

INQUIRY INTO THE DEATH OF DAWN STURGESS

SUBMISSIONS OF COUNSEL TO THE INQUIRY FOR THE OPEN DIRECTIONS HEARING ON 25 MARCH 2022

INTRODUCTION

1. This is the first hearing of the Inquiry into the death of Dawn Sturgess. On 9 March 2022, the Home Secretary wrote to Lord Hughes confirming his appointment as Chair of the Inquiry into the Death of Dawn Sturgess ('the Inquiry'). Lord Hughes' appointment as Chair was formally announced on 10 March 2022. The setting-up date of the Inquiry for the purposes of section 5 of the Inquiries Act 2005 ('the Act') was 17 March 2022.
2. Following the formal announcement, the Solicitor to the Inquiry ('STI') wrote to those with Interested Person status in the inquest (IPs) on 11 March 2022 notifying them of this hearing and enclosing directions for the filing of written submissions by 12pm on 18 March. Those submissions have been received and are summarised below. STI also notified the parties that a CLOSED directions hearing would be held following the OPEN hearing. Arrangements are being made for the CLOSED hearing to take place shortly after the OPEN hearing in a secure London location.
3. Piers Harrison was appointed as Secretary to the Inquiry on 14 March 2022.

OVERVIEW

4. The purpose of the OPEN and CLOSED directions hearings is to make procedural decisions associated with initiating this Inquiry; to take stock of progress; and to make

directions towards holding substantive hearings. We anticipate that the Chair will wish to give directions having heard submissions at both the OPEN and CLOSED hearings.

5. As we have previously observed in written submissions served in the inquest proceedings,¹ the special sensitivities of this case have required and will continue to require an unusually complicated - and, therefore, time-consuming - disclosure process both at stage 1 (provision of documents from CPs and others to the Chair) and also at stage 2 (disclosure of relevant documents by the Chair to CPs). It is apparent from the written submissions served on behalf of Her Majesty's Government ('HMG') for this hearing that those sensitivities have been made more pressing and complex by the outbreak of war in Ukraine. The HMG submissions assert at §19 that the need to protect the United Kingdom from the threat posed by Russia and other hostile agents has never been more acute and that HMG's priority is protecting the United Kingdom from imminent threats. It is further stated that the overlap between those working across HMG to assist the Inquiry and those who are working on the real-time threat posed by the Russian state has impacted on the timetable for disclosure.
6. However, even given these complexities, it is regrettable that the completion of stage 1 disclosure for most material providers remains a distant prospect. Operation Verbasco and the GLD, which between them hold the greatest volume of material for disclosure, have indicated in their written submissions that they do not anticipate completing stage 1 disclosure until the end of this year (HMG submissions, §18) or do not expect to have scheduled the relevant material until then (Op Verbasco submissions, §13). Operation Verbasco estimates that the total number of documents held is in the region of 55,000, with only 40% of those having been scheduled to date. Only approximately 3,500 (6%) have been shared with the ILT as stage 1 disclosure to date. Wiltshire Police have scheduled 3,096 documents, but more than 10,000 documents are to be retrieved.
7. Given the long timescales envisaged for the completion of stage 1 disclosure, it appears to be most unlikely that it will be possible to commence substantive hearings in late February 2023. That is unfortunate, not least for the family of Dawn Sturgess, who will have to wait more than 4 years for the substantive hearings into her death to commence.

¹ Our submissions of 24 August 2021 at §3 and those of 1 December 2021 at §6

8. Counsel to the Inquest ('CTI') have considered HMG's proposal to conduct a two-stage inquiry in order to make progress with an OPEN phase of hearings while disclosure of sensitive material continues in the background. We anticipate that the Chair will wish to hear oral submissions on this suggestion at the hearing. Our preliminary view is that this proposal should not be adopted, for the following reasons:
 - a. While the delay in this case is regrettable, progress must not come at the cost of a thorough investigation into the death.
 - b. Whilst it is superficially tempting to make some progress with the hearing of a part of the evidence, it is likely that the Inquiry's understanding of the OPEN and non-sensitive material in this case will be impacted by the sensitive and CLOSED material.
 - c. The process of considering what is currently said to be sensitive / CLOSED material is likely to lead to some further OPEN disclosure. For example, we anticipate that much of the police evidence relating to their investigation into the Skripal poisoning, which is currently all treated as CLOSED, will ultimately be made OPEN.
 - d. There is a risk that proceeding with a hearing when only part of the evidential picture is known will undermine an effective and thorough investigation.
 - e. Further, conducting a two-stage inquiry is likely to increase the overall length of the proceedings and ultimately result in delay to the publication of the inquiry report and recommendations.

9. CTI submit that it is preferable to continue to work towards one set of final hearings, as soon as possible, and to make directions to further progress disclosure to facilitate this. A further directions hearing should be held in June 2022.

CORE PARTICIPANT STATUS

10. Rule 5(1) of the Inquiry Rules 2006 provides that the Chair may designate a person as a core participant ('CP') at any time during the course of an inquiry provided that person consents to being so designated. Rule 5(2) provides that in deciding whether to designate a person as a core participant, the Chair must in particular consider whether:

- (a) The person played, or may have played, a direct and significant role in relation to the matters to which the inquiry relates;
- (b) The person has a significant interest in an important aspect of the matters to which the inquiry relates; or
- (c) The person may be subject to explicit or significant criticism during the inquiry proceedings or in the report, or in any interim report.

11. In our written submissions in the inquest proceedings dated 1 December 2021, we proposed that, subject to agreement by each proposed CP, the Chair ought to designate all those who have been recognised as Interested Persons ('IPs') in the inquest as CPs in the first instance, without the need for a formal application. In their submissions the IPs have each given their consent to be designated as CPs.

12. Dawn Sturgess' family have invited the Chair to make a ruling that Ms Sturgess' daughter be referred to as GS. An equivalent ruling was made in the inquest by Baroness Hallett on 30 March 2021 on grounds of her age and because her name was unlikely to be relevant to the proceedings. CTI invite the Chair to make an equivalent ruling for the purpose of this Inquiry.

13. STI has received a letter from representatives of Sergei and Yulia Skripal requesting their designation as CPs. Given the Terms of Reference, we submit that their 'significant interest' in the matters to which the Inquiry relates is self-evident.

14. CTI invite the Chair formally to designate the following as CPs:

- a. Ms Sturgess' mother Caroline Sturgess;
- b. Ms Sturgess' father Stephen Stanley Sturgess;
- c. Ms Sturgess' eldest son Aidan Hope;
- d. Ms Sturgess' youngest son Ewan Hope;
- e. Ms Sturgess' daughter GS;
- f. Ms Sturgess' partner Charlie Rowley;
- g. The Secretary of State for the Home Department on her own behalf, and also in a representative capacity for the following branches of Government; the Cabinet Office, GO Science, DEFRA, FCDO, Ministry of Defence, Department for

Levelling Up, Communities and Housing; and Department for Health and Social Care;

- h. South West Ambulance Service NHS Foundation Trust;
- i. Wiltshire Council;
- j. The Chief Constable of Wiltshire Police;
- k. The Commissioner of Police of the Metropolis;
- l. Thames Valley Police;
- m. Sergei Skripal; and
- n. Yulia Skripal

Petrov, Boshirov and Fedotov

15. CTI note that two Russian nationals, Mr Alexandr Petrov and Mr Ruslan Boshirov, were recognised as IPs by Senior Coroner David Ridley. That status was withdrawn on 30 March 2021 by Baroness Hallett as neither man responded to her invitation to participate in the Inquest.
16. CTI note that charges have now been authorised by the CPS against a third man in connection with Dawn's Death, Denis Sergeev (known as Sergey Fedotov). On 22 September 2021 Baroness Hallett amended the scope of the inquest to include the involvement of Denis Sergeev in the poisoning of Sergei and Yulia Skripal.
17. It is unlikely that either Petrov, Boshirov or Fedotov ('the Russian nationals') will consent to be designated as CPs in this Inquiry. Nevertheless, it is important to ensure the Inquiry's investigation takes account of the explanations provided by Mr Petrov, Mr Boshirov and the Russian Embassy for the men's presence in London and Salisbury at the material time. CTI submit that it would be appropriate to task one member of the team, Ms Pottle, with responsibility for ensuring that the Inquiry takes all reasonable steps to test the evidence connecting the Russian nationals to Ms Sturgess' death.
18. However, it is important to emphasise that the role we propose that Ms Pottle undertakes would not involve her representing the Russian nationals at the Inquiry.

They would remain entitled to apply to be designated as CPs, and to appoint their own legal representatives if they so wished.

FUNDING

19. The Chair has responsibility within the Inquiry for its expenditure in accordance with section 40 of the 2005 Act and rules 20-34 of the 2006 Rules. That power is subject to such conditions or qualifications as may be determined by the Minister pursuant to section 40(4) of the 2005 Act. On 9 March 2022 the Home Secretary wrote to the Chair notifying him of conditions pursuant to section 40(4) and enclosing a ‘Notice of Determination’.
20. An application for funding has been made by representatives of the family of Dawn Sturgess. The application includes funding for a separate Queen’s Counsel to represent Charlie Rowley. We submit that the grounds for Mr Rowley to be separately represented to this extent are cogent, and we therefore support that part of the application.
21. It will be necessary for the Inquiry to produce a Costs Protocol before any final awards are made by the Chair. For that reason, CTI do not invite the Chair to rule on the application at present. To ensure that the family’s legal representatives are not prejudiced by any delay, we invite the Chair to indicate that applications for funding in respect of expenditure incurred since the Inquiry was set-up, but before the award was made, will not be refused on grounds that they were incurred prior to the making of an award.²
22. CTI invite the Chair to determine the family’s application for funding, once a Costs Protocol is in place, on the basis of the written submissions.

² Pursuant to §6 of the Notice of Determination.

DISCLOSURE

23. The conduct of the ongoing disclosure exercise is the most significant challenge faced by the Inquiry. The Inquiry must seek to ensure that the processes for stage 1 and stage 2 disclosure are conducted in a manner (a) that ensures that all relevant material is made available to the Inquiry, and that as much as possible is provided in OPEN to CPs; (b) that appropriately respects the unusual sensitivities of the material connected to this case; and (c) that is as quick as possible.
24. A practical issue arises regarding the provision of undertakings by CPs not to use documents disclosed to them in the course of the Inquiry for any other purpose. It is necessary for the such undertakings to be provided in the course of inquiries (and inquests) in order to replicate the effect of CPR Part 31.22. Such undertakings were provided by all IPs to the Coroner for the purpose of the inquest proceedings. A new undertaking, to similar effect, must now be given to the Chair. STI will circulate a form of undertaking to CPs for completion.

Disclosure by CPs

25. As noted above, there is significant work still to be done before stage 1 disclosure can be completed by CPs:
- a. GLD: a realistic timescale for completion of Stage 1 disclosure is said to be not before the end of the year.³
 - b. Operation Verbasco: the completion of scheduling of the 55,000 documents (prior to their review for security sensitivity by Op Verbasco and the other relevant HMG departments and agencies) may be complete by the end of this year.⁴ No timescale is given for the security review necessary for stage 1 disclosure. It is a concern that the handling of the material has not, with some exceptions, been prioritised based on that which is likely to be of greater relevance.
 - c. Wiltshire Police: Though the handling of material has been prioritised based on that which is likely to be greater relevance, owing to delays in procuring secure

³ §18 of HMG submissions

⁴ §13 Joint Submissions of the Metropolitan Police Service and Thames Valley Police

IT infrastructure it has not been possible to submit material for the security review necessary for stage 1 disclosure. Though 3,096 documents have been scheduled more than 10,000 documents are yet to be retrieved. No timescale is given for the completion of Stage 1 disclosure.

- d. Wiltshire Council: The Council is awaiting advice from GLD as to the sensitivity of information contained within Council documents to complete disclosure, the Council hopes to have completed stage 1 disclosure by 29 April 2022.
- e. South West Ambulance Service NHS Foundation Trust ('SWASFT'): SWASFT has completed stage 1 disclosure, stage 2 disclosure was completed on 16 March 2022.

26. It is obvious that the security review conducted by GLD over HMG material as well as police material will lead to significant delays in the completion of stage 1 disclosure.

Disclosure by ILT

27. By way of update to the work undertaken by ILT as described at §27 of our written submissions of 1 December 2021:

- a. ILT has received a small number of documents by way of further stage 1 disclosure.
- b. ILT has continued to conduct regular meetings and videoconferences, and engage in correspondence with IPs, in particular GLD and Op Verbasco to monitor disclosure workflows. ILT have been working closely with the Verbasco team to produce a corporate statement which cross-refers to significant documents for the Inquiry's consideration. ILT had hoped that this document would lead the disclosure exercise, enabling the Verbasco Team to prioritise the material which is likely to be of greater relevance (and not simply to assist the ILT to make targeted requests under Rule 9 of the Inquiry Rules 2009).
- c. Following preliminary inspection of documents from GLD at a secure location, STI has made a further formal request for stage 1 disclosure of the majority of

documents reviewed. The correspondence also included requests for inspection of further material referenced within the documents already inspected.

- d. In total, ILT has now made three such requests for stage 1 disclosure. The requests were made in October 2021, November 2021 and February 2022. Taken together, the requests relate to a significant number of documents. To date GLD has not responded substantively to any of the three outstanding requests.
- e. ILT has reviewed the disclosure strategies provided by HMG in respect of most government departments, agencies or organisations holding relevant material and provided feedback; one such document remains outstanding.

Next steps

28. It is clear that the security reviews are leading to significant delays in the completion of stage 1 disclosure. HMG has proposed a two-stage inquiry process to enable some progress to be made while disclosure of sensitive and CLOSED material is outstanding. As noted above, our preliminary view is that this is not a course that should be adopted. There is a risk that proceeding with a hearing when only part of the evidential picture is known will undermine an effective and thorough investigation. Further, conducting a two-stage inquiry is likely to increase the overall length of the proceedings and ultimately result in delay to the publication of the report. Finally, a dual hearing would lead to a loss of focus on the preparation of sensitive material for disclosure. Given the apparent difficulty in drafting in additional resources to deal with disclosure⁵, a dual hearing would inevitably divert the available resources from conducting a security review of sensitive material.

29. CTI will invite the Chair to make directions, following the CLOSED hearing, to progress disclosure as expeditiously as possible, and to set another directions hearing in June to review progress.

30. CTI have considered whether it is feasible to set a timetable for the completion of disclosure and new final hearing date now. Regrettably, CTI have come to the view

⁵ HMG submissions for the open directions hearing on 25 March 2022, §19.

that there is not sufficient certainty surrounding the completion of stage 1 disclosure for the holders of the majority of the relevant material (HMG and the police) to enable a realistic timetable to be set at this time. The position will obviously become clearer over time, and it may be possible to set dates for the final hearing at the next hearing that we have proposed in June.

31. We are sure that the Chair will wish to hear more detail from each of the CPs at the oral hearing as to the stage that their disclosure process has reached and what further progress can be achieved over the next 2-3 months.
32. We respectfully submit that there are two ‘parcels’ of disclosure that should be the focus of work by HMG and Operation Verbasco during that period, and that the Chair should make directions in that regard.
33. First, HMG should be directed to provide stage 1 disclosure of all documents that are the subject of outstanding written requests made by ILT. For the avoidance of doubt, what we envisage is the provision to ILT of a set of these documents marked to show that which (on HMG’s submission) can and that which cannot be disclosed to CPs in OPEN at stage 2. We suggest a direction that stage 1 disclosure of this material be provided by 29 April 2022.
34. Second, Operation Verbasco should be directed to provide by way of stage 1 disclosure the chronological report referred to above (if necessary in advanced draft), together with all supporting documents. As above, both the report and the documents should be marked to show the content that is said to be OPEN and CLOSED. We suggest a direction that stage 1 disclosure of this material is provided by 1 June 2022.

WITNESS EVIDENCE

35. As noted in our submissions of 1 December 2021 (§24,25), ILT has started to draw up a list of potential witnesses. As stage 1 disclosure has not progressed significantly since December the provisional witness list is still in its early stages. As disclosure gains momentum, and the provisional witness list is more developed, STI will make contact

with each individual. Our current intention is to commence sending Rule 9 requests for witness evidence within the next two months. We suggest that the position in this regard is reviewed at the next hearing.

RESTRICTION ORDERS AND NOTICES

36. CPs have made written submissions setting out their current approach to applications for restriction orders and (in HMG's case) the making of restriction notices.

37. Since the disclosure process is still at a relatively early stage, it would be premature for the Inquiry to focus on these matters now. Our intention is that a substantial quantity of stage 1 disclosure will have been made by the time of the further hearing in June, and that in consequence it will be possible for detailed directions regarding restriction orders to be given then.

38. An exception to this general approach is the issue of the redaction of names referred to at paragraph 21 of the HMG submissions. We submit that this discrete issue may well be capable of being determined at an early stage, and that doing so may facilitate the process of stage 2 disclosure. We will make further submissions on this point at the OPEN and CLOSED hearings.

NEXT DIRECTIONS HEARING

39. As noted above, we suggest the Chair schedule a further directions hearing for June 2022.

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23 March 2022