

<p>1 Wednesday, 16 October 2019                  2 (10.30 am)                  3 (Proceedings delayed)                  4 (10.45 am)                  5 Welcome and opening remarks by THE CHAIR                  6 THE CHAIR: Good morning, everyone. I'm Alexis Jay and I'm                  7 the chair of this public inquiry. Sitting with me are                  8 other panel members of the inquiry, Drusilla Sharpling                  9 and Ivor Frank. Sir Malcolm Evans is not available to                  10 join us today.                  11 On behalf of the inquiry, I welcome you all to this,                  12 the fifth preliminary hearing in the Accountability and                  13 Reparations Investigation.                  14 This investigation is examining the extent to which                  15 existing support services, compensation frameworks and                  16 the civil justice system are fit to deliver reparations                  17 to victims and survivors of child sexual abuse.                  18 From 26 November of this year, we will hold                  19 a three-day public hearing. Today's preliminary hearing                  20 is an opportunity to discuss preparations for this.                  21 Before we hear from counsel, a couple of points on                  22 timing. If necessary, we'll take a ten-minute break                  23 around 11.45, and then a break for lunch, if this                  24 hearing hasn't concluded before then, at 1.00 pm.                  25 The transcript of today's proceedings will be</p> <p style="text-align: center;">Page 1</p>	<p>1 published on the inquiry's website and we will let all                  2 core participants know when this has been done.                  3 I'll now ask Mr Peter Skelton QC to proceed.                  4 Mr Skelton?                  5 Opening statement by MR SKELTON                  6 MR SKELTON: Thank you, chair, members of the panel. This                  7 is the fifth preliminary hearing in this investigation.                  8 The purpose of the hearing is to provide an update on                  9 the process of the investigation and to discuss                  10 preparations for the three-day public hearing commencing                  11 on 26 November.                  12 These brief submissions set out the approach which                  13 we, your counsel, propose should be taken in the public                  14 hearing.                  15 Before doing so, may I please introduce the                  16 advocates who are present today. Lois Williams, junior                  17 counsel to the investigation.                  18 For the core participants, Aswini Weeraratne QC,                  19 representing B19.                  20 Chris Jacobs, representing the Forde Park Survivors'                  21 Group, the Stanhope Castle Survivors' Group and F41 to                  22 F43, F47, Paul Connolly and F58.                  23 Bilhar Uppal, representing L1, L3 to L6, L12, L41                  24 and L42.                  25 Alan Collins, representing J1 to J3 and who is also</p> <p style="text-align: center;">Page 2</p>
<p>1 speaking on behalf of Nigel O'Mara, who is here today as                  2 his representative David Greenwood is unable to attend.                  3 Daniel Shaw, representing Robert Balfour.                  4 Caoilfhionn Gallagher, representing Maxine Leigh.                  5 Kim Harrison, representing the Association of                  6 Personal Injury Lawyers, APIL.                  7 Aaron Moss, representing the Secretary of State for                  8 Justice, the MoJ.                  9 Michael Pether, representing Middlesbrough Council.                  10 Rory Phillips QC, representing Ecclesiastical                  11 Insurance Office, EIO.                  12 Jonathan Hough QC, representing Royal Sun Alliance,                  13 RSA.                  14 Chris Webb-Jenkins, representing Municipal Mutual                  15 Insurance, MMI.                  16 Paula Jefferson, representing the Association of                  17 British Insurers, the ABI.                  18 And Sarah Bousfield, representing Zurich Insurance.                  19 I think I said they were the CPs', or core                  20 participants', representatives. Of course, Ms Gallagher                  21 is representing someone who is applying for CP status                  22 today, rather than actually representing someone who has                  23 been granted it.                  24 Madam, as we have said before, the A&amp;R Investigation                  25 is one of the inquiry's more thematic investigations</p> <p style="text-align: center;">Page 3</p>	<p>1 focusing on the aftermath of abuse. It examines the                  2 extent to which the civil justice system, criminal                  3 compensation and support services deliver reparations to                  4 victims of child sexual abuse.                  5 The first part of the investigation comprised the                  6 publication in August 2016 of issues papers on the civil                  7 justice system and on criminal compensation. Following                  8 the receipt of responses to these papers, the inquiry                  9 held seminars, in November 2016 and in February 2017, to                  10 explore the two issues in more detail. The inquiry                  11 subsequently made a number of recommendations in its                  12 interim report, published in April 2018.                  13 The inquiry also selected five case studies through                  14 which to examine these issues: North Wales Children's                  15 Homes; Forde Park Approved School; St Leonard's                  16 Children's Home; St Aidan's and St Vincent's Approved                  17 Schools; and Stanhope Castle Approved School.                  18 Public hearings in the case studies were held for                  19 three weeks in November and December 2018                  20 and January 2019. The purpose of the hearings was to                  21 elicit evidence, through specific examples, about the                  22 civil justice system, compensation frameworks and                  23 existing support services.                  24 The primary focus of the case studies was                  25 necessarily on past practices. Evidence of how these</p> <p style="text-align: center;">Page 4</p>

<p>1 systems and services work today was also sought so that                  2 the inquiry could consider workable recommendations for                  3 the future.                  4 On 14 August this year, the inquiry published                  5 an update note on its website announcing that, as part                  6 of the next phase of the investigation, it would                  7 consider the following two issues.                  8 First, whether the law of limitation should be                  9 reformed to make it easier for victims and survivors to                  10 bring claims in respect of non-recent child sexual                  11 abuse.                  12 Second, the potential for a redress scheme to offer                  13 accountability and reparation to victims and survivors                  14 of child sexual abuse.                  15 On 19 September, the inquiry published its report on                  16 the five case studies. The report found that none of                  17 the systems under examination in the investigation --                  18 civil justice, criminal compensation and support                  19 services -- is always able to adequately provide the                  20 remedies sought as accountability and reparations by                  21 victims and survivors of child sexual abuse.                  22 The report made a number of recommendations for the                  23 improvement of those systems. It also confirmed that                  24 the issues of limitation and redress required further                  25 investigation.</p> <p style="text-align: center;">Page 5</p>	<p>1 Turning to the issue of core participants, the                  2 update note stated that existing core participants in                  3 this investigation will remain core participants for                  4 phase 2 unless written notice is provided to the                  5 solicitor to the inquiry confirming that the core                  6 participant doesn't wish to be involved in this phase.                  7 The following 11 existing core participants' teams                  8 will remain involved in this phase of the investigation.                  9 First, victims and survivors represented by                  10 Howe &amp; Co, Switalskis Solicitors, Bindmans,                  11 Uppal Taylor, Hugh James and Simpson Millar.                  12 Second, MMI.                  13 Third, Zurich.                  14 Fourth, RSA.                  15 Fifth, the MoJ.                  16 And lastly, Middlesbrough Council.                  17 Since our written submissions for this hearing were                  18 circulated, Devon and Cornwall Police have indicated                  19 that, although they will remain a core participant, they                  20 don't wish to be involved in this phase of the                  21 investigation.                  22 The update note also invited anyone who wished to be                  23 designated as a core participant in relation to this                  24 phase of the investigation to make an application to the                  25 solicitor to the inquiry by 11 September.</p> <p style="text-align: center;">Page 6</p>
<p>1 The inquiry received 12 applications for core                  2 participant status in this phase of the investigation.                  3 Pursuant to rule 5 of the Inquiry Rules 2006, you've                  4 granted such status to four applicants. They are:                  5 (a) the ABI;                  6 (b) APIL;                  7 (c) Ecclesiastical Insurance Office; and                  8 (d) the Insurance and Reinsurance Legacy Committee                  9 the IRLALCL, although they are not present today.                  10 You've also declined eight applications, but have                  11 stated that if any applicant wished to orally renew the                  12 application at the preliminary hearing today, they                  13 should notify the solicitor to the inquiry and provide                  14 any additional information they wish to rely on.                  15 Only one person, Maxine Leigh, is renewing her                  16 application, and, as I've mentioned, her counsel will                  17 address you at the conclusion of the procedural business                  18 today.                  19 In respect of the other applications, in due course                  20 your provisional rulings will be confirmed in final                  21 determinations, as is the usual practice.                  22 Turning then to the evidence.                  23 It's proposed that the issues under investigation in                  24 this phase are dealt with primarily by witness evidence.                  25 To date the inquiry has made 33 requests for witness</p> <p style="text-align: center;">Page 7</p>	<p>1 statements pursuant to rule 9 of the Inquiry Rules 2006.                  2 This has included requests from claimant solicitors and                  3 their representative bodies, insurers and their                  4 representative bodies, defendant solicitors, defendant                  5 institutions, support service organisations, the Legal                  6 Aid Agency, and the Ministry of Justice.                  7 In the case of claimant and defendant solicitors and                  8 the Legal Aid Agency, data has also been sought on civil                  9 claims for non-recent child sexual abuse.                  10 These requests have been made in order to assist the                  11 inquiry in understanding:                  12 (a) the need for, and implications of, any changes                  13 to the law of limitation and the potential establishment                  14 of a redress scheme;                  15 (b) options for changes to the law of limitation;                  16 and                  17 (c) how any potential redress scheme might operate                  18 and be funded.                  19 We have started to receive these statements and are                  20 in the process of reviewing them for the purposes of                  21 disclosure to the core participants.                  22 The inquiry's recent procedural note stated that it                  23 was anticipated that the vast majority of the disclosure                  24 would be completed by Friday, 15 November. In fact, we                  25 will start to disclose statements by this Friday,</p> <p style="text-align: center;">Page 8</p>

<p>1 18 October, and now hope that the majority of disclosure 2 will be completed by Tuesday, 29 October, although there 3 may, of course, be some limited disclosure after that 4 date. 5 We remain very mindful, as always, of the need for 6 core participants to receive statements and documents as 7 soon as possible, so that they can prepare for the 8 hearings. 9 As to the timetable, the public hearings will 10 commence on Tuesday, 26 November, and will run for three 11 days until Thursday, the 28th. 12 Witnesses will be carefully selected and their 13 evidence focused on those issues that require 14 exploration in oral evidence. We intend to provide 15 a draft timetable of witnesses and an overview of the 16 topics that they will be asked about by Tuesday, 17 29 October. In order to make the best use of the time 18 available and to elicit the most helpful evidence, we 19 anticipate proposing to hear from multiple witnesses at 20 the same time -- a process sometimes referred to as 21 "hot tubbing". 22 As I've already made clear, we are also aiming to 23 have the majority of witness statements disclosed by 24 Tuesday, 29 October, and the timetable will be in draft 25 form and only finalised after we have received comments</p> <p style="text-align: center;">Page 9</p>	<p>1 from the core participants. 2 As to evidence on victims and survivors, it's 3 important to recognise that the inquiry has already 4 received substantial evidence from victims and survivors 5 during the case studies about their difficulties 6 obtaining accountability and reparation and their views 7 on what improvements could be made. In addition to 8 those who gave oral evidence, the written evidence of 9 all the other victims and survivors in the case studies 10 was either read or summarised at the hearings. 11 The focus of the three-day hearing in November this 12 year will be on thematic topics relating to the 13 potential changes to the law of limitation and the 14 possibility of any redress scheme. We therefore do not 15 propose to call victims and survivors as witnesses to 16 provide further evidence of their individual 17 experiences. However, the inquiry will continue to 18 consider and rely on the evidence that they have 19 previously given, and we also intend to seek their 20 views, through a questionnaire, on issues relating to 21 any potential redress scheme. 22 Finally, all those victims and survivors previously 23 granted core participant status will remain as core 24 participants, if, of course, they wish to do so, and, as 25 such, we look forward to their continued assistance</p> <p style="text-align: center;">Page 10</p>
<p>1 through this final phase of the investigation. 2 Chair, I think I've introduced most of the business 3 of this morning's hearing. I think I will now cede the 4 floor, as it were, to those who wish to address you on 5 the issues that I have raised. 6 Thank you. 7 Shall I invite the first advocate to address you, if 8 they so wish? It's not clear that everyone would like 9 to speak, but let's start with Ms Weereratne. 10 Submissions by MS WEERERATNE 11 MS WEERERATNE: Good morning, chair and panel. I'm grateful 12 for the opportunity to say a few words, but I don't 13 really wish to repeat what I've already put into my very 14 brief submissions. 15 You will see, and perhaps not be surprised, that, 16 really, our main concern is timetabling and two points 17 that we raise. 18 One is that we should have disclosure of the witness 19 statements, and other disclosure, as soon as possible. 20 I note what Mr Skelton repeats in relation to the date 21 of 29 October, but that clearly, you know, still leaves 22 us right up against the wire in terms of any submissions 23 that we may wish to make about the timetabling, and so 24 the forth, of witnesses at that point. I'm sure he has 25 taken on board the point we've made in that regard.</p> <p style="text-align: center;">Page 11</p>	<p>1 The second point is simply that it would be so 2 helpful to know what the thematic areas are going to be 3 in relation to these two areas of investigation as soon 4 as possible, so that we can, when the disclosure does 5 come, use our time proportionately and read 6 proportionately and make sure that we can focus on what 7 is required for the purposes of assisting this inquiry 8 at the forthcoming hearing. 9 I mean, it's not rocket science, I know I'm not 10 saying anything new, but it's just to emphasise that 11 those are the points that certainly have been on our 12 minds. We would be grateful to know, if we could, when 13 we're going to know the thematic areas in particular. 14 Thank you. 15 THE CHAIR: Thank you, Ms Weereratne. Mr Skelton, do you 16 wish to respond? 17 MR SKELTON: I don't think I need to, thank you. 18 THE CHAIR: Mr Jacobs? 19 Submissions by MR JACOBS 20 MR JACOBS: Chair, good morning. I'm instructed by 21 Howe &amp; Co who act for 20 complainant core participants 22 within this investigation. 23 We've put in written submissions, dated 24 10 October 2019, and we rely on those. 25 For the purposes of today, I raise four issues.</p> <p style="text-align: center;">Page 12</p>

<p>1 Firstly, my clients, who are involved in the Forde Park 2 case study, have expressed a concern that Devon County 3 Council no longer appear to be involved in this 4 investigation. We ask, and have done in our written 5 submissions, that the position be clarified. We request 6 that this body is served with a rule 9 request so as to 7 ascertain its position on limitation and redress. 8 Local authorities, we say, are bodies that are 9 directly involved in the matters in this investigation 10 and their views should be considered. We take the view 11 that the inquiry would be assisted by calling witnesses 12 from local authorities in all of the five case studies 13 to ascertain the views, at a local political level 14 throughout country, on the two important issues which 15 are now before this investigation. 16 We note that the views of the two local authorities 17 in the Nottinghamshire investigation were illustrative 18 of the approaches that should and should not be taken, 19 and we ask that members of these local authorities are 20 recalled, as they have quite clearly considered the 21 limitation and reparation issues in some detail. They 22 can all give evidence simultaneously, as we've heard, 23 using the so-called "hot tubbing" procedure. 24 Secondly, we have suggested that the inquiry 25 operates a comparative study of the approaches now taken</p> <p style="text-align: center;">Page 13</p>	<p>1 in other jurisdictions to the issues of limitation and 2 reparation schemes. The inquiry will be aware, of 3 course, of the progress that's been made in Scotland, 4 and we submit that the steps that have been taken, and 5 are being taken, in that jurisdiction would serve as 6 a useful comparator within this process. In particular, 7 proposals for combination payments, compensation for 8 next of kin, interim payments for priority groups such 9 as those aged over 70, are all measures which my clients 10 would like the inquiry to consider at the November 11 hearings. 12 The Lambeth scheme is also relevant, and also other 13 non-child sex abuse schemes, such as the Windrush 14 scheme, which demonstrates that a nuanced and holistic 15 approach and measures can be implemented rapidly, if 16 needed. 17 Thirdly, I've been asked to raise an issue in 18 relation to timing. We understand that the inquiry's 19 final report is anticipated to be published in or 20 around March 2021. Three of our core participant 21 clients, two within this investigation, have died since 22 the inquiry commenced. We take the view that the 23 inquiry should publish its final recommendations on 24 accountability and recommendations in an interim report 25 prior to the publication of the final report so as to</p> <p style="text-align: center;">Page 14</p>
<p>1 ensure that many of my clients, who are now elderly and 2 in poor health, will be in a position to receive 3 appropriate accountability and reparation for the abuse 4 they suffered as children and to benefit from the 5 changes that the inquiry recommends. 6 Finally, I ask that the inquiry gives consideration 7 to two issues which we raised in our written submissions 8 in January: namely, what redress is there to be for 9 those who were failed by the civil justice and criminal 10 justice compensation systems? 11 Chair, victims and survivors who were pressured into 12 accepting low or derisory offers due to the uncertainty 13 arising from limitation -- and you will recall people 14 talking about "take it or leave it" when they gave 15 evidence in this investigation earlier -- those victims 16 and survivors, in my submission, should not be excluded 17 from any national reparation scheme which the inquiry 18 recommends. 19 Neither should levels of compensation be reduced 20 where victims went on to commit criminal offences and 21 where it can be established that those offences arose 22 from abuse, or where it can be reasonably inferred that 23 the criminality arose from the abuse. They should not 24 be penalised under a proposed reparation scheme. 25 Chair, we will develop these points as the</p> <p style="text-align: center;">Page 15</p>	<p>1 investigation proceeds. For the purpose of today, my 2 request is that the inquiry agrees to entertain these 3 matters in the November hearing. 4 Thank you, unless I can assist further. 5 THE CHAIR: Thank you Mr Jacobs. Mr Uppal? 6 MR UPPAL: Madam chairman, members of the panel, we have no 7 submissions to make at this stage. 8 THE CHAIR: Thank you. Mr Collins? 9 Submissions by MR COLLINS 10 MR COLLINS: Thank you. If we could say a few words on 11 behalf of Nigel O'Mara, I've been asked by his solicitor 12 Mr Greenwood, who unfortunately cannot be with us today, 13 to make this short oral submission. 14 Mr O'Mara would like you to consider alternative 15 avenues of redress, including the cost of education. To 16 quote from Mr O'Mara, he says: 17 "I believe there is a need for an educational trust 18 to help survivors obtain qualifications later in life. 19 I wish to recommend the creation of an educational trust 20 to provide grants for abuse survivors. Every single 21 witness that I have heard in this inquiry seems to have 22 been robbed of their education as a result of the 23 devastation inflicted on them by abusers. I can speak 24 from personal experience. My education was very badly 25 affected by my abuse. I left school with no</p> <p style="text-align: center;">Page 16</p>

1 qualifications. I still have none.  
 2 "My movements in care.  
 3 "I found it very difficult to gain access to further  
 4 education. I hold a place open now at the open  
 5 University to study a degree in psychology and  
 6 counselling, starting in February. However, I'm not  
 7 eligible for any maintenance funding, which means that  
 8 I can't take up that place.  
 9 "These obstacles would not exist for a survivor such  
 10 as me if an educational trust was in place. I would  
 11 propose the creation of a charitable trust which could  
 12 pay out grants to cover either the cost of tuition fees  
 13 and/or maintenance payments. This would allow child  
 14 sexual abuse survivors to access education today.  
 15 I think organisations such as the insurance companies  
 16 could be encouraged to contribute to this, and I'd  
 17 invite them to make comment on that in their closing  
 18 submissions."  
 19 So that's what Mr O'Mara has asked me to explain  
 20 today and, if I may say so, it's very eloquent, and  
 21 I think many, many survivors up and down the land would  
 22 understand entirely where he is coming from.  
 23 If I can speak personally, I have represented far  
 24 too many survivors over the years who would say they  
 25 were robbed of their education as a result of the sexual

Page 17

1 MS HARRISON: Good morning, we have no submissions to make,  
 2 chair.  
 3 THE CHAIR: Thank you. Mr Moss?  
 4 MR MOSS: Chair, panel, we have no submissions.  
 5 THE CHAIR: Mr Pether?  
 6 MR PETHER: Good morning. Likewise, no submissions, thank  
 7 you.  
 8 THE CHAIR: Thank you. Mr Phillips?  
 9 MR PHILLIPS: Nothing from me, chair.  
 10 THE CHAIR: Thank you. Mr Hough?  
 11 Submissions by MR HOUGH  
 12 MR HOUGH: Chair, members of the panel, on behalf of Royal  
 13 and Sun Alliance, I have only a few short points to make  
 14 in submissions today.  
 15 First of all, RSA continues to support the inquiry  
 16 in its important work. We provided very substantial  
 17 disclosure and witness evidence in phase 1 of this  
 18 investigation at the request of solicitors to the  
 19 investigation.  
 20 Likewise, for phase 2, both RSA and Mr Gillespie of  
 21 Keoghs have provided witness statements in response to  
 22 rule 9 letters. A separate statement has also been  
 23 provided by RSA's policy holder, Nugent Care, in  
 24 response to a rule 9 letter. We hope these statements  
 25 will be of assistance to the panel.

Page 19

1 abuse they were subjected to.  
 2 So I think the point that Mr O'Mara is making is  
 3 an excellent one, and I'm sure all of us here would  
 4 understand where he is coming from. I would commend his  
 5 recommendation to you.  
 6 Turning now to the core participants I represent,  
 7 you have my written submission, so I won't repeat that.  
 8 Picking up on what I've heard this morning, I would  
 9 echo, if it's being suggested, what is being said about  
 10 looking to see what's happening elsewhere, in particular  
 11 Scotland and Australia, where there has been limitation  
 12 reform, and actually try and see how it's working in  
 13 practice.  
 14 I would also ask you -- and I'm repeating a point  
 15 that I've made elsewhere on another occasion -- it would  
 16 be useful to see how the model litigant guidelines are  
 17 actually working in the Australian states, because they  
 18 may well bridge the two themes that you're looking at,  
 19 limitation and redress.  
 20 So unless I can assist you any further, those are my  
 21 submissions.  
 22 THE CHAIR: Thank you Mr Collins. Mr Shaw?  
 23 MR SHAW: Good morning, chair, members of the panel. We  
 24 have no submissions to make.  
 25 THE CHAIR: Thank you. Ms Harrison?

Page 18

1 Secondly, given that phase 2 is intended to address  
 2 thematic topics of limitation, law and redress schemes,  
 3 we support the suggested approach to taking evidence  
 4 outlined in the submissions of counsel to the  
 5 investigation.  
 6 As we understand it, this part of the investigation  
 7 will be forward-looking, considering whether or not any  
 8 recommendations should be made in relation to limitation  
 9 or redress schemes.  
 10 It's, therefore, not necessary or appropriate to  
 11 engage once again in considering group actions that were  
 12 conducted years ago against a different legal context.  
 13 The inquiry in phase 1, we suggest, examined the  
 14 case studies in sufficient detail for its purposes.  
 15 Thirdly, we endorse the sensitive rigorous and  
 16 practical approach taken by the inquiry to  
 17 recommendations so far in this investigation. As others  
 18 have said, the issues under consideration are important.  
 19 In this phase of the investigation, it will be necessary  
 20 to take proper account of how the law currently operates  
 21 and to consider carefully all the potential effects of  
 22 any proposals for reform.  
 23 As others have submitted, if recommendations are to  
 24 be considered based on the approach taken in other  
 25 countries, there should be, we suggest, a rigorous

Page 20

<p>1 examination of how systems in such countries operate.                  2 Thank you very much.                  3 THE CHAIR: Thank you, Mr Hough.                  4 Mr Webb-Jenkins?                  5 MR WEBB-JENKINS: Good morning, chair. We have no                  6 submissions to make.                  7 THE CHAIR: Thank you. Ms Jefferson?                  8 MS JEFFERSON: Thank you. The ABI would just like to say                  9 that they're very grateful to be involved and look                  10 forward to contributing to the thematic topics. Thank                  11 you.                  12 THE CHAIR: Thank you. Ms Bousfield?                  13 MS BOUSFIELD: Good morning, chair, members of the panel.                  14 We have no submissions to make.                  15 THE CHAIR: Thank you.                  16 Reply submissions by MR SKELTON                  17 MR SKELTON: Chair, just briefly in response to a few of the                  18 points that were mentioned, probably not all of them,                  19 since I don't think all of them I need to address.                  20 Just on the issue of local authorities, I should                  21 clarify the inquiry has requested statements from all of                  22 the local authorities involved in the case studies,                  23 including Devon County Council, on the issues under                  24 investigation in this phase, ie limitation and redress                  25 schemes.</p> <p style="text-align: center;">Page 21</p>	<p>1 It's not for the inquiry to ask the council to                  2 explain the reasons why they have decided to discontinue                  3 their participation in this phase, nor its actions since                  4 the report was published.                  5 The inquiry's proposals on which witnesses to call                  6 will be included, of course, in the draft timetable                  7 which I've adverted to before, and comments can be                  8 provided at that stage by those present. We have not                  9 requested, nor does the inquiry plan to request, witness                  10 statements from the Nottinghamshire Councils, the                  11 inquiry has already held a separate investigation into                  12 those councils and does not consider it -- or your                  13 counsel do not consider it necessary to seek further                  14 evidence from them for the purposes of this                  15 investigation.                  16 Just turning to the issue of other jurisdictions.                  17 Chair, we recognise the value of understanding some                  18 of the changes that have been made in respect of                  19 limitation law and redress in other jurisdictions.                  20 We are in the process of reviewing the witness                  21 evidence on these issues, because some witnesses will,                  22 in fact, address it, as was presaged, I think, at the                  23 last hearing and, indeed, in the seminars a few years                  24 ago, and are considering ways in which to introduce that                  25 type of information, that evidence, into the three-day</p> <p style="text-align: center;">Page 22</p>
<p>1 hearing in November.                  2 Finally, just on a broader issue of the thematic                  3 topics, we will, of course, take into account today's                  4 submissions when we consider how those topics should be                  5 articulated and applied to the hearings.                  6 As I have said, we'll provide an overview of the                  7 topics for the witnesses along with the draft timetable                  8 in due course and, if necessary, we will provide more                  9 details in the witness topic lists that will be                  10 circulated as usually occurs close to the hearings.                  11 Unless I can address you further, chair, I propose                  12 to allow Ms Gallagher to make her application to you.                  13 THE CHAIR: Thank you, Mr Skelton. Ms Gallagher?                  14 Application by MS GALLAGHER                  15 MS GALLAGHER: Thank you very much, chair and panel.                  16 I intend to address you under four                  17 headings: firstly, there are some brief preliminary                  18 remarks which my client has asked me to raise; secondly,                  19 I'm going to give you a brief outline about Ms Leigh,                  20 Maxine Leigh, who makes this renewed application;                  21 thirdly, I'm just going to outline the core basis for                  22 the provisional refusal in paragraph 8 of the decision                  23 on Friday, 11 October, 2019; and, lastly, I'm going to                  24 make my submissions. Those are the four headings.                  25 I can reassure you I'll be brief.</p> <p style="text-align: center;">Page 23</p>	<p>1 Firstly, preliminary remarks. There are three                  2 points here.                  3 The first is Ms Leigh is very grateful to you and                  4 your team for considering her application and doing so                  5 so swiftly. We are grateful for the indication in the                  6 provisional determination that, although it was made                  7 late, you recognised the reasons for that. We're                  8 grateful for that to you and your team.                  9 The second preliminary point is we very much welcome                  10 phase 2 of this investigation. Ms Leigh, along with                  11 many others from her organisation, Support for Survivors                  12 in Nottingham, was deeply concerned at the limited focus                  13 of phase 1 of this investigation, and in particular its                  14 focus upon institutional settings. So each and every                  15 case study -- which are outlined in the update note and                  16 outlined in summary today -- concerned institutional                  17 settings, so North Wales Children's Homes, Forde Park                  18 Approved School, St Leonard's Children's Home,                  19 St Aidan's, St Vincent's and Stanhope Castle Approved                  20 School, because, of course, many people within Support                  21 for Survivors, the organisation, are individuals who                  22 were abused in a foster care setting. Indeed, that's                  23 also true for Ms Leigh herself.                  24 So this phase is greatly welcomed, and also the                  25 focus upon limitation and the potential for redress</p> <p style="text-align: center;">Page 24</p>

<p>1 schemes is greatly welcomed by Ms Leigh. We very much                  2 support the reasons given by Mr Skelton in outline as to                  3 why those two thematic issues are of such importance.                  4 Now, in the update note, which was dated mid-August,                  5 it refers at paragraph 5 to those being key thematic                  6 issues which arose during the initial phase, the case                  7 studies phase here, late last year. But of course, as                  8 you know well, chair and panel, they are also key issues                  9 which have emerged in many other strands, including                  10 Nottinghamshire, to which Mr Jacobs made reference, and                  11 including the Roman Catholic Church, where there's                  12 a upcoming hearing. So they are repeated themes and we                  13 very much welcome that they are now going to be under                  14 the spotlight in the accountability and reparation                  15 strand, and in such a timely way, in late November.                  16 The third preliminary point to make is just, for the                  17 avoidance of any doubt, I think I, uniquely in the room,                  18 have not seen any skeletons or written submissions or                  19 even an agenda before today. I make no criticism,                  20 I just say the first I heard of the new core                  21 participants was just orally now, and the first I heard                  22 of some of the points made by Ms Weeraratne, for                  23 example, and Mr Jacobs was just in their oral summaries.                  24 Ms Leigh doesn't comment on any of those points at this                  25 stage, but we can see real sense in many of the points</p> <p style="text-align: center;">Page 25</p>	<p>1 which have been made and, if core participant status is                  2 granted, Ms Leigh will make submissions as swiftly as                  3 possible on some of the issues raised today.                  4 Secondly, Ms Leigh herself. Ms Leigh is a survivor                  5 of child sexual abuse and, as I've indicated, she was                  6 abused in a foster care setting. She founded the                  7 organisation Support for Survivors, which is a peer-led                  8 charity based in Nottingham supporting adult survivors                  9 of childhood abuse. She started this charity precisely                  10 because of her concerns at the lack of peer-led support                  11 available to victims and survivors of abuse. She                  12 supports approximately 200 victims and survivors of                  13 abuse and she is intimately engaged in work, on                  14 an ongoing basis, with the two councils Mr Jacobs                  15 referred to, Nottingham City Council and Nottinghamshire                  16 County Council, in relation to the themes here: issues                  17 of limitation; and issues concerning redress schemes.                  18 She goes to meetings on a regular basis related to those                  19 matters along with other members of her organisation,                  20 and she does that in the context of this peer-led                  21 support that she provides, because her organisation                  22 supports survivors at all stages of their journey,                  23 including assisting them with making complaints to the                  24 police, supporting them throughout their civil claims,                  25 and she also has some quite powerful evidence relating</p> <p style="text-align: center;">Page 26</p>
<p>1 to, often, the distinction which you find, particularly                  2 in a foster care setting, between relatively swift                  3 settlements in relation to abusers, civil claims against                  4 abusers, and far lengthier processes and very drawn-out                  5 and distressing processes in relation to civil claims                  6 against institutions, including the local authorities.                  7 Now, you know, and we have drawn to your attention,                  8 that she gave evidence during the inquiry into the                  9 Nottinghamshire Councils investigation, and we have                  10 given you the reference to that. She gave evidence on                  11 24 October 2018.                  12 One further thing I should just flag at this stage                  13 in relation to Ms Leigh, which I know you have on the                  14 papers, but I've asked to draw attention to it now,                  15 Ms Leigh has also achieved a large number of awards over                  16 the years, many of which reflect the fact that she's                  17 a woman of colour and that much of her work concerns                  18 particular issues for BME survivors in Nottingham. For                  19 example, she has received the Black Achievers Help Award                  20 the Sheriff of Nottingham Award in 2014 and the                  21 Michael Varnam Award, 2016, the Inspire National Awards,                  22 2016, and she recently was the Nottingham Post                  23 Inspirational Woman in Business.                  24 So she's particularly well placed -- and that's                  25 recognised by the awards which she has achieved -- to</p> <p style="text-align: center;">Page 27</p>	<p>1 provide a voice for survivors in this large group that                  2 she works with, particularly survivors like herself, who                  3 are from a foster care setting, and particularly                  4 survivors like herself who are BME.                  5 So that's a background in relation to her.                  6 Now her submission was made by her solicitor,                  7 Debbie Heath of InstaLaw, and it was provisionally                  8 refused. She had submitted that she had a significant                  9 interest in an important aspect of the matters to which                  10 the inquiry relates pursuant to rule 5(2)(b) of the 2006                  11 rules, given her particular role and experience. The                  12 core of the rejection is contained at paragraph 8. It                  13 says this:                  14 "As someone who provides supports to victims and                  15 survivors, Ms Leigh may have an interest in the                  16 potential reform of limitation and the possibility of                  17 a redress scheme. However, it is not apparent that her                  18 interest is significant or otherwise different from                  19 other support service organisations in this field.                  20 A relevant factor is that the inquiry has already                  21 received evidence from support service organisations                  22 during the case studies phase of this investigation.                  23 These organisations will continue to assist the inquiry                  24 during this phase of its work. In addition, the inquiry                  25 has already received substantial evidence from victims</p> <p style="text-align: center;">Page 28</p>

<p>1 and survivors during the case studies phase of the                  2 investigation about their difficulties obtaining                  3 accountability and reparation and they will continue to                  4 assist the inquiry during this phase of its work. It is                  5 not apparent from Ms Leigh's application that she's                  6 played a direct and significant role in respect of these                  7 matters."                  8 So bearing that in mind, I turn to our submissions.                  9 So the first core point which we make is that we                  10 entirely agree with Mr Skelton that this three-day                  11 hearing is focused on thematic issues, limitation and                  12 redress schemes. But, at present, because of the                  13 carry-over approach which has been adopted, whereby all                  14 core participants who are core participants in the first                  15 phase are automatically entitled to be core participants                  16 in the second phase, I'm afraid Ms Leigh's submission is                  17 that gives you a skewed picture, because, as I have                  18 indicated, every single one of the case studies looked                  19 at concerned an institutional setting, it concerned                  20 a children's home, a particular residential-type                  21 environment, a physical environment rather than foster                  22 care.                  23 Now, the Nottinghamshire Councils' investigation, as                  24 you, of course, know, uniquely, amongst the local                  25 authority-focused investigations to date, examined</p> <p style="text-align: center;">Page 29</p>	<p>1 foster care. Foster care is now the setting in which                  2 most children in care are placed, running at about                  3 74 per cent or slightly higher, depending on the                  4 figures. That's contrasted to only 9 per cent in                  5 children's homes.                  6 Now, Mr Hough used the phrase "forward looking" in                  7 his submissions just now. Ms Leigh entirely agrees with                  8 that, and if you are, in examining the issues of                  9 limitation and redress schemes, going to be forward                  10 looking, you must hear the voices of victims and                  11 survivors who were abused in a foster care setting.                  12 At the moment, you have a very heavy bias, or                  13 weighting, towards core participants who were abused in                  14 an institutional setting. As the panel well knows, from                  15 the very powerful evidence heard during the                  16 Nottinghamshire Councils' investigation, during which                  17 you heard from more victims and survivors than in any                  18 other phase of this inquiry, foster care involves unique                  19 challenges, it raises additional barriers to disclosure                  20 into adulthood and different barriers to disclosure, and                  21 we think Ms Leigh's voice is particularly important in                  22 that particular context.                  23 Now, if you were starting with a blank sheet and you                  24 were saying everyone has to justify their presence at                  25 the table, at this hearing at the end of November, so</p> <p style="text-align: center;">Page 30</p>
<p>1 victims and survivors have to show why they have                  2 something extra to bring to the table, and no one was                  3 starting from a position of it being presumed they were                  4 in, Ms Leigh might have a more difficult barrier to                  5 climb. But it seems to us that adopting an approach of                  6 "If you were in in phase 1, you're automatically in in                  7 phase 2", and then setting this very high standard which                  8 is set in paragraph 8, which is saying, "Well, your                  9 interest can't possibly be significant unless you can                  10 show it's otherwise different from others who have                  11 already given evidence", just means that those who have                  12 already been in phase 1 continue to have their voices                  13 heard and those like Ms Leigh, who didn't have a basis                  14 for making an application in phase 1, don't.                  15 It's also, if she is in, quite a proportionate way,                  16 it seems to us, to pick up on some of the points                  17 Mr Jacobs has made in relation to Nottinghamshire,                  18 because, of course, we have very much in mind that, in                  19 the very detailed report which came out at the end                  20 of July in relation to Nottinghamshire, you've much                  21 evidence which is relevant potentially to questions                  22 which might be put to witnesses. This one of the key                  23 reasons why Ms Leigh wants to be a core participant,                  24 rather than simply providing her material in the way                  25 that she has already, and providing her material through</p> <p style="text-align: center;">Page 31</p>	<p>1 [redacted], because she wants to be able to suggest                  2 lines of questioning to witnesses in a proportionate way                  3 through rule 10. She wants to do that at this hearing                  4 at the end of November, working with your counsel team,                  5 and she wants to be able to draw on some of the lessons                  6 which need to be learned from the Nottinghamshire                  7 Councils' investigation.                  8 You'll, of course, be very aware that there there's                  9 a very lengthy report with very detailed findings, many                  10 of which are hugely critical in relation to one local                  11 authority in particular.                  12 It only sounds in two very specific recommendations,                  13 and no recommendations relating to limitation or redress                  14 schemes, although you heard much evidence on that,                  15 simply because those matters were going to be addressed                  16 at this upcoming hearing.                  17 This is a way to knit those together. I know you've                  18 heard submissions from me on many occasions about                  19 a concern about having a silo approach with not learning                  20 lessons from one part of the inquiry carrying it over                  21 into others, but this a proportionate way to take that                  22 forward.                  23 It also seems to us that just when you use the                  24 language of rule 5(2)(b), suggesting that Ms Leigh, in                  25 any event, doesn't have a significant interest in these</p> <p style="text-align: center;">Page 32</p>



<p>1 matters, is simply wrong. Ms Leigh spends every waking                  2 moment working on these issues, she works on limitation                  3 and redress schemes along with other issues concerning                  4 survivors every day. That is what she does. It's her                  5 raison d'etre. It's because of her experience as                  6 a survivor she does that. I'm afraid that the phrase                  7 used in paragraph 8 was a little unfortunate, suggesting                  8 that, whilst she may have an interest, it's not                  9 significant. Just as a matter of language, regardless                  10 of the points I've made about foster care and the other                  11 points I've raised, Ms Leigh is concerned that that is                  12 belittling her experience and doesn't reflect the value                  13 that she can bring to this very important second phase,                  14 which she greatly welcomes, in a number of weeks' time.                  15 Unless I can assist further, those are our                  16 submissions.                  17 THE CHAIR: Thank you, Ms Gallagher.                  18 Mr Skelton?                  19 MR SKELTON: I won't address you in response to that, chair.                  20 THE CHAIR: Thank you.                  21 Does anyone wish to raise any other business?                  22 No. Well, if not, thank you all for attending today                  23 and for your helpful submissions.                  24 That concludes this preliminary hearing and we look                  25 forward to seeing you all on 26 November. Thank you.</p> <p style="text-align: center;">Page 33</p>	<p>1 (11.26 am)                  2 (The hearing concluded)                  3                  4                  5 I N D E X                  6                  7 Welcome and opening remarks by THE .....1                  CHAIR                  8 Opening statement by MR SKELTON .....2                  9 Submissions by MS WEERERATNE .....11                  10 Submissions by MR JACOBS .....12                  11 Submissions by MR COLLINS .....16                  12 Submissions by MR HOUGH .....19                  13 Reply submissions by MR SKELTON .....21                  14 Application by MS GALLAGHER .....23                  15                  16                  17                  18                  19                  20                  21                  22                  23                  24                  25</p> <p style="text-align: center;">Page 34</p>

<p style="text-align: center;"><b>A</b></p> <p><b>A&amp;R</b> 3:24  <b>Aaron</b> 3:7  <b>ABI</b> 3:17 7:5 21:8  <b>able</b> 5:19 32:1,5  <b>abuse</b> 1:17 4:1,4              5:11,14,21 8:9              14:13 15:3,22,23              16:20,25 17:14              18:1 26:5,9,11,13  <b>abused</b> 24:22 26:6              30:11,13  <b>abusers</b> 16:23 27:3              27:4  <b>accepting</b> 15:12  <b>access</b> 17:3,14  <b>account</b> 20:20 23:3  <b>accountability</b> 1:12              5:13,20 10:6              14:24 15:3 25:14              29:3  <b>achieved</b> 27:15,25  <b>Achievers</b> 27:19  <b>act</b> 12:21  <b>actions</b> 20:11 22:3  <b>addition</b> 10:7 28:24  <b>additional</b> 7:14              30:19  <b>address</b> 7:17 11:4,7              20:1 21:19 22:22              23:11,16 33:19  <b>addressed</b> 32:15  <b>adequately</b> 5:19  <b>adopted</b> 29:13  <b>adopting</b> 31:5  <b>adult</b> 26:8  <b>adulthood</b> 30:20  <b>adverted</b> 22:7  <b>advocate</b> 11:7  <b>advocates</b> 2:16  <b>afraid</b> 29:16 33:6  <b>aftermath</b> 4:1  <b>aged</b> 14:9  <b>Agency</b> 8:6,8  <b>agenda</b> 25:19  <b>ago</b> 20:12 22:24</p>	<p><b>agree</b> 29:10  <b>agrees</b> 16:2 30:7  <b>Aid</b> 8:6,8  <b>Aidan's</b> 4:16 24:19  <b>aiming</b> 9:22  <b>Alan</b> 2:25  <b>Alexis</b> 1:6  <b>Alliance</b> 3:12 19:13  <b>allow</b> 17:13 23:12  <b>alternative</b> 16:14  <b>and/or</b> 17:13  <b>announcing</b> 5:5  <b>anticipate</b> 9:19  <b>anticipated</b> 8:23              14:19  <b>APIL</b> 3:6 7:6  <b>apparent</b> 28:17              29:5  <b>appear</b> 13:3  <b>applicant</b> 7:11  <b>applicants</b> 7:4  <b>application</b> 6:24              7:12,16 23:12,14              23:20 24:4 29:5              31:14 34:14  <b>applications</b> 7:1,10              7:19  <b>applied</b> 23:5  <b>applying</b> 3:21  <b>approach</b> 2:12              14:15 20:3,16,24              29:13 31:5 32:19  <b>approaches</b> 13:18              13:25  <b>appropriate</b> 15:3              20:10  <b>Approved</b> 4:15,16              4:17 24:18,19  <b>approximately</b>              26:12  <b>April</b> 4:12  <b>areas</b> 12:2,3,13  <b>arising</b> 15:13  <b>arose</b> 15:21,23 25:6  <b>articulated</b> 23:5  <b>ascertain</b> 13:7,13</p>	<p><b>asked</b> 9:16 14:17              16:11 17:19 23:18              27:14  <b>aspect</b> 28:9  <b>assist</b> 8:10 16:4              18:20 28:23 29:4              33:15  <b>assistance</b> 10:25              19:25  <b>assisted</b> 13:11  <b>assisting</b> 12:7              26:23  <b>Association</b> 3:5,16  <b>Aswini</b> 2:18  <b>attend</b> 3:2  <b>attending</b> 33:22  <b>attention</b> 27:7,14  <b>August</b> 4:6 5:4  <b>Australia</b> 18:11  <b>Australian</b> 18:17  <b>authorities</b> 13:8,12              13:16,19 21:20,22              27:6  <b>authority</b> 32:11  <b>authority-focused</b>              29:25  <b>automatically</b>              29:15 31:6  <b>available</b> 1:9 9:18              26:11  <b>avenues</b> 16:15  <b>avoidance</b> 25:17  <b>Award</b> 27:19,20,21  <b>awards</b> 27:15,21,25  <b>aware</b> 14:2 32:8</p> <p style="text-align: center;"><b>B</b></p> <p><b>b</b> 7:6 8:15  <b>B19</b> 2:19  <b>background</b> 28:5  <b>badly</b> 16:24  <b>Balfour</b> 3:3  <b>barrier</b> 31:4  <b>barriers</b> 30:19,20  <b>based</b> 20:24 26:8  <b>basis</b> 23:21 26:14</p>	<p>26:18 31:13  <b>bearing</b> 29:8  <b>behalf</b> 1:11 3:1              16:11 19:12  <b>believe</b> 16:17  <b>belittling</b> 33:12  <b>benefit</b> 15:4  <b>best</b> 9:17  <b>bias</b> 30:12  <b>Bilhar</b> 2:23  <b>Bindmans</b> 6:10  <b>Black</b> 27:19  <b>blank</b> 30:23  <b>BME</b> 27:18 28:4  <b>board</b> 11:25  <b>bodies</b> 8:3,4 13:8  <b>body</b> 13:6  <b>Bousfield</b> 3:18              21:12,13  <b>break</b> 1:22,23  <b>bridge</b> 18:18  <b>brief</b> 2:12 11:14              23:17,19,25  <b>briefly</b> 21:17  <b>bring</b> 5:10 31:2              33:13  <b>British</b> 3:17  <b>broader</b> 23:2  <b>business</b> 7:17 11:2              27:23 33:21</p> <p style="text-align: center;"><b>C</b></p> <p><b>c</b> 7:7 8:17  <b>call</b> 10:15 22:5  <b>calling</b> 13:11  <b>Caoilfhionn</b> 3:4  <b>care</b> 17:2 19:23              24:22 26:6 27:2              28:3 29:22 30:1,1              30:2,11,18 33:10  <b>carefully</b> 9:12              20:21  <b>carry-over</b> 29:13  <b>carrying</b> 32:20  <b>case</b> 4:13,18,24              5:16 8:7 10:5,9</p>	<p>13:2,12 20:14              21:22 24:15 25:6              28:22 29:1,18  <b>Castle</b> 2:21 4:17              24:19  <b>Catholic</b> 25:11  <b>cede</b> 11:3  <b>cent</b> 30:3,4  <b>certainly</b> 12:11  <b>chair</b> 1:5,6,7 2:6              11:2,11 12:15,18              12:20 15:11,25              16:5,8 18:22,23              18:25 19:2,3,4,5,8              19:9,10,12 21:3,5              21:7,12,13,15,17              22:17 23:11,13,15              25:8 33:17,19,20              34:7  <b>chairman</b> 16:6  <b>challenges</b> 30:19  <b>changes</b> 8:12,15              10:13 15:5 22:18  <b>charitable</b> 17:11  <b>charity</b> 26:8,9  <b>child</b> 1:17 4:4 5:10              5:14,21 8:9 17:13              26:5  <b>childhood</b> 26:9  <b>children</b> 15:4 30:2  <b>children's</b> 4:14,16              24:17,18 29:20              30:5  <b>Chris</b> 2:20 3:14  <b>Church</b> 25:11  <b>circulated</b> 6:18              23:10  <b>City</b> 26:15  <b>civil</b> 1:16 4:2,6,22              5:18 8:8 15:9              26:24 27:3,5  <b>claimant</b> 8:2,7  <b>claims</b> 5:10 8:9              26:24 27:3,5  <b>clarified</b> 13:5  <b>clarify</b> 21:21</p>
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<p><b>clear</b> 9:22 11:8  <b>clearly</b> 11:21 13:20  <b>client</b> 23:18  <b>clients</b> 13:1 14:9,21 15:1  <b>climb</b> 31:5  <b>close</b> 23:10  <b>closing</b> 17:17  <b>Collins</b> 2:25 16:8,9 16:10 18:22 34:11  <b>colour</b> 27:17  <b>combination</b> 14:7  <b>come</b> 12:5  <b>coming</b> 17:22 18:4  <b>commence</b> 9:10  <b>commenced</b> 14:22  <b>commencing</b> 2:10  <b>commend</b> 18:4  <b>comment</b> 17:17 25:24  <b>comments</b> 9:25 22:7  <b>commit</b> 15:20  <b>Committee</b> 7:8  <b>companies</b> 17:15  <b>comparative</b> 13:25  <b>comparator</b> 14:6  <b>compensation</b> 1:15 4:3,7,22 5:18 14:7 15:10,19  <b>complainant</b> 12:21  <b>complaints</b> 26:23  <b>completed</b> 8:24 9:2  <b>comprised</b> 4:5  <b>concern</b> 11:16 13:2 32:19  <b>concerned</b> 24:12 24:16 29:19,19 33:11  <b>concerning</b> 26:17 33:3  <b>concerns</b> 26:10 27:17  <b>concluded</b> 1:24 34:2  <b>concludes</b> 33:24</p>	<p><b>conclusion</b> 7:17  <b>conducted</b> 20:12  <b>confirmed</b> 5:23 7:20  <b>confirming</b> 6:5  <b>Connolly</b> 2:22  <b>consider</b> 5:2,7 10:18 14:10 16:14 20:21 22:12,13 23:4  <b>consideration</b> 15:6 20:18  <b>considered</b> 13:10 13:20 20:24  <b>considering</b> 20:7 20:11 22:24 24:4  <b>contained</b> 28:12  <b>context</b> 20:12 26:20 30:22  <b>continue</b> 10:17 28:23 29:3 31:12  <b>continued</b> 10:25  <b>continues</b> 19:15  <b>contrasted</b> 30:4  <b>contribute</b> 17:16  <b>contributing</b> 21:10  <b>core</b> 2:2,18 3:19 6:1,2,3,5,7,19,23 7:1 8:21 9:6 10:1 10:23,23 12:21 14:20 18:6 23:21 25:20 26:1 28:12 29:9,14,14,15 30:13 31:23  <b>Cornwall</b> 6:18  <b>cost</b> 16:15 17:12  <b>council</b> 3:9 6:16 13:3 21:23 22:1 26:15,16  <b>councils</b> 22:10,12 26:14 27:9  <b>Councils'</b> 29:23 30:16 32:7  <b>counsel</b> 1:21 2:13 2:17 7:16 20:4 22:13 32:4</p>	<p><b>counselling</b> 17:6  <b>countries</b> 20:25 21:1  <b>country</b> 13:14  <b>County</b> 13:2 21:23 26:16  <b>couple</b> 1:21  <b>course</b> 3:20 7:19 9:3 10:24 14:3 22:6 23:3,8 24:20 25:7 29:24 31:18 32:8  <b>cover</b> 17:12  <b>CP</b> 3:21  <b>CPs'</b> 3:19  <b>creation</b> 16:19 17:11  <b>criminal</b> 4:2,7 5:18 15:9,20  <b>criminality</b> 15:23  <b>critical</b> 32:10  <b>criticism</b> 25:19  <b>currently</b> 20:20</p> <hr/> <p style="text-align: center;"><b>D</b></p> <hr/> <p><b>d</b> 7:8 34:5  <b>d'etre</b> 33:5  <b>Daniel</b> 3:3  <b>data</b> 8:8  <b>date</b> 7:25 9:4 11:20 29:25  <b>dated</b> 12:23 25:4  <b>David</b> 3:2  <b>day</b> 33:4  <b>days</b> 9:11  <b>dealt</b> 7:24  <b>Debbie</b> 28:7  <b>December</b> 4:19  <b>decided</b> 22:2  <b>decision</b> 23:22  <b>declined</b> 7:10  <b>deeply</b> 24:12  <b>defendant</b> 8:4,4,7  <b>degree</b> 17:5  <b>delayed</b> 1:3  <b>deliver</b> 1:16 4:3</p>	<p><b>demonstrates</b> 14:14  <b>depending</b> 30:3  <b>derisory</b> 15:12  <b>designated</b> 6:23  <b>detail</b> 4:10 13:21 20:14  <b>detailed</b> 31:19 32:9  <b>details</b> 23:9  <b>determination</b> 24:6  <b>determinations</b> 7:21  <b>devastation</b> 16:23  <b>develop</b> 15:25  <b>Devon</b> 6:18 13:2 21:23  <b>died</b> 14:21  <b>different</b> 20:12 28:18 30:20 31:10  <b>difficult</b> 17:3 31:4  <b>difficulties</b> 10:5 29:2  <b>direct</b> 29:6  <b>directly</b> 13:9  <b>disclose</b> 8:25  <b>disclosed</b> 9:23  <b>disclosure</b> 8:21,23 9:1,3 11:18,19 12:4 19:17 30:19 30:20  <b>discontinue</b> 22:2  <b>discuss</b> 1:20 2:9  <b>distinction</b> 27:1  <b>distressing</b> 27:5  <b>documents</b> 9:6  <b>doing</b> 2:15 24:4  <b>doubt</b> 25:17  <b>draft</b> 9:15,24 22:6 23:7  <b>draw</b> 27:14 32:5  <b>drawn</b> 27:7  <b>drawn-out</b> 27:4  <b>Drusilla</b> 1:8  <b>due</b> 7:19 15:12 23:8</p> <hr/> <p style="text-align: center;"><b>E</b></p> <hr/> <p><b>E</b> 34:5  <b>earlier</b> 15:15  <b>easier</b> 5:9  <b>Ecclesiastical</b> 3:10 7:7  <b>echo</b> 18:9  <b>education</b> 16:15,22 16:24 17:4,14,25  <b>educational</b> 16:17 16:19 17:10  <b>effects</b> 20:21  <b>eight</b> 7:10  <b>EIO</b> 3:11  <b>either</b> 10:10 17:12  <b>elderly</b> 15:1  <b>elicit</b> 4:21 9:18  <b>eligible</b> 17:7  <b>eloquent</b> 17:20  <b>emerged</b> 25:9  <b>emphasise</b> 12:10  <b>encouraged</b> 17:16  <b>endorse</b> 20:15  <b>engage</b> 20:11  <b>engaged</b> 26:13  <b>ensure</b> 15:1  <b>entertain</b> 16:2  <b>entirely</b> 17:22 29:10 30:7  <b>entitled</b> 29:15  <b>environment</b> 29:21 29:21  <b>established</b> 15:21  <b>establishment</b> 8:13  <b>Evans</b> 1:9  <b>event</b> 32:25  <b>evidence</b> 4:21,25 7:22,24 9:13,14 9:18 10:2,4,8,8,16 10:18 13:22 15:15 19:17 20:3 22:14 22:21,25 26:25 27:8,10 28:21,25 30:15 31:11,21 32:14  <b>examination</b> 5:17 21:1</p>
---	--	---	---

<b>examine</b> 4:14	<b>findings</b> 32:9	<b>future</b> 5:3	<b>hearing</b> 1:12,19,19	21:23 25:9,11
<b>examined</b> 20:13	<b>first</b> 4:5 5:8 6:9		1:24 2:7,8,10,14	26:23 27:6
29:25	11:7 19:15 24:3	<hr/> <b>G</b> <hr/>	6:17 7:12 10:11	<b>indicated</b> 6:18 26:5
<b>examines</b> 4:1	25:20,21 29:9,14	<b>gain</b> 17:3	11:3 12:8 16:3	29:18
<b>examining</b> 1:14	<b>firstly</b> 13:1 23:17	<b>Gallagher</b> 3:4,20	22:23 23:1 25:12	<b>indication</b> 24:5
30:8	24:1	23:12,13,14,15	29:11 30:25 32:3	<b>individual</b> 10:16
<b>example</b> 25:23	<b>fit</b> 1:16	33:17 34:14	32:16 33:24 34:2	<b>individuals</b> 24:21
27:19	<b>five</b> 4:13 5:16 13:12	<b>Gillespie</b> 19:20	<b>hearings</b> 4:18,20	<b>inferred</b> 15:22
<b>examples</b> 4:21	<b>flag</b> 27:12	<b>give</b> 13:22 23:19	9:8,9 10:10 14:11	<b>inflicted</b> 16:23
<b>excellent</b> 18:3	<b>floor</b> 11:4	<b>given</b> 10:19 20:1	23:5,10	<b>information</b> 7:14
<b>excluded</b> 15:16	<b>focus</b> 4:24 10:11	25:2 27:10 28:11	<b>Heath</b> 28:7	22:25
<b>exist</b> 17:9	12:6 24:12,14,25	31:11	<b>heavy</b> 30:12	<b>initial</b> 25:6
<b>existing</b> 1:15 4:23	<b>focused</b> 9:13 29:11	<b>gives</b> 15:6 29:17	<b>held</b> 4:9,18 22:11	<b>Injury</b> 3:6
6:2,7	<b>focusing</b> 4:1	<b>goes</b> 26:18	<b>help</b> 16:18 27:19	<b>inquiry</b> 1:7,8,11
<b>experience</b> 16:24	<b>following</b> 4:7 5:7	<b>going</b> 12:2,13 23:19	<b>helpful</b> 9:18 12:2	4:8,10,13 5:2,4,15
28:11 33:5,12	6:7	23:21,23 25:13	33:23	6:5,25 7:1,3,13,25
<b>experiences</b> 10:17	<b>Forde</b> 2:20 4:15	30:9 32:15	<b>high</b> 31:7	8:1,11 10:3,17
<b>explain</b> 17:19 22:2	13:1 24:17	<b>good</b> 1:6 11:11	<b>higher</b> 30:3	12:7 13:11,24
<b>exploration</b> 9:14	<b>form</b> 9:25	12:20 18:23 19:1	<b>hold</b> 1:18 17:4	14:2,10,22,23
<b>explore</b> 4:10	<b>forth</b> 11:24	19:6 21:5,13	<b>holder</b> 19:23	15:5,6,17 16:2,21
<b>expressed</b> 13:2	<b>forthcoming</b> 12:8	<b>granted</b> 3:23 7:4	<b>holistic</b> 14:14	19:15 20:13,16
<b>extent</b> 1:14 4:2	<b>forward</b> 10:25	10:23 26:2	<b>home</b> 4:16 24:18	21:21 22:1,9,11
<b>extra</b> 31:2	21:10 30:6,9	<b>grants</b> 16:20 17:12	29:20	27:8 28:10,20,23
	32:22 33:25	<b>grateful</b> 11:11	<b>homes</b> 4:15 24:17	28:24 29:4 30:18
	<b>forward-looking</b>	12:12 21:9 24:3,5	30:5	32:20
<hr/> <b>F</b> <hr/>	20:7	24:8	<b>hope</b> 9:1 19:24	<b>inquiry's</b> 2:1 3:25
<b>F41</b> 2:21	<b>foster</b> 24:22 26:6	<b>greatly</b> 24:24 25:1	<b>hot</b> 9:21 13:23	8:22 14:18 22:5
<b>F43</b> 2:22	27:2 28:3 29:21	33:14	<b>Hough</b> 3:12 19:10	<b>Inspirational</b> 27:23
<b>F47</b> 2:22	30:1,1,11,18	<b>Greenwood</b> 3:2	19:11,12 21:3	<b>Inspire</b> 27:21
<b>F58</b> 2:22	33:10	16:12	30:6 34:12	<b>InstaLaw</b> 28:7
<b>fact</b> 8:24 22:22	<b>found</b> 5:16 17:3	<b>group</b> 2:21,21	<b>Howe</b> 6:10 12:21	<b>institutional</b> 24:14
27:16	<b>founded</b> 26:6	20:11 28:1	<b>hugely</b> 32:10	24:16 29:19 30:14
<b>factor</b> 28:20	<b>four</b> 7:4 12:25	<b>groups</b> 14:8	<b>Hugh</b> 6:11	<b>institutions</b> 8:5
<b>failed</b> 15:9	23:16,24	<b>guidelines</b> 18:16		27:6
<b>far</b> 17:23 20:17	<b>Fourth</b> 6:14		<hr/> <b>I</b> <hr/>	<b>instructed</b> 12:20
27:4	<b>frameworks</b> 1:15	<hr/> <b>H</b> <hr/>	<b>illustrative</b> 13:17	<b>insurance</b> 3:11,15
<b>February</b> 4:9 17:6	4:22	<b>happening</b> 18:10	<b>implemented</b> 14:15	3:18 7:7,8 17:15
<b>fees</b> 17:12	<b>Frank</b> 1:9	<b>Harrison</b> 3:5 18:25	<b>implications</b> 8:12	<b>insurers</b> 3:17 8:3
<b>field</b> 28:19	<b>Friday</b> 8:24,25	19:1	<b>importance</b> 25:3	<b>intend</b> 9:14 10:19
<b>fifth</b> 1:12 2:7 6:15	23:23	<b>headings</b> 23:17,24	<b>important</b> 10:3	23:16
<b>figures</b> 30:4	<b>funded</b> 8:18	<b>health</b> 15:2	13:14 19:16 20:18	<b>intended</b> 20:1
<b>final</b> 7:20 11:1	<b>funding</b> 17:7	<b>hear</b> 1:21 9:19	28:9 30:21 33:13	<b>interest</b> 28:9,15,18
14:19,23,25	<b>further</b> 5:24 10:16	30:10	<b>improvement</b> 5:23	31:9 32:25 33:8
<b>finalised</b> 9:25	16:4 17:3 18:20	<b>heard</b> 13:22 16:21	<b>improvements</b> 10:7	<b>interim</b> 4:12 14:8
<b>Finally</b> 10:22 15:6	22:13 23:11 27:12	18:8 25:20,21	<b>included</b> 8:2 22:6	14:24
23:2	33:15	30:15,17 31:13	<b>including</b> 16:15	<b>intimately</b> 26:13
<b>find</b> 27:1		32:14,18		

<p><b>introduce</b> 2:15 22:24</p> <p><b>introduced</b> 11:2</p> <p><b>investigation</b> 1:13 1:14 2:7,9,17 3:24 4:5 5:6,17,25 6:3 6:8,21,24 7:2,23 11:1 12:3,22 13:4 13:9,15,17 14:21 15:15 16:1 19:18 19:19 20:5,6,17 20:19 21:24 22:11 22:15 24:10,13 27:9 28:22 29:2 29:23 30:16 32:7</p> <p><b>investigations</b> 3:25 29:25</p> <p><b>invite</b> 11:7 17:17</p> <p><b>invited</b> 6:22</p> <p><b>involved</b> 6:6,8,20 13:1,3,9 21:9,22</p> <p><b>involves</b> 30:18</p> <p><b>IRLALCL</b> 7:9</p> <p><b>issue</b> 6:1 14:17 21:20 22:16 23:2</p> <p><b>issues</b> 4:6,10,14 5:7 5:24 7:23 9:13 10:20 11:5 12:25 13:14,21 14:1 15:7 20:18 21:23 22:21 25:3,6,8 26:3,16,17 27:18 29:11 30:8 33:2,3</p> <p><b>Ivor</b> 1:9</p> <hr/> <p style="text-align: center;"><b>J</b></p> <hr/> <p><b>J1</b> 2:25</p> <p><b>J3</b> 2:25</p> <p><b>Jacobs</b> 2:20 12:18 12:19,20 16:5 25:10,23 26:14 31:17 34:10</p> <p><b>James</b> 6:11</p> <p><b>January</b> 4:20 15:8</p> <p><b>Jay</b> 1:6</p> <p><b>Jefferson</b> 3:16 21:7</p>	<p>21:8</p> <p><b>join</b> 1:10</p> <p><b>Jonathan</b> 3:12</p> <p><b>journey</b> 26:22</p> <p><b>July</b> 31:20</p> <p><b>junior</b> 2:16</p> <p><b>jurisdiction</b> 14:5</p> <p><b>jurisdictions</b> 14:1 22:16,19</p> <p><b>justice</b> 1:16 3:8 4:2 4:7,22 5:18 8:6 15:9,10</p> <p><b>justify</b> 30:24</p> <hr/> <p style="text-align: center;"><b>K</b></p> <hr/> <p><b>Keoghs</b> 19:21</p> <p><b>key</b> 25:5,8 31:22</p> <p><b>Kim</b> 3:5</p> <p><b>kin</b> 14:8</p> <p><b>knit</b> 32:17</p> <p><b>know</b> 2:2 11:21 12:2,9,12,13 25:8 27:7,13 29:24 32:17</p> <p><b>knows</b> 30:14</p> <hr/> <p style="text-align: center;"><b>L</b></p> <hr/> <p><b>L1</b> 2:23</p> <p><b>L12</b> 2:23</p> <p><b>L3</b> 2:23</p> <p><b>L41</b> 2:23</p> <p><b>L42</b> 2:24</p> <p><b>L6</b> 2:23</p> <p><b>lack</b> 26:10</p> <p><b>Lambeth</b> 14:12</p> <p><b>land</b> 17:21</p> <p><b>language</b> 32:24 33:9</p> <p><b>large</b> 27:15 28:1</p> <p><b>lastly</b> 6:16 23:23</p> <p><b>late</b> 24:7 25:7,15</p> <p><b>law</b> 5:8 8:13,15 10:13 20:2,20 22:19</p> <p><b>Lawyers</b> 3:6</p> <p><b>learned</b> 32:6</p> <p><b>learning</b> 32:19</p>	<p><b>leave</b> 15:14</p> <p><b>leaves</b> 11:21</p> <p><b>left</b> 16:25</p> <p><b>Legacy</b> 7:8</p> <p><b>legal</b> 8:5,8 20:12</p> <p><b>Leigh</b> 3:4 7:15 23:19,20 24:3,10 24:23 25:1,24 26:2,4,4 27:13,15 28:15 30:7 31:4 31:13,23 32:24 33:1,11</p> <p><b>Leigh's</b> 29:5,16 30:21</p> <p><b>lengthier</b> 27:4</p> <p><b>lengthy</b> 32:9</p> <p><b>Leonard's</b> 4:15 24:18</p> <p><b>lessons</b> 32:5,20</p> <p><b>let's</b> 11:9</p> <p><b>letter</b> 19:24</p> <p><b>letters</b> 19:22</p> <p><b>level</b> 13:13</p> <p><b>levels</b> 15:19</p> <p><b>life</b> 16:18</p> <p><b>Likewise</b> 19:6,20</p> <p><b>limitation</b> 5:8,24 8:13,15 10:13 13:7,21 14:1 15:13 18:11,19 20:2,8 21:24 22:19 24:25 26:17 28:16 29:11 30:9 32:13 33:2</p> <p><b>limited</b> 9:3 24:12</p> <p><b>lines</b> 32:2</p> <p><b>lists</b> 23:9</p> <p><b>litigant</b> 18:16</p> <p><b>little</b> 33:7</p> <p><b>local</b> 13:8,12,13,16 13:19 21:20,22 27:6 29:24 32:10</p> <p><b>Lois</b> 2:16</p> <p><b>longer</b> 13:3</p> <p><b>look</b> 10:25 21:9 33:24</p>	<p><b>looked</b> 29:18</p> <p><b>looking</b> 18:10,18 30:6,10</p> <p><b>low</b> 15:12</p> <p><b>lunch</b> 1:23</p> <hr/> <p style="text-align: center;"><b>M</b></p> <hr/> <p><b>Madam</b> 3:24 16:6</p> <p><b>main</b> 11:16</p> <p><b>maintenance</b> 17:7 17:13</p> <p><b>majority</b> 8:23 9:1 9:23</p> <p><b>making</b> 18:2 26:23 31:14</p> <p><b>Malcolm</b> 1:9</p> <p><b>March</b> 14:20</p> <p><b>material</b> 31:24,25</p> <p><b>matter</b> 33:9</p> <p><b>matters</b> 13:9 16:3 26:19 28:9 29:7 32:15 33:1</p> <p><b>Maxine</b> 3:4 7:15 23:20</p> <p><b>mean</b> 12:9</p> <p><b>means</b> 17:7 31:11</p> <p><b>measures</b> 14:9,15</p> <p><b>meetings</b> 26:18</p> <p><b>members</b> 1:8 2:6 13:19 16:6 18:23 19:12 21:13 26:19</p> <p><b>mentioned</b> 7:16 21:18</p> <p><b>Michael</b> 3:9 27:21</p> <p><b>mid-August</b> 25:4</p> <p><b>Middlesbrough</b> 3:9 6:16</p> <p><b>Millar</b> 6:11</p> <p><b>mind</b> 29:8 31:18</p> <p><b>mindful</b> 9:5</p> <p><b>minds</b> 12:12</p> <p><b>Ministry</b> 8:6</p> <p><b>MMI</b> 3:15 6:12</p> <p><b>model</b> 18:16</p> <p><b>MoJ</b> 3:8 6:15</p> <p><b>moment</b> 30:12 33:2</p>	<p><b>morning</b> 1:6 11:11 12:20 18:8,23 19:1,6 21:5,13</p> <p><b>morning's</b> 11:3</p> <p><b>Moss</b> 3:7 19:3,4</p> <p><b>movements</b> 17:2</p> <p><b>multiple</b> 9:19</p> <p><b>Municipal</b> 3:14</p> <p><b>Mutual</b> 3:14</p> <hr/> <p style="text-align: center;"><b>N</b></p> <hr/> <p><b>N</b> 34:5</p> <p><b>national</b> 15:17 27:21</p> <p><b>necessarily</b> 4:25</p> <p><b>necessary</b> 1:22 20:10,19 22:13 23:8</p> <p><b>need</b> 8:12 9:5 12:17 16:17 21:19 32:6</p> <p><b>needed</b> 14:16</p> <p><b>Neither</b> 15:19</p> <p><b>new</b> 12:10 25:20</p> <p><b>Nigel</b> 3:1 16:11</p> <p><b>non-child</b> 14:13</p> <p><b>non-recent</b> 5:10 8:9</p> <p><b>North</b> 4:14 24:17</p> <p><b>note</b> 5:5 6:2,22 8:22 11:20 13:16 24:15 25:4</p> <p><b>notice</b> 6:4</p> <p><b>notify</b> 7:13</p> <p><b>Nottingham</b> 24:12 26:8,15 27:18,20 27:22</p> <p><b>Nottinghamshire</b> 13:17 22:10 25:10 26:15 27:9 29:23 30:16 31:17,20 32:6</p> <p><b>November</b> 1:18 2:11 4:9,19 8:24 9:10 10:11 14:10 16:3 23:1 25:15 30:25 32:4 33:25</p>
--	--	---	--	---

<p><b>nuanced</b> 14:14</p> <p><b>Nugent</b> 19:23</p> <p><b>number</b> 4:11 5:22 27:15 33:14</p> <hr/> <p style="text-align: center;"><b>O</b></p> <hr/> <p><b>O'Mara</b> 3:1 16:11 16:14,16 17:19 18:2</p> <p><b>obstacles</b> 17:9</p> <p><b>obtain</b> 16:18</p> <p><b>obtaining</b> 10:6 29:2</p> <p><b>occasion</b> 18:15</p> <p><b>occasions</b> 32:18</p> <p><b>occurs</b> 23:10</p> <p><b>October</b> 1:1 9:1,2 9:17,24 11:21 12:24 23:23 27:11</p> <p><b>offences</b> 15:20,21</p> <p><b>offer</b> 5:12</p> <p><b>offers</b> 15:12</p> <p><b>Office</b> 3:11 7:7</p> <p><b>once</b> 20:11</p> <p><b>ongoing</b> 26:14</p> <p><b>open</b> 17:4,4</p> <p><b>opening</b> 1:5 2:5 34:6,8</p> <p><b>operate</b> 8:17 21:1</p> <p><b>operates</b> 13:25 20:20</p> <p><b>opportunity</b> 1:20 11:12</p> <p><b>options</b> 8:15</p> <p><b>oral</b> 9:14 10:8 16:13 25:23</p> <p><b>orally</b> 7:11 25:21</p> <p><b>order</b> 8:10 9:17</p> <p><b>organisation</b> 24:11 24:21 26:7,19,21</p> <p><b>organisations</b> 8:5 17:15 28:19,21,23</p> <p><b>outline</b> 23:19,21 25:2</p> <p><b>outlined</b> 20:4 24:15 24:16</p> <p><b>overview</b> 9:15 23:6</p>	<p style="text-align: center;"><b>P</b></p> <hr/> <p><b>panel</b> 1:8 2:6 11:11 16:6 18:23 19:4 19:12,25 21:13 23:15 25:8 30:14</p> <p><b>papers</b> 4:6,8 27:14</p> <p><b>paragraph</b> 23:22 25:5 28:12 31:8 33:7</p> <p><b>Park</b> 2:20 4:15 13:1 24:17</p> <p><b>part</b> 4:5 5:5 20:6 32:20</p> <p><b>participant</b> 6:6,19 6:23 7:2 10:23 14:20 26:1 31:23</p> <p><b>participants</b> 2:2,18 6:1,2,3 8:21 9:6 10:1,24 12:21 18:6 25:21 29:14 29:14,15 30:13</p> <p><b>participants'</b> 3:20 6:7</p> <p><b>participation</b> 22:3</p> <p><b>particular</b> 12:13 14:6 18:10 24:13 27:18 28:11 29:20 30:22 32:11</p> <p><b>particularly</b> 27:1 27:24 28:2,3 30:21</p> <p><b>Paul</b> 2:22</p> <p><b>Paula</b> 3:16</p> <p><b>pay</b> 17:12</p> <p><b>payments</b> 14:7,8 17:13</p> <p><b>peer-led</b> 26:7,10,20</p> <p><b>penalised</b> 15:24</p> <p><b>people</b> 15:13 24:20</p> <p><b>person</b> 7:15</p> <p><b>personal</b> 3:6 16:24</p> <p><b>personally</b> 17:23</p> <p><b>Peter</b> 2:3</p> <p><b>Pether</b> 3:9 19:5,6</p> <p><b>phase</b> 5:6 6:4,6,8 6:20,24 7:2,24</p>	<p>11:1 19:17,20 20:1,13,19 21:24 22:3 24:10,13,24 25:6,7 28:22,24 29:1,4,15,16 30:18 31:6,7,12 31:14 33:13</p> <p><b>Phillips</b> 3:10 19:8,9</p> <p><b>phrase</b> 30:6 33:6</p> <p><b>physical</b> 29:21</p> <p><b>pick</b> 31:16</p> <p><b>Picking</b> 18:8</p> <p><b>picture</b> 29:17</p> <p><b>place</b> 17:4,8,10</p> <p><b>placed</b> 27:24 30:2</p> <p><b>plan</b> 22:9</p> <p><b>played</b> 29:6</p> <p><b>please</b> 2:15</p> <p><b>pm</b> 1:24</p> <p><b>point</b> 11:24,25 12:1 18:2,14 24:9 25:16 29:9</p> <p><b>points</b> 1:21 11:16 12:11 15:25 19:13 21:18 24:2 25:22 25:24,25 31:16 33:10,11</p> <p><b>police</b> 6:18 26:24</p> <p><b>policy</b> 19:23</p> <p><b>political</b> 13:13</p> <p><b>poor</b> 15:2</p> <p><b>position</b> 13:5,7 15:2 31:3</p> <p><b>possibility</b> 10:14 28:16</p> <p><b>possible</b> 9:7 11:19 12:4 26:3</p> <p><b>possibly</b> 31:9</p> <p><b>Post</b> 27:22</p> <p><b>potential</b> 5:12 8:13 8:17 10:13,21 20:21 24:25 28:16</p> <p><b>potentially</b> 31:21</p> <p><b>powerful</b> 26:25 30:15</p> <p><b>practical</b> 20:16</p>	<p><b>practice</b> 7:21 18:13</p> <p><b>practices</b> 4:25</p> <p><b>precisely</b> 26:9</p> <p><b>preliminary</b> 1:12 1:19 2:7 7:12 23:17 24:1,9 25:16 33:24</p> <p><b>preparations</b> 1:20 2:10</p> <p><b>prepare</b> 9:7</p> <p><b>presaged</b> 22:22</p> <p><b>presence</b> 30:24</p> <p><b>present</b> 2:16 7:9 22:8 29:12</p> <p><b>pressured</b> 15:11</p> <p><b>presumed</b> 31:3</p> <p><b>previously</b> 10:19 10:22</p> <p><b>primarily</b> 7:24</p> <p><b>primary</b> 4:24</p> <p><b>prior</b> 14:25</p> <p><b>priority</b> 14:8</p> <p><b>probably</b> 21:18</p> <p><b>procedural</b> 7:17 8:22</p> <p><b>procedure</b> 13:23</p> <p><b>proceed</b> 2:3</p> <p><b>proceedings</b> 1:3,25</p> <p><b>proceeds</b> 16:1</p> <p><b>process</b> 2:9 8:20 9:20 14:6 22:20</p> <p><b>processes</b> 27:4,5</p> <p><b>progress</b> 14:3</p> <p><b>proper</b> 20:20</p> <p><b>proportionate</b> 31:15 32:2,21</p> <p><b>proportionately</b> 12:5,6</p> <p><b>proposals</b> 14:7 20:22 22:5</p> <p><b>propose</b> 2:13 10:15 17:11 23:11</p> <p><b>proposed</b> 7:23 15:24</p> <p><b>proposing</b> 9:19</p> <p><b>provide</b> 2:8 5:19</p>	<p>7:13 9:14 10:16 16:20 23:6,8 28:1</p> <p><b>provided</b> 6:4 19:16 19:21,23 22:8</p> <p><b>provides</b> 26:21 28:14</p> <p><b>providing</b> 31:24,25</p> <p><b>provisional</b> 7:20 23:22 24:6</p> <p><b>provisionally</b> 28:7</p> <p><b>psychology</b> 17:5</p> <p><b>public</b> 1:7,19 2:10 2:13 4:18 9:9</p> <p><b>publication</b> 4:6 14:25</p> <p><b>publish</b> 14:23</p> <p><b>published</b> 2:1 4:12 5:4,15 14:19 22:4</p> <p><b>purpose</b> 2:8 4:20 16:1</p> <p><b>purposes</b> 8:20 12:7 12:25 20:14 22:14</p> <p><b>pursuant</b> 7:3 8:1 28:10</p> <p><b>put</b> 11:13 12:23 31:22</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <hr/> <p><b>QC</b> 2:3,18 3:10,12</p> <p><b>qualifications</b> 16:18 17:1</p> <p><b>questioning</b> 32:2</p> <p><b>questionnaire</b> 10:20</p> <p><b>questions</b> 31:21</p> <p><b>quite</b> 13:20 26:25 31:15</p> <p><b>quote</b> 16:16</p> <hr/> <p style="text-align: center;"><b>R</b></p> <hr/> <p><b>raise</b> 11:17 12:25 14:17 23:18 33:21</p> <p><b>raised</b> 11:5 15:7 26:3 33:11</p> <p><b>raises</b> 30:19</p> <p><b>raison</b> 33:5</p> <p><b>rapidly</b> 14:15</p>
---	---	---	---	--

<p><b>read</b> 10:10 12:5  <b>real</b> 25:25  <b>really</b> 11:13,16  <b>reasonably</b> 15:22  <b>reasons</b> 22:2 24:7      25:2 31:23  <b>reassure</b> 23:25  <b>recall</b> 15:13  <b>recalled</b> 13:20  <b>receipt</b> 4:8  <b>receive</b> 8:19 9:6      15:2  <b>received</b> 7:1 9:25      10:4 27:19 28:21      28:25  <b>recognise</b> 10:3      22:17  <b>recognised</b> 24:7      27:25  <b>recommend</b> 16:19  <b>recommendation</b>      18:5  <b>recommendations</b>      4:11 5:2,22 14:23      14:24 20:8,17,23      32:12,13  <b>recommends</b> 15:5      15:18  <b>redacted</b> 32:1  <b>redress</b> 5:12,24      8:14,17 10:14,21      13:7 15:8 16:15      18:19 20:2,9      21:24 22:19 24:25      26:17 28:17 29:12      30:9 32:13 33:3  <b>reduced</b> 15:19  <b>reference</b> 25:10      27:10  <b>referred</b> 9:20 26:15  <b>refers</b> 25:5  <b>reflect</b> 27:16 33:12  <b>reform</b> 18:12 20:22      28:16  <b>reformed</b> 5:9  <b>refusal</b> 23:22</p>	<p><b>refused</b> 28:8  <b>regard</b> 11:25  <b>regardless</b> 33:9  <b>regular</b> 26:18  <b>Reinsurance</b> 7:8  <b>rejection</b> 28:12  <b>related</b> 26:18  <b>relates</b> 28:10  <b>relating</b> 10:12,20      26:25 32:13  <b>relation</b> 6:23 11:20      12:3 14:18 20:8      26:16 27:3,5,13      28:5 31:17,20      32:10  <b>relatively</b> 27:2  <b>relevant</b> 14:12      28:20 31:21  <b>rely</b> 7:14 10:18      12:24  <b>remain</b> 6:3,8,19 9:5      10:23  <b>remarks</b> 1:5 23:18      24:1 34:6  <b>remedies</b> 5:20  <b>renew</b> 7:11  <b>renewed</b> 23:20  <b>renewing</b> 7:15  <b>reparation</b> 5:13      10:6 13:21 14:2      15:3,17,24 25:14      29:3  <b>reparations</b> 1:13      1:16 4:3 5:20  <b>repeat</b> 11:13 18:7  <b>repeated</b> 25:12  <b>repeating</b> 18:14  <b>repeats</b> 11:20  <b>Reply</b> 21:16 34:13  <b>report</b> 4:12 5:15,16      5:22 14:19,24,25      22:4 31:19 32:9  <b>represent</b> 18:6  <b>representative</b> 3:2      8:3,4  <b>representatives</b></p>	<p>3:20  <b>represented</b> 6:9      17:23  <b>representing</b> 2:19      2:20,23,25 3:3,4,5      3:7,9,10,12,14,16      3:18,21,22  <b>request</b> 13:5,6 16:2      19:18 22:9  <b>requested</b> 21:21      22:9  <b>requests</b> 7:25 8:2      8:10  <b>require</b> 9:13  <b>required</b> 5:24 12:7  <b>residential-type</b>      29:20  <b>respect</b> 5:10 7:19      22:18 29:6  <b>respond</b> 12:16  <b>response</b> 19:21,24      21:17 33:19  <b>responses</b> 4:8  <b>result</b> 16:22 17:25  <b>reviewing</b> 8:20      22:20  <b>right</b> 11:22  <b>rigorous</b> 20:15,25  <b>robbed</b> 16:22 17:25  <b>Robert</b> 3:3  <b>rocket</b> 12:9  <b>role</b> 28:11 29:6  <b>Roman</b> 25:11  <b>room</b> 25:17  <b>Rory</b> 3:10  <b>Royal</b> 3:12 19:12  <b>RSA</b> 3:13 6:14      19:15,20  <b>RSA's</b> 19:23  <b>rule</b> 7:3 8:1 13:6      19:22,24 28:10      32:3,24  <b>rules</b> 7:3 8:1 28:11  <b>rulings</b> 7:20  <b>run</b> 9:10  <b>running</b> 30:2</p>	<p style="text-align: center;"><b>S</b></p> <p><b>Sarah</b> 3:18  <b>saying</b> 12:10 30:24      31:8  <b>says</b> 16:16 28:13  <b>scheme</b> 5:12 8:14      8:17 10:14,21      14:12,14 15:17,24      28:17  <b>schemes</b> 14:2,13      20:2,9 21:25 25:1      26:17 29:12 30:9      32:14 33:3  <b>school</b> 4:15,17      16:25 24:18,20  <b>Schools</b> 4:17  <b>science</b> 12:9  <b>Scotland</b> 14:3      18:11  <b>second</b> 5:12 6:12      12:1 24:9 29:16      33:13  <b>secondly</b> 13:24      20:1 23:18 26:4  <b>Secretary</b> 3:7  <b>see</b> 11:15 18:10,12      18:16 25:25  <b>seeing</b> 33:25  <b>seek</b> 10:19 22:13  <b>seen</b> 25:18  <b>selected</b> 4:13 9:12  <b>seminars</b> 4:9 22:23  <b>sense</b> 25:25  <b>sensitive</b> 20:15  <b>separate</b> 19:22      22:11  <b>September</b> 5:15      6:25  <b>serve</b> 14:5  <b>served</b> 13:6  <b>service</b> 8:5 28:19      28:21  <b>services</b> 1:15 4:3,23      5:1,19  <b>set</b> 2:12 31:8  <b>setting</b> 24:22 26:6</p>	<p>27:2 28:3 29:19      30:1,11,14 31:7  <b>settings</b> 24:14,17  <b>settlements</b> 27:3  <b>sex</b> 14:13  <b>sexual</b> 1:17 4:4      5:10,14,21 8:9      17:14,25 26:5  <b>Sharpling</b> 1:8  <b>Shaw</b> 3:3 18:22,23  <b>sheet</b> 30:23  <b>Sheriff</b> 27:20  <b>short</b> 16:13 19:13  <b>show</b> 31:1,10  <b>significant</b> 28:8,18      29:6 31:9 32:25      33:9  <b>silo</b> 32:19  <b>simply</b> 12:1 31:24      32:15 33:1  <b>Simpson</b> 6:11  <b>simultaneously</b>      13:22  <b>single</b> 16:20 29:18  <b>Sir</b> 1:9  <b>Sitting</b> 1:7  <b>skeletons</b> 25:18  <b>Skelton</b> 2:3,4,5,6      11:20 12:15,17      21:16,17 23:13      25:2 29:10 33:18      33:19 34:8,13  <b>skewed</b> 29:17  <b>slightly</b> 30:3  <b>so-called</b> 13:23  <b>solicitor</b> 6:5,25      7:13 16:11 28:6  <b>solicitors</b> 6:10 8:2,4      8:7 19:18  <b>soon</b> 9:7 11:19 12:3  <b>sought</b> 5:1,20 8:8  <b>sounds</b> 32:12  <b>speak</b> 11:9 16:23      17:23  <b>speaking</b> 3:1  <b>specific</b> 4:21 32:12</p>
--	--	---	--	---

<p><b>spends</b> 33:1  <b>spotlight</b> 25:14  <b>St</b> 4:15,16,16 24:18              24:19,19  <b>stage</b> 16:7 22:8              25:25 27:12  <b>stages</b> 26:22  <b>standard</b> 31:7  <b>Stanhope</b> 2:21 4:17              24:19  <b>start</b> 8:25 11:9  <b>started</b> 8:19 26:9  <b>starting</b> 17:6 30:23              31:3  <b>State</b> 3:7  <b>stated</b> 6:2 7:11 8:22  <b>statement</b> 2:5              19:22 34:8  <b>statements</b> 8:1,19              8:25 9:6,23 11:19              19:21,24 21:21              22:10  <b>states</b> 18:17  <b>status</b> 3:21 7:2,4              10:23 26:1  <b>steps</b> 14:4  <b>strand</b> 25:15  <b>strands</b> 25:9  <b>studies</b> 4:13,18,24              5:16 10:5,9 13:12              20:14 21:22 25:7              28:22 29:1,18  <b>study</b> 13:2,25 17:5              24:15  <b>subjected</b> 18:1  <b>submission</b> 15:16              16:13 18:7 28:6              29:16  <b>submissions</b> 2:12              6:17 11:10,14,22              12:19,23 13:5              15:7 16:7,9 17:18              18:21,24 19:1,4,6              19:11,14 20:4              21:6,14,16 23:4              23:24 25:18 26:2</p>	<p>29:8 30:7 32:18          33:16,23 34:9,10          34:11,12,13  <b>submit</b> 14:4  <b>submitted</b> 20:23              28:8  <b>subsequently</b> 4:11  <b>substantial</b> 10:4              19:16 28:25  <b>suffered</b> 15:4  <b>sufficient</b> 20:14  <b>suggest</b> 20:13,25              32:1  <b>suggested</b> 13:24              18:9 20:3  <b>suggesting</b> 32:24              33:7  <b>summaries</b> 25:23  <b>summarised</b> 10:10  <b>summary</b> 24:16  <b>Sun</b> 3:12 19:13  <b>support</b> 1:15 4:3,23              5:18 8:5 19:15              20:3 24:11,20              25:2 26:7,10,21              28:19,21  <b>supporting</b> 26:8,24  <b>supports</b> 26:12,22              28:14  <b>sure</b> 11:24 12:6              18:3  <b>surprised</b> 11:15  <b>survivor</b> 17:9 26:4              33:6  <b>survivors</b> 1:17 5:9              5:13,21 6:9 10:2,4              10:9,15,22 15:11              15:16 16:18,20              17:14,21,24 24:11              24:21 26:7,8,11              26:12,22 27:18              28:1,2,4,15 29:1              30:11,17 31:1              33:4  <b>Survivors'</b> 2:20,21  <b>swift</b> 27:2</p>	<p><b>swiftly</b> 24:5 26:2  <b>Switalskis</b> 6:10  <b>system</b> 1:16 4:2,7              4:22  <b>systems</b> 5:1,17,23              15:10 21:1</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p><b>table</b> 30:25 31:2  <b>take</b> 1:22 13:10              14:22 15:14 17:8              20:20 23:3 32:21  <b>taken</b> 2:13 11:25              13:18,25 14:4,5              20:16,24  <b>talking</b> 15:14  <b>Taylor</b> 6:11  <b>team</b> 24:4,8 32:4  <b>teams</b> 6:7  <b>ten-minute</b> 1:22  <b>terms</b> 11:22  <b>thank</b> 2:6 11:6              12:14,15,17 16:4              16:5,8,10 18:22              18:25 19:3,6,8,10              21:2,3,7,8,10,12              21:15 23:13,15              33:17,20,22,25  <b>thematic</b> 3:25              10:12 12:2,13              20:2 21:10 23:2              25:3,5 29:11  <b>themes</b> 18:18 25:12              26:16  <b>thing</b> 27:12  <b>think</b> 3:19 11:2,3              12:17 17:15,21              18:2 21:19 22:22              25:17 30:21  <b>third</b> 6:13 25:16  <b>thirdly</b> 14:17 20:15              23:21  <b>three</b> 4:19 9:10              14:20 24:1  <b>three-day</b> 1:19              2:10 10:11 22:25</p>	<p>29:10  <b>Thursday</b> 9:11  <b>time</b> 9:17,20 12:5              33:14  <b>timely</b> 25:15  <b>timetable</b> 9:9,15,24              22:6 23:7  <b>timetabling</b> 11:16              11:23  <b>timing</b> 1:22 14:18  <b>today</b> 1:10 2:16 3:1              3:22 5:1 7:9,12,18              12:25 16:1,12              17:14,20 19:14              24:16 25:19 26:3              33:22  <b>today's</b> 1:19,25              23:3  <b>topic</b> 23:9  <b>topics</b> 9:16 10:12              20:2 21:10 23:3,4              23:7  <b>transcript</b> 1:25  <b>true</b> 24:23  <b>trust</b> 16:17,19              17:10,11  <b>try</b> 18:12  <b>tubbing</b> 9:21 13:23  <b>Tuesday</b> 9:2,10,16              9:24  <b>tuition</b> 17:12  <b>turn</b> 29:8  <b>turning</b> 6:1 7:22              18:6 22:16  <b>two</b> 4:10 5:7 11:16              12:3 13:14,16              14:21 15:7 18:18              25:3 26:14 32:12  <b>type</b> 22:25</p> <hr/> <p style="text-align: center;"><b>U</b></p> <hr/> <p><b>unable</b> 3:2  <b>uncertainty</b> 15:12  <b>understand</b> 14:18              17:22 18:4 20:6  <b>understanding</b></p>	<p>8:11 22:17  <b>unfortunate</b> 33:7  <b>unfortunately</b>              16:12  <b>unique</b> 30:18  <b>uniquely</b> 25:17              29:24  <b>University</b> 17:5  <b>upcoming</b> 25:12              32:16  <b>update</b> 2:8 5:5 6:2              6:22 24:15 25:4  <b>Uppal</b> 2:23 6:11              16:5,6  <b>use</b> 9:17 12:5 32:23  <b>useful</b> 14:6 18:16  <b>usual</b> 7:21  <b>usually</b> 23:10</p> <hr/> <p style="text-align: center;"><b>V</b></p> <hr/> <p><b>value</b> 22:17 33:12  <b>Varnam</b> 27:21  <b>vast</b> 8:23  <b>victims</b> 1:17 4:4 5:9              5:13,21 6:9 10:2,4              10:9,15,22 15:11              15:15,20 26:11,12              28:14,25 30:10,17              31:1  <b>view</b> 13:10 14:22  <b>views</b> 10:6,20 13:10              13:13,16  <b>Vincent's</b> 4:16              24:19  <b>voice</b> 28:1 30:21  <b>voices</b> 30:10 31:12</p> <hr/> <p style="text-align: center;"><b>W</b></p> <hr/> <p><b>waking</b> 33:1  <b>Wales</b> 4:14 24:17  <b>wants</b> 31:23 32:1,3              32:5  <b>way</b> 25:15 31:15,24              32:2,17,21  <b>ways</b> 22:24  <b>we'll</b> 1:22 23:6  <b>we're</b> 12:13 24:7</p>
---	--	--	--	---



<p><b>we've</b> 11:25 12:23 13:22 <b>Webb-Jenkins</b> 3:14 21:4,5 <b>website</b> 2:1 5:5 <b>Wednesday</b> 1:1 <b>weeks</b> 4:19 <b>weeks'</b> 33:14 <b>Weereratne</b> 2:18 11:9,10,11 12:15 25:22 34:9 <b>weighting</b> 30:13 <b>welcome</b> 1:5,11 24:9 25:13 34:6 <b>welcomed</b> 24:24 25:1 <b>welcomes</b> 33:14 <b>went</b> 15:20 <b>whilst</b> 33:8 <b>Williams</b> 2:16 <b>Windrush</b> 14:13 <b>wire</b> 11:22 <b>wish</b> 6:6,20 7:14 10:24 11:4,8,13 11:23 12:16 16:19 33:21 <b>wished</b> 6:22 7:11 <b>witness</b> 7:24,25 9:23 11:18 16:21 19:17,21 22:9,20 23:9 <b>witnesses</b> 9:12,15 9:19 10:15 11:24 13:11 22:5,21 23:7 31:22 32:2 <b>woman</b> 27:17,23 <b>words</b> 11:12 16:10 <b>work</b> 5:1 19:16 26:13 27:17 28:24 29:4 <b>workable</b> 5:2 <b>working</b> 18:12,17 32:4 33:2 <b>works</b> 28:2 33:2 <b>written</b> 6:4,17 10:8 12:23 13:4 15:7</p>	<p>18:7 25:18 <b>wrong</b> 33:1 <hr/><b>X</b> <hr/><b>X</b> 34:5 <hr/><b>Y</b> <hr/><b>year</b> 1:18 5:4 10:12 25:7 <b>years</b> 17:24 20:12 22:23 27:16 <hr/><b>Z</b> <hr/><b>Zurich</b> 3:18 6:13 <hr/><b>0</b> <hr/><b>1</b> <hr/><b>1</b> 19:17 20:13 24:13 31:6,12,14 34:6 <b>1.00</b> 1:24 <b>10</b> 12:24 32:3 <b>10.30</b> 1:2 <b>10.45</b> 1:4 <b>11</b> 6:7,25 23:23 34:9 <b>11.26</b> 34:1 <b>11.45</b> 1:23 <b>12</b> 7:1 34:10 <b>14</b> 5:4 <b>15</b> 8:24 <b>16</b> 1:1 34:11 <b>18</b> 9:1 <b>19</b> 5:15 34:12 <hr/><b>2</b> <hr/><b>2</b> 6:4 19:20 20:1 24:10 31:7 34:8 <b>20</b> 12:21 <b>200</b> 26:12 <b>2006</b> 7:3 8:1 28:10 <b>2014</b> 27:20 <b>2016</b> 4:6,9 27:21,22 <b>2017</b> 4:9 <b>2018</b> 4:12,19 27:11 <b>2019</b> 1:1 4:20 12:24 23:23</p>	<p><b>2021</b> 14:20 <b>21</b> 34:13 <b>23</b> 34:14 <b>24</b> 27:11 <b>26</b> 1:18 2:11 9:10 33:25 <b>28th</b> 9:11 <b>29</b> 9:2,17,24 11:21 <hr/><b>3</b> <hr/><b>33</b> 7:25 <hr/><b>4</b> <hr/><b>5</b> <hr/><b>5</b> 7:3 25:5 <b>5(2)(b)</b> 28:10 32:24 <hr/><b>6</b> <hr/><b>7</b> <hr/><b>70</b> 14:9 <b>74</b> 30:3 <hr/><b>8</b> <hr/><b>8</b> 23:22 28:12 31:8 33:7 <hr/><b>9</b> <hr/><b>9</b> 8:1 13:6 19:22,24 30:4</p>		
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