exceptional [5]</b> 61/16 63/1 63/17 63/20	<b>explosion [3]</b> 63/7 122/5 129/7	<b>failures [8]</b> 5/6 7/17 7/18 12/4 12/25 38/24
92/14 94/19 105/15	88/6 94/8 105/12	67/20	<b>explosive [1]</b> 83/8	86/2 122/2
123/20 135/17 145/16	123/23	<b>exchange [3]</b> 57/22 86/12 135/18	<b>explosives [3]</b> 81/9 83/10 84/17	<b>failures in [1]</b> 122/2
<b>ensured [1]</b> 115/6	<b>everybody [1]</b> 109/15	<b>exciting [1]</b> 74/2	<b>exposing [2]</b> 55/9 120/23	<b>fairly [2]</b> 115/18 118/24
<b>ensuring [1]</b> 72/6	<b>everyone [6]</b> 53/15 73/23 113/23 123/1	<b>exclude [1]</b> 30/20	<b>express [1]</b> 140/11	<b>faith [2]</b> 46/9 149/13
<b>enter [1]</b> 63/12	131/14 135/9	<b>excluded [1]</b> 80/5	<b>expressed [2]</b> 104/1 148/25	<b>fall [5]</b> 7/3 10/6 22/11 50/25 146/24
<b>entered [1]</b> 59/22	<b>everything [3]</b> 91/25 127/21 146/16	<b>exclusively [1]</b> 78/13		<b>fallback [1]</b> 22/21
<b>entering [1]</b> 78/16	<b>evidence [71]</b> 2/16 7/4 7/13 8/25 10/23	<b>Excuse [1]</b> 131/2		<b>falls [1]</b> 75/20
<b>entire [2]</b> 3/11 43/14	18/6 21/14 22/4 26/14	<b>executive [5]</b> 71/6 80/5 80/8 80/14 98/4		
<b>entirely [2]</b> 117/15 142/20	26/18 27/17 28/22	<b>exhibit [1]</b> 130/2		
<b>entities [1]</b> 102/18	37/10 39/7 41/10 42/8	<b>exist [2]</b> 48/18 65/16		
<b>entitled [3]</b> 5/11 13/18 44/5	42/15 42/17 42/20	<b>existence [4]</b> 17/3 43/25 66/7 90/7		
<b>entitles [1]</b> 16/15	42/23 43/22 47/8			
<b>environment [2]</b> 132/1 142/18	47/19 48/16 48/17			
<b>equally [2]</b> 65/24				



<b>F</b>	<b>Fifth [3]</b> 83/14 89/15 94/22 <b>fig [1]</b> 14/13 <b>fighting [1]</b> 6/7 <b>figure [1]</b> 112/16 <b>figures [1]</b> 141/1 <b>file [1]</b> 44/8 <b>files [2]</b> 43/24 60/17 <b>fill [1]</b> 26/25 <b>filled [1]</b> 37/16 <b>final [3]</b> 86/3 106/2 109/3 <b>finally [11]</b> 18/5 29/18 37/18 41/24 44/5 68/11 69/23 89/19 90/22 120/15 143/12 <b>find [5]</b> 37/20 38/3 38/3 127/3 134/19 <b>finding [1]</b> 11/8 <b>findings [8]</b> 56/8 96/19 98/22 106/11 107/20 107/22 108/8 120/16 <b>Finely [1]</b> 22/10 <b>firm [1]</b> 80/4 <b>firmly [2]</b> 33/16 51/5 <b>first [28]</b> 1/4 3/19 8/9 14/24 24/11 37/6 37/11 39/24 47/11 54/7 79/24 86/5 90/11 93/7 113/7 116/25 118/15 121/5 128/6 131/17 133/6 137/17 137/23 138/3 139/23 141/24 144/6 146/25 <b>firstly [18]</b> 36/20 41/17 48/4 51/14 56/5 67/19 69/13 82/3 88/9 98/16 99/16 102/5 103/18 103/19 106/19 108/17 122/7 124/10 <b>fit [1]</b> 17/8 <b>five [7]</b> 30/8 63/15 80/13 88/15 100/14 100/25 109/2 <b>Flanagan [6]</b> 27/21 70/24 77/20 93/22 100/12 101/1 <b>Flanagan's [2]</b> 27/20 100/19 <b>flawed [1]</b> 77/6 <b>flows [1]</b> 146/22 <b>focus [7]</b> 3/3 3/19 36/25 50/1 73/10 81/17 98/23 <b>focused [2]</b> 92/10 116/1 <b>focussed [2]</b> 48/1 86/16 <b>foiled [1]</b> 83/7 <b>followed [7]</b> 4/8 62/4 74/1 78/8 81/16 94/3 102/14	<b>following [29]</b> 1/14 2/3 30/9 31/16 33/6 40/25 41/15 59/19 63/2 64/22 80/13 82/5 82/12 83/7 90/23 92/15 94/22 100/8 102/24 103/13 103/19 107/4 109/3 120/2 120/8 121/20 124/9 135/25 142/7 <b>follows [4]</b> 33/21 85/25 86/1 124/10 <b>foot [1]</b> 47/15 <b>force [5]</b> 51/2 57/2 67/6 93/23 100/17 <b>forced [2]</b> 56/15 74/24 <b>forces [19]</b> 43/7 43/17 43/18 51/14 54/25 59/5 62/1 70/6 81/24 85/23 90/14 96/1 96/20 97/23 99/2 107/10 107/13 117/19 123/9 <b>fore [1]</b> 120/24 <b>forecasts [1]</b> 91/10 <b>foremost [1]</b> 3/10 <b>foreshadowed [1]</b> 146/12 <b>forever [1]</b> 6/10 <b>forgotten [1]</b> 121/2 <b>form [5]</b> 2/16 16/24 61/21 68/18 80/17 <b>formal [3]</b> 70/4 79/21 97/21 <b>formally [3]</b> 44/9 107/15 122/25 <b>formation [2]</b> 78/24 79/19 <b>formed [4]</b> 40/4 56/22 72/4 91/22 <b>former [9]</b> 12/17 18/8 43/2 49/15 57/5 76/14 77/19 93/21 100/12 <b>formerly [1]</b> 121/14 <b>formulated [1]</b> 149/4 <b>forth [2]</b> 118/24 123/24 <b>forward [1]</b> 48/3 <b>fought [1]</b> 4/12 <b>found [10]</b> 20/10 26/12 28/14 35/9 35/19 62/18 78/4 92/5 103/2 148/1 <b>Foundation [1]</b> 2/21 <b>four [3]</b> 28/16 46/1 57/3 <b>fourth [5]</b> 50/18 83/5 89/10 94/10 118/19 <b>Fourthly [2]</b> 4/23 39/5 <b>Fox [5]</b> 31/14 31/18 33/8 45/6 150/8 <b>fragile [1]</b> 76/5	<b>fragility [2]</b> 75/7 76/10 <b>framework [1]</b> 97/25 <b>Frank [1]</b> 80/15 <b>Fred [1]</b> 31/25 <b>freely [1]</b> 76/24 <b>frequency [1]</b> 70/21 <b>frequent [2]</b> 16/1 16/3 <b>Friday [24]</b> 18/24 20/2 53/16 54/4 54/15 72/20 72/22 72/23 74/18 75/9 75/10 75/14 75/18 75/19 76/4 76/5 76/10 78/17 84/5 111/15 115/11 119/6 137/17 137/24 <b>friend [1]</b> 125/25 <b>frivolous [2]</b> 125/17 134/11 <b>front [2]</b> 60/13 111/6 <b>FRU [6]</b> 57/5 71/24 85/1 86/21 87/1 87/7 <b>frustrate [1]</b> 59/5 <b>frustrating [1]</b> 126/24 <b>frustratingly [1]</b> 144/16 <b>fuelled [1]</b> 114/10 <b>full [18]</b> 16/18 21/22 42/15 42/15 46/25 47/8 48/25 92/8 96/8 101/23 108/22 112/22 113/11 124/2 127/5 134/7 136/14 145/17 <b>fully [7]</b> 12/4 45/16 103/15 103/16 108/18 130/9 135/10 <b>Fulton [18]</b> 12/8 30/11 51/10 58/23 84/22 85/6 88/10 88/14 88/18 90/1 93/17 93/23 99/21 99/23 100/6 100/16 101/2 123/8 <b>Fulton's [3]</b> 51/12 100/23 101/4 <b>function [1]</b> 59/23 <b>functions [2]</b> 30/6 58/19 <b>fundamental [2]</b> 9/15 35/12 <b>funds [1]</b> 34/15 <b>further [29]</b> 7/25 14/19 20/4 23/2 25/11 41/12 45/4 47/7 47/19 49/9 49/25 63/15 64/10 67/2 84/10 85/17 94/5 100/3 105/7 105/20 111/23 120/17 128/7 136/19 139/22 141/12 141/14 146/16 147/12 <b>furtherance [1]</b> 58/18	<b>Furthermore [2]</b> 66/12 140/22 <b>future [2]</b> 74/3 95/2 <b>Féin [6]</b> 19/14 73/9 73/14 78/25 79/1 81/20
<b>G</b>				
<b>Gallagher [7]</b> 11/15 13/20 31/20 31/20 31/21 36/9 127/17 <b>gang [1]</b> 104/8 <b>gap [1]</b> 112/11 <b>gaps [1]</b> 120/19 <b>Garda [30]</b> 11/11 12/13 12/15 12/19 15/24 17/17 18/11 24/5 24/12 24/21 25/9 59/16 59/17 60/18 60/20 83/2 83/9 83/13 83/25 84/2 84/4 84/10 84/15 88/22 88/24 89/2 92/16 92/21 106/15 107/5 <b>Gareth [2]</b> 32/25 37/25 <b>Garry [1]</b> 33/10 <b>Gary [1]</b> 2/1 <b>gather [5]</b> 60/19 64/17 68/12 84/4 104/18 <b>gathered [5]</b> 68/1 68/15 88/7 89/23 102/6 <b>gathering [21]</b> 25/7 54/18 55/5 55/13 55/17 56/22 57/14 57/18 58/25 59/18 61/4 61/8 68/13 86/15 86/23 88/5 89/11 90/12 98/6 103/8 103/12 <b>gave [13]</b> 2/15 8/25 35/24 43/3 63/20 83/20 89/13 89/13 100/24 101/7 120/13 140/4 143/2 <b>Gavin [1]</b> 32/22 <b>GCHQ [7]</b> 57/17 58/9 65/17 66/3 89/6 124/11 125/5 <b>GCHQ's [1]</b> 58/18 <b>Gearoid [1]</b> 32/8 <b>general [11]</b> 7/3 16/18 20/15 21/24 30/5 60/7 65/14 70/16 71/5 81/7 118/20 <b>generalised [1]</b> 107/6 <b>generally [7]</b> 12/18 30/7 60/17 79/22 99/24 107/8 147/8 <b>generations [1]</b> 111/18				

<p><b>G</b></p> <p><b>genesis</b> [1] 110/14</p> <p><b>gently</b> [1] 112/17</p> <p><b>genuine</b> [1] 113/13</p> <p><b>geographic</b> [1] 64/24</p> <p><b>Gerald</b> [3] 1/21 1/21 56/1</p> <p><b>Geraldine</b> [1] 33/1</p> <p><b>Gerry</b> [1] 73/9</p> <p><b>get</b> [12] 13/5 13/5 38/8 92/17 108/15 111/20 119/12 121/17 127/4 127/5 127/6 132/15</p> <p><b>gets</b> [1] 118/4</p> <p><b>getting</b> [2] 116/14 121/18</p> <p><b>Gibson</b> [2] 33/4 33/5</p> <p><b>Giles</b> [1] 33/12</p> <p><b>Giles McCourt</b> [1] 33/12</p> <p><b>Gillen</b> [4] 126/9 126/20 127/10 134/5</p> <p><b>give</b> [7] 3/6 15/15 20/5 27/17 43/5 48/21 126/6</p> <p><b>given</b> [21] 8/7 11/18 21/18 26/12 29/1 29/12 40/8 45/12 47/23 50/20 50/21 86/2 94/25 103/11 104/11 119/14 120/25 126/8 137/15 148/20 149/15</p> <p><b>gives</b> [1] 138/8</p> <p><b>giving</b> [3] 42/23 90/22 94/10</p> <p><b>glacial</b> [1] 127/12</p> <p><b>globally</b> [1] 137/15</p> <p><b>Gloucester</b> [1] 124/12</p> <p><b>go</b> [7] 8/12 12/1 68/21 68/23 79/6 130/12 133/13</p> <p><b>goal</b> [1] 73/5</p> <p><b>goes</b> [1] 138/25</p> <p><b>going</b> [22] 8/19 12/5 48/3 83/3 84/16 110/5 110/22 112/8 114/13 115/12 116/1 119/11 119/22 125/12 127/4 127/5 127/6 129/18 130/5 130/8 131/11 137/15</p> <p><b>gone</b> [1] 123/11</p> <p><b>good</b> [35] 1/3 1/4 1/8 1/11 18/24 20/2 46/9 53/16 54/3 54/15 57/24 57/24 57/24 72/20 72/21 72/22 74/18 75/8 75/10 75/14 75/18 75/19 76/4 76/5 76/10 78/17</p>	<p>84/5 101/19 109/13 111/15 115/11 119/6 137/17 137/23 149/13</p> <p><b>got</b> [3] 115/7 119/1 119/3</p> <p><b>governed</b> [1] 55/14</p> <p><b>governing</b> [2] 41/6 98/14</p> <p><b>government</b> [50] 4/21 5/2 5/5 5/8 8/23 9/5 9/6 13/18 14/20 15/10 15/12 15/14 17/5 56/2 57/16 70/11 71/13 72/1 73/14 77/1 80/3 95/21 95/24 96/20 96/23 98/5 98/9 98/13 105/14 106/9 108/23 114/23 121/6 121/15 122/1 123/14 124/23 125/16 125/20 127/24 128/5 128/10 128/17 128/25 135/20 136/16 144/2 145/6 145/15 149/12</p> <p><b>government's</b> [1] 71/16</p> <p><b>governments</b> [5] 12/2 14/6 19/5 73/15 74/7</p> <p><b>Graham</b> [1] 2/6</p> <p><b>grand</b> [2] 13/9 74/25</p> <p><b>grant</b> [1] 15/11</p> <p><b>grapple</b> [1] 114/1</p> <p><b>grappled</b> [1] 145/4</p> <p><b>grasped</b> [1] 14/12</p> <p><b>grateful</b> [3] 2/19 103/11 143/16</p> <p><b>gratitude</b> [4] 36/20 110/24 120/24 129/14</p> <p><b>grave</b> [1] 8/10</p> <p><b>Greaney</b> [6] 1/3 27/6 109/10 139/12 143/15 147/23</p> <p><b>great</b> [5] 62/6 87/11 103/25 114/4 129/17</p> <p><b>greater</b> [9] 4/17 19/10 51/9 51/18 58/3 76/7 78/3 103/21 103/24</p> <p><b>greatest</b> [3] 93/15 111/4 111/9</p> <p><b>greatly</b> [2] 4/23 27/9</p> <p><b>Grenfell</b> [4] 130/20 132/24 133/8 133/11</p> <p><b>grief</b> [1] 111/19</p> <p><b>grim</b> [1] 6/19</p> <p><b>Grimes</b> [5] 33/2 33/2 33/3 39/8 39/9</p> <p><b>grind</b> [1] 136/17</p> <p><b>ground</b> [2] 92/18 128/20</p> <p><b>grounds</b> [5] 17/12 28/16 29/8 58/19 63/9</p> <p><b>group</b> [14] 15/25</p>	<p>24/14 28/25 45/3 60/3 71/22 72/4 72/13 72/17 82/7 82/16 84/11 106/18 119/1</p> <p><b>groups</b> [7] 26/6 55/24 59/10 72/6 78/22 102/20 146/9 98/14</p> <p><b>growing</b> [1] 79/24</p> <p><b>grown</b> [1] 54/22</p> <p><b>guard</b> [1] 30/21</p> <p><b>Guards</b> [1] 92/18</p> <p><b>guidance</b> [4] 55/14 90/12 98/5 98/14</p> <p><b>guided</b> [1] 3/13</p> <p><b>guidelines</b> [5] 97/1 97/15 97/19 98/3 98/9</p> <p><b>guilt</b> [3] 33/23 34/4 34/6</p> <p><b>Gweedore</b> [1] 79/20</p> <p><b>H</b></p> <p><b>had</b> [108] 27/14 29/3 30/1 33/18 34/19 37/5 37/9 40/8 40/21 41/3 44/11 45/2 52/16 53/20 54/5 54/9 55/16 55/20 55/25 56/3 58/10 58/24 60/6 60/18 60/19 61/5 66/21 67/5 67/9 68/2 69/14 69/20 69/21 70/8 71/12 72/8 73/4 73/13 76/20 76/22 77/1 79/23 80/1 81/8 83/5 83/8 83/18 83/21 83/24 84/2 84/18 86/11 86/18 86/20 88/15 89/5 89/6 89/8 90/15 94/2 94/17 94/20 94/24 96/2 97/10 98/15 100/20 101/10 102/22 103/24 104/5 104/11 104/17 109/20 113/13 113/20 113/25 114/4 114/11 115/6 115/8 117/6 119/18 119/24 120/11 120/19 121/11 122/16 123/7 123/14 124/12 124/15 124/20 125/16 126/22 127/1 127/25 128/22 130/25 132/11 132/18 135/12 140/6 140/9 141/9 141/11 145/1 146/14</p> <p><b>half</b> [1] 112/25</p> <p><b>halt</b> [1] 136/18</p> <p><b>handle</b> [1] 90/15</p> <p><b>handled</b> [6] 50/4 51/6 56/6 85/3 90/1 90/2</p> <p><b>handler</b> [1] 100/23</p> <p><b>handlers</b> [2] 59/1 123/25</p> <p><b>handling</b> [7] 50/12</p>	<p>57/1 90/13 98/10 98/23 99/21 105/22</p> <p><b>happen</b> [6] 39/3 91/10 114/3 131/13 131/18 133/7</p> <p><b>happened</b> [10] 37/21 112/10 113/12 115/1 115/4 117/13 117/14 132/25 133/8 133/10</p> <p><b>happening</b> [5] 76/20 105/12 119/15 119/16 138/18</p> <p><b>happens</b> [1] 148/3</p> <p><b>harbour</b> [1] 147/15</p> <p><b>hard</b> [7] 21/2 38/15 38/15 43/18 43/24 44/2 141/10</p> <p><b>harm</b> [1] 34/15</p> <p><b>harmful</b> [1] 19/15</p> <p><b>harrowing</b> [1] 37/8</p> <p><b>has</b> [88] 5/16 9/18 10/25 11/2 11/21 11/22 14/8 20/24 21/6 23/1 24/17 24/23 25/5 26/21 29/12 29/21 35/10 37/5 37/16 39/6 39/18 42/14 42/17 43/22 44/1 45/7 45/23 46/22 47/2 52/19 53/17 56/4 56/20 59/2 62/7 68/16 73/22 78/5 78/20 79/3 90/25 91/16 91/18 91/20 91/22 91/25 93/21 96/21 101/15 101/20 101/21 101/24 102/20 102/23 111/19 111/23 112/9 112/11 113/8 114/24 122/12 124/2 126/14 130/5 130/7 132/14 132/16 133/20 134/7 135/9 138/1 138/12 138/24 139/5 140/23 141/15 142/2 142/3 142/10 142/21 143/18 144/5 144/16 145/19 145/21 146/12 146/16 147/24</p> <p><b>have</b> [248]</p> <p><b>haven't</b> [1] 131/2</p> <p><b>having</b> [9] 17/10 28/12 68/21 82/23 83/10 114/3 145/13 146/14 148/17</p> <p><b>Hawkes</b> [2] 1/17 1/18</p> <p><b>Hayes</b> [1] 1/23</p> <p><b>he</b> [76] 9/1 9/3 11/16 15/25 26/11 26/14 27/23 28/13 35/25 39/12 63/17 71/2 77/1 77/15 77/21 77/23 83/8 83/9 83/12 83/16 83/18 83/21 83/21 84/13 84/24 84/25</p>	<p>85/1 85/3 85/3 85/4 85/5 88/13 88/15 88/25 89/13 90/4 93/10 94/15 94/17 100/24 104/6 104/14 110/16 112/16 112/18 112/21 113/7 113/12 113/13 113/15 113/21 113/25 114/4 114/5 114/8 114/12 120/14 122/7 122/11 123/2 125/24 126/8 126/12 126/19 128/8 129/16 130/18 134/1 137/22 138/25 139/14 140/5 140/8 140/12 143/25 144/5</p> <p><b>head</b> [2] 24/13 43/2</p> <p><b>heading</b> [2] 18/20 69/2</p> <p><b>headings</b> [1] 29/25</p> <p><b>headquarters</b> [6] 26/8 55/20 57/3 57/17 72/9 74/20</p> <p><b>heal</b> [1] 37/25</p> <p><b>healing</b> [1] 38/12</p> <p><b>health</b> [2] 125/25 126/19</p> <p><b>heap</b> [1] 5/4</p> <p><b>hear</b> [10] 1/5 23/12 31/8 31/12 109/3 109/11 125/19 125/19 146/5 148/13</p> <p><b>heard</b> [12] 4/12 37/10 43/22 49/12 61/6 104/23 109/14 117/7 118/11 123/8 131/2 140/11</p> <p><b>hearing</b> [11] 2/24 3/23 48/9 49/15 109/21 125/22 133/19 135/6 139/9 143/19 149/16</p> <p><b>hearings</b> [17] 2/10 3/24 9/1 33/21 33/25 34/21 36/22 37/1 37/6 37/11 41/1 111/1 113/2 126/1 135/8 144/16 144/18</p> <p><b>heart</b> [2] 39/19 137/24</p> <p><b>hearts</b> [1] 27/1</p> <p><b>Heather</b> [1] 1/24</p> <p><b>heighten</b> [1] 21/8</p> <p><b>heinous</b> [1] 39/2</p> <p><b>held</b> [7] 16/11 28/8 36/1 44/25 48/20 101/20 110/21</p> <p><b>Helen</b> [1] 1/18</p> <p><b>help</b> [6] 4/13 106/18 110/22 129/14 134/19 143/21</p> <p><b>helpful</b> [1] 143/18</p> <p><b>helps</b> [1] 91/11</p>
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<b>H</b>	90/20 110/19 144/2 147/18	<b>hunting [1]</b> 82/23	26/17 27/25 42/19	107/16 108/6 115/9
<b>her [11]</b> 77/11 98/4 98/8 98/12 109/25 110/1 110/2 120/25 121/1 122/11 144/10	<b>holding [1]</b> 116/16	<b>Huntley [1]</b> 1/20	55/3 59/3 59/7 70/24	118/9 126/13 133/7
<b>here [7]</b> 31/4 110/16 114/22 119/1 130/25 138/6 138/18	<b>holistic [4]</b> 48/9 48/17 48/21 50/11	<b>hurdles [1]</b> 6/13	86/25 94/18 100/13 123/3 147/1	<b>idea [2]</b> 121/16 131/15
<b>here's [2]</b> 121/15 121/19	<b>home [3]</b> 9/12 65/25 126/18	<b>hurt [1]</b> 3/22	<b>I recognise [2]</b> 145/10 147/22	<b>ideal [2]</b> 16/8 35/1
<b>hidden [3]</b> 10/3 21/9 27/24	<b>homes [2]</b> 65/1 104/13	<b>husband [3]</b> 31/24 32/23 109/25	<b>I repeat [1]</b> 3/18	<b>identified [11]</b> 10/8 45/17 50/14 78/5
<b>hierarchy [1]</b> 71/9	<b>honest [2]</b> 113/13 136/24	<b>I</b>	<b>I represent [25]</b> 13/7 42/6 45/20 46/4 46/13 47/13 47/18 48/1 69/12 96/11 96/17 97/18 99/14 100/4 101/13 102/2 102/12 103/10 104/21 104/24 108/4 108/7 108/9 108/14 108/25	88/22 93/9 130/5 130/8 135/23 140/6 140/9
<b>high [8]</b> 21/3 57/18 117/7 121/13 125/22 127/9 128/24 132/25	<b>honoured [1]</b> 136/17	<b>I already [1]</b> 104/17	<b>I and [2]</b> 31/17 146/15	<b>identifies [2]</b> 48/12 136/6
<b>high-level [1]</b> 21/3	<b>hope [20]</b> 6/18 31/3 37/17 37/17 37/19 38/3 38/3 38/4 38/8 109/21 120/13 127/7 134/25 135/3 135/16 137/9 137/11 138/5 139/8 141/19	<b>I am [13]</b> 20/8 42/25 77/9 94/12 110/5 114/13 114/21 117/25 125/12 133/23 137/18 143/16 149/15	<b>I appear [1]</b> 109/23	<b>identify [5]</b> 3/5 10/5 47/16 48/6 48/17
<b>higher [2]</b> 22/23 115/15	<b>hoped [3]</b> 29/5 61/13 135/12	<b>I and [2]</b> 31/17 146/15	<b>I appeared [1]</b> 130/20	<b>identifying [1]</b> 49/17
<b>highest [4]</b> 21/10 23/6 44/21 71/13	<b>hopefully [1]</b> 110/6	<b>I assume [1]</b> 149/13	<b>I appear [1]</b> 109/23	<b>identities [1]</b> 104/12
<b>highlight [9]</b> 7/12 8/8 20/8 48/10 75/7 103/13 105/8 108/3 108/4	<b>Horner [3]</b> 13/19 28/12 35/25	<b>I attended [1]</b> 112/1	<b>I said [2]</b> 31/12 109/4	<b>identity [3]</b> 63/6 80/16 85/15
<b>highlighted [7]</b> 22/17 36/23 58/5 61/9 75/4 86/24 142/11	<b>horrific [3]</b> 53/23 119/14 129/13	<b>I being [1]</b> 109/14	<b>I say [6]</b> 2/11 27/4 115/24 133/21 135/4 145/18	<b>if [52]</b> 6/23 9/7 10/4 16/11 17/2 18/15 24/15 40/10 42/23 44/3 49/20 49/22 58/18 60/10 63/9 71/19 80/10 82/22 82/24 85/20 87/19 94/6 96/7 99/5 101/4 101/10 103/6 104/9 105/12 114/13 114/25 115/17 115/22 116/11 116/19 117/5 117/22 118/20 118/24 119/3 119/18 120/2 129/4 131/8 131/11 133/18 133/19 134/3 136/15 137/14 144/25 148/25
<b>Hillsborough [5]</b> 130/2 130/3 130/19 132/23 132/25	<b>horse [1]</b> 74/25	<b>I can [2]</b> 18/15 118/5	<b>I should [1]</b> 96/16	<b>ignored [2]</b> 138/17 138/18
<b>him [5]</b> 113/21 113/21 120/13 121/10 123/2	<b>hostility [1]</b> 114/9	<b>I come [2]</b> 116/12 149/5	<b>I sincerely [1]</b> 38/3	<b>ignoring [2]</b> 11/21 14/7
<b>himself [2]</b> 114/7 114/8	<b>hour [1]</b> 69/2	<b>I do [3]</b> 126/15 143/23 148/4	<b>I suggest [1]</b> 119/16	<b>ill [1]</b> 27/2
<b>hindsight [11]</b> 27/23 28/2 28/3 28/5 28/7 51/20 51/21 51/22 52/2 52/8 117/5	<b>hours [1]</b> 63/15	<b>I don't [6]</b> 9/5 9/6 9/6 114/21 115/4 133/13	<b>I take [1]</b> 11/4	<b>illogical [1]</b> 113/18
<b>hint [1]</b> 132/15	<b>House [1]</b> 36/1	<b>I find [1]</b> 38/3	<b>I telephoned [1]</b> 42/21	<b>images [1]</b> 23/14
<b>his [44]</b> 9/2 13/4 27/7 27/21 32/14 62/7 63/16 72/12 76/15 77/7 77/10 81/7 83/6 84/21 85/3 90/3 100/11 102/21 104/2 105/9 106/25 112/19 112/21 113/16 113/22 113/24 114/10 114/11 119/25 120/14 122/9 122/25 125/23 125/25 126/10 126/11 126/19 128/8 128/13 129/17 139/13 139/14 140/4 144/1	<b>how [17]</b> 6/10 9/14 16/3 23/4 43/12 48/21 79/8 90/15 102/4 113/12 113/25 114/2 115/4 125/13 137/24 138/13 148/7	<b>I had [3]</b> 97/10 109/20 117/6	<b>I therefore [2]</b> 145/25 149/10	<b>imagine [2]</b> 21/2 115/2
<b>historical [2]</b> 6/2 43/2	<b>however [46]</b> 6/17 11/1 11/20 20/7 22/19 23/1 26/3 27/7 28/5 29/9 34/3 40/23 45/9 46/12 47/18 48/13 50/5 52/11 54/10 60/16 61/10 61/18 73/2 73/7 74/4 74/13 74/17 75/13 78/17 80/6 80/21 85/20 87/22 92/12 92/24 93/19 99/13 107/16 108/10 114/9 114/20 118/4 118/25 134/22 146/17 149/9	<b>I have [26]</b> 2/23 8/22 11/4 13/7 22/17 25/23 34/6 42/2 46/8 47/25 49/11 61/14 61/14 85/11 93/3 103/19 111/6 114/15 130/6 130/18 133/23 133/23 145/12 145/20 148/7 149/2	<b>I think [9]</b> 82/14 82/15 82/17 82/23 90/25 110/1 115/18 128/20 133/20	<b>immediate [3]</b> 20/5 52/5 81/6
<b>history [10]</b> 6/18 6/20 39/13 54/19 54/22 76/1 78/1 78/20 122/15 134/15	<b>HQ [1]</b> 72/8	<b>I hope [5]</b> 38/3 38/4 38/8 109/21 138/5	<b>I tried [1]</b> 114/25	<b>immediately [3]</b> 4/20 51/4 115/3
<b>hits [1]</b> 82/23	<b>huge [1]</b> 5/24	<b>I intend [3]</b> 48/4 48/5 110/4	<b>I want [4]</b> 53/13 61/2 106/2 114/14	<b>impact [5]</b> 7/21 37/5 113/21 122/16 144/18
<b>hold [6]</b> 46/1 60/22	<b>hugely [1]</b> 21/11	<b>I just [8]</b> 25/10 38/19 38/19 47/15 97/14 105/8 118/7 131/19	<b>I was [8]</b> 42/22 43/7 69/10 76/20 117/6 118/5 129/22 139/13	<b>impacted [1]</b> 40/12
	<b>Hugh [2]</b> 123/12 135/5	<b>I know [1]</b> 130/16	<b>I will [14]</b> 6/25 20/5 23/13 23/15 40/14 48/10 50/9 61/11 90/18 110/6 111/6 115/19 125/20 149/14	<b>imperative [3]</b> 5/8 21/22 136/13
	<b>Hughes [3]</b> 1/18 1/18 1/19	<b>I may [2]</b> 114/13 137/14	<b>I wish [1]</b> 130/17	<b>implementation [2]</b> 56/3 71/10
	<b>human [12]</b> 2/12 2/14 5/7 5/16 35/9 35/10 35/11 64/11 65/7 67/5 68/3 68/3	<b>I mean [3]</b> 38/15 40/15 117/11	<b>I would [4]</b> 91/15 143/16 146/17 147/22	<b>implemented [1]</b> 40/13
	<b>Hume [1]</b> 73/8	<b>I move [1]</b> 121/3	<b>I'd [2]</b> 69/9 82/21	<b>implication [1]</b> 100/19
		<b>I pause [3]</b> 119/21 127/2 138/5	<b>I'm [14]</b> 8/19 38/4 38/14 54/2 82/19 114/24 116/1 116/16 117/13 119/22 120/2 129/18 130/7 132/21	<b>implications [1]</b> 56/4
		<b>I prefer [1]</b> 109/21	<b>I've [27]</b> 34/4 34/7 38/22 45/17 60/13 67/18 75/11 78/2 78/16 86/6 86/13 86/18 88/6 95/3 95/17 96/24 100/5 102/3 104/1 105/17 106/10	<b>implicitly [1]</b> 13/2
		<b>I quote [25]</b> 9/4 10/12 10/22 11/8 13/4 13/22 14/16 18/10 19/21 24/16 25/4 26/6 26/16		<b>implied [1]</b> 116/23
				<b>implies [1]</b> 96/4
				<b>importance [12]</b> 35/8

<b>I</b>	<b>including [18]</b> 9/21 12/20 20/15 40/23 50/19 57/1 57/2 60/1 64/3 67/11 70/11 82/8 86/19 101/17 108/19 117/19 118/18 131/14 <b>inclusive [1]</b> 103/5 <b>inconceivable [1]</b> 105/11 <b>inconsistent [1]</b> 26/13 <b>incorporate [1]</b> 110/7 <b>increase [2]</b> 102/15 102/16 <b>incredible [2]</b> 20/9 21/2 <b>incredibly [1]</b> 43/18 <b>indebted [1]</b> 120/22 <b>indeed [6]</b> 3/23 28/23 68/13 84/7 141/21 142/10 <b>indicated [6]</b> 11/4 44/18 105/17 106/10 106/20 115/10 <b>indicates [1]</b> 52/9 <b>indicating [4]</b> 49/9 95/8 95/15 114/17 <b>indication [1]</b> 43/23 <b>indicative [1]</b> 103/14 <b>indirectly [1]</b> 115/21 <b>individual [3]</b> 12/10 50/3 90/14 <b>individual's [2]</b> 65/25 67/3 <b>individuals [9]</b> 19/14 34/13 50/17 85/16 85/18 114/21 123/25 135/23 136/4 <b>inevitable [1]</b> 48/13 <b>inevitably [1]</b> 6/13 <b>inferences [1]</b> 148/17 <b>inferior [1]</b> 58/7 <b>infiltrated [3]</b> 58/24 83/18 123/7 <b>inflicted [1]</b> 39/15 <b>influence [5]</b> 8/4 69/14 69/20 69/21 70/2 <b>influenced [2]</b> 41/9 77/13 <b>influences [1]</b> 7/23 <b>inform [2]</b> 42/22 93/16 <b>informants [1]</b> 57/9 <b>information [76]</b> 4/10 6/8 10/17 11/10 12/12 15/5 18/11 21/10 21/16 26/13 40/1 40/10 43/5 43/19 48/25 50/4 51/5 55/9 58/13 59/11 59/24 64/4 66/7 70/12 86/12 87/18 87/20 88/2	88/13 88/15 88/18 89/1 91/3 91/6 91/8 91/12 91/18 91/19 91/22 92/2 92/4 92/21 93/6 94/6 94/23 95/2 95/3 96/5 100/15 101/16 106/22 106/24 107/1 107/23 107/25 108/1 114/19 118/17 119/3 119/9 122/18 123/9 123/15 124/17 127/1 127/25 128/23 129/10 132/13 135/2 135/18 136/5 136/8 136/25 137/5 144/21 <b>information' [1]</b> 43/9 <b>information/intellige nce [1]</b> 128/23 <b>informative [2]</b> 143/19 146/4 <b>informed [4]</b> 15/25 51/1 51/3 100/25 <b>informer [1]</b> 123/8 <b>informers [2]</b> 65/8 98/15 <b>Ingram [1]</b> 2/6 <b>inherent [1]</b> 144/20 <b>inherently [1]</b> 61/20 <b>initial [7]</b> 2/24 7/13 26/25 126/2 126/5 127/9 127/21 <b>initially [5]</b> 49/5 63/14 83/14 90/1 141/8 <b>initiate [2]</b> 63/3 121/4 <b>initiated [2]</b> 65/23 73/17 <b>initiative [2]</b> 4/9 73/18 <b>injured [12]</b> 2/4 2/23 4/13 9/14 18/17 21/16 22/1 22/9 23/16 33/7 106/17 129/15 <b>injuries [1]</b> 4/4 <b>injury [5]</b> 17/2 63/8 74/12 74/19 109/20 <b>INLA [1]</b> 102/23 <b>innocent [1]</b> 4/2 <b>inordinate [1]</b> 126/24 <b>input [1]</b> 71/12 <b>inquest [16]</b> 17/11 112/1 112/10 112/16 112/16 113/15 118/6 118/8 118/11 119/24 120/1 120/5 129/23 130/19 132/24 133/1 <b>inquests [1]</b> 39/10 <b>inquiries [4]</b> 5/25 56/9 148/3 148/5 <b>inquiry [159]</b> <b>Inquiry's [10]</b> 18/19 20/21 96/14 140/23 141/17 142/11 143/7 146/3 146/22 147/10	<b>inquisitive [1]</b> 112/5 <b>inquisitorial [3]</b> 16/12 112/6 130/22 <b>inside [2]</b> 58/14 119/4 <b>insinuation [1]</b> 28/19 <b>insisted [1]</b> 133/1 <b>inspected [1]</b> 9/20 <b>inspection [1]</b> 9/19 <b>inspire [1]</b> 23/9 <b>installations [1]</b> 19/7 <b>instance [1]</b> 7/5 <b>instances [1]</b> 62/25 <b>Instead [3]</b> 28/4 30/14 48/2 <b>institute [1]</b> 13/11 <b>institutional [1]</b> 87/3 <b>institutions [1]</b> 138/17 <b>instructed [2]</b> 109/24 144/5 <b>instructing [1]</b> 112/2 <b>instruments [1]</b> 35/9 <b>insult [1]</b> 17/2 <b>intelligence [204]</b> <b>intelligence-gatherin g [1]</b> 59/18 <b>intelligent [2]</b> 72/1 91/9 <b>intend [3]</b> 48/4 48/5 110/4 <b>intended [5]</b> 3/25 33/21 46/9 46/12 81/19 <b>intends [1]</b> 140/1 <b>intense [2]</b> 19/3 53/20 <b>intensified [1]</b> 111/23 <b>intensify [1]</b> 11/3 <b>intensity [1]</b> 27/4 <b>intensive [1]</b> 78/7 <b>intent [3]</b> 20/3 49/9 124/20 <b>intention [2]</b> 57/12 81/25 <b>intentions [1]</b> 27/3 <b>interactions [2]</b> 12/19 12/24 <b>intercept [4]</b> 60/11 66/19 89/3 124/13 <b>intercepted [1]</b> 83/3 <b>intercepting [2]</b> 66/3 118/23 <b>interception [4]</b> 65/17 65/20 65/23 66/1 <b>interceptions [1]</b> 66/13 <b>intercepts [2]</b> 66/7 66/8 <b>interconnectedness [1]</b> 48/18 <b>interest [6]</b> 3/4 6/23 18/5 68/8 144/2 146/8	<b>interested [1]</b> 146/6 <b>interestingly [1]</b> 133/10 <b>interests [4]</b> 16/25 22/8 87/11 108/21 <b>interference [2]</b> 19/6 65/18 <b>interim [3]</b> 42/19 97/22 99/1 <b>internal [2]</b> 29/25 60/21 <b>International [1]</b> 17/15 <b>interpretation [1]</b> 28/5 <b>interrupt [1]</b> 60/11 <b>intervene [2]</b> 56/15 77/11 <b>intervening [1]</b> 74/17 <b>intervention [2]</b> 60/14 105/14 <b>into [28]</b> 2/25 5/9 5/17 12/5 17/11 39/10 40/24 49/13 52/12 55/19 55/19 59/22 67/6 76/25 78/1 78/16 79/7 86/21 88/12 92/2 92/3 92/5 111/16 117/12 122/18 124/18 133/13 134/9 <b>introduce [1]</b> 117/11 <b>introduced [1]</b> 70/7 <b>invaluable [1]</b> 2/20 <b>invariably [1]</b> 43/4 <b>investigate [8]</b> 10/12 29/4 35/23 40/9 40/14 42/13 61/24 102/4 <b>investigated [6]</b> 12/4 45/17 50/23 103/15 103/16 122/12 <b>investigating [3]</b> 55/8 95/6 120/9 <b>investigation [27]</b> 5/17 6/2 7/22 7/24 13/21 14/1 14/3 18/19 19/3 21/19 41/13 41/22 42/1 44/6 44/12 46/7 64/9 88/12 91/3 94/3 104/4 106/16 106/25 111/10 120/17 128/12 134/9 <b>investigations [9]</b> 10/18 12/19 42/18 44/13 45/19 46/15 56/8 64/19 101/21 <b>investigative [1]</b> 45/10 <b>investigator's [1]</b> 92/1 <b>investigators [5]</b> 91/11 92/2 92/4 94/19 104/11 <b>Investigatory [1]</b> 65/11
----------	---	--	--	--

<p><b>I</b></p> <p><b>invitation [2]</b> 3/5 29/1</p> <p><b>invite [1]</b> 3/6</p> <p><b>involve [3]</b> 7/5 13/23 38/5</p> <p><b>involved [15]</b> 16/5 49/17 56/19 56/25 59/19 70/1 83/10 84/18 93/10 104/6 128/23 135/10 136/4 141/2 145/1</p> <p><b>involvement [5]</b> 19/13 63/6 73/6 79/25 135/23</p> <p><b>involves [1]</b> 52/2</p> <p><b>involving [3]</b> 26/16 77/22 84/19</p> <p><b>ipsa [1]</b> 133/21</p> <p><b>IRA [58]</b> 1/15 2/5 3/20 4/5 19/14 36/12 60/23 73/4 73/10 73/19 74/10 74/18 75/3 75/17 75/24 76/12 78/25 79/11 79/12 79/16 79/19 79/20 79/24 80/4 80/8 80/13 80/13 80/17 80/25 81/1 81/10 81/15 81/21 81/22 81/25 82/18 83/11 84/1 84/3 84/6 84/8 84/17 85/10 88/19 94/24 100/7 102/22 102/23 102/25 103/1 103/3 103/7 113/24 116/17 122/4 123/5 124/20 124/22</p> <p><b>IRA's [1]</b> 81/8</p> <p><b>IRECO [2]</b> 81/13 103/2</p> <p><b>Ireland [153]</b></p> <p><b>Ireland' [1]</b> 55/6</p> <p><b>Ireland's [3]</b> 15/10 70/14 106/8</p> <p><b>Irish [15]</b> 5/11 9/6 12/2 19/24 53/8 73/15 80/10 84/7 84/25 86/8 107/20 108/22 135/11 135/20 136/16</p> <p><b>irrelevant [1]</b> 15/7</p> <p><b>is [353]</b></p> <p><b>island [1]</b> 138/3</p> <p><b>isolated [2]</b> 102/14 118/8</p> <p><b>isolation [2]</b> 48/16 48/23</p> <p><b>issue [42]</b> 8/20 10/16 12/21 46/18 48/11 51/20 51/23 51/23 52/2 52/8 52/24 53/1 53/9 58/7 60/24 61/24 74/5 74/8 75/16 75/25 77/3 77/6 93/1 98/7</p>	<p>98/12 100/3 102/12 103/19 103/20 105/7 105/8 105/20 106/3 111/4 111/8 118/10 118/19 118/20 121/5 135/4 141/24 142/1</p> <p><b>issued [8]</b> 27/15 40/25 45/24 73/15 74/24 75/17 98/4 127/9</p> <p><b>issues [58]</b> 3/5 3/12 5/19 7/1 8/6 10/5 11/3 12/5 39/20 39/21 41/12 41/17 42/7 42/10 46/22 47/4 47/16 47/19 48/11 48/12 48/12 52/10 59/25 70/11 70/12 71/2 71/8 74/5 74/10 75/15 76/1 78/14 86/4 86/5 86/11 90/19 97/12 101/3 103/18 104/23 108/3 108/12 108/16 112/17 118/7 118/10 120/5 120/23 121/1 123/2 130/11 136/8 139/21 144/5 146/13 146/23 146/24 147/9</p> <p><b>it [257]</b></p> <p><b>it didn't [1]</b> 79/8</p> <p><b>it's [34]</b> 9/8 38/15 38/17 39/21 42/8 46/1 47/20 49/21 50/1 53/2 69/19 71/19 96/7 102/4 103/8 108/9 108/11 110/11 111/7 114/24 116/21 117/12 117/13 117/21 118/25 119/11 127/4 129/20 130/21 131/1 131/7 131/11 137/18 140/22</p> <p><b>itemised [1]</b> 25/25</p> <p><b>items [1]</b> 82/2</p> <p><b>its [34]</b> 5/21 11/10 11/13 12/19 14/6 14/15 16/20 16/24 18/7 27/3 34/14 39/17 39/19 51/7 52/20 56/2 57/22 59/11 59/18 73/3 79/1 79/13 86/19 86/22 87/14 87/17 93/15 95/24 96/20 99/6 134/9 137/19 141/23 149/16</p> <p><b>itself [7]</b> 28/1 28/3 43/15 112/12 116/24 121/22 133/21</p> <hr/> <p><b>J</b></p> <p><b>Jaime [2]</b> 33/10 35/3</p> <p><b>James [1]</b> 32/14</p> <p><b>January [3]</b> 37/15 37/25 127/22</p>	<p><b>Jennings [3]</b> 12/14 15/23 16/10</p> <p><b>jigsaw [2]</b> 49/18 49/19</p> <p><b>Jim [1]</b> 2/7</p> <p><b>job [2]</b> 43/8 114/19</p> <p><b>Joe [1]</b> 32/12</p> <p><b>John [15]</b> 1/6 1/10 1/13 6/17 10/8 12/13 28/18 29/14 32/10 62/7 63/16 64/18 73/8 89/2 150/4</p> <p><b>join [1]</b> 139/9</p> <p><b>joining [1]</b> 81/4</p> <p><b>joint [3]</b> 71/15 71/19 73/15</p> <p><b>jointly [4]</b> 24/20 83/16 85/2 90/2</p> <p><b>Jolene [1]</b> 32/13</p> <p><b>Jose [1]</b> 32/19</p> <p><b>joy [2]</b> 35/4 35/4</p> <p><b>judge [3]</b> 43/10 43/16 133/1</p> <p><b>judgment [9]</b> 35/19 35/24 36/2 38/23 52/4 52/23 126/10 126/12 127/10</p> <p><b>judgments [1]</b> 22/11</p> <p><b>judicial [8]</b> 11/16 13/20 28/11 28/20 45/11 46/23 46/24 137/22</p> <p><b>Julia [1]</b> 1/19</p> <p><b>July [12]</b> 3/18 19/19 44/10 75/4 89/9 100/9 104/9 121/15 133/19 135/7 149/17 149/19</p> <p><b>July 1998 [1]</b> 89/9</p> <p><b>juncture [1]</b> 18/22</p> <p><b>June [8]</b> 1/1 11/24 74/16 74/19 75/2 88/16 100/16 104/8</p> <p><b>June 2012 [1]</b> 11/24</p> <p><b>junior [1]</b> 29/10</p> <p><b>jurisdiction [2]</b> 95/23 146/22</p> <p><b>jurisdictions [3]</b> 78/4 135/18 135/24</p> <p><b>just [46]</b> 19/19 25/10 34/4 34/6 34/7 38/19 38/19 42/3 46/8 47/15 47/25 49/11 60/13 61/14 67/18 69/1 73/22 78/2 82/21 82/24 85/11 93/3 96/24 97/2 97/5 97/14 102/3 104/1 105/8 112/7 114/14 115/12 117/7 118/7 119/25 126/8 129/10 129/20 129/22 131/19 135/4 137/14 137/19 142/2 143/25 145/18</p> <p><b>justice [11]</b> 5/2 13/17</p>	<p>13/19 17/15 28/12 35/25 39/4 113/4 126/9 126/20 134/5</p> <p><b>Justice Gillen [2]</b> 126/9 126/20</p> <p><b>Justice International [1]</b> 17/15</p> <p><b>justification [1]</b> 132/6</p> <p><b>justified [1]</b> 58/19</p> <p><b>justify [1]</b> 132/3</p> <hr/> <p><b>K</b></p> <p><b>Kane [8]</b> 1/7 1/8 1/10 31/6 140/4 140/11 140/24 150/5</p> <p><b>KC [6]</b> 1/10 31/14 109/18 150/5 150/9 150/12</p> <p><b>Keeley [1]</b> 101/2</p> <p><b>keep [8]</b> 3/19 23/13 38/14 62/9 82/23 82/24 96/12 131/16</p> <p><b>keeping [1]</b> 90/19</p> <p><b>keeps [1]</b> 108/10</p> <p><b>Kelly [1]</b> 33/12</p> <p><b>Kenny [2]</b> 12/16 13/3</p> <p><b>Kenova [7]</b> 42/19 42/25 43/20 56/10 86/25 97/22 99/1</p> <p><b>Kent [1]</b> 83/23</p> <p><b>kept [2]</b> 26/7 101/11</p> <p><b>kernel [1]</b> 128/17</p> <p><b>Kerrigan [1]</b> 2/1</p> <p><b>Kevin [18]</b> 1/19 8/24 12/8 30/11 41/1 51/10 58/23 84/22 85/6 88/10 90/1 93/17 93/23 99/21 99/23 100/6 100/15 123/8</p> <p><b>key [9]</b> 3/17 35/17 67/18 68/14 77/3 79/7 88/8 100/2 111/3</p> <p><b>keystrokes [1]</b> 65/6</p> <p><b>killed [1]</b> 117/6</p> <p><b>killings [1]</b> 74/11</p> <p><b>killings [1]</b> 39/10</p> <p><b>kilogram [1]</b> 103/2</p> <p><b>kind [2]</b> 82/16 84/13</p> <p><b>Kingdom [13]</b> 19/5 24/3 58/14 62/23 64/13 65/12 66/4 66/18 71/18 96/1 96/2 105/12 115/13</p> <p><b>Kingsmill [1]</b> 17/11</p> <p><b>Kirwan [1]</b> 49/16</p> <p><b>knock [1]</b> 8/1</p> <p><b>knock-on [1]</b> 8/1</p> <p><b>know [26]</b> 1/4 2/21 8/16 9/5 9/6 19/11 38/16 85/14 99/10 109/20 109/23 110/13 112/6 114/17 115/4 117/22 117/23 117/23</p>	<p>118/24 126/3 128/25 130/16 131/8 132/13 133/15 133/16</p> <p><b>knowing [1]</b> 36/4</p> <p><b>knowledge [10]</b> 12/10 16/22 30/10 33/18 35/4 47/5 63/6 68/15 82/25 124/15</p> <p><b>knowledge' [1]</b> 57/10</p> <p><b>known [23]</b> 1/15 17/3 19/13 53/17 58/9 71/19 71/21 73/16 78/11 81/24 83/9 84/1 91/8 93/7 93/11 95/14 96/7 106/15 113/11 115/8 124/23 133/3 133/7</p> <p><b>knows [1]</b> 134/23</p> <hr/> <p><b>L</b></p> <p><b>lack [5]</b> 4/24 21/18 25/18 107/7 111/22</p> <p><b>lacked [1]</b> 87/2</p> <p><b>lacks [1]</b> 15/14</p> <p><b>Lagan [1]</b> 1/24</p> <p><b>land [1]</b> 66/25</p> <p><b>landscape [3]</b> 49/21 56/21 120/25</p> <p><b>language [3]</b> 91/1 130/10 149/1</p> <p><b>Laoghaire [1]</b> 84/19</p> <p><b>largely [3]</b> 60/2 64/20 86/16</p> <p><b>last [5]</b> 3/18 38/11 93/11 111/1 139/18</p> <p><b>lasting [3]</b> 73/22 75/21 139/6</p> <p><b>late [1]</b> 60/15</p> <p><b>later [15]</b> 39/13 41/11 48/10 50/9 51/12 76/7 83/15 90/11 90/18 93/2 110/1 112/25 115/16 125/24 126/8</p> <p><b>latest [1]</b> 46/23</p> <p><b>laudable [1]</b> 3/15</p> <p><b>launch [1]</b> 81/6</p> <p><b>launchers [1]</b> 50/20</p> <p><b>Laurence [26]</b> 110/16 112/12 112/15 113/3 113/11 113/19 118/8 119/24 120/11 120/19 121/3 121/4 121/9 121/13 122/16 122/23 125/9 125/23 126/11 126/18 127/21 127/22 129/15 134/1 134/23 136/23</p> <p><b>Laurence's [1]</b> 121/23</p> <p><b>Laverty [1]</b> 43/16</p> <p><b>law [26]</b> 31/14 31/18 33/8 36/9 43/15 45/6 52/3 54/9 54/16 55/5 56/18 64/19 65/15</p>
--	--	---	---	--

<p><b>L</b></p> <p><b>law...</b> [13] 65/19 66/19 66/21 67/5 67/6 67/7 67/11 70/10 128/9 130/3 137/21 138/17 150/8</p> <p><b>laws</b> [1] 5/12</p> <p><b>laying</b> [1] 94/12</p> <p><b>lazy</b> [1] 30/22</p> <p><b>lead</b> [8] 55/16 56/14 56/16 57/10 79/6 86/7 134/24 135/21</p> <p><b>lead-up</b> [1] 135/21</p> <p><b>leader</b> [2] 73/8 73/8</p> <p><b>leaders</b> [1] 59/21</p> <p><b>leadership</b> [4] 79/4 79/11 80/24 83/19</p> <p><b>leading</b> [3] 7/6 18/18 67/13</p> <p><b>leads</b> [2] 13/15 53/13</p> <p><b>leaf</b> [1] 14/13</p> <p><b>leaking</b> [1] 84/8</p> <p><b>learn</b> [3] 113/6 146/5 147/14</p> <p><b>learned</b> [2] 36/4 132/25</p> <p><b>learning</b> [3] 37/16 39/3 44/13</p> <p><b>least</b> [10] 36/3 46/5 50/15 65/4 69/13 89/8 89/8 96/14 99/8 129/4</p> <p><b>leaves</b> [1] 25/18</p> <p><b>leaving</b> [3] 3/25 77/18 80/22</p> <p><b>led</b> [6] 14/8 18/25 19/8 19/23 53/6 122/5</p> <p><b>ledger</b> [1] 59/22</p> <p><b>left</b> [3] 11/20 80/25 114/11</p> <p><b>legacy</b> [1] 122/25</p> <p><b>legal</b> [21] 5/7 31/18 33/8 58/15 61/25 62/5 67/16 70/12 97/25 121/7 125/23 127/17 131/25 134/3 139/19 140/18 142/17 143/9 144/4 146/11 146/15</p> <p><b>legislation</b> [6] 58/12 62/15 62/17 65/13 67/22 98/10</p> <p><b>legislative</b> [1] 67/24</p> <p><b>legitimacy</b> [1] 80/9</p> <p><b>legitimate</b> [4] 34/8 36/6 78/6 105/25</p> <p><b>length</b> [1] 110/7</p> <p><b>lens</b> [1] 149/4</p> <p><b>less</b> [2] 54/5 82/9</p> <p><b>lesser</b> [3] 4/17 19/10 26/6</p> <p><b>lessons</b> [2] 36/4 39/3</p> <p><b>lest</b> [1] 19/12</p> <p><b>Let</b> [1] 75/23</p> <p><b>let's</b> [1] 131/12</p>	<p><b>lethal</b> [1] 36/14</p> <p><b>letter</b> [1] 116/14</p> <p><b>Letterkenny</b> [1] 93/12</p> <p><b>level</b> [15] 21/3 21/11 22/23 23/6 39/5 44/21 54/11 61/16 83/19 107/12 115/15 115/15 117/4 119/15 128/24</p> <p><b>levels</b> [1] 71/13</p> <p><b>liable</b> [1] 63/11</p> <p><b>liaises</b> [1] 145/7</p> <p><b>Liam</b> [3] 80/15 81/16 102/22</p> <p><b>Libby</b> [6] 109/25 121/22 122/5 125/3 128/3 129/3</p> <p><b>lie</b> [1] 4/16</p> <p><b>life</b> [11] 35/8 35/17 49/22 63/8 63/8 99/6 111/14 122/9 123/18 125/3 131/13</p> <p><b>lifeblood</b> [1] 133/15</p> <p><b>light</b> [18] 26/9 41/17 41/18 41/21 42/2 45/19 46/23 47/15 69/17 77/3 81/21 85/11 102/10 104/16 112/8 113/4 120/15 148/18</p> <p><b>lightly</b> [1] 121/7</p> <p><b>like</b> [4] 81/13 114/2 131/3 146/17</p> <p><b>likely</b> [4] 4/3 41/21 54/5 68/1</p> <p><b>likened</b> [1] 9/17</p> <p><b>limitation</b> [2] 14/19 14/20</p> <p><b>limitations</b> [3] 14/23 67/16 67/17</p> <p><b>limited</b> [5] 10/24 29/6 43/4 47/23 140/23</p> <p><b>limits</b> [2] 42/4 146/20</p> <p><b>Linda</b> [1] 31/24</p> <p><b>line</b> [1] 60/14</p> <p><b>link</b> [2] 7/14 109/5</p> <p><b>linked</b> [13] 51/9 52/8 77/6 78/1 93/20 96/24 97/14 100/3 102/12 102/14 104/10 106/5 119/7</p> <p><b>linking</b> [1] 93/4</p> <p><b>links</b> [1] 7/18</p> <p><b>Lisa</b> [1] 32/7</p> <p><b>Lisburn</b> [3] 74/21 104/8 104/9</p> <p><b>list</b> [7] 48/12 86/1 118/7 130/11 146/12 146/23 147/9</p> <p><b>listen</b> [1] 58/11</p> <p><b>listening</b> [4] 64/25 65/1 144/24 146/14</p> <p><b>litigated</b> [1] 121/13</p> <p><b>litigation</b> [15] 121/3</p>	<p>121/5 122/14 122/16 122/23 123/22 125/9 125/15 125/21 126/22 127/16 127/20 128/4 134/6 134/7</p> <p><b>little</b> [7] 29/14 47/2 82/16 106/4 115/16</p> <p>133/24 137/18</p> <p><b>live</b> [1] 89/7</p> <p><b>lived</b> [1] 112/19</p> <p><b>lives</b> [5] 4/12 21/5 36/5 37/5 59/6</p> <p><b>loaded</b> [1] 28/24</p> <p><b>local</b> [1] 107/12</p> <p><b>locate</b> [9] 24/8 24/17 24/24 140/13 140/19 141/16 141/17 147/20 148/14</p> <p><b>located</b> [15] 20/24 21/7 23/23 24/1 24/4 24/6 25/5 25/25 27/6 44/22 100/10 101/15 140/3 141/15 148/11</p> <p><b>location</b> [2] 93/11 147/6</p> <p><b>London</b> [3] 58/6 74/11 105/19</p> <p><b>London's</b> [1] 58/3</p> <p><b>lonely</b> [1] 112/16</p> <p><b>long</b> [9] 63/4 110/20 111/20 117/13 119/11 126/21 133/16 145/13 149/4</p> <p><b>long-standing</b> [1] 110/20</p> <p><b>longer</b> [1] 133/24</p> <p><b>look</b> [4] 14/16 16/25 94/20 148/4</p> <p><b>looking</b> [2] 38/4 69/10</p> <p><b>lookout</b> [1] 82/8</p> <p><b>loquitur</b> [1] 133/21</p> <p><b>Lord</b> [6] 26/11 43/6 126/9 126/20 143/14 150/14</p> <p><b>Lord MacLean</b> [1] 26/11</p> <p><b>Lord Stevens</b> [1] 43/6</p> <p><b>Lords</b> [1] 36/2</p> <p><b>Lorraine</b> [2] 2/2 2/5</p> <p><b>loss</b> [8] 2/14 3/22 37/3 39/13 100/5 111/19 123/18 125/3</p> <p><b>lost</b> [21] 31/16 31/21 31/23 31/24 32/3 32/8 32/10 32/12 32/14 32/17 32/20 32/23 32/25 33/2 33/4 36/2 37/19 45/16 100/20 101/12 119/12</p> <p><b>lot</b> [6] 37/17 110/13 119/12 123/8 131/9 135/1</p>	<p><b>loud</b> [1] 109/14</p> <p><b>louder</b> [1] 13/13</p> <p><b>loudly</b> [1] 113/9</p> <p><b>Louise</b> [1] 32/16</p> <p><b>love</b> [1] 114/11</p> <p><b>loved</b> [4] 1/14 31/16 37/2 37/19</p> <p><b>low</b> [2] 28/15 28/20</p> <p><b>loyalist</b> [3] 74/1 75/5 78/15</p> <p><b>Lucas</b> [2] 32/12 33/13</p> <p><b>luck</b> [1] 57/24</p> <p><b>lunch</b> [1] 97/2</p> <p><b>Luncheon</b> [1] 97/7</p> <p><b>Lurgan</b> [1] 75/1</p> <p><b>luxury</b> [1] 149/10</p> <p><b>Lynne</b> [1] 1/24</p> <p><b>M</b></p> <p><b>machinery</b> [2] 54/21 86/7</p> <p><b>MacLean</b> [1] 26/11</p> <p><b>made</b> [81] 1/11 7/9 9/9 10/1 10/25 11/2 16/8 17/3 17/17 20/12 21/24 22/20 28/9 28/16 28/19 28/24 29/1 31/15 34/4 34/6 35/21 43/14 43/18 46/8 47/5 47/7 47/15 49/11 50/13 50/16 60/13 65/24 66/2 88/6 89/16 90/9 90/19 90/20 90/23 91/16 93/3 94/15 96/19 97/10 104/17 106/24 108/8 110/18 115/20 119/2 125/7 125/14 126/16 127/8 129/6 129/7 129/9 132/4 132/7 133/6 133/23 134/2 135/14 135/25 140/1 140/2 142/6 142/9 142/23 143/5 144/9 145/4 145/17 147/3 147/4 147/5 147/19 148/9 148/14 149/11 149/13</p> <p><b>main</b> [6] 4/1 8/21 25/3 26/4 83/21 118/10</p> <p><b>mainland</b> [1] 105/11</p> <p><b>maintain</b> [1] 76/11</p> <p><b>maintained</b> [1] 60/21</p> <p><b>Majesty's</b> [3] 98/5 98/8 98/13</p> <p><b>major</b> [2] 80/21 82/23</p> <p><b>majority</b> [6] 55/24 75/12 79/5 80/23 81/1 138/7</p> <p><b>make</b> [30] 4/9 11/5 11/8 14/23 29/25 46/20 48/4 48/10 50/9</p>	<p>60/11 61/2 68/8 74/8 75/23 81/20 82/19 94/2 110/17 113/14 119/23 119/24 120/21 131/13 133/2 133/9 134/3 136/18 142/5 144/19 145/12</p> <p><b>maker</b> [1] 104/25</p> <p><b>makers</b> [1] 70/5</p> <p><b>makes</b> [2] 63/16 90/19</p> <p><b>making</b> [6] 35/15 39/1 115/22 128/22 128/24 145/15</p> <p><b>malaise</b> [1] 24/8</p> <p><b>malpractice</b> [1] 26/16</p> <p><b>manage</b> [1] 146/2</p> <p><b>managed</b> [2] 36/22 83/17</p> <p><b>management</b> [5] 24/14 55/13 72/3 97/20 144/6</p> <p><b>managing</b> [2] 89/24 98/6</p> <p><b>Manchester</b> [1] 74/19</p> <p><b>Mandy</b> [1] 1/17</p> <p><b>manner</b> [5] 36/21 37/19 39/18 48/17 143/19</p> <p><b>manpower</b> [1] 19/8</p> <p><b>Mansfield</b> [12] 109/4 109/11 109/13 109/18 139/8 139/13 142/2 142/3 142/6 142/10 142/21 150/12</p> <p><b>mantra</b> [1] 23/12</p> <p><b>many</b> [33] 3/23 4/2 4/13 8/6 16/7 34/23 54/6 56/25 60/15 67/6 67/19 81/4 86/21 111/14 111/17 111/18 113/10 114/8 121/7 121/11 125/9 126/22 130/22 135/19 139/5 139/16 144/14 144/19 144/21 145/3 145/3 145/7 147/16</p> <p><b>March</b> [2] 36/10 129/16</p> <p><b>Marcus</b> [1] 33/13</p> <p><b>Marcus-Smith</b> [1] 33/13</p> <p><b>Marie</b> [2] 33/10 38/12</p> <p><b>Marion</b> [1] 1/22</p> <p><b>Mark</b> [1] 1/17</p> <p><b>marked</b> [1] 74/12</p> <p><b>Marlow</b> [4] 32/12 32/12 32/13 38/7</p> <p><b>Martin</b> [1] 33/4</p> <p><b>Mary</b> [3] 33/3 33/11 43/16</p> <p><b>mass</b> [1] 33/19</p>
---	---	---	--	---

<b>M</b>	136/22 137/3 137/14 144/25 149/8	100/9 100/9 128/25 <b>meetings [34]</b> 20/13 20/22 21/3 21/6 22/18 22/23 22/24 23/4 23/6 23/23 24/10 24/11 24/18 24/20 24/25 25/1 25/22 44/25 70/19 71/3 71/7 71/7 72/14 73/7 77/16 85/5 115/3 115/3 115/5 115/5 119/15 140/8 140/25 141/6	<b>militant [1]</b> 82/17 <b>military [8]</b> 43/8 56/18 71/5 73/20 74/1 95/13 106/21 106/24 <b>mind [7]</b> 18/4 107/2 108/10 114/14 122/21 146/12 149/10 <b>mind the [1]</b> 114/14 <b>mindful [1]</b> 124/19 <b>minimised [1]</b> 30/24 <b>minimises [1]</b> 28/21 <b>Minister [5]</b> 5/2 11/18 13/17 82/4 82/12 <b>ministers [4]</b> 70/11 72/10 145/1 146/2 <b>minority [1]</b> 75/13 <b>minutes [10]</b> 20/22 20/24 24/17 24/24 26/6 44/24 50/15 95/1 109/2 140/8 <b>misfeasance [1]</b> 121/25 <b>mislaid [1]</b> 101/25 <b>misled [1]</b> 43/7 <b>missed [1]</b> 120/9 <b>missing [8]</b> 8/10 44/9 45/5 123/11 123/13 131/11 139/25 140/5 <b>mistakes [4]</b> 130/5 130/8 131/21 142/13 <b>Mitchell [3]</b> 74/15 78/12 80/7 <b>mitigated [1]</b> 33/24 <b>mixed [1]</b> 107/8 <b>mobile [3]</b> 12/21 89/6 124/13 <b>mobilisation [1]</b> 19/7 <b>modern [1]</b> 34/11 <b>moment [8]</b> 69/4 111/7 114/13 125/12 125/20 127/2 134/15 137/15 <b>moments [2]</b> 123/12 135/5 <b>Monaghan [5]</b> 32/2 32/2 32/3 32/3 83/23 <b>Monday [3]</b> 137/2 149/17 149/19 <b>Monica [1]</b> 33/13 <b>monitored [2]</b> 89/6 89/8 <b>monitoring [1]</b> 58/11 <b>monthly [1]</b> 24/11 <b>months [2]</b> 7/15 32/5 <b>moral [1]</b> 5/7 <b>more [32]</b> 5/25 8/5 12/18 21/2 22/20 40/5 40/19 49/4 49/19 49/19 54/18 57/25 78/7 79/18 90/20 96/5 99/24 107/8 107/24 110/19 113/16 118/4 125/1 131/7 131/15 133/13 133/20 137/5	140/15 147/8 149/1 149/2 <b>morning [7]</b> 1/3 1/4 1/8 1/11 2/24 48/10 129/8 <b>most [27]</b> 11/1 17/16 19/3 20/8 23/22 35/12 35/15 59/4 59/8 59/19 62/14 62/16 62/21 67/7 70/20 71/1 71/3 72/19 80/21 83/12 87/5 141/16 146/4 146/6 146/7 146/9 148/12 <b>MOT [2]</b> 9/18 9/23 <b>mother [4]</b> 31/23 32/3 33/1 33/3 <b>motivated [2]</b> 99/12 99/19 <b>motives [2]</b> 100/1 100/21 <b>motorways [1]</b> 74/23 <b>mount [1]</b> 79/16 <b>mouths [1]</b> 131/16 <b>move [7]</b> 69/10 82/21 82/22 88/19 100/7 121/3 144/15 <b>moved [4]</b> 50/21 76/22 93/18 127/12 <b>movement [1]</b> 80/20 <b>movements [3]</b> 63/6 64/22 68/10 <b>Moving [1]</b> 43/20 <b>movingly [1]</b> 117/8 <b>Mr [58]</b> 1/3 1/7 1/8 1/10 11/15 13/19 16/10 25/10 27/6 28/12 31/6 31/8 31/12 31/14 35/25 39/9 44/6 51/12 68/24 76/14 77/7 77/15 83/11 88/14 89/13 90/23 94/11 97/3 97/9 104/3 105/10 109/1 109/4 109/10 109/11 109/13 109/18 118/12 134/5 134/17 134/23 139/8 139/12 139/13 140/4 140/11 140/24 142/2 142/3 142/6 142/10 142/21 143/15 146/19 147/23 150/5 150/9 150/12 <b>Mr Baxter [7]</b> 77/7 77/15 89/13 90/23 94/11 104/3 105/10 <b>Mr Burke [1]</b> 83/11 <b>Mr Chairman [3]</b> 25/10 134/17 134/23 <b>Mr Fearghal [1]</b> 39/9 <b>Mr Fulton [1]</b> 88/14 <b>Mr Fulton's [1]</b> 51/12 <b>Mr Greaney [6]</b> 1/3 27/6 109/10 139/12
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<p><b>M</b></p> <p><b>Mr Greaney... [2]</b> 143/15 147/23</p> <p><b>Mr Jennings [1]</b> 16/10</p> <p><b>Mr Justice [4]</b> 13/19 28/12 35/25 134/5</p> <p><b>Mr Kane [6]</b> 1/7 1/8 31/6 140/4 140/11 140/24</p> <p><b>Mr Mansfield [12]</b> 109/4 109/11 109/13 109/18 139/8 139/13 142/2 142/3 142/6 142/10 142/21 150/12</p> <p><b>Mr Michael [1]</b> 11/15</p> <p><b>Mr Norman [1]</b> 76/14</p> <p><b>Mr Sean [1]</b> 44/6</p> <p><b>Mr Southey [8]</b> 31/8 31/12 68/24 97/3 97/9 109/1 118/12 146/19</p> <p><b>Ms [1]</b> 144/10</p> <p><b>Ms Fee [1]</b> 144/10</p> <p><b>much [16]</b> 6/9 21/25 31/5 34/2 79/3 110/7 113/21 114/24 119/6 121/8 121/19 123/23 127/8 131/3 135/8 139/12</p> <p><b>Mullen [1]</b> 1/24</p> <p><b>multiparty [1]</b> 74/15</p> <p><b>multiple [1]</b> 90/7</p> <p><b>multitude [1]</b> 56/17</p> <p><b>murder [3]</b> 44/6 122/11 137/3</p> <p><b>murdered [5]</b> 1/15 8/25 113/24 121/24 122/6</p> <p><b>murderous [1]</b> 3/25</p> <p><b>murders [2]</b> 4/4 17/11</p> <p><b>Murphy [1]</b> 1/20</p> <p><b>must [22]</b> 3/8 3/11 3/13 6/18 14/14 21/22 23/9 30/24 33/14 46/16 85/24 96/1 115/6 115/17 116/13 121/18 130/9 131/6 131/7 131/24 135/19 142/16</p> <p><b>my [10]</b> 13/25 30/16 42/20 42/22 76/7 112/1 136/24 137/3 145/19 146/1</p> <p><b>myself [3]</b> 3/17 23/14 148/7</p> <p><b>mystery [1]</b> 44/4</p>	<p>67/22</p> <p><b>named [4]</b> 50/17 123/25 128/6 128/10</p> <p><b>namely [3]</b> 30/5 122/4 124/11</p> <p><b>names [3]</b> 2/23 29/10 60/21</p> <p><b>narrative [6]</b> 69/16 110/14 113/14 113/17 120/20 122/24</p> <p><b>narrow [1]</b> 30/22</p> <p><b>national [9]</b> 29/8 58/20 59/15 59/24 60/1 66/15 74/25 131/23 142/15</p> <p><b>nature [5]</b> 12/18 16/4 126/3 148/14 148/18</p> <p><b>NatWest [1]</b> 57/22</p> <p><b>near [1]</b> 81/6</p> <p><b>necessarily [1]</b> 13/23</p> <p><b>necessary [9]</b> 16/12 63/5 66/14 66/20 104/18 112/5 121/9 145/16 145/24</p> <p><b>need [43]</b> 21/24 37/24 38/8 39/25 39/25 40/9 40/14 42/13 44/14 46/15 48/6 48/9 50/11 51/13 51/21 52/9 52/12 56/11 60/10 69/16 76/2 76/2 76/11 80/4 85/19 92/13 95/4 96/4 99/17 103/15 103/23 104/16 104/21 104/25 105/4 105/25 108/13 112/7 116/12 116/14 117/24 121/17 148/4</p> <p><b>needed [6]</b> 62/8 68/2 87/25 103/15 105/3 144/8</p> <p><b>needs [2]</b> 41/15 42/10</p> <p><b>negative [1]</b> 8/1</p> <p><b>negligence [3]</b> 121/25 128/13 131/8</p> <p><b>negotiation [1]</b> 149/7</p> <p><b>negotiations [2]</b> 74/9 80/2</p> <p><b>neither [1]</b> 126/13</p> <p><b>network [1]</b> 87/17</p> <p><b>never [6]</b> 38/17 45/7 85/4 100/16 101/15 122/12</p> <p><b>new [4]</b> 73/23 74/2 79/4 84/9</p> <p><b>newly [1]</b> 6/21</p> <p><b>Newry [1]</b> 107/13</p> <p><b>next [10]</b> 69/2 88/20 109/21 120/18 131/6 131/6 133/19 135/6 139/9 149/16</p> <p><b>nickname [1]</b> 50/18</p> <p><b>Nicola [2]</b> 38/7</p>	<p>109/23</p> <p><b>Nikki [2]</b> 32/12 33/12</p> <p><b>NIO [1]</b> 141/10</p> <p><b>no [44]</b> 11/19 15/18 16/17 16/21 17/14 19/17 21/6 23/12 23/12 23/13 23/13 30/13 33/15 35/13 45/21 50/6 56/5 65/14 67/10 67/24 75/23 77/24 80/11 83/12 86/3 86/22 90/12 90/17 91/20 97/21 98/3 106/4 113/19 123/21 126/1 126/15 132/7 134/23 139/6 139/18 143/2 143/3 143/4 149/2</p> <p><b>no-one [2]</b> 77/24 139/18</p> <p><b>nobody [2]</b> 34/18 116/9</p> <p><b>Noeleen [1]</b> 32/23</p> <p><b>Noeleen McGrath [1]</b> 32/23</p> <p><b>non [2]</b> 55/14 86/16</p> <p><b>non-statutory [1]</b> 55/14</p> <p><b>non-terrorist [1]</b> 86/16</p> <p><b>nonco [1]</b> 46/14</p> <p><b>nonco-operation [1]</b> 46/14</p> <p><b>none [3]</b> 20/25 128/12 128/20</p> <p><b>Noorkoiv [1]</b> 52/23</p> <p><b>nor [3]</b> 91/17 126/14 134/11</p> <p><b>normal [1]</b> 8/17</p> <p><b>normalisation [2]</b> 18/21 54/15</p> <p><b>normally [1]</b> 23/4</p> <p><b>Norman [1]</b> 76/14</p> <p><b>north [6]</b> 88/20 93/18 100/8 136/17 138/8 139/2</p> <p><b>Northern [86]</b> 14/4 15/21 17/21 18/6 19/23 20/3 20/18 21/5 23/7 23/21 24/2 30/7 36/10 40/16 42/20 44/11 44/19 44/24 45/1 45/25 53/6 53/11 53/23 54/8 54/9 54/12 54/14 54/21 55/6 55/18 57/8 58/8 59/2 61/15 62/6 62/15 62/19 63/18 63/21 63/24 67/21 68/19 69/22 70/8 70/10 70/13 71/1 71/5 71/14 71/20 71/22 72/1 72/11 72/24 73/7 75/12 75/13 76/15</p>	<p>76/18 76/25 80/9 84/25 86/7 89/4 89/14 90/22 92/12 94/10 97/20 97/23 98/4 98/6 103/22 104/2 105/9 105/23 116/5 138/2 140/10 141/2 141/4 141/7 141/8 141/15 143/24 145/9</p> <p><b>not [183]</b></p> <p><b>Notably [1]</b> 88/18</p> <p><b>noted [13]</b> 26/3 47/20 53/2 58/6 61/5 68/13 85/6 92/6 101/19 108/6 142/3 142/6 146/23</p> <p><b>nothing [6]</b> 15/15 17/25 23/9 30/18 33/21 95/14</p> <p><b>notice [7]</b> 46/4 54/3 114/23 115/7 118/3 118/6 119/21</p> <p><b>November [2]</b> 11/7 106/20</p> <p><b>November 1997 [1]</b> 106/20</p> <p><b>now [41]</b> 7/12 8/5 8/19 18/15 23/21 29/12 31/12 42/25 49/15 64/10 65/11 82/19 109/11 112/1 112/3 112/23 114/21 116/12 118/17 119/9 119/23 121/18 122/21 125/14 128/17 128/25 129/18 130/16 131/1 131/6 132/10 133/15 133/16 134/18 137/5 138/16 141/15 144/9 145/4 145/15 149/16</p> <p><b>NSU [7]</b> 59/17 59/19 60/1 60/6 60/9 83/5 84/2</p> <p><b>Nuala [2]</b> 32/22 120/3</p> <p><b>Nuala O'Loan's [1]</b> 120/3</p> <p><b>nuisance [1]</b> 101/3</p> <p><b>number [24]</b> 2/22 11/5 39/23 42/22 43/24 48/11 48/12 61/19 64/2 66/2 66/22 69/24 74/4 78/5 80/22 80/25 81/10 82/2 83/11 87/9 97/11 107/2 123/25 129/8</p> <p><b>numbered [1]</b> 82/7</p> <p><b>numbers [1]</b> 81/22</p> <p><b>nursing [1]</b> 126/18</p> <p><b>O</b></p> <p><b>O'Loan [1]</b> 120/22</p> <p><b>O'Loan's [1]</b> 120/3</p> <p><b>O'Reilly [1]</b> 1/23</p> <p><b>object [1]</b> 110/21</p>	<p><b>objectionable [1]</b> 52/1</p> <p><b>objective [1]</b> 3/10</p> <p><b>objectives [1]</b> 84/12</p> <p><b>obligations [1]</b> 52/20</p> <p><b>obliged [2]</b> 17/21 52/19</p> <p><b>obliges [1]</b> 36/9</p> <p><b>obscured [1]</b> 120/20</p> <p><b>observation [2]</b> 129/19 145/12</p> <p><b>observations [7]</b> 11/5 110/8 110/17 110/18 115/20 139/23 142/3</p> <p><b>observe [1]</b> 31/4</p> <p><b>observed [1]</b> 143/1</p> <p><b>observing [1]</b> 64/22</p> <p><b>obstacles [1]</b> 79/14</p> <p><b>obstructed [1]</b> 43/8</p> <p><b>obstructive [1]</b> 30/22</p> <p><b>obtain [7]</b> 57/6 67/2 68/9 81/10 96/3 127/1 147/16</p> <p><b>obtained [8]</b> 13/24 49/2 51/10 65/22 70/23 89/19 93/22 96/6</p> <p><b>obtaining [2]</b> 56/16 126/23</p> <p><b>obvious [6]</b> 52/15 84/3 117/17 122/16 126/14 130/21</p> <p><b>obviously [15]</b> 53/15 72/19 72/23 73/2 85/18 86/3 92/13 114/22 118/5 131/14 132/12 132/13 132/15 132/21 135/14</p> <p><b>occasion [1]</b> 2/5</p> <p><b>occasionally [2]</b> 110/6 118/2</p> <p><b>occasions [1]</b> 88/16</p> <p><b>occurred [10]</b> 7/15 65/10 72/21 78/22 78/24 79/18 103/25 106/12 112/2 133/9</p> <p><b>occurred in [1]</b> 112/2</p> <p><b>October [4]</b> 74/1 74/21 79/21 124/2</p> <p><b>October 1997 [1]</b> 79/21</p> <p><b>off [5]</b> 76/22 77/1 102/13 110/6 139/13</p> <p><b>offences [4]</b> 60/11 64/3 64/7 83/9</p> <p><b>offensive [1]</b> 79/17</p> <p><b>offer [1]</b> 141/25</p> <p><b>offered [1]</b> 29/23</p> <p><b>office [11]</b> 20/19 26/8 70/10 71/17 72/11 76/18 121/25 141/4 141/8 141/8 141/15</p> <p><b>officer [7]</b> 20/15</p>
---	--	--	---	--



<b>O</b>	37/22 39/12 42/12 45/18 49/20 50/2 50/11 53/21 58/22 59/4 61/6 66/11 68/17 77/24 78/9 81/13 89/8 95/20 102/13 104/10 104/23 105/16 117/11 117/17 118/10 118/18 120/4 121/20 123/8 123/13 123/14 127/25 130/19 133/6 134/23 139/18 145/12 146/17 147/15 <b>one-off [1]</b> 102/13 <b>ones [6]</b> 1/15 31/16 37/2 37/19 45/18 119/8 <b>ones and [1]</b> 37/2 <b>ongoing [4]</b> 6/7 13/12 19/15 127/16 <b>online [1]</b> 143/8 <b>only [37]</b> 2/11 2/14 6/25 9/20 9/25 11/3 11/4 11/21 14/16 15/1 15/17 16/17 21/7 23/22 28/20 30/4 42/7 49/20 49/23 57/10 64/5 80/25 82/9 87/8 87/9 110/16 111/23 112/3 115/7 115/15 121/17 125/23 131/22 134/6 139/3 140/25 142/14 <b>only suspicion [1]</b> 64/5 <b>onto [1]</b> 41/3 <b>open [19]</b> 13/24 21/22 21/25 29/19 30/19 48/20 107/22 108/10 110/5 126/3 127/8 132/1 132/4 132/5 132/20 135/8 142/18 142/25 149/10 <b>opened [1]</b> 130/16 <b>opening [48]</b> 1/5 1/9 1/11 2/8 3/2 10/21 20/6 21/14 26/1 27/7 27/20 27/21 28/9 28/14 29/18 30/25 31/13 31/15 46/19 47/5 47/16 47/21 52/8 70/23 80/11 90/23 106/2 108/24 109/3 109/17 130/14 139/15 139/23 140/4 142/3 142/8 142/11 142/19 142/25 143/1 143/3 143/18 144/10 147/13 148/22 150/3 150/7 150/11 <b>openings [1]</b> 133/9 <b>openness [3]</b> 3/14 29/16 130/3 <b>operate [3]</b> 6/21	92/18 135/10 <b>operated [5]</b> 57/3 60/4 71/21 83/16 87/8 <b>operating [3]</b> 14/11 17/13 92/11 <b>operation [32]</b> 3/14 13/13 17/15 25/19 46/14 58/1 60/25 61/7 61/10 61/12 83/5 86/23 89/11 92/16 93/2 93/10 95/18 95/19 102/19 102/25 106/3 107/4 107/5 107/9 107/11 107/14 107/15 124/18 127/4 136/14 148/23 149/3 <b>operational [7]</b> 16/1 18/13 49/17 92/23 99/2 102/22 128/9 <b>operations [7]</b> 56/3 57/10 60/15 60/16 61/5 73/21 102/21 <b>operative [1]</b> 143/10 <b>opinion [1]</b> 16/24 <b>opponents [1]</b> 76/8 <b>opportunities [3]</b> 10/22 104/7 120/9 <b>opportunity [8]</b> 14/13 37/7 38/11 47/21 73/21 94/20 104/11 138/9 <b>opposed [3]</b> 78/19 130/19 145/13 <b>or [131]</b> 4/17 7/16 7/20 7/23 8/15 8/16 10/3 12/11 13/1 16/18 16/19 19/10 21/20 22/9 22/24 26/8 27/14 29/8 30/22 33/23 35/5 36/1 39/25 41/8 42/2 44/3 45/16 47/22 49/21 49/22 52/9 56/23 58/14 58/14 58/20 60/2 60/11 60/11 60/14 62/9 62/10 62/11 62/12 63/3 63/6 63/6 63/6 63/7 63/8 63/10 63/11 63/13 64/4 64/21 64/22 64/22 64/23 65/5 65/5 65/25 66/7 66/16 66/16 67/1 67/15 67/16 67/17 69/19 69/21 71/19 77/10 82/9 87/13 87/24 90/12 91/10 91/25 93/6 93/12 95/24 97/25 97/25 98/10 98/14 99/6 99/8 99/24 101/2 103/15 103/16 103/21 104/13 105/13 106/4 106/25 108/3 113/12 114/3 115/23 116/15 116/15	123/14 123/16 123/19 123/19 124/11 124/18 125/2 127/5 127/24 127/24 128/1 128/8 128/9 128/11 128/19 130/5 130/8 131/21 132/6 132/11 133/4 133/4 133/18 136/4 142/13 143/8 145/23 148/1 148/10 149/7 <b>or in [1]</b> 21/20 <b>oral [1]</b> 47/8 <b>orally [1]</b> 2/16 <b>Oran [1]</b> 32/9 <b>order [14]</b> 13/25 48/17 51/2 62/19 62/24 63/24 70/10 74/7 105/2 127/1 127/11 132/3 132/6 132/7 <b>orders [3]</b> 4/8 17/22 29/6 <b>ordinated [1]</b> 88/4 <b>ordination [3]</b> 71/18 87/2 102/20 <b>ordinator [3]</b> 20/17 70/17 72/7 <b>organisation [6]</b> 61/21 84/9 94/13 119/4 123/5 123/7 <b>organisational [4]</b> 27/16 29/2 56/21 70/4 <b>organisations [10]</b> 25/2 25/6 57/7 58/24 59/20 61/20 78/15 83/17 83/19 87/4 <b>origin [1]</b> 5/20 <b>origins [2]</b> 62/2 79/22 <b>Osman [1]</b> 35/20 <b>other [54]</b> 3/25 5/25 10/13 16/7 18/16 19/8 20/14 25/2 25/6 25/9 25/23 29/2 29/8 30/8 30/11 33/22 40/11 41/9 48/25 51/9 52/10 52/13 56/8 56/16 57/25 63/7 64/7 65/4 65/6 65/8 72/21 76/21 78/4 83/22 93/20 96/4 103/20 104/6 106/19 108/17 119/19 122/7 126/7 127/18 133/14 134/2 135/1 136/16 137/10 141/1 144/1 145/1 145/7 148/4 <b>others [21]</b> 4/13 6/25 27/16 36/5 36/15 41/16 43/12 63/22 64/21 74/12 110/12 111/17 112/18 114/9 120/18 121/11 135/14 145/15 146/2 149/1 149/9 <b>otherwise [3]</b> 29/11	131/7 133/3 <b>our [34]</b> 2/19 2/22 3/10 3/17 4/6 4/15 4/19 4/23 5/4 8/7 8/9 8/13 8/20 9/16 9/19 12/23 15/15 17/13 18/22 19/2 23/19 25/18 26/1 27/1 30/17 30/25 36/15 74/2 76/11 128/18 139/23 140/14 142/3 142/22 <b>ourselves [2]</b> 10/24 25/16 <b>out [41]</b> 16/18 28/16 31/2 37/20 39/20 39/21 41/13 42/7 42/10 42/25 49/7 49/9 50/25 51/15 54/9 54/22 62/12 66/14 76/1 76/25 78/2 86/18 88/12 104/12 111/3 116/1 117/4 121/12 125/15 125/21 126/5 129/24 133/14 136/2 138/19 140/17 140/24 143/17 146/23 148/2 148/9 <b>outcome [2]</b> 134/2 134/8 <b>outcomes [1]</b> 31/3 <b>outlined [8]</b> 3/17 42/3 47/25 61/14 61/14 107/16 119/13 144/10 <b>outlining [1]</b> 67/19 <b>outrage' [1]</b> 84/13 <b>outset [1]</b> 33/14 <b>outside [1]</b> 58/14 <b>outstanding [2]</b> 38/2 75/15 <b>over [24]</b> 8/6 11/22 12/6 19/23 53/6 54/24 68/20 74/5 78/22 78/25 83/18 88/20 99/15 100/8 111/24 112/13 119/2 120/18 135/2 139/17 144/17 145/2 145/25 147/19 <b>overall [14]</b> 48/5 48/7 50/2 50/5 50/7 50/8 51/15 51/17 61/2 61/22 85/12 90/6 102/1 104/22 <b>overarching [1]</b> 87/24 <b>overcome [3]</b> 2/14 6/14 38/9 <b>overlap [3]</b> 7/10 85/22 135/22 <b>overlaps [1]</b> 129/23 <b>overseas [1]</b> 87/11 <b>oversight [2]</b> 128/16 128/22 <b>overt [1]</b> 77/22 <b>overtures [1]</b> 82/19
----------	---	---	---	--

<b>O</b>	24/22 25/3	75/15 95/21 107/12	76/24 77/18 83/11	<b>placed [7]</b> 2/23 41/25
<b>overturned [1]</b> 46/2	<b>paragraph 6 [1]</b> 120/2	111/1 119/5 119/8	90/20 91/2 91/24	54/4 65/1 84/15 91/14
<b>overwhelmed [1]</b> 2/12	<b>paragraph 79 [1]</b> 23/2	123/12 132/11 145/8	129/3 138/8 147/6	145/8
<b>overwhelming [1]</b> 75/12	<b>parallel [7]</b> 4/20 5/9	<b>parties [2]</b> 78/11 92/7	<b>per [1]</b> 53/7	<b>plain [5]</b> 28/19
<b>overwhelmingly [1]</b> 72/23	13/11 16/10 74/8	<b>parts [9]</b> 9/25 22/9	<b>perceived [1]</b> 12/3	126/13 130/10 140/1
<b>owe [1]</b> 5/18	96/17 135/12	30/1 30/5 30/8 30/8	<b>perceptive [1]</b> 9/3	145/14
<b>own [16]</b> 2/19 5/10	<b>Paramilitaries [1]</b> 86/9	85/24 87/4 89/23	<b>perfect [1]</b> 138/24	<b>plainly [3]</b> 60/18
9/2 16/24 37/7 51/7	<b>paramilitary [4]</b> 79/16 80/20 81/6	<b>party [1]</b> 74/9	<b>perfectly [1]</b> 111/10	127/6 147/15
56/17 59/12 86/19	81/15	<b>Pascal [2]</b> 80/16 83/6	<b>perhaps [10]</b> 8/5 8/8	<b>plaintiff [1]</b> 126/16
86/22 87/17 89/24	<b>parenthesis [2]</b> 24/15 24/23	<b>pass [2]</b> 42/24	17/16 48/6 82/7 82/9	<b>plan [1]</b> 105/4
93/15 106/25 115/22	<b>part [28]</b> 4/24 11/9	129/10	86/23 97/2 126/7	<b>planned [4]</b> 3/21
144/1	13/1 16/10 18/18 30/5	<b>passage [5]</b> 6/12	145/8	33/17 51/11 58/2
<b>owned [1]</b> 87/13	35/21 36/1 45/3 45/14	21/18 42/25 145/18	<b>period [16]</b> 6/3 16/2	<b>planning [2]</b> 62/11
<b>P</b>	54/18 68/14 68/22	147/23	16/6 18/18 24/10	136/2
<b>pace [1]</b> 127/12	73/2 78/10 87/23	<b>passed [18]</b> 11/23	45/23 53/17 54/15	<b>planted [8]</b> 3/21 9/11
<b>Paddy [1]</b> 88/23	91/22 91/23 91/23	45/23 58/17 72/6	55/12 56/10 68/20	33/17 53/16 122/4
<b>page [1]</b> 11/25	102/15 116/3 119/2	88/15 88/17 91/16	71/1 74/17 83/18	123/6 123/21 124/21
<b>page 11 [1]</b> 11/25	122/25 125/20 131/19	91/18 93/23 95/2 95/9	96/10 100/16	<b>planting [2]</b> 123/16
<b>pages [1]</b> 114/14	139/4 146/7 146/9	100/17 106/22 107/1	<b>periods [1]</b> 78/16	128/1
<b>pain [3]</b> 2/14 14/7	<b>partially [1]</b> 63/3	144/11 146/2 147/17	<b>Permanent [3]</b> 20/18	<b>plate [1]</b> 66/23
139/2	<b>Participant [4]</b> 28/25	149/3	70/14 141/3	<b>platitudes [1]</b> 13/8
<b>Palmer [1]</b> 2/7	131/22 142/14 143/25	<b>passing [3]</b> 7/1 26/3	<b>permitted [4]</b> 98/16	<b>plausible [1]</b> 28/15
<b>Paloma [2]</b> 32/19	<b>Participants [43]</b> 1/9	66/6	125/23 125/24 137/14	<b>played [4]</b> 54/24
37/14	1/13 1/14 2/4 6/17	<b>past [10]</b> 30/11 38/10	<b>perpetrators [4]</b> 5/21	57/13 57/17 57/19
<b>Panorama [1]</b> 124/8	10/8 20/7 22/2 25/20	42/18 77/11 90/20	128/1 136/3 136/6	<b>playing [2]</b> 9/7 81/24
<b>paper [3]</b> 20/22 54/19	27/13 27/16 28/18	91/12 98/22 101/20	<b>perpetuators [1]</b> 123/16	<b>plays [1]</b> 137/21
106/16	29/3 29/15 29/17	101/25 111/24	<b>person [5]</b> 63/4	<b>plea [1]</b> 136/18
<b>papers [1]</b> 140/7	30/21 30/23 31/13	<b>path [4]</b> 111/20 113/1	63/14 64/22 109/21	<b>pleaded [2]</b> 127/21
<b>parade [1]</b> 34/25	45/22 46/11 46/20	139/3 139/4	139/9	127/23
<b>paragraph [18]</b> 10/10	47/3 51/21 102/12	<b>patience [1]</b> 73/24	<b>person's [3]</b> 63/5	<b>pleadings [5]</b> 123/3
10/11 10/21 11/17	104/20 104/24 108/4	<b>Patricia [1]</b> 32/10	67/1 68/9	123/24 124/2 124/9
13/21 15/22 17/19	130/1 130/4 130/13	<b>Patrick [3]</b> 32/2 33/2	<b>personal [2]</b> 63/9	126/16
19/20 20/20 22/21	139/16 142/5 142/9	86/13	107/15	<b>please [1]</b> 31/7
23/2 24/22 25/3 26/3	142/23 142/25 143/20	<b>patrol [1]</b> 76/23	<b>personnel [2]</b> 8/14	<b>plethora [1]</b> 12/5
27/22 28/12 120/2	146/5 146/10 147/14	<b>patrols [1]</b> 77/21	16/5	<b>plight [1]</b> 14/7
125/11	147/17 148/22 150/4	<b>Patsy [1]</b> 31/20	<b>persons [1]</b> 141/3	<b>pm [7]</b> 69/6 69/8 97/6
<b>paragraph 14 [1]</b> 11/17	150/8	<b>pattern [1]</b> 78/8	<b>perspective [1]</b> 91/6	97/8 109/7 109/9
<b>paragraph 16 [1]</b> 19/20	<b>participate [1]</b> 108/18	<b>Paul [1]</b> 1/23	<b>pertaining [1]</b> 101/14	149/18
<b>paragraph 17 [1]</b> 17/19	<b>participating [1]</b> 78/12	<b>Paula [1]</b> 1/20	<b>pertinent [1]</b> 123/12	<b>point [15]</b> 14/15 22/2
<b>paragraph 18 [2]</b> 10/21 28/12	<b>participation [4]</b> 15/13 78/23 115/14	<b>pause [8]</b> 25/10	<b>perusal [1]</b> 11/2	25/11 47/15 69/3 72/4
<b>paragraph 2 [2]</b> 10/10 10/11	135/3	127/2 129/18 133/23	<b>Peter [1]</b> 49/16	79/7 79/21 92/1 92/3
<b>paragraph 251 [1]</b> 20/20	<b>particular [37]</b> 3/3	138/5	<b>Phil [1]</b> 83/23	119/25 124/7 133/5
<b>paragraph 264 [1]</b> 26/3	6/14 6/20 6/23 7/1 9/2	<b>paused [1]</b> 134/8	<b>Philomena [1]</b> 1/21	144/14 146/17
<b>paragraph 3 [1]</b> 15/22	25/12 25/20 46/21	<b>pay [1]</b> 25/12	<b>phone [5]</b> 65/25 89/8	<b>pointed [1]</b> 148/2
<b>paragraph 30 [1]</b> 22/21	48/2 48/11 48/15	<b>peace [21]</b> 18/20	89/15 101/17 124/13	<b>points [5]</b> 49/11
<b>paragraph 31 [1]</b> 27/22	48/23 50/1 51/20 52/1	18/23 19/15 35/13	<b>phoned [1]</b> 101/8	67/18 90/8 90/10
<b>paragraph 310 [1]</b> 13/21	58/9 58/22 67/11 74/5	69/16 69/23 73/17	<b>phones [1]</b> 12/21	103/20
<b>paragraph 39 [2]</b>	78/21 78/22 81/7	74/4 74/10 75/7 76/8	<b>phrase [1]</b> 16/5	<b>police [64]</b> 15/21
	94/12 97/12 98/9	78/10 78/18 79/7	<b>phrases [1]</b> 23/15	18/6 23/21 25/4 26/5
	105/18 106/1 107/18	79/25 81/19 138/9	<b>picture [10]</b> 48/25	29/18 29/23 30/3 30/6
	108/8 110/15 123/17	138/24 138/24 139/3	49/18 49/20 49/22	34/16 44/5 44/6 44/10
	129/8 129/20 136/24	139/6	50/7 50/8 51/17 61/22	44/19 50/16 50/25
	137/1 144/6	<b>peaceful [4]</b> 4/1	90/6 112/22	54/8 58/18 62/18
	<b>particularly [16]</b> 26/9	72/25 78/14 111/15	<b>piece [3]</b> 48/15 48/23	62/25 63/20 63/22
	38/19 40/11 42/12	<b>peacetime [1]</b> 115/10	49/20	63/24 64/10 66/24
	48/19 51/22 61/18	<b>Pen [1]</b> 37/3	<b>pieces [3]</b> 49/19	75/1 76/3 76/19 78/7
		<b>pending [1]</b> 134/8	49/23 50/4	88/11 88/13 88/15
		<b>penetrating [1]</b> 57/7	<b>PIRA [2]</b> 57/22 58/2	88/23 89/12 89/16
		<b>people [24]</b> 5/9 5/18	<b>place [14]</b> 11/22 14/1	89/23 91/17 91/18
		9/9 34/12 36/13 38/1	23/5 36/23 39/11	92/1 95/11 95/14
		38/8 53/23 69/24	52/20 53/1 66/9 73/13	100/11 106/21 107/9
		70/20 72/24 74/12	89/17 97/21 106/5	107/13 117/19 120/3
		74/19 75/12 75/13	125/4 149/17	120/7 120/8 121/6
				121/21 122/1 123/14

<b>P</b>	<b>possible [13]</b> 21/11 21/25 22/10 23/10 34/9 64/25 65/7 69/14 69/19 71/13 84/14 100/21 135/9	<b>prepared [5]</b> 11/8 64/18 71/11 72/12 133/17	<b>principle [3]</b> 52/11 73/18 78/17	<b>product [3]</b> 66/13 66/19 91/9
<b>police...</b> [11] 123/17 124/23 125/6 125/16 128/5 128/7 128/17 128/24 136/25 140/10 140/25	<b>possibly [1]</b> 119/17	<b>Preparedness [1]</b> 40/18	<b>principles [5]</b> 3/13 3/17 78/12 80/7 130/2	<b>productive [1]</b> 132/14
<b>policies [1]</b> 117/18	<b>post [1]</b> 76/17	<b>presence [1]</b> 63/10	<b>prior [12]</b> 3/12 6/3 7/15 13/4 41/22 65/10 74/17 94/21 95/15 103/5 103/5 103/24	<b>professed [2]</b> 5/13 25/21
<b>policing [17]</b> 6/5 7/16 21/15 40/15 40/16 55/5 57/24 60/2 60/3 63/17 64/7 64/16 77/12 98/7 103/21 105/9 105/17	<b>post-1998 [1]</b> 76/17	<b>present [6]</b> 2/13 21/21 53/15 93/10 125/24 138/16	<b>prioritise [1]</b> 99/25	<b>professional's [1]</b> 91/6
<b>policy [19]</b> 20/13 21/4 22/18 22/24 23/25 25/22 44/25 70/11 70/19 71/7 76/24 79/1 94/13 94/14 97/25 140/8 140/25 141/2 141/6	<b>postponement [1]</b> 74/25	<b>presented [4]</b> 106/16 122/24 146/19 147/13	<b>prioritising [1]</b> 99/15	<b>professionalism [1]</b> 110/25
<b>political [33]</b> 6/9 6/21 7/21 7/23 8/3 18/15 18/17 18/25 19/4 20/4 21/12 23/25 68/23 69/11 69/12 69/20 70/2 70/5 71/2 72/20 73/11 74/3 74/14 77/7 77/22 77/25 78/9 78/10 78/14 82/16 84/12 85/22 120/25	<b>potentially [17]</b> 14/22 26/22 41/15 44/19 49/8 51/9 53/9 68/5 68/9 68/11 94/18 98/15 98/16 98/18 99/16 103/14 106/7	<b>preservation [1]</b> 115/7	<b>priority [3]</b> 99/2 99/23 103/11	<b>proffered [1]</b> 45/16
<b>politicians [2]</b> 23/7 77/13	<b>power [5]</b> 13/25 14/25 15/18 17/5 68/19	<b>preserved [2]</b> 62/21 116/11	<b>private [3]</b> 66/22 125/22 133/12	<b>profound [1]</b> 113/21
<b>politicisation [1]</b> 79/6	<b>powerful [1]</b> 39/14	<b>President [2]</b> 137/16 138/21	<b>privilege [4]</b> 2/22 2/25 31/18 33/9	<b>profoundly [1]</b> 25/15
<b>politics [1]</b> 69/14	<b>powers [34]</b> 34/16 53/24 54/2 54/5 58/15 61/25 62/15 62/16 62/18 62/21 63/1 63/2 63/3 63/4 63/17 63/20 63/23 64/8 64/10 64/11 64/15 65/11 67/2 67/18 67/19 67/20 67/23 68/2 68/5 68/11 68/21 81/22 85/17 104/18	<b>press [2]</b> 10/9 96/17	<b>probability [5]</b> 136/1 136/3 136/5 136/7 136/10	<b>progress [5]</b> 74/8 134/3 138/23 144/14 145/11
<b>Pomerance [1]</b> 43/10	<b>practice [2]</b> 55/7 117/18	<b>pressed [2]</b> 131/6 141/10	<b>probably [3]</b> 52/15 95/11 110/11	<b>progresses [1]</b> 3/7
<b>population [2]</b> 54/14 68/4	<b>pre [4]</b> 18/13 92/23 122/3 137/2	<b>pressure [2]</b> 14/11 81/19	<b>probe [1]</b> 44/14	<b>progressing [1]</b> 80/2
<b>Portraits [1]</b> 37/3	<b>pre-emptive [3]</b> 18/13 92/23 122/3	<b>prevail [1]</b> 18/2	<b>probed [1]</b> 112/17	<b>prohibited [1]</b> 63/10
<b>portray [1]</b> 24/16	<b>pre-emptions [1]</b> 137/2	<b>prevent [7]</b> 38/24 62/9 66/20 122/20 123/16 125/3 128/1	<b>problem [2]</b> 92/17 132/23	<b>promise [1]</b> 11/20
<b>pose [1]</b> 18/23	<b>pre-warnings [1]</b> 137/2	<b>preventability [21]</b> 3/8 4/3 4/7 4/16 5/19 8/1 8/20 10/1 10/5 10/16 15/1 19/9 41/7 41/14 41/18 51/23 94/5 111/8 134/10 134/13 146/25	<b>problems [2]</b> 92/12 145/4	<b>promises [1]</b> 13/9
<b>posed [6]</b> 54/1 61/22 67/20 85/16 116/5 142/21	<b>precautionary [1]</b> 119/5	<b>preventable [2]</b> 19/1 137/7	<b>procedural [1]</b> 129/20	<b>promote [1]</b> 69/16
<b>position [20]</b> 22/19 22/22 42/5 46/3 47/6 51/15 51/16 56/14 79/13 96/22 99/10 112/13 122/13 126/10 131/7 133/2 133/3 139/19 143/2 145/23	<b>preceded [3]</b> 53/19 78/6 94/16	<b>preventative [1]</b> 107/18	<b>procedure [2]</b> 100/14 106/11	<b>prompted [1]</b> 56/15
<b>positioned [1]</b> 59/9	<b>predecessors [1]</b> 42/22	<b>prevented [17]</b> 8/24 10/15 14/17 51/25 57/24 67/7 103/17 104/5 104/15 112/14 114/6 122/8 123/10 123/18 124/6 125/6 137/3	<b>proceed [1]</b> 134/6	<b>proof [1]</b> 27/7
<b>positions [1]</b> 60/22	<b>predictive [1]</b> 91/9	<b>preventing [1]</b> 66/16	<b>proceeding [1]</b> 14/3	<b>proper [2]</b> 97/19 117/16
<b>positive [2]</b> 31/3 143/10	<b>prefer [1]</b> 109/21	<b>prevention [5]</b> 7/20 62/19 62/21 63/19 128/11	<b>proceedings [12]</b> 11/16 13/20 28/11 28/21 45/24 46/24 46/25 127/15 127/18 131/5 143/8 149/5	<b>properly [8]</b> 7/17 29/7 102/7 120/9 122/12 128/13 134/6 145/23
<b>positivity [1]</b> 137/9	<b>prejudice [2]</b> 47/12 47/14	<b>previous [12]</b> 7/7 17/10 83/8 84/18 113/6 119/2 121/10 124/24 130/18 148/3 149/4 149/6	<b>proceeds [1]</b> 31/5	<b>properties [1]</b> 104/13
<b>possessed [2]</b> 40/22 64/5	<b>preliminary [3]</b> 11/1 48/11 136/1	<b>previously [2]</b> 67/9 124/21	<b>process [29]</b> 18/20 18/24 19/16 36/24 38/5 38/12 43/14 69/23 73/17 74/4 74/10 75/7 78/10 78/18 78/19 79/7 79/7 80/1 80/5 80/11 81/19 112/6 126/2 126/23 131/3 136/18 137/22 143/11 144/20	<b>property [2]</b> 65/17 67/1
<b>possessing [1]</b> 64/4	<b>premises [2]</b> 63/13 81/18	<b>pride [1]</b> 138/10	<b>processes [9]</b> 6/6 8/2 78/23 79/9 130/23 134/3 138/17 143/20 148/15	<b>propose [1]</b> 143/6
<b>possession [4]</b> 11/10 11/14 12/10 16/20	<b>preparation [2]</b> 7/13 62/12	<b>primacy [1]</b> 87/21	<b>procession [1]</b> 34/25	<b>proposed [1]</b> 81/16
<b>possibility [2]</b> 99/22 118/22		<b>primarily [3]</b> 16/6 72/12 99/19	<b>produce [3]</b> 44/1 44/11 71/25	<b>proposition [1]</b> 135/15
		<b>primary [2]</b> 28/6 70/14	<b>produced [2]</b> 87/13 131/4	<b>proscribed [2]</b> 123/5 123/7
		<b>Prime [3]</b> 11/18 82/4 82/11	<b>produces [1]</b> 91/8	<b>prosecution [1]</b> 83/21

<p><b>P</b></p> <p><b>provided</b> [40] 15/20 18/7 20/7 20/10 22/14 23/20 25/3 26/4 27/10 27/12 27/14 29/22 37/6 42/14 43/11 44/15 44/22 47/9 50/19 62/24 63/22 85/6 87/12 88/10 88/13 88/18 88/25 89/2 92/7 100/6 101/22 107/6 124/3 127/14 127/15 131/24 132/17 136/15 138/1 142/16</p> <p><b>providers</b> [1] 148/11</p> <p><b>provides</b> [1] 110/13</p> <p><b>providing</b> [9] 4/14 88/23 112/4 112/4 126/25 132/12 134/16 143/22 144/17</p> <p><b>Province</b> [1] 71/6</p> <p><b>provision</b> [9] 15/10 18/2 18/11 45/21 65/24 72/9 87/16 92/21 134/4</p> <p><b>provisional</b> [13] 19/14 73/4 73/10 79/6 79/11 80/20 80/25 81/8 81/20 83/11 103/1 130/11 146/12</p> <p><b>provisionals</b> [1] 80/23</p> <p><b>provisions</b> [5] 35/12 62/20 62/22 63/18 63/19</p> <p><b>PSNI</b> [27] 20/11 20/23 20/24 22/12 22/15 24/17 24/23 25/5 25/20 26/10 26/12 27/10 43/2 43/3 44/1 52/8 86/14 98/2 103/12 107/17 121/14 127/24 140/13 140/19 140/24 141/6 141/16</p> <p><b>PSNI's</b> [2] 92/20 105/21</p> <p><b>public</b> [25] 3/16 12/1 40/3 46/1 61/17 65/24 66/22 87/25 98/19 98/21 99/15 99/20 105/3 110/13 112/23 121/25 122/18 126/1 126/3 134/8 134/9 134/15 137/11 141/21 145/2</p> <p><b>publication</b> [1] 121/21</p> <p><b>publicly</b> [2] 102/17 113/9</p> <p><b>published</b> [2] 11/24 89/5</p> <p><b>pudding</b> [1] 27/8</p>	<p><b>purely</b> [1] 17/12</p> <p><b>purported</b> [1] 28/10</p> <p><b>purpose</b> [3] 9/24 63/5 81/18</p> <p><b>purposes</b> [5] 7/25 46/6 64/6 66/14 89/1</p> <p><b>pursue</b> [1] 23/10</p> <p><b>pursuit</b> [2] 55/12 72/25</p> <p><b>put</b> [11] 11/9 36/18 36/20 52/19 53/1 84/13 110/8 114/25 118/6 122/25 124/18</p> <p><b>putting</b> [2] 81/19 82/6</p> <p><b>puzzling</b> [1] 43/25</p> <hr/> <p><b>Q</b></p> <p><b>QC</b> [1] 27/24</p> <p><b>quality</b> [4] 57/18 123/15 127/25 148/19</p> <p><b>quarter</b> [2] 81/3 113/20</p> <p><b>quartermaster</b> [2] 81/2 81/7</p> <p><b>quell</b> [1] 68/19</p> <p><b>question</b> [17] 3/8 18/22 25/11 26/20 41/4 63/25 78/6 114/15 116/10 116/25 117/1 117/8 117/21 119/21 123/23 132/10 142/21</p> <p><b>questioned</b> [1] 129/4</p> <p><b>questioning</b> [2] 108/19 135/6</p> <p><b>questions</b> [28] 7/12 34/8 36/7 37/17 38/1 85/21 90/5 101/14 108/20 112/6 112/17 113/8 113/10 115/12 115/24 116/13 116/15 116/20 117/4 117/15 117/24 119/25 122/20 129/11 131/9 135/19 139/16 139/20</p> <p><b>quickly</b> [1] 5/25</p> <p><b>quite</b> [4] 11/7 110/11 111/7 131/9</p> <p><b>quotation</b> [3] 10/20 27/23 28/13</p> <p><b>quote</b> [28] 9/4 10/12 10/22 11/8 13/4 13/22 14/16 18/10 19/21 24/16 25/4 26/6 26/16 26/17 27/25 42/19 55/3 59/3 59/7 60/8 68/17 70/24 86/25 94/18 100/13 123/3 137/19 147/1</p> <p><b>quoting</b> [1] 137/18</p> <hr/> <p><b>R</b></p> <p><b>race</b> [1] 74/25</p>	<p><b>Radford</b> [5] 1/23 1/23 1/24 1/24 1/25</p> <p><b>raise</b> [6] 98/12 100/4 104/21 105/24 106/2 113/7</p> <p><b>raised</b> [15] 7/2 34/9 36/7 46/22 47/4 56/2 98/8 101/14 103/19 104/24 120/5 121/1 123/2 135/4 139/17</p> <p><b>raises</b> [6] 41/4 85/20 90/5 93/4 101/3 144/5</p> <p><b>Ramos</b> [4] 32/19 32/20 32/21 37/14</p> <p><b>ran</b> [1] 55/24</p> <p><b>range</b> [7] 40/22 64/7 64/17 108/12 108/16 141/1 141/3</p> <p><b>Rangers</b> [1] 84/25</p> <p><b>ranging</b> [1] 64/6</p> <p><b>ranks</b> [2] 35/12 111/23</p> <p><b>rapidly</b> [1] 126/19</p> <p><b>rare</b> [2] 18/14 92/24</p> <p><b>rather</b> [9] 27/24 39/25 48/16 67/16 88/3 93/6 121/7 127/5 128/22</p> <p><b>raw</b> [1] 91/7</p> <p><b>Ray</b> [1] 2/5</p> <p><b>reach</b> [1] 143/4</p> <p><b>reached</b> [3] 49/4 86/4 106/12</p> <p><b>react</b> [2] 16/16 125/2</p> <p><b>read</b> [8] 22/14 28/10 42/25 110/6 114/15 116/1 119/23 130/6</p> <p><b>reading</b> [2] 110/10 130/7</p> <p><b>ready</b> [1] 97/9</p> <p><b>real</b> [35] 1/15 2/4 3/20 4/5 13/12 14/2 15/15 36/12 38/11 52/5 67/15 79/19 80/17 81/1 81/10 81/15 81/22 81/25 84/1 84/3 84/6 84/6 84/17 85/9 88/19 100/7 102/22 102/25 103/6 113/23 116/17 122/4 123/5 124/20 124/22</p> <p><b>realism</b> [1] 117/12</p> <p><b>realities</b> [1] 18/10</p> <p><b>reality</b> [5] 6/19 21/1 34/18 115/1 144/23</p> <p><b>really</b> [3] 38/15 38/15 114/16</p> <p><b>reason</b> [18] 22/4 37/22 38/20 45/15 51/24 56/5 81/23 85/13 88/7 93/5 94/8 95/20 105/16 105/20 106/14 110/10 121/24</p>	<p>149/15</p> <p><b>reasonable</b> [3] 52/6 63/9 96/2</p> <p><b>reasons</b> [10] 21/12 26/12 39/23 41/16 52/15 69/13 84/4 86/2 101/19 143/2</p> <p><b>reassurance</b> [1] 141/20</p> <p><b>reassure</b> [1] 29/14</p> <p><b>recall</b> [2] 34/22 39/12</p> <p><b>receipt</b> [1] 132/8</p> <p><b>receive</b> [3] 29/15 36/17 59/11</p> <p><b>received</b> [18] 30/13 43/12 43/13 43/13 51/4 59/12 59/25 87/20 91/7 94/23 95/5 95/12 101/16 105/5 107/23 108/1 125/5 129/9</p> <p><b>receiving</b> [1] 71/23</p> <p><b>recent</b> [6] 7/9 15/19 18/7 29/9 63/7 63/7</p> <p><b>recently</b> [1] 29/21</p> <p><b>recitals</b> [1] 15/8</p> <p><b>recognise</b> [5] 86/14 142/5 145/6 145/10 147/22</p> <p><b>recognised</b> [5] 40/6 77/23 103/8 121/2 121/4</p> <p><b>recognising</b> [1] 7/17</p> <p><b>recognition</b> [2] 35/8 66/23</p> <p><b>reconciliation</b> [1] 138/9</p> <p><b>record</b> [7] 2/24 21/6 25/5 36/20 90/19 123/1 129/2</p> <p><b>record-keeping</b> [1] 90/19</p> <p><b>recording</b> [2] 65/5 66/9</p> <p><b>records</b> [13] 16/4 23/22 44/2 100/5 100/10 101/5 101/11 101/12 116/10 119/17 119/18 141/9 141/11</p> <p><b>recruit</b> [1] 87/9</p> <p><b>recruited</b> [3] 83/14 84/23 90/2</p> <p><b>recruiting</b> [1] 57/8</p> <p><b>recruitment</b> [2] 57/1 86/20</p> <p><b>redaction</b> [2] 17/5 29/10</p> <p><b>reduce</b> [1] 69/24</p> <p><b>reduced</b> [4] 40/10 52/17 76/19 94/25</p> <p><b>reduction</b> [1] 77/21</p> <p><b>reduction/removal</b> [1] 77/21</p> <p><b>redundant</b> [1] 14/23</p>	<p><b>refer</b> [3] 2/9 6/25 52/22</p> <p><b>reference</b> [22] 3/10 10/11 14/16 20/12 25/21 42/4 48/8 58/9 111/3 111/6 115/25 116/4 126/6 130/6 130/9 130/11 134/21 136/9 137/1 138/21 146/19 147/11</p> <p><b>referred</b> [10] 8/22 25/23 50/18 60/2 79/3 100/22 123/3 140/5 142/4 147/5</p> <p><b>referring</b> [2] 43/6 130/10</p> <p><b>refers</b> [3] 11/17 83/1 107/14</p> <p><b>reflect</b> [2] 134/22 146/15</p> <p><b>reflected</b> [3] 9/2 35/7 54/19</p> <p><b>reflection</b> [1] 125/13</p> <p><b>reflective</b> [2] 91/11 146/11</p> <p><b>reflects</b> [1] 15/5</p> <p><b>refuge</b> [1] 5/21</p> <p><b>refusal</b> [1] 13/11</p> <p><b>regard</b> [7] 5/1 5/4 7/9 17/10 18/5 145/10 145/12</p> <p><b>regarded</b> [2] 79/21 91/6</p> <p><b>regarding</b> [17] 65/14 67/7 68/9 77/15 84/1 85/9 85/21 86/4 88/21 97/16 99/14 99/20 104/23 106/12 106/24 107/20 134/4</p> <p><b>Regardless</b> [1] 144/9</p> <p><b>regional</b> [1] 57/3</p> <p><b>regions</b> [1] 55/19</p> <p><b>regret</b> [1] 129/17</p> <p><b>regrettable</b> [2] 5/14 26/9</p> <p><b>regrettably</b> [1] 24/7</p> <p><b>regretted</b> [2] 46/19 47/2</p> <p><b>regular</b> [3] 24/9 24/19 129/1</p> <p><b>regularly</b> [3] 40/21 119/16 129/1</p> <p><b>regulated</b> [1] 65/18</p> <p><b>regulates</b> [1] 65/12</p> <p><b>Regulation</b> [1] 65/11</p> <p><b>regulatory</b> [1] 67/16</p> <p><b>reinstated</b> [1] 126/9</p> <p><b>related</b> [9] 30/9 41/14 45/10 48/24 55/8 58/6 94/4 97/12 98/7</p> <p><b>relates</b> [5] 11/13 15/1 15/17 61/8 142/1</p> <p><b>relating</b> [18] 3/11 7/11 12/24 13/18</p>
--	---	---	--	--

<b>R</b>	<b>remit [1]</b> 63/23 <b>removal [2]</b> 77/17 77/21 <b>remove [1]</b> 36/11 <b>removed [1]</b> 7/20 <b>removing [1]</b> 73/6 <b>renew [1]</b> 4/19 <b>renewed [2]</b> 19/22 53/5 <b>repeat [2]</b> 3/18 4/22 <b>repeatedly [3]</b> 68/7 98/8 149/11 <b>repeats [1]</b> 38/24 <b>repetition [1]</b> 6/24 <b>report [29]</b> 11/6 11/24 12/18 19/19 26/11 42/19 43/1 43/20 43/24 44/5 53/3 53/21 57/23 59/21 60/21 62/7 63/16 64/18 86/25 89/12 93/25 97/22 99/1 100/11 107/13 120/3 120/13 121/21 137/1 <b>reported [5]</b> 50/24 55/19 56/20 60/20 89/12 <b>reporting [3]</b> 19/19 30/12 72/10 <b>reports [10]</b> 12/6 22/23 44/14 44/22 45/2 45/11 71/25 72/12 97/19 100/15 <b>represent [35]</b> 1/14 2/17 2/22 3/4 7/2 9/15 13/7 18/17 21/17 31/19 33/9 42/6 45/20 46/4 46/13 47/13 47/18 48/1 69/12 96/11 96/17 97/18 99/14 100/4 101/13 102/2 102/12 103/10 104/21 104/24 108/4 108/7 108/9 108/14 108/25 <b>representation [2]</b> 57/2 72/8 <b>representatives [3]</b> 20/14 72/17 143/9 <b>represented [8]</b> 1/6 1/9 1/13 31/14 99/9 146/9 150/4 150/8 <b>represents [4]</b> 25/16 137/12 140/12 143/25 <b>republic [70]</b> 4/18 4/21 4/25 5/3 5/5 5/8 5/14 5/22 8/19 8/23 10/6 10/19 11/19 12/8 12/9 12/12 12/17 12/25 13/10 14/1 14/3 14/7 14/21 14/25 15/3 15/4 15/14 16/11 16/16 16/23 17/6 17/7 17/13 18/3 19/5 21/20	25/2 25/6 25/14 30/10 49/13 59/13 59/13 61/16 66/4 72/24 88/24 96/3 96/18 96/20 96/23 106/3 106/5 106/6 106/8 106/10 107/24 107/25 108/2 135/13 135/16 136/2 136/5 136/7 136/10 136/12 138/5 138/11 148/24 149/8 <b>republican [17]</b> 3/20 6/20 17/12 19/12 33/17 33/23 34/7 55/18 75/6 78/15 78/21 78/25 80/3 80/20 86/8 102/16 116/6 <b>republicanism [1]</b> 78/21 <b>Republicans [10]</b> 40/9 78/10 79/5 83/1 83/19 83/22 85/15 88/25 106/21 117/3 <b>reputation [1]</b> 26/19 <b>request [7]</b> 14/6 20/21 30/1 30/3 30/8 135/9 140/24 <b>requested [2]</b> 11/11 17/4 <b>requests [9]</b> 16/17 27/11 27/15 29/24 97/18 144/7 144/8 145/4 146/3 <b>require [2]</b> 19/2 21/15 <b>required [8]</b> 4/22 46/25 51/3 51/18 61/23 65/23 106/7 141/12 <b>requirement [5]</b> 28/1 62/4 86/22 125/25 142/4 <b>requirements [1]</b> 72/16 <b>requires [2]</b> 111/10 141/23 <b>res [1]</b> 133/21 <b>rescuing [1]</b> 4/13 <b>reside [1]</b> 136/11 <b>resigned [1]</b> 80/14 <b>resistance [2]</b> 122/17 122/19 <b>resolute [1]</b> 13/11 <b>resolving [1]</b> 78/14 <b>resonance [1]</b> 138/15 <b>resonate [1]</b> 39/14 <b>resourced [1]</b> 33/17 <b>resources [21]</b> 6/7 19/8 19/24 52/20 52/24 53/2 53/7 53/10 53/25 54/2 54/5 54/7 59/12 61/17 61/18	69/22 85/13 95/13 104/18 145/16 145/24 <b>resourcing [2]</b> 70/12 144/7 <b>respect [18]</b> 1/16 1/18 1/19 1/21 1/22 1/25 2/1 2/19 5/23 9/16 11/13 23/17 23/18 71/8 91/4 120/24 128/11 136/11 <b>respective [1]</b> 143/17 <b>respond [3]</b> 40/11 40/19 138/5 <b>responders [1]</b> 37/6 <b>responding [1]</b> 39/7 <b>response [31]</b> 20/6 20/21 27/12 29/24 30/4 30/14 39/22 40/5 40/12 49/25 50/3 50/6 58/22 60/4 68/14 76/12 76/13 78/7 93/16 95/4 95/11 95/25 100/11 102/8 102/9 105/4 114/15 120/8 139/1 147/2 147/7 <b>responses [4]</b> 23/8 26/25 27/19 146/3 <b>responsibility [20]</b> 2/25 8/22 12/15 25/7 33/15 33/22 36/13 40/2 54/17 55/17 55/21 56/21 60/6 70/9 105/1 113/24 116/18 116/19 128/14 133/12 <b>responsible [9]</b> 3/22 36/12 59/14 71/17 71/23 72/4 87/19 116/16 128/9 <b>rest [5]</b> 10/2 31/18 33/8 110/17 138/13 <b>restored [1]</b> 12/1 <b>restrain [1]</b> 23/14 <b>restricted [2]</b> 64/12 64/15 <b>restriction [4]</b> 29/5 132/3 132/5 132/7 <b>restrictions [6]</b> 58/17 65/14 65/16 65/21 66/6 66/12 <b>rests [2]</b> 4/18 33/16 <b>result [9]</b> 33/7 56/1 61/23 81/10 87/20 90/13 96/8 136/25 141/5 <b>resulted [13]</b> 39/6 45/11 56/17 69/17 73/19 74/6 74/10 78/15 80/1 83/6 86/12 103/24 121/11 <b>retained [2]</b> 45/18 79/11 <b>retention [1]</b> 148/16 <b>retired [1]</b> 18/8	<b>retraction [1]</b> 125/19 <b>retrieval [1]</b> 6/15 <b>return [5]</b> 3/6 15/22 61/1 80/11 93/1 <b>returned [1]</b> 84/25 <b>reveal [2]</b> 23/21 43/19 <b>reveals [1]</b> 28/5 <b>revelation [2]</b> 20/9 21/7 <b>review [19]</b> 11/16 13/20 28/11 28/20 37/13 37/23 38/21 42/8 45/11 45/12 46/23 46/24 46/25 55/2 56/3 72/14 86/13 96/13 128/16 <b>reviewed [3]</b> 56/1 56/4 85/20 <b>reviewing [1]</b> 49/25 <b>reviews [1]</b> 45/19 <b>revisit [1]</b> 146/18 <b>rewritten [1]</b> 6/18 <b>Richard [1]</b> 1/18 <b>ridiculed [1]</b> 112/19 <b>right [8]</b> 35/8 35/17 36/18 67/3 67/10 67/11 109/15 122/9 <b>rightly [3]</b> 36/16 138/12 147/18 <b>rights [8]</b> 5/16 35/9 35/10 35/11 64/11 67/5 68/3 68/3 <b>rigorous [3]</b> 111/10 140/1 148/12 <b>rigour [4]</b> 39/17 42/12 102/5 141/21 <b>rise [2]</b> 35/24 109/2 <b>risk [22]</b> 34/15 49/1 49/10 51/16 52/6 55/9 61/23 79/9 85/14 85/16 90/10 98/20 98/21 99/6 116/20 116/22 116/22 118/25 119/1 131/23 136/15 142/15 <b>risks [4]</b> 50/2 54/1 61/22 98/18 <b>rivalry [2]</b> 87/3 87/5 <b>road [5]</b> 63/3 63/4 76/22 121/12 126/21 <b>roadblocks [1]</b> 118/23 <b>robbery [1]</b> 83/7 <b>Robert [1]</b> 2/7 <b>robust [3]</b> 22/7 37/18 135/17 <b>Rocio [1]</b> 32/20 <b>rocket [1]</b> 50/20 <b>role [16]</b> 9/17 12/14 29/4 30/6 39/17 54/13 56/12 57/5 57/9 57/13 57/17 57/19 81/7 81/25 102/21 137/21
----------	---	---	--	---

<p><b>R</b></p> <p><b>roles [2]</b> 54/24 56/20</p> <p><b>Ronan [2]</b> 33/12 49/14</p> <p><b>Ronnie [9]</b> 27/20 27/21 70/23 70/25 77/19 93/22 100/12 100/19 101/1</p> <p><b>room [1]</b> 2/13</p> <p><b>root [1]</b> 128/15</p> <p><b>Rosemary [2]</b> 2/6 32/25</p> <p><b>Rountree [1]</b> 109/23</p> <p><b>route [1]</b> 124/16</p> <p><b>routine [1]</b> 55/6</p> <p><b>Roy [1]</b> 1/20</p> <p><b>Royal [2]</b> 44/22 84/25</p> <p><b>RUC [53]</b> 4/7 4/11 11/9 12/20 16/1 17/21 18/12 18/13 24/5 24/13 24/21 25/1 25/5 26/19 43/8 52/10 52/13 54/10 54/12 55/16 56/6 56/13 56/24 70/15 72/8 76/14 86/10 86/21 87/1 87/7 87/12 87/12 87/18 87/23 88/2 90/4 92/16 92/18 92/22 92/23 93/23 95/3 95/10 98/8 98/11 100/17 100/22 106/15 106/22 107/2 107/6 121/14 127/24</p> <p><b>RUC's [1]</b> 56/12</p> <p><b>RUC/PSNI [1]</b> 127/24</p> <p><b>rule [13]</b> 27/11 27/15 27/19 29/24 30/1 30/3 30/8 39/20 39/21 60/7 70/7 137/21 138/16</p> <p><b>Rule 9 [7]</b> 27/11 27/15 27/19 29/24 30/1 30/3 30/8</p> <p><b>ruled [2]</b> 41/12 42/7</p> <p><b>rules [4]</b> 90/12 96/25 97/15 98/14</p> <p><b>ruling [3]</b> 7/9 29/12 42/9</p> <p><b>rump [3]</b> 82/21 82/22 82/23</p> <p><b>running [6]</b> 34/24 57/8 59/2 86/20 87/17 121/12</p> <p><b>Rupert [9]</b> 12/9 30/11 58/24 83/14 83/20 89/20 89/25 93/8 93/20</p> <p><b>rush [66]</b> 109/12 109/17 109/25 110/23 111/5 111/9 111/17 112/12 112/12 112/15 113/2 113/3 113/11 113/19 118/1 119/24</p>	<p>120/11 120/22 121/3 121/5 121/9 121/13 121/22 122/5 122/13 122/14 122/16 122/19 122/23 123/22 123/24 124/7 125/3 125/8 125/9 125/23 126/6 126/11 126/18 127/1 127/21 127/22 128/3 128/15 128/19 129/3 129/13 129/15 130/17 132/10 134/1 134/5 134/10 134/14 134/23 134/24 134/25 135/9 135/11 136/13 136/18 136/23 137/6 137/8 137/11 150/11</p> <p><b>Rush's [1]</b> 110/16</p> <hr/> <p><b>S</b></p> <p><b>sadly [1]</b> 126/19</p> <p><b>safe [1]</b> 4/9</p> <p><b>safeguarding [1]</b> 66/17</p> <p><b>safeguards [1]</b> 66/2</p> <p><b>safety [4]</b> 98/19 98/22 99/15 116/19</p> <p><b>said [52]</b> 9/3 23/3 24/15 24/23 29/23 30/18 31/12 33/24 34/7 35/11 36/9 37/14 37/25 38/7 38/13 38/23 38/25 39/7 43/1 43/3 43/7 43/11 43/17 51/16 53/4 54/20 55/22 75/11 77/20 82/6 93/9 94/17 99/1 104/6 107/7 109/4 112/9 114/20 114/22 122/11 123/2 124/15 126/12 130/21 136/23 137/22 138/6 139/5 142/7 144/24 145/25 146/16</p> <p><b>said the [1]</b> 142/7</p> <p><b>Samantha [1]</b> 1/22</p> <p><b>Samaritan's [1]</b> 147/4</p> <p><b>same [7]</b> 4/11 47/11 132/1 132/24 135/15 141/5 142/18</p> <p><b>sample [1]</b> 129/10</p> <p><b>Sandy [1]</b> 33/13</p> <p><b>Sarjantson [1]</b> 52/5</p> <p><b>sat [1]</b> 10/3</p> <p><b>satisfaction [1]</b> 36/3</p> <p><b>satisfied [3]</b> 16/13 88/14 111/11</p> <p><b>Saturday [2]</b> 4/2 31/17</p> <p><b>save [5]</b> 4/12 36/4 59/6 143/7 143/9</p> <p><b>saw [1]</b> 80/18</p> <p><b>say [33]</b> 2/11 6/24 7/8</p>	<p>13/7 23/15 25/10 27/4 49/21 91/15 115/24 118/5 119/10 124/4 125/11 129/21 131/4 131/5 131/10 131/16 131/17 131/20 132/22 133/4 133/14 133/21 133/22 135/4 139/4 143/6 143/13 143/16 145/18 147/22</p> <p><b>saying [5]</b> 77/9 116/18 119/10 122/7 131/1</p> <p><b>says [4]</b> 128/8 136/13 137/6 142/12</p> <p><b>scale' [1]</b> 57/25</p> <p><b>scare [1]</b> 41/2</p> <p><b>scene [2]</b> 4/8 4/12</p> <p><b>sceptical [1]</b> 149/3</p> <p><b>schedule [1]</b> 144/18</p> <p><b>scheme [1]</b> 67/24</p> <p><b>scientific [1]</b> 67/17</p> <p><b>scope [2]</b> 116/3 129/22</p> <p><b>scrutinised [1]</b> 101/23</p> <p><b>scrutiny [6]</b> 12/7 13/23 27/5 99/18 130/13 148/12</p> <p><b>SDLP [1]</b> 73/8</p> <p><b>Seamus [2]</b> 80/15 83/23</p> <p><b>Sean [2]</b> 32/24 44/6</p> <p><b>search [8]</b> 16/19 63/8 63/11 63/12 63/25 113/22 114/12 140/23</p> <p><b>searches [3]</b> 104/12 141/12 141/15</p> <p><b>searching [2]</b> 127/19 134/20</p> <p><b>seated [2]</b> 8/13 21/11</p> <p><b>seats [1]</b> 79/2</p> <p><b>second [10]</b> 37/22 40/14 47/15 52/19 93/21 117/1 118/16 128/10 142/1 144/7</p> <p><b>secondly [15]</b> 4/6 8/13 14/25 24/19 41/21 48/5 51/17 56/8 67/24 82/10 88/21 90/18 102/6 108/20 122/11</p> <p><b>secret [4]</b> 26/7 65/16 73/13 83/15</p> <p><b>Secretaries [1]</b> 145/1</p> <p><b>Secretary [24]</b> 20/14 20/18 28/9 28/14 28/25 29/9 29/12 44/23 45/25 46/21 65/22 66/25 70/8 70/13 70/14 70/22 70/25 71/4 77/10 141/3 143/24 144/12 145/9 145/14</p>	<p><b>secretly [1]</b> 57/7</p> <p><b>sectarian [1]</b> 17/12</p> <p><b>section [4]</b> 15/24 17/14 66/15 112/7</p> <p><b>section 2 [1]</b> 66/15</p> <p><b>section 3 [1]</b> 17/14</p> <p><b>secure [2]</b> 73/21 127/2</p> <p><b>Securicor [1]</b> 83/8</p> <p><b>security [85]</b> 6/5 7/16 8/3 8/17 12/15 12/22 15/24 18/20 19/6 19/18 19/22 20/13 20/17 21/3 21/15 22/18 22/24 23/7 23/25 24/12 25/22 29/8 34/15 43/6 43/17 43/17 44/25 45/3 52/16 53/3 53/5 53/14 54/13 54/20 54/22 54/25 57/15 57/15 58/20 59/5 59/14 59/25 60/1 62/1 62/1 66/16 69/10 69/15 69/22 70/2 70/5 70/11 70/14 70/18 70/19 71/2 71/3 71/7 71/8 71/15 71/21 71/24 76/12 76/13 76/18 76/23 77/4 77/14 83/16 85/23 89/24 90/14 95/24 96/1 97/23 99/2 117/19 117/20 123/9 131/24 140/8 140/24 141/2 141/6 142/16</p> <p><b>see [11]</b> 9/6 17/8 23/12 36/17 109/15 110/4 120/19 125/12 131/4 134/3 146/10</p> <p><b>seeing [1]</b> 146/6</p> <p><b>seek [7]</b> 34/12 36/19 38/20 48/3 62/9 128/19 141/22</p> <p><b>seeking [3]</b> 16/8 108/7 141/5</p> <p><b>seeks [1]</b> 145/22</p> <p><b>seem [2]</b> 146/8 148/18</p> <p><b>seems [2]</b> 30/17 94/13</p> <p><b>seen [4]</b> 77/22 99/23 120/19 148/7</p> <p><b>SEFF [1]</b> 2/21</p> <p><b>self [5]</b> 18/1 73/18 106/18 111/21 146/21</p> <p><b>self-determination [1]</b> 73/18</p> <p><b>self-evidently [1]</b> 146/21</p> <p><b>Self-help [1]</b> 106/18</p> <p><b>self-protection [1]</b> 111/21</p> <p><b>self-serving [1]</b> 18/1</p>	<p><b>Semtex [2]</b> 81/11 103/1</p> <p><b>Semtex-based [1]</b> 103/1</p> <p><b>senior [13]</b> 12/20 18/8 20/14 24/19 43/10 43/16 60/22 70/17 72/17 77/17 140/25 141/1 149/11</p> <p><b>sense [8]</b> 38/11 70/21 110/14 113/15 115/21 116/17 120/13 120/21</p> <p><b>sensitive [4]</b> 29/7 101/20 112/17 127/14</p> <p><b>sent [1]</b> 93/8</p> <p><b>sentiments [2]</b> 110/20 127/8</p> <p><b>separate [2]</b> 102/11 102/18</p> <p><b>separately [3]</b> 27/14 59/19 146/4</p> <p><b>separation [1]</b> 55/4</p> <p><b>September [2]</b> 42/21 124/8</p> <p><b>September 2020 [1]</b> 42/21</p> <p><b>sequence [1]</b> 7/6</p> <p><b>sergeant [3]</b> 12/13 49/15 100/22</p> <p><b>series [3]</b> 49/7 102/14 105/12</p> <p><b>serious [8]</b> 25/15 66/16 79/14 82/1 85/14 125/1 131/8 140/12</p> <p><b>servants [3]</b> 29/11 124/11 128/8</p> <p><b>served [1]</b> 128/4</p> <p><b>serves [2]</b> 21/7 30/20</p> <p><b>service [25]</b> 15/21 18/6 19/22 19/24 20/17 23/21 26/5 44/10 44/19 45/3 53/7 54/8 54/20 57/15 57/16 59/16 59/23 65/17 66/24 71/15 71/21 71/24 72/10 140/10 147/4</p> <p><b>services [12]</b> 12/22 25/13 34/16 34/17 53/5 57/18 62/1 68/16 70/18 83/16 89/24 95/25</p> <p><b>serving [2]</b> 18/1 76/19</p> <p><b>set [19]</b> 21/3 62/7 66/14 76/1 78/2 81/5 86/18 97/19 111/1 111/3 111/14 124/2 129/24 133/14 138/19 140/17 140/24 145/2 146/23</p> <p><b>setback [1]</b> 126/6</p>
--	---	---	---	--

<b>S</b>	49/8	100/12 100/19 101/1	34/13 72/25 113/20	31/12 31/14 68/24
<b>sets [1]</b> 127/17	<b>shut [1]</b> 131/16	109/2 109/11 113/1	<b>Society's [1]</b> 35/7	97/3 97/9 109/1
<b>setting [3]</b> 143/17	<b>shy [1]</b> 112/18	124/3 128/15 129/19	<b>soldier [1]</b> 74/21	118/12 123/12 135/5
144/15 145/13	<b>sic [2]</b> 90/12 94/23	139/4 139/15 140/14	<b>soldiers [2]</b> 76/21	146/19 150/9
<b>settlement [3]</b> 73/22	<b>sick [1]</b> 13/8	141/14 141/19 141/24	76/23	<b>Sovereignty [3]</b>
75/21 76/17	<b>sides [5]</b> 13/24 55/5	143/4 143/6 143/12	<b>solely [2]</b> 15/11 24/2	79/19 80/19 82/13
<b>seven [2]</b> 25/23 26/1	107/10 135/11 136/14	<b>Sir Anthony [1]</b>	<b>solicitor [1]</b> 112/2	<b>Spanish [1]</b> 34/24
<b>Seventh [1]</b> 84/15	<b>sight [1]</b> 28/7	27/24	<b>solicitors [4]</b> 1/6 1/10	<b>speak [2]</b> 91/3 91/24
<b>several [6]</b> 37/10	<b>sign [1]</b> 80/10	<b>Sir Gerald [1]</b> 56/1	1/13 150/5	<b>speaking [3]</b> 69/2
43/23 47/9 51/20	<b>signatories [1]</b>	<b>Sir Ronnie [9]</b> 27/20	<b>solid [1]</b> 75/20	93/11 113/9
57/25 146/24	138/10	27/21 70/23 70/25	<b>solution [1]</b> 73/11	<b>speaks [2]</b> 13/13
<b>shall [1]</b> 116/7	<b>signature [1]</b> 14/9	77/19 93/22 100/12	<b>some [60]</b> 5/25 6/25	133/21
<b>shame [1]</b> 5/5	<b>signed [2]</b> 72/22	100/19 101/1	7/3 7/10 7/12 8/9 8/13	<b>special [31]</b> 3/7
<b>shaped [1]</b> 111/18	75/10	<b>sister [5]</b> 32/4 32/13	9/13 11/2 11/5 12/1	24/13 26/7 34/16
<b>share [4]</b> 50/9 55/9	<b>significance [7]</b>	32/20 33/1 33/5	21/17 23/24 33/24	50/24 55/16 55/20
90/21 100/2	11/21 19/17 51/8 58/5	<b>sit [2]</b> 97/5 115/23	38/8 38/9 44/21 47/22	55/22 55/25 56/9 60/5
<b>shared [18]</b> 33/22	88/11 93/15 137/19	<b>site [2]</b> 64/24 66/11	48/4 48/6 48/13 49/23	64/2 71/12 71/12
41/20 55/7 66/19 90/6	<b>significant [22]</b> 8/21	<b>sitting [2]</b> 117/5	53/13 56/22 58/5	71/23 72/3 72/18 85/4
91/24 92/1 92/14 93/7	15/3 18/16 42/16 44/1	117/6	58/15 62/25 65/15	85/5 86/9 87/7 88/17
94/1 94/6 94/7 94/8	45/23 51/5 58/7 63/23	<b>situation [7]</b> 7/19	69/9 70/21 71/3 76/8	90/3 93/24 94/1 98/3
94/17 98/18 102/7	67/5 68/5 68/12 72/19	19/9 36/14 37/8 52/17	79/25 80/7 82/19	100/10 100/17 100/25
107/19 146/8	75/13 78/5 79/11	73/23 98/11	96/14 106/16 110/9	108/21 135/5
<b>shares [1]</b> 147/21	79/18 80/21 82/20	<b>situations [2]</b> 67/6	110/11 113/7 119/13	<b>specific [4]</b> 16/17
<b>sharing [11]</b> 10/17	94/1 95/15 143/23	126/7	120/5 120/23 121/20	71/19 88/9 118/4
12/21 66/12 86/5 88/5	<b>significantly [1]</b>	<b>six [1]</b> 30/1	124/20 127/6 127/13	<b>specifically [2]</b> 17/1
90/17 90/24 92/11	137/5	<b>Sixth [2]</b> 83/25 95/6	131/9 134/16 136/1	25/25
92/13 97/13 117/20	<b>signing [2]</b> 74/18	<b>Skelton [6]</b> 1/19 1/20	136/3 141/25 143/22	<b>specified [2]</b> 114/24
<b>Sharkey [1]</b> 2/7	75/8	1/20 1/21 8/25 41/1	144/24 145/19 145/20	146/25
<b>Shaun [1]</b> 32/11	<b>silence [1]</b> 111/21	<b>skill [1]</b> 81/5	146/21 148/3 148/25	<b>speculation [1]</b> 84/17
<b>Shauna [1]</b> 1/20	<b>silos [4]</b> 88/2 90/10	<b>slow [2]</b> 144/17	149/8	<b>spend [2]</b> 10/9 53/13
<b>she [2]</b> 114/11 120/7	94/5 98/17	<b>smacking [1]</b> 22/22	<b>somebody [1]</b> 119/4	<b>sphere [1]</b> 55/23
<b>shed [3]</b> 41/17 41/18	<b>similar [3]</b> 26/22 29/5	<b>small [9]</b> 11/4 19/17	<b>something [11]</b> 39/1	<b>splinter [1]</b> 82/7
41/21	126/7	80/25 81/10 81/11	61/1 88/20 91/10	<b>split [8]</b> 78/24 79/4
<b>sheet [1]</b> 100/9	<b>Similarly [5]</b> 15/17	81/11 81/22 87/8	91/11 91/13 93/18	79/8 79/18 79/22
<b>sheets [1]</b> 88/17	38/7 57/13 77/19 98/2	141/19	100/8 114/2 131/12	80/18 80/22 102/24
<b>shift [1]</b> 36/16	<b>simple [1]</b> 69/15	<b>Smith [1]</b> 33/13	143/12	<b>splits [2]</b> 78/20 78/22
<b>shining [1]</b> 35/1	<b>simply [4]</b> 67/8	<b>Smithwick [8]</b> 11/6	<b>sometimes [5]</b> 85/5	<b>SPMs [1]</b> 20/25
<b>shocking [2]</b> 20/9	120/21 140/18 147/24	<b>smugglers [1]</b> 50/25	87/2 90/3 118/2 147/4	<b>spoke [1]</b> 50/15
119/14	<b>simultaneously [1]</b>	<b>so [57]</b> 3/23 4/2 6/9	<b>somewhere [1]</b> 82/22	<b>spoken [1]</b> 39/10
<b>shooting [1]</b> 49/13	14/4	6/25 11/12 13/6 22/10	<b>son [6]</b> 31/21 31/25	<b>staff [2]</b> 2/18 72/12
<b>short [10]</b> 31/7 31/10	<b>since [16]</b> 6/10 11/23	34/2 36/19 39/16	32/8 32/10 32/14	<b>stage [22]</b> 8/8 10/23
34/25 69/5 69/7 75/20	45/9 45/23 46/1 46/4	53/20 63/4 64/11	32/17	20/8 26/24 37/1 39/23
96/10 109/8 110/5	46/22 54/10 62/2 84/3	76/20 90/6 91/23	<b>sons [1]</b> 113/16	44/17 46/21 61/2 69/5
126/15	93/10 115/8 117/13	92/10 97/5 97/9 110/4	<b>soon [2]</b> 84/13	86/4 103/10 103/12
<b>shortened [1]</b> 40/8	118/3 144/11 144/14	111/14 111/17 111/18	115/18	108/5 108/7 113/4
<b>shortly [1]</b> 20/5	<b>sincerely [1]</b> 38/3	112/10 112/10 113/10	<b>sorry [6]</b> 9/5 114/24	122/22 129/18 132/22
<b>shot [2]</b> 74/21 75/1	<b>single [3]</b> 40/2	115/17 116/16 116/19	117/13 119/11 119/11	135/4 136/1 139/20
<b>should [40]</b> 4/22 22/2	141/19 147/4	117/25 118/3 118/14	133/23	<b>staggering [1]</b> 21/1
22/3 22/11 30/21	<b>singular [1]</b> 138/15	118/19 118/23 118/24	<b>sort [3]</b> 16/8 16/8	<b>stake [1]</b> 119/6
36/16 36/18 36/25	<b>Sinn [6]</b> 19/14 73/9	119/2 119/6 119/7	148/2	<b>stance [1]</b> 113/19
40/12 41/8 45/13	73/14 78/25 79/1	119/10 119/21 120/4	<b>sought [11]</b> 29/6 46/6	<b>stand [2]</b> 112/15
45/21 46/25 47/12	81/20	121/15 123/5 123/13	48/2 87/9 97/19	131/8
56/5 69/20 69/21	<b>Siobhan [1]</b> 110/1	132/21 133/6 133/23	112/18 113/4 120/23	<b>standard [1]</b> 29/15
85/25 87/19 92/3 92/6	<b>Siochana [11]</b> 11/11	139/5 143/4 144/4	140/9 140/20 141/7	<b>standing [3]</b> 39/3
92/8 95/9 96/16 99/21	12/15 12/20 15/25	144/21 145/2 145/5	<b>sounds [1]</b> 131/3	80/4 110/20
101/15 101/23 103/6	17/17 18/12 24/5	145/10 145/13 147/16	<b>source [4]</b> 49/3 88/14	<b>Stanley [2]</b> 31/22
107/1 108/8 113/25	24/13 24/22 25/9	148/17	99/6 129/16	38/25
114/17 115/6 121/1	92/22	<b>so-called [2]</b> 123/5	<b>sources [3]</b> 59/25	<b>stark [1]</b> 126/2
124/6 127/8 131/18	<b>sir [38]</b> 1/4 1/11 2/8	123/13	65/8 89/25	<b>start [1]</b> 120/19
132/2 132/20 135/10	2/18 3/6 13/7 22/6	<b>societies [1]</b> 35/15	<b>south [9]</b> 2/20 9/9	<b>starting [3]</b> 2/8 14/15
<b>shouldn't [1]</b> 41/12	23/14 27/4 27/20	<b>society [4]</b> 34/12	9/10 9/11 9/11 89/11	22/2
<b>showed [1]</b> 139/1	27/21 27/24 30/25		106/13 138/8 139/3	<b>state [125]</b> 4/17 4/18
<b>showing [2]</b> 12/2	31/7 56/1 70/23 70/25		<b>southern [1]</b> 81/3	8/23 10/6 10/15 10/16
	77/19 86/13 93/22		<b>Southey [12]</b> 31/8	10/18 12/11 13/10



<b>S</b>	46/19 47/5 47/7 47/16 52/9 70/23 73/16 75/17 86/14 92/20 98/2 100/20 105/21 107/17 108/24 109/3 109/17 110/5 110/10 110/15 119/23 127/22 128/18 132/1 132/16 132/17 133/2 133/25 138/22 140/4 142/19 144/10 150/3 150/7 150/11	<b>Stormont [1]</b> 72/8 <b>story [3]</b> 37/20 137/12 140/15 <b>straightaway [1]</b> 131/12 <b>strained [1]</b> 87/6 <b>strategic [6]</b> 71/3 71/7 72/15 72/15 87/10 87/13 <b>strategy [2]</b> 70/12 124/19 <b>street [3]</b> 4/1 73/16 117/7 <b>streets [2]</b> 9/13 41/3 <b>strength [4]</b> 2/15 23/11 136/20 137/10 <b>strike [2]</b> 125/15 125/21 <b>Strong [1]</b> 125/18 <b>strongly [3]</b> 22/6 122/19 149/2 <b>struck [1]</b> 126/5 <b>structural [1]</b> 56/5 <b>structure [4]</b> 27/9 48/14 54/16 55/25 <b>structured [1]</b> 55/19 <b>structures [1]</b> 59/17 <b>struggle [2]</b> 80/12 119/23 <b>struggled [1]</b> 125/9 <b>struggling [1]</b> 120/11 <b>stuff [1]</b> 82/16 <b>Sub [4]</b> 50/25 51/3 95/10 106/23 <b>Sub-Divisional [4]</b> 50/25 51/3 95/10 106/23 <b>subcommittee [1]</b> 71/20 <b>subject [5]</b> 64/25 65/6 97/24 99/17 112/24 <b>subjected [2]</b> 26/22 148/12 <b>submission [5]</b> 17/19 76/11 82/2 92/7 98/21 <b>submissions [22]</b> 10/23 17/18 45/5 46/8 46/12 47/18 48/4 48/8 48/10 50/9 58/15 69/9 76/7 88/6 92/10 93/3 97/11 103/20 104/17 125/7 146/15 146/18 <b>submit [10]</b> 45/20 51/24 52/3 61/20 61/23 69/12 69/14 90/10 99/14 103/18 <b>submitted [7]</b> 41/7 45/5 85/12 101/22 102/1 105/25 143/3 <b>subsequent [2]</b> 7/10 93/17 <b>subsequently [4]</b> 75/3 75/14 80/14	130/14 <b>substantial [2]</b> 29/2 56/20 <b>substantive [5]</b> 25/17 30/13 47/4 64/3 64/6 <b>subversives [2]</b> 18/14 92/24 <b>succeeded [1]</b> 6/1 <b>success [2]</b> 105/18 126/15 <b>successes [3]</b> 58/1 58/6 61/5 <b>successful [1]</b> 45/7 <b>successive [1]</b> 14/6 <b>succinct [1]</b> 9/3 <b>such [53]</b> 7/17 8/11 9/23 13/2 14/5 16/4 16/10 16/12 17/4 17/8 17/23 17/25 19/6 19/12 20/22 21/7 22/23 23/4 23/8 23/15 25/15 28/24 29/6 30/19 33/19 34/16 35/9 35/18 39/12 41/22 51/9 52/1 55/9 56/10 57/25 58/23 83/22 88/11 93/17 95/5 96/1 105/5 123/17 140/13 141/14 142/9 144/9 144/19 145/3 148/5 148/11 148/14 148/17 <b>sudden [1]</b> 52/18 <b>suffered [1]</b> 136/21 <b>suffering [3]</b> 2/14 39/6 39/12 <b>sufficient [5]</b> 53/2 107/7 123/10 123/15 127/25 <b>sufficiently [2]</b> 134/22 135/17 <b>suggest [9]</b> 18/1 28/3 33/21 88/1 102/19 105/21 107/18 112/8 119/16 <b>suggested [4]</b> 95/3 95/4 102/21 102/24 <b>suggesting [6]</b> 40/1 41/9 51/10 93/18 98/19 124/5 <b>suggestion [1]</b> 93/15 <b>suggests [5]</b> 27/25 76/13 78/3 106/6 107/11 <b>suitable [2]</b> 69/3 69/4 <b>summary [4]</b> 3/18 26/24 28/10 63/2 <b>summer [3]</b> 34/19 35/1 58/2 <b>summons [2]</b> 116/15 127/9 <b>sun [1]</b> 35/1 <b>sunny [1]</b> 4/1 <b>Superintendent [2]</b>	49/16 76/15 <b>superintendents [1]</b> 49/24 <b>superior [1]</b> 87/16 <b>supplied [2]</b> 12/13 142/25 <b>suppliers [1]</b> 65/3 <b>supply [2]</b> 58/4 107/25 <b>supplying [1]</b> 89/20 <b>support [10]</b> 2/18 22/8 54/12 56/24 79/12 87/12 90/11 106/18 113/20 125/9 <b>supported [6]</b> 50/8 70/13 82/2 98/22 101/24 104/1 <b>supporting [2]</b> 89/13 135/14 <b>supportive [1]</b> 54/24 <b>supports [3]</b> 90/8 92/6 137/6 <b>Supreme [1]</b> 36/1 <b>sure [2]</b> 38/14 39/1 <b>surprising [2]</b> 101/10 101/11 <b>surrounding [5]</b> 37/13 37/24 38/22 113/5 120/12 <b>surveillance [9]</b> 19/7 59/15 62/9 64/21 65/12 65/15 67/15 83/2 83/5 <b>survived [2]</b> 2/4 37/20 <b>survivor [3]</b> 1/12 27/13 30/20 <b>survivors [48]</b> 2/23 9/14 14/8 21/9 22/1 22/9 23/16 26/22 33/7 36/23 37/4 39/19 39/24 41/6 42/6 42/11 42/13 45/14 45/20 46/3 46/10 46/13 47/11 47/13 47/17 48/1 69/12 96/11 96/17 97/18 99/9 99/13 100/4 101/13 102/2 103/10 103/13 106/9 108/6 108/9 108/11 108/14 108/18 108/25 139/17 139/25 140/16 141/21 <b>survivors' [1]</b> 108/20 <b>suspect [2]</b> 68/7 93/12 <b>suspected [5]</b> 59/20 62/10 63/1 63/21 64/1 <b>suspecting [1]</b> 63/10 <b>suspects [5]</b> 7/9 64/16 64/21 94/20 104/13 <b>suspension [1]</b> 9/22 <b>suspicion [3]</b> 64/5
----------	---	---	--	--



<b>S</b>	<b>techniques [2]</b> 19/7 65/18 <b>technology [1]</b> 6/8 <b>telecom [1]</b> 65/3 <b>telecommunications [1]</b> 65/21 <b>Telegraph [1]</b> 89/5 <b>telephone [14]</b> 50/13 58/12 64/24 65/2 65/17 65/25 66/4 66/9 67/12 82/10 83/3 89/6 101/2 147/2 <b>telephoned [1]</b> 42/21 <b>Television [1]</b> 147/3 <b>tell [2]</b> 37/4 119/20 <b>telling [1]</b> 17/16 <b>Temporary [3]</b> 62/20 62/22 63/19 <b>ten [2]</b> 28/16 50/15 <b>term [1]</b> 91/3 <b>termed [1]</b> 115/9 <b>terminal [1]</b> 65/5 <b>terms [24]</b> 3/9 10/10 14/15 41/12 42/3 48/7 69/15 71/13 80/22 111/3 111/6 112/3 115/25 116/3 116/22 129/4 130/5 130/8 130/10 134/21 136/8 137/20 146/19 147/10 <b>territorial [1]</b> 5/20 <b>terrorism [28]</b> 6/7 6/11 19/25 20/4 25/9 40/16 53/8 54/1 58/1 58/8 60/2 60/7 61/17 62/20 62/22 63/12 63/19 64/1 66/20 67/21 67/25 68/6 69/24 70/1 76/3 78/4 105/19 107/14 <b>terrorist [26]</b> 53/19 55/18 55/24 57/7 57/9 58/21 58/24 59/5 59/9 59/20 60/16 62/3 62/12 64/5 69/17 75/5 76/4 84/13 86/16 98/7 98/25 99/3 103/22 107/3 122/3 135/22 <b>terrorist-related [1]</b> 98/7 <b>terrorists [13]</b> 3/20 6/20 10/2 17/12 19/12 33/17 33/23 34/7 57/11 63/1 63/21 68/7 116/6 <b>test [3]</b> 9/18 22/7 136/19 <b>tested [1]</b> 140/21 <b>text [1]</b> 27/11 <b>than [15]</b> 3/25 13/13 25/9 33/22 49/5 54/5 78/4 88/3 114/25 119/19 119/25 131/7 133/13 133/14 149/1	<b>thank [14]</b> 2/17 31/5 31/6 97/10 108/24 109/1 109/16 109/19 139/7 139/8 139/12 143/7 143/9 143/15 <b>that [704]</b> <b>that's [8]</b> 28/13 51/19 113/25 116/25 131/12 133/23 134/1 145/25 <b>their [82]</b> 2/15 3/2 4/9 4/19 5/6 5/10 5/10 5/12 8/10 8/23 9/19 12/3 13/11 13/12 13/14 14/8 17/11 17/18 17/19 19/18 20/4 22/11 29/4 31/16 32/10 33/2 33/4 33/23 36/3 36/20 37/2 37/3 37/3 37/4 37/5 37/7 41/6 53/21 56/17 57/11 59/1 60/15 63/6 63/23 64/8 64/22 67/8 68/10 77/1 77/16 79/25 81/5 81/15 81/25 89/24 99/7 110/18 110/23 110/25 115/14 115/22 119/2 120/8 120/23 120/24 122/2 124/1 124/11 124/16 129/13 129/14 130/13 131/16 133/2 136/20 137/6 142/8 142/25 143/17 145/2 148/15 148/20 <b>them [37]</b> 3/7 9/6 9/12 9/13 15/6 15/6 36/8 36/9 42/22 53/1 54/24 64/23 68/22 79/5 80/11 81/6 82/15 82/19 82/21 94/21 101/6 111/7 113/9 116/1 116/16 118/1 118/2 123/14 123/19 123/23 127/25 130/7 130/17 130/25 134/19 143/22 145/8 <b>themes [3]</b> 37/10 47/16 48/6 <b>themselves [7]</b> 14/12 17/23 38/5 59/10 116/3 116/10 144/25 <b>themselves in [1]</b> 38/5 <b>then [31]</b> 6/23 7/7 9/7 10/4 14/19 22/12 23/1 25/1 27/20 35/25 38/18 45/25 46/18 61/25 68/21 78/18 90/4 96/24 97/3 104/19 116/14 117/14 117/14 117/15 118/19 118/20 118/23 132/8 133/20 139/15 144/15 <b>there [192]</b>	<b>there's [7]</b> 9/12 40/14 48/7 94/7 119/3 131/9 146/17 <b>thereafter [2]</b> 18/25 95/10 <b>therefore [18]</b> 15/5 22/13 26/24 30/1 45/12 52/24 53/9 65/12 67/13 87/21 88/1 89/22 101/11 106/23 115/11 136/13 145/25 149/10 <b>thereto [1]</b> 22/15 <b>these [83]</b> 2/10 14/23 22/15 23/6 23/10 24/18 24/24 26/25 30/19 36/6 39/16 44/13 44/22 47/9 47/18 57/18 62/7 63/2 63/17 63/22 64/2 67/1 67/19 68/5 70/15 70/19 71/7 76/24 81/12 85/5 85/8 86/4 86/5 90/11 92/10 92/17 92/19 98/15 102/17 103/3 103/9 103/20 105/24 107/22 110/19 112/3 113/9 115/3 116/13 116/15 116/20 117/1 117/4 117/15 117/24 119/7 120/16 123/1 124/4 125/7 127/13 127/15 127/17 130/9 130/16 130/21 130/22 131/5 131/9 132/4 132/8 132/19 135/21 138/15 138/15 140/9 140/19 140/23 143/23 146/7 147/10 148/24 149/5 <b>they [133]</b> 3/21 4/10 4/21 5/1 5/7 5/18 6/1 6/18 7/13 8/9 8/16 9/7 12/3 12/7 13/8 14/12 17/20 17/23 17/23 17/24 23/17 24/10 29/2 29/15 29/16 34/23 36/12 36/13 36/25 37/8 37/9 38/2 38/3 38/8 38/9 40/24 42/23 43/3 43/4 43/14 43/18 43/19 44/2 44/3 46/20 48/2 53/24 54/5 58/10 64/5 68/8 71/22 77/18 80/10 80/16 91/5 95/12 96/21 103/25 110/19 110/21 111/10 113/24 114/16 114/20 115/4 115/6 115/17 115/17 115/20 115/22 115/23 116/11 116/14 116/15 116/18 116/19 117/5 117/9 117/10 117/14 118/3	118/6 118/13 118/13 118/14 119/10 119/18 121/17 121/17 121/18 127/3 127/3 128/25 129/4 131/1 131/4 131/7 131/8 131/8 131/9 131/16 131/16 132/17 132/18 132/19 132/20 133/3 133/4 133/5 133/5 133/6 133/10 133/16 133/17 133/19 133/22 134/3 134/17 134/18 134/19 134/22 135/2 135/8 135/15 137/9 142/5 143/10 143/20 146/6 147/14 147/18 149/13 <b>they're [1]</b> 82/20 <b>things [6]</b> 48/4 91/5 120/21 121/17 121/18 132/18 <b>think [11]</b> 82/14 82/15 82/17 82/23 90/25 105/11 110/1 115/18 128/20 133/20 149/15 <b>thinking [1]</b> 144/25 <b>third [5]</b> 40/21 82/9 89/5 93/25 117/17 <b>thirdly [7]</b> 4/15 25/1 38/20 68/5 82/25 102/7 108/22 <b>this [250]</b> <b>thorough [4]</b> 37/12 37/18 37/23 38/21 <b>thoroughness [1]</b> 39/17 <b>those [88]</b> 1/5 2/11 2/12 2/13 2/15 2/17 3/4 3/5 3/18 4/7 4/11 5/11 6/25 7/2 7/18 7/18 7/22 7/24 7/25 12/10 13/1 13/7 18/3 21/6 25/8 26/1 30/4 30/13 30/25 34/17 36/2 36/11 36/16 37/19 38/5 39/14 39/22 43/1 53/22 54/2 54/4 55/7 59/9 60/22 61/18 62/10 63/25 64/6 64/15 66/8 66/12 69/25 76/8 78/19 79/9 81/4 82/6 82/8 85/17 91/4 94/19 104/6 104/16 127/7 128/22 128/22 129/3 129/14 130/8 130/23 131/24 139/20 140/12 140/14 140/20 141/9 141/11 142/16 142/20 143/1 143/7 144/8 144/23 144/24 145/20 145/24 146/25 147/21 <b>though [4]</b> 48/21
----------	--	--	---	---

<b>T</b>	121/17 121/19 127/17 138/2	<b>treatment [1]</b> 26/23	<b>U</b>	<b>undertaking [3]</b> 56/20 87/23 141/14
<b>though... [3]</b> 61/2 108/16 145/12	<b>told [2]</b> 9/20 82/20	<b>treats [1]</b> 74/24	<b>UK [12]</b> 4/17 10/1 10/15 10/16 14/17	<b>undisclosed [1]</b> 21/10
<b>threat [13]</b> 8/10 34/14 40/1 40/4 41/10 51/4 58/20 67/25 76/4 101/15 105/5 116/5 124/22	<b>tolerance [3]</b> 78/3 98/25 103/22	<b>trenchant [1]</b> 149/1	15/2 21/20 52/19 56/2 116/4 117/18 147/2	<b>undoubtedly [2]</b> 59/9 110/20
<b>threaten [1]</b> 79/13	<b>toll [1]</b> 122/15	<b>trespass [1]</b> 66/25	<b>Ulster [2]</b> 44/23 147/3	<b>unease [1]</b> 120/12
<b>threatened [1]</b> 60/3	<b>Tony [2]</b> 82/5 82/12	<b>trial [1]</b> 83/20	<b>ultimately [4]</b> 73/19 80/6 114/10 123/24	<b>unequivocal [1]</b> 142/24
<b>threats [7]</b> 40/20 52/10 87/10 95/5 101/16 102/10 105/5	<b>Tony Blair [2]</b> 82/5 82/12	<b>trials [2]</b> 45/10 45/10	<b>umbrella [1]</b> 60/5	<b>uneven [1]</b> 79/3
<b>three [7]</b> 24/4 50/17 69/13 70/14 90/10 91/4 130/6	<b>too [7]</b> 38/14 39/20 110/7 131/1 131/1 140/9 142/6	<b>Tribunal [5]</b> 17/22 83/1 84/22 100/24 107/11	<b>unable [6]</b> 24/8 25/25 44/1 46/20 133/19 141/16	<b>unfairly [1]</b> 28/21
<b>threshold [1]</b> 64/8	<b>took [9]</b> 23/5 34/2 36/7 36/12 39/11 66/9 106/5 112/15 113/2	<b>Tribunal's [1]</b> 95/22	<b>unacceptable [3]</b> 15/2 23/11 100/13	<b>unfit [1]</b> 9/24
<b>through [12]</b> 37/3 55/2 57/1 71/9 72/12 83/3 91/13 101/8 118/16 122/23 124/11 149/4	<b>topic [10]</b> 51/19 53/13 96/24 97/14 102/11 104/20 106/2 118/15 118/16 142/1	<b>tried [4]</b> 68/18 113/5 114/25 129/14	<b>unanswered [2]</b> 8/12 37/17	<b>unfortunately [2]</b> 34/12 61/11
<b>throughout [3]</b> 55/12 62/23 123/22	<b>topics [3]</b> 30/9 30/13 30/19	<b>troops [1]</b> 77/17	<b>unarguable [2]</b> 125/17 126/17	<b>unhappy [1]</b> 98/11
<b>Throughout the [1]</b> 123/22	<b>total [1]</b> 24/1	<b>true [3]</b> 57/11 64/13 80/16	<b>unborn [1]</b> 32/5	<b>uniforms [1]</b> 64/3
<b>ties [1]</b> 70/4	<b>totally [1]</b> 82/14	<b>trust [2]</b> 92/19 145/25	<b>unburdened [1]</b> 149/6	<b>unilateral [1]</b> 17/5
<b>time [61]</b> 6/12 6/20 8/5 8/7 10/9 18/10 21/18 29/2 34/25 35/13 40/7 40/10 45/9 45/23 47/7 52/16 53/3 53/13 53/14 55/16 56/7 56/12 62/1 62/14 64/14 67/3 67/13 67/17 72/19 75/8 79/12 79/23 83/17 83/18 86/15 87/8 94/25 96/10 97/17 98/12 100/23 107/2 111/15 113/15 115/23 117/13 119/11 120/7 120/25 123/19 125/2 126/18 127/16 132/1 133/18 135/21 138/3 141/5 142/18 145/18 147/23	<b>touch [3]</b> 69/1 69/17 97/15	<b>truth [18]</b> 3/11 13/5 13/5 39/4 43/4 108/15 110/21 111/20 112/22 113/3 113/11 113/22 121/10 127/19 134/13 134/16 139/5 139/6	<b>unimaginable [1]</b> 111/19	
<b>times [10]</b> 4/4 53/20 54/17 112/19 114/7 114/8 130/22 139/5 144/14 145/3	<b>touched [2]</b> 51/19 105/7	<b>try [3]</b> 4/9 92/2 119/24	<b>unclear [3]</b> 87/22 93/19 116/8	<b>unionism [1]</b> 75/5
<b>timing [4]</b> 46/18 81/12 125/7 145/11	<b>tour [1]</b> 59/21	<b>trying [8]</b> 82/19 92/17 114/2 117/11 133/4 134/16 144/15 144/21	<b>uncomfortable [3]</b> 43/15 113/10 134/14	<b>unionists [1]</b> 81/21
<b>tiny [1]</b> 137/14	<b>towards [4]</b> 126/11 139/4 144/14 144/15	<b>tsunami [1]</b> 2/12	<b>unconstitutional [1]</b> 80/8	<b>unique [2]</b> 113/1 138/8
<b>tired [1]</b> 13/8	<b>town [3]</b> 34/22 34/24 41/3	<b>Tuesday [1]</b> 1/1	<b>unconvincing [1]</b> 26/13	<b>unit [7]</b> 57/2 59/15 59/18 60/4 60/5 60/9 60/14
<b>tirelessly [1]</b> 134/18	<b>town's [1]</b> 4/1	<b>turn [7]</b> 6/23 20/5 46/18 92/2 96/24 139/13 148/8	<b>uncover [2]</b> 121/10 134/16	<b>united [16]</b> 19/5 24/3 58/14 62/23 64/13 65/12 66/4 66/17 71/18 73/6 95/25 96/2 105/11 115/13 115/14 137/17
<b>tiresome [1]</b> 126/24	<b>trace [1]</b> 144/21	<b>TURNBULL [2]</b> 143/14 150/14	<b>under [17]</b> 3/20 5/12 15/4 16/13 16/22 17/19 18/20 35/14 52/21 60/4 62/9 63/13 63/23 67/4 96/13 99/6 116/12	<b>United States [2]</b> 115/14 137/17
<b>today [13]</b> 1/4 96/22 110/2 110/9 110/19 112/9 114/24 118/12 119/13 123/9 138/16 142/10 146/1	<b>Tracey [1]</b> 1/19	<b>turning [5]</b> 27/20 54/7 61/25 112/1 124/7	<b>undercover [2]</b> 60/9 65/8	<b>units [7]</b> 55/20 56/18 56/22 57/2 57/4 61/20 90/14
<b>together [5]</b> 109/23	<b>track [2]</b> 58/11 74/7	<b>turns [1]</b> 126/22	<b>underestimate [1]</b> 5/24	<b>university [1]</b> 117/4
	<b>tracking [3]</b> 12/21 64/23 84/15	<b>twin [1]</b> 74/7	<b>undermined [1]</b> 61/21	<b>unjustifiable [1]</b> 126/25
	<b>traditions [1]</b> 138/2	<b>twin-track [1]</b> 74/7	<b>understand [6]</b> 29/3 30/2 114/2 130/1 143/21 144/23	<b>unknown [2]</b> 50/21 80/16
	<b>traffic [1]</b> 66/4	<b>twins [1]</b> 32/5	<b>understandable [2]</b> 140/15 148/25	<b>unlawful [1]</b> 67/9
	<b>trails [1]</b> 26/17	<b>twists [1]</b> 126/22	<b>understandably [2]</b> 26/20 142/20	<b>unless [3]</b> 16/25 22/3 149/15
	<b>trajectory [1]</b> 111/14	<b>two [36]</b> 8/8 14/23 22/16 48/4 50/18 51/13 52/11 56/4 65/18 74/12 74/20 75/1 84/15 84/18 92/17 93/12 98/15 100/14 103/1 105/13 110/2 112/11 112/13 112/25 113/16 114/14 127/17 127/18 127/18 135/18 138/1 139/18 139/21 144/5 144/11 147/2	<b>understanding [14]</b> 5/1 13/16 14/9 14/14 15/8 16/14 16/23 57/11 91/1 95/20 96/7 96/13 96/15 135/16	<b>unlikely [2]</b> 5/25 72/21
	<b>translation [1]</b> 91/12	<b>tyrone [1]</b> 9/3	<b>understood [1]</b> 118/18	<b>unlikely [1]</b> 49/20
	<b>transmitting [1]</b> 125/5		<b>undertake [2]</b> 6/2 37/9	<b>unpopular [1]</b> 125/8
	<b>transparency [6]</b> 3/13 29/16 129/21 130/4 135/8 135/17		<b>undertaken [2]</b> 102/18 141/13	<b>unpredictable [1]</b> 52/18
	<b>transparent [1]</b> 131/15		<b>undertakes [1]</b> 39/17	<b>unqualified [2]</b> 34/4 34/5
	<b>transparently [1]</b> 126/4			<b>unregulated [1]</b> 64/20
	<b>transportation [1]</b> 124/25			<b>unreliable [2]</b> 49/3 148/9
	<b>trauma [1]</b> 111/18			<b>unresolved [1]</b> 111/23
	<b>traumatic [1]</b> 53/23			<b>unrest [1]</b> 54/11
	<b>travel [1]</b> 126/1			<b>unsatisfactory [2]</b> 5/3 26/14
	<b>Travis [2]</b> 33/11 33/25			<b>unspecified [1]</b> 50/16
				<b>unsustainable [2]</b> 125/18 126/11

<p><b>U</b></p> <p><b>until [8]</b> 51/1 54/7 54/14 79/15 85/2 131/17 149/15 149/19</p> <p><b>unturned [1]</b> 11/20</p> <p><b>up [13]</b> 18/18 35/15 38/16 38/17 39/4 41/2 43/5 67/13 80/10 126/8 135/21 144/15 145/13</p> <p><b>upcoming [1]</b> 7/4</p> <p><b>updated [1]</b> 102/10</p> <p><b>upholding [1]</b> 138/18</p> <p><b>upon [17]</b> 8/1 21/4 31/1 39/15 40/21 51/19 96/1 99/8 104/22 105/7 124/17 132/8 139/21 141/24 142/1 145/8 145/21</p> <p><b>upshot [1]</b> 141/14</p> <p><b>upsurge [1]</b> 52/18</p> <p><b>urge [2]</b> 22/6 96/11</p> <p><b>urging [1]</b> 73/22</p> <p><b>us [8]</b> 3/3 37/16 68/24 75/23 127/7 139/9 143/21 144/23</p> <p><b>use [16]</b> 5/4 49/6 58/10 58/23 63/1 63/21 63/23 64/8 65/14 81/17 97/1 97/16 97/20 97/23 98/15 120/5</p> <p><b>used [9]</b> 4/8 7/25 40/6 49/18 60/13 67/2 81/13 84/16 91/19</p> <p><b>useful [1]</b> 94/18</p> <p><b>using [6]</b> 20/4 64/23 65/1 65/7 71/24 110/10</p> <p><b>usually [1]</b> 23/15</p> <p><b>utmost [2]</b> 9/16 12/3</p> <p><b>utter [1]</b> 111/16</p>	<p>118/23</p> <p><b>vein [1]</b> 29/5</p> <p><b>vernacular [1]</b> 9/3</p> <p><b>versa [1]</b> 70/3</p> <p><b>version [2]</b> 30/15 43/4</p> <p><b>versions [1]</b> 132/5</p> <p><b>very [26]</b> 10/8 18/14 19/15 27/22 31/5 43/25 67/4 69/4 79/3 85/20 92/24 112/24 113/4 113/21 115/25 117/8 117/12 119/2 119/19 129/24 131/3 137/18 139/12 145/3 145/3 147/15</p> <p><b>vexatious [2]</b> 125/17 134/11</p> <p><b>via [1]</b> 109/5</p> <p><b>viable [1]</b> 93/12</p> <p><b>vice [1]</b> 70/3</p> <p><b>victims [35]</b> 38/20 38/24 39/18 39/24 41/6 42/11 42/13 45/14 45/20 46/3 46/10 46/13 47/11 47/13 47/17 48/1 69/11 96/11 96/16 97/17 99/9 99/13 100/4 101/13 102/2 103/10 103/13 106/9 108/6 108/8 108/10 108/14 108/18 108/20 108/25</p> <p><b>Victor [1]</b> 32/14</p> <p><b>video [1]</b> 109/5</p> <p><b>view [8]</b> 40/4 51/5 92/1 113/17 121/9 125/25 134/14 140/14</p> <p><b>viewed [10]</b> 6/11 43/15 56/11 59/2 73/1 80/7 85/25 92/8 128/13 143/8</p> <p><b>views [2]</b> 3/18 21/9</p> <p><b>vindication [1]</b> 120/14</p> <p><b>violence [11]</b> 34/14 52/18 53/19 68/19 73/5 73/10 76/9 78/1 78/8 82/1 103/22</p> <p><b>violent [1]</b> 102/16</p> <p><b>virtually [1]</b> 113/19</p> <p><b>visibility [1]</b> 27/14</p> <p><b>visitors [2]</b> 5/10 34/23</p> <p><b>vital [3]</b> 57/9 129/21 133/15</p> <p><b>voluntary [1]</b> 15/13</p> <p><b>vote [1]</b> 75/14</p> <p><b>vouch [1]</b> 148/5</p> <p><b>vulnerable [1]</b> 77/18</p>	<p><b>Wadham [3]</b> 62/7 63/16 64/19</p> <p><b>waited [1]</b> 133/16</p> <p><b>waits [1]</b> 131/4</p> <p><b>Walker [3]</b> 1/17 55/2 86/13</p> <p><b>walking [1]</b> 9/13</p> <p><b>wall [1]</b> 111/21</p> <p><b>wane [1]</b> 114/10</p> <p><b>want [16]</b> 8/16 34/5 38/2 47/14 53/13 61/2 105/8 106/2 108/3 108/4 114/7 114/14 127/3 128/21 132/13 137/19</p> <p><b>wanted [3]</b> 84/12 97/14 109/19</p> <p><b>wanting [1]</b> 34/3</p> <p><b>war [1]</b> 53/22</p> <p><b>warn [1]</b> 51/21</p> <p><b>Warner [2]</b> 56/1 56/11</p> <p><b>warning [6]</b> 39/22 40/5 40/8 40/18 94/25 147/5</p> <p><b>warnings [5]</b> 40/25 74/23 118/16 118/18 137/2</p> <p><b>warrant [5]</b> 12/6 63/13 63/13 63/14 65/22</p> <p><b>was [346]</b></p> <p><b>was intended [1]</b> 81/19</p> <p><b>wasn't [1]</b> 98/17</p> <p><b>watch [1]</b> 31/4</p> <p><b>watching [1]</b> 65/5</p> <p><b>water [1]</b> 9/8</p> <p><b>watertight [1]</b> 119/19</p> <p><b>Watson [1]</b> 2/7</p> <p><b>way [15]</b> 8/8 12/1 33/24 34/3 34/5 38/16 38/17 47/11 109/20 110/11 118/9 135/10 143/10 148/20 149/5</p> <p><b>ways [1]</b> 115/5</p> <p><b>we [133]</b> 1/4 1/13 2/17 2/19 2/21 3/4 3/4 3/6 3/19 4/11 5/23 7/2 7/8 7/12 9/15 18/17 19/11 20/6 21/16 22/6 22/14 25/25 27/4 27/9 27/17 28/3 30/25 31/2 31/3 31/7 31/8 31/12 36/8 36/11 38/14 43/12 43/12 43/13 48/19 51/24 52/3 52/22 61/20 61/23 69/5 69/9 69/14 76/20 76/22 82/14 82/15 82/17 82/22 82/24 90/10 93/10 94/20 97/2 97/5 97/10 103/18 104/9 108/3</p>	<p>109/3 109/11 114/17 114/18 115/2 115/7 116/9 116/11 116/17 117/7 117/10 117/22 117/22 117/23 118/16 118/16 118/17 118/17 118/22 119/8 119/10 119/17 119/18 119/19 119/23 122/21 122/25 124/3 124/4 125/11 125/19 126/3 126/6 127/7 128/25 129/1 129/19 129/21 131/2 131/5 131/10 131/17 131/20 132/10 132/12 132/15 132/22 133/3 133/15 135/6 137/23 137/24 139/4 139/8 139/18 139/21 139/21 139/24 139/25 140/11 140/17 141/19 141/24 142/4 142/7 143/4 143/6 143/12 145/10 145/10</p> <p><b>we're [4]</b> 82/23 109/24 112/8 127/5</p> <p><b>we've [4]</b> 110/4 118/11 119/12 137/24</p> <p><b>weak [1]</b> 67/4</p> <p><b>weaponry [2]</b> 79/14 81/9</p> <p><b>weapons [3]</b> 50/19 74/6 81/13</p> <p><b>wearing [1]</b> 64/3</p> <p><b>website [1]</b> 57/20</p> <p><b>week [2]</b> 105/13 131/6</p> <p><b>weekly [1]</b> 72/13</p> <p><b>weeks [3]</b> 22/16 71/1 124/21</p> <p><b>weight [2]</b> 28/22 41/24</p> <p><b>welcome [6]</b> 3/5 7/8 27/4 27/17 96/21 135/15</p> <p><b>welcomed [1]</b> 47/23</p> <p><b>well [17]</b> 19/13 28/7 30/25 58/2 66/17 66/18 68/16 115/16 115/19 115/21 115/25 117/12 117/21 119/18 119/19 130/20 133/20</p> <p><b>well-being [1]</b> 66/17</p> <p><b>well-known [1]</b> 19/13</p> <p><b>well-planned [1]</b> 58/2</p> <p><b>Wendy [1]</b> 2/6</p> <p><b>went [5]</b> 36/17 80/16 118/16 138/21 140/11</p> <p><b>were [143]</b> 1/15 2/4 3/17 4/3 4/10 5/10 6/1 7/16 8/2 8/14 9/10 10/1 16/11 17/21 17/23 18/10 19/4 22/16 27/9 33/7 34/24</p>	<p>36/22 40/24 41/4 41/19 43/25 44/3 45/24 49/7 50/17 50/18 50/20 53/10 53/23 53/25 54/5 54/11 55/1 55/11 58/25 59/8 59/22 60/16 61/16 61/19 62/5 62/7 62/18 63/17 64/5 64/15 64/20 65/14 65/18 65/18 65/21 66/2 66/6 67/14 67/16 67/23 68/2 68/8 70/4 70/15 70/19 70/20 71/4 71/22 72/14 72/25 73/12 76/8 76/22 76/24 77/16 78/11 79/16 80/2 80/3 80/5 80/10 81/10 81/13 82/9 84/3 84/8 84/16 84/17 88/2 88/17 89/3 89/24 90/12 92/13 95/13 98/3 98/16 99/19 100/16 102/18 103/2 110/16 110/18 111/1 114/20 114/23 116/20 117/5 117/10 117/10 117/14 118/6 118/10 118/13 118/18 118/22 119/7 119/15 119/16 121/12 121/16 123/2 124/9 124/23 125/14 125/23 127/13 127/16 128/24 128/25 129/12 129/12 132/19 133/4 133/4 133/6 136/4 140/25 143/3 144/10 145/4 149/3</p> <p><b>were pursuit [1]</b> 72/25</p> <p><b>weren't [1]</b> 118/14</p> <p><b>Wharf [2]</b> 61/8 61/9</p> <p><b>what [76]</b> 3/24 7/14 7/21 14/21 17/23 17/24 19/11 20/13 28/5 34/7 36/17 36/17 36/19 37/20 38/22 40/14 40/15 41/5 42/4 43/1 43/12 46/12 48/2 48/3 51/16 53/20 55/2 78/11 85/25 86/1 87/19 87/24 91/8 96/24 105/2 110/4 111/9 111/14 112/8 113/6 114/14 115/17 116/20 116/22 117/9 117/14 117/14 118/22 119/22 120/19 130/14 131/4 132/13 132/24 133/2 133/4 133/5 133/5 133/5 133/10 133/10 133/14 133/17 134/10 137/15 137/22</p>
<p><b>V</b></p> <p><b>vacuum [1]</b> 77/24</p> <p><b>valiantly [1]</b> 4/12</p> <p><b>valuable [4]</b> 53/25 59/8 60/19 61/8</p> <p><b>value [7]</b> 91/21 107/23 108/1 140/19 144/3 147/12 149/12</p> <p><b>values [1]</b> 35/15</p> <p><b>van [1]</b> 83/8</p> <p><b>vans [1]</b> 84/16</p> <p><b>various [10]</b> 47/22 57/2 59/25 97/18 101/8 101/10 115/4 120/6 144/25 149/10</p> <p><b>vast [3]</b> 19/2 79/5 80/23</p> <p><b>vehicle [4]</b> 9/18 10/7 63/9 118/25</p> <p><b>vehicles [2]</b> 65/2</p>	<p><b>W</b></p> <p><b>W71 [2]</b> 100/23 101/7</p>			

<b>W</b>	72/11	13/23 15/21 17/6	18/7 20/10 20/20	132/1 142/8 142/18
<b>what...</b> [10] 138/6	<b>who</b> [85] 2/4 2/15	18/19 20/5 21/14	22/12 22/14 22/21	<b>wrong</b> [2] 28/4 36/17
138/18 138/19 141/11	2/21 3/21 4/8 5/10	21/22 23/13 23/15	23/20 29/22 83/21	<b>wrongly</b> [2] 28/21
144/24 146/11 146/20	5/11 9/9 15/23 18/3	27/8 29/6 29/15 30/15	131/17	101/4
146/21 147/22 147/25	18/8 20/3 27/16 27/18	31/3 31/3 31/12 34/11	<b>witnesses</b> [8] 6/15	
<b>whatever</b> [3] 4/16	31/16 31/21 31/22	36/11 37/18 40/14	15/19 16/10 43/23	<b>Y</b>
115/23 145/16	31/24 32/3 32/8 32/10	41/10 43/5 43/18	91/13 96/9 108/19	<b>year</b> [14] 20/1 34/1
<b>whatsoever</b> [1] 17/14	32/12 32/14 32/17	47/16 48/3 48/10	136/11	39/11 68/20 112/2
<b>when</b> [42] 5/24 6/20	32/20 32/23 32/25	48/19 49/21 50/9	<b>women</b> [1] 4/2	112/10 112/15 118/4
9/3 11/11 22/6 22/20	33/2 33/4 33/7 33/8	51/11 52/15 53/15	<b>worded</b> [1] 149/2	118/6 119/2 120/4
39/11 40/11 43/6	33/15 33/17 34/12	60/25 61/11 68/24	<b>words</b> [12] 13/9	121/20 131/7 137/25
43/12 43/18 44/3 48/9	36/2 36/11 36/13	69/5 75/23 81/24	13/14 39/9 39/14 65/8	<b>years</b> [30] 11/23 12/6
48/19 49/25 51/4 51/9	36/16 37/19 38/5 42/6	82/22 85/19 90/11	112/21 121/23 122/7	21/5 22/19 26/10
51/22 52/12 52/16	45/20 46/3 58/24	90/18 91/21 91/23	125/18 126/20 137/16	30/18 38/10 39/13
52/17 58/15 66/11	63/11 72/7 72/25 76/8	93/1 96/8 96/9 96/18	138/15	46/1 53/19 53/22 54/6
66/20 69/9 77/16	78/19 81/24 82/8 84/8	97/5 106/11 109/3	<b>work</b> [17] 3/7 5/23	54/24 81/9 111/25
84/25 85/19 89/13	84/8 85/16 87/9	109/5 109/11 109/12	9/17 19/25 25/17 27/2	112/11 120/18 121/20
90/22 91/15 91/24	100/23 104/3 109/4	110/4 110/6 111/6	28/22 31/2 59/18 60/7	123/2 123/22 130/25
94/10 97/9 97/10	109/11 109/25 109/25	111/11 112/7 115/16	85/1 88/22 96/14	134/19 135/2 136/22
103/1 119/6 119/10	110/1 113/4 117/9	115/18 115/19 118/1	117/4 138/2 141/23	138/4 140/14 144/11
121/18 124/21 133/8	117/9 119/1 119/4	118/2 121/2 125/12	143/7	144/22 145/3 147/17
134/1	122/4 123/8 123/9	125/20 126/4 127/6	<b>worked</b> [6] 59/16	<b>yes</b> [4] 109/6 109/16
<b>whenever</b> [1] 22/10	128/22 128/24 129/5	131/13 134/24 134/25	60/5 85/1 85/4 85/4	118/25 139/11
<b>where</b> [31] 4/2 7/19	129/7 129/8 129/12	136/8 136/10 138/5	90/4	<b>yesterday</b> [18] 27/7
9/18 10/2 10/3 23/2	129/14 130/23 135/9	139/11 140/18 140/20	<b>workers</b> [1] 2/19	109/5 110/9 110/19
27/13 38/16 38/17	135/14 136/11 143/7	141/20 141/22 143/21	<b>working</b> [3] 4/10	112/9 114/16 115/7
44/2 55/9 55/20 64/4	143/8 144/2 146/2	144/23 146/1 146/15	77/22 77/24	115/20 117/7 119/11
66/13 76/21 86/1 92/4	<b>whole</b> [5] 10/4 37/20	147/24 148/13 148/17	<b>workings</b> [3] 17/14	131/1 132/16 139/24
99/10 112/8 116/10	58/3 110/14 138/3	149/14 149/16 149/17	55/25 56/9	140/18 142/4 142/7
117/10 117/10 131/8	<b>wholly</b> [3] 5/3 23/11	<b>willing</b> [2] 12/3 76/8	<b>world</b> [2] 6/10 138/13	142/22 146/1
133/3 133/7 134/24	63/3	<b>Wilson</b> [4] 1/25 2/1	<b>worries</b> [1] 110/20	<b>yet</b> [4] 15/2 21/6 96/7
138/16 142/5 143/4	<b>whom</b> [8] 3/4 5/18	2/1 2/2	<b>worse</b> [1] 114/4	125/19
145/10 148/9	7/2 9/15 18/17 31/17	<b>wing</b> [1] 80/20	<b>worst</b> [2] 111/12	<b>you</b> [99] 1/4 2/17 3/1
<b>whereabouts</b> [1]	145/7 145/21	<b>wish</b> [17] 4/6 5/4	115/10	3/3 3/6 6/5 7/9 13/5
101/14	<b>whose</b> [4] 1/14 2/23	12/23 19/11 25/12	<b>would</b> [68] 2/8 2/11	13/5 22/6 30/25 31/1
<b>whereby</b> [3] 19/9	8/25 80/15	29/20 30/25 36/19	5/11 9/23 10/4 11/20	31/2 31/5 31/6 38/15
121/16 131/3	<b>why</b> [25] 8/14 26/21	42/24 100/4 104/21	16/7 17/23 18/1 18/12	38/16 38/16 38/17
<b>whether</b> [37] 8/17	34/15 37/22 38/20	110/23 122/25 129/4	19/15 28/3 28/6 34/18	38/18 39/7 49/19
10/13 14/16 16/5	39/16 41/4 46/13	130/17 143/13 143/16	40/3 46/5 50/16 51/25	49/20 49/21 61/6 69/1
26/20 29/8 36/7 40/16	46/15 56/6 85/21	<b>wished</b> [1] 146/10	55/9 58/12 64/10	69/2 77/9 82/20 97/9
41/7 49/21 51/14	95/20 110/19 113/12	<b>withheld</b> [3] 42/17	64/12 66/21 67/4 67/6	97/10 105/12 108/24
51/17 51/24 52/5	117/23 118/8 118/11	99/8 112/23	67/8 69/3 69/4 69/12	109/1 109/2 109/12
52/24 53/1 53/10 58/7	118/12 118/14 127/2	<b>withhold</b> [1] 101/6	77/9 78/7 79/6 80/11	109/16 109/16 109/19
58/13 77/4 77/6 78/7	131/12 132/3 132/6	<b>within</b> [52] 4/4 5/21	84/24 87/22 88/1 88/4	109/19 109/20 109/23
85/18 87/13 87/22	132/17 141/10	6/6 7/4 13/25 15/11	89/17 89/22 90/16	110/4 110/8 110/12
90/5 93/19 96/2 96/5	<b>wicked</b> [1] 34/2	16/20 20/17 21/21	91/15 92/22 93/12	110/13 110/22 110/24
101/3 102/9 103/21	<b>Wicklow</b> [1] 49/14	23/7 25/2 25/6 30/15	95/2 95/11 98/5 99/7	111/11 112/4 112/6
103/23 104/25 107/23	<b>wide</b> [5] 63/23 64/6	51/14 59/1 59/9 59/16	100/4 101/10 102/19	113/1 113/7 114/17
107/24 108/1	64/11 64/17 134/22	59/16 60/23 61/15	103/24 104/21 105/13	115/5 117/3 117/5
<b>which</b> [197]	<b>wide-ranging</b> [1]	70/17 71/16 71/18	105/14 109/2 117/8	117/8 117/21 118/2
<b>while</b> [21] 48/14	64/6	72/3 75/5 78/20 78/21	122/21 123/17 124/3	118/24 118/25 119/1
54/16 56/24 59/16	<b>wider</b> [4] 38/1 77/25	80/8 80/19 80/23 81/1	125/6 132/14 133/9	119/3 119/4 119/9
60/10 64/10 66/1	119/25 141/21	81/12 81/21 81/22	134/11 139/19 143/16	119/20 120/2 121/4
71/19 75/3 78/12	<b>widespread</b> [1] 74/22	81/25 83/19 84/7 84/7	145/5 146/17 147/22	123/8 124/3 125/12
78/17 80/3 80/18	<b>width</b> [1] 2/13	86/10 88/2 91/2 92/11	<b>wouldn't</b> [1] 133/3	126/4 127/5 128/15
80/25 85/3 85/4 87/17	<b>wife</b> [7] 8/25 31/23	92/11 94/23 96/10	<b>Wright</b> [2] 26/11	129/24 129/25 130/3
93/14 94/3 102/17	32/3 113/24 114/11	106/13 115/13 120/7	43/20	130/12 130/21 131/1
147/22	121/23 137/3	128/13 133/18 141/2	<b>writ</b> [2] 116/15 127/9	132/11 132/12 132/17
<b>whilst</b> [4] 3/9 43/9	<b>wife's</b> [1] 122/9	147/10	<b>write</b> [1] 23/13	132/18 133/14 134/17
114/1 144/23	<b>Wilkinson</b> [1] 31/20	<b>without</b> [11] 12/5	<b>writing</b> [2] 131/25	134/24 135/15 139/4
<b>White</b> [6] 12/13 31/24	<b>will</b> [106] 1/5 1/6 3/5	25/10 34/3 47/5 48/23	142/17	139/4 139/7 139/8
31/24 31/25 32/1 89/2	6/12 6/19 6/24 6/25	63/13 63/14 86/10	<b>written</b> [11] 2/16	139/8 139/12 142/2
<b>Whitehall</b> [2] 57/23	7/3 7/5 7/7 7/10 10/11	114/3 129/16 139/6	17/18 17/19 22/25	143/12 143/13 143/15
	11/5 13/5 13/5 13/6	<b>witness</b> [11] 15/20	26/1 45/5 48/8 110/5	<b>you're</b> [1] 38/18

Y

**your [14]** 2/18 3/7  
3/10 6/1 12/7 13/5  
13/5 28/25 69/2  
110/22 117/24 118/1  
130/16 138/19  
**yourself [4]** 38/16  
38/17 118/3 131/14

É

**Éireann [1]** 79/2