

INQUIRY INTO THE DEATH OF DAWN STURGESS

SUBMISSIONS ON BEHALF OF THE FAMILY 18 MARCH 2022

1. These submissions are made on behalf of the family of Dawn Sturgess and also her partner, Charlie Rowley. They will be referred to collectively as ‘the family’. These submissions address the issues set out in the Chair’s Directions dated 11 March 2022 that are relevant to the family, namely (a) and (b). They also address anonymity.

(a) Application for Core Participant status

2. This is an application pursuant to rule 5 of the Inquiry Rules 2006 for the following to be designated as Core Participants in this Inquiry (‘the Applicants’):
 - a. Ms Sturgess' father Stephen Stanley Sturgess;
 - b. Ms Sturgess' mother Caroline Sturgess;
 - c. Ms Sturgess' eldest son Aidan Hope;
 - d. Ms Sturgess' youngest son Ewan Hope;
 - e. Ms Sturgess' daughter GS; and
 - f. Ms Sturgess' partner Charlie Rowley.
3. In accordance with rule 5(1) of the 2006 Rules, Mr and Ms Sturgess confirm they consent to be designated a Core Participant, and also provide consent on behalf of GS who is a minor. Mr A Hope and Mr E Hope (who are not minors) and Mr Rowley also confirm they consent to be designated as Core Participants.

Criteria for designation pursuant to rule 5(2) of the 2006 Rules

4. All six Applicants listed above should be granted Core Participant status because they satisfy rule 5(2)(b) of the 2006 Rules, namely that for the reasons below each “*has a significant interest in an important aspect of the matters to which the inquiry relates*”, and for the further reasons set out below:

- a. The Applicants represent the interests of the deceased, Ms Sturgess. They include her next of kin, and are in the process of obtaining probate so they will include the representative of her estate. The Inquiry is focused on her death, and it is crucial that her interests are represented.
- b. The first five Applicants are close family members of Ms Sturgess, and Mr Rowley was her partner. As such they have a significant interest in the issues within the Terms of Reference, namely ascertaining the circumstances of her death, identifying who was responsible, and ensuring lessons are learned to reduce the risk of future deaths. Those issues are all of great personal importance to them. As Sir Christopher Pitchford indicated when Chairman of the Undercover Policing Inquiry, “[t]he purpose of designation [as a CP] is to provide those most intimately concerned with the work of the Inquiry with the means to participate effectively”.¹ In this Inquiry, the Applicants are those most intimately concerned with the Inquiry’s work.
- c. The centrality of the Applicants to this Inquiry is clear from the correspondence between Baroness Hallett and the Home Secretary leading to the establishment of the Inquiry. This reflects their significant interest in the matters to which the Inquiry relates. For example: “I am keen that this Inquiry keeps the family of Ms Sturgess at its heart in its pursuit to understand how she died” (letter from the Home Secretary, dated 16 November 2021); and “I am anxious to ensure that the Inquiry can commence its substantive work and deliver answers to the questions the bereaved family and partner of Dawn Sturgess have about her death as soon as possible” (letter from Baroness Hallett dated 17 November 2021).
- d. The Applicants will bring “a perspective to the Inquiry different to all the other core participants”.² No other Core Participant offers the perspective of the bereaved, which must be represented as it is the central “aspect of public

¹ Undercover Policing Inquiry, Core Participants Ruling, 21 October 2015, as revised, §2 (<https://www.ucpi.org.uk/wp-content/uploads/2016/09/160921-ruling-core-participants-number-1-reissued.pdf>).

² Leveson Inquiry, Further ruling on Core Participants (Module 2), 17 February 2012, §1 (<https://webarchive.nationalarchives.gov.uk/20140122203424/http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Further-ruling-on-Core-Participants-17-February-2012.pdf>).

concern”³ with which the Inquiry is concerned. Core Participant status should therefore be granted.

- e. The Applicants were gravely affected by Ms Sturgess’ death and have a profound desire to learn the truth about the circumstances of her death. They have been heavily involved in the investigation to date. For example, they brought a successful judicial review claim against the original Coroner’s decision not to investigate Russian state responsibility: [2020] 1 WLR 4889. This indicates their interest in the Inquiry and the importance of its conclusions to them, matters which favour granting Core Participant status, e.g. see the Infected Blood Inquiry, in which Sir Brian Langstaff observed that in determining Core Participant status a relevant factor was whether applicants “have demonstrated by [their] actions an interest in the workings of the Inquiry as well as how important the conclusions of the Inquiry are for them. In general, those individuals should be granted core participant status if they wish it.”⁴
- f. The Applicants require Core Participant status in order to achieve a measure of catharsis and resolution following Ms Sturgess’ death. This is an important matter to take into consideration (*Keyu v Secretary of State for Foreign & Commonwealth Affairs* [2016] AC 1355 §§306, 310; *Dyer v Chief Constable of West Yorkshire* [2021] 1 WLR 1233 §§101, 121-122).
- g. The Applicants were all designated as interested persons by the Coroner on 30 March 2021 for the purpose of the inquest, pursuant to s.47(2)(a) Coroners and Justice Act 2009 (and Mr Rowley also under s.47(2)(f)). Paragraph 1(a) of the Terms of Reference demonstrates that a purpose of the Inquiry is to replace the inquest and meet the duty to investigate in s.5(1) CJA 2009. The Applicants should be designated Core Participants to avoid frustrating the legislative purpose in s.47(2) CJA 2009, namely enabling the Applicants to participate in the investigation identified in s.5(1) of that Act.

³ Ibid.

⁴ Chair’s Statement of Intent on Core Participant Status, §13 (<https://www.infectedbloodinquiry.org.uk/sites/default/files/documents/Chairs-Statement-of-Intent-on-Core-Participant-Status-1.pdf>).

- h. The caselaw regarding the procedural duty in article 2 ECHR recognises the legitimate interest of the deceased's family in the conduct of the article 2 investigation (e.g. *R (Middleton) v West Somerset Coroner* [2004] 2 AC 182, §18; *R (Letts) v Lord Chancellor* [2015] 1 WLR 4497, §59). The Coroner decided that “as things stand, Article 2 ECHR is not engaged”⁵. But some of the reasons why the family have a legitimate interest in an article 2 investigation apply equally to this Inquiry. For example, it is just as important at this Inquiry that the family “may at least have the satisfaction of knowing that lessons learned from his death may save the lives of others”, as it is in the context of an article 2 investigation (*Middleton* §18). Similarly, the proper involvement of the next of kin at this Inquiry is, just as much as in the context of an article 2 investigation, “an ingredient of the overriding need to maintain public confidence” (*Letts* §59). Just as in an article 2 investigation, for the Inquiry to “to be effective, the family must be able to play an effective part” (*R (Humberstone) v Legal Services Commission* [2011] 1 WLR 1460 §75). As a result, where the bereaved have a legitimate interest in the conduct of an article 2 investigation, they must be actively involved (*Anusca v Moldova* (App. No. 24034/07) §44) and “accorded an appropriate level of participation” (*Middleton* §18). The same applies to this Inquiry.
- i. It is relevant that there is a realistic possibility that the Chairman may later decide that the article 2 procedural duty is engaged. If so, that duty will require the Inquiry to provide funded representation to the family, so they can effectively participate. At an inquest, where there is a possibility that article 2 will be later engaged, the investigation should be broad enough to explore the facts relevant to an article 2 investigation and make conclusions (*R (Boyce) v HM Senior Coroner for Teesside and Hartlepool* [2022] 4 WLR 15 §74). By analogy, where there is a real possibility that article 2 will be engaged in this Inquiry, it is appropriate to grant the Applicants Core Participant status and funded representation at this stage, to ensure that their interests are represented

⁵ First Ruling on Scope, 8 April 2021, §26. The Coroner made clear she would keep the issue under review. The family may well invite the Chairman to revisit the question of whether the article 2 procedural duty applies in this case, in light of disclosure regarding the actions of the UK authorities.

within the Inquiry, and thus to ensure compliance with article 2, should the procedural duty subsequently be found to be engaged.

- j. Designating the Applicants as Core Participants will assist the Chairman in discharging the Inquiry's Terms of Reference. Not only do the Applicants have a strong and direct interest in ensuring that the Terms of Reference are met in full, their legal team (some of whom have security vetting) have considerable experience in representing the bereaved at high-profile inquests and inquiries involving sensitive and national security material, including cases of poisoning implicating the Russian state.⁶ The Applicants' designation will therefore assist the Inquiry, a matter that has been recognised by numerous previous inquiry chairs as favouring Core Participant status, e.g. the Infected Blood Inquiry ("the extent to which the individual can show that their involvement would add further to achieving the aims of the Inquiry"⁷), the Manchester Arena Inquiry⁸.
 - k. There is a considerable public interest in ensuring that the interests of both Ms Sturgess and the Applicants are represented within the Inquiry. That is for the reasons set out above and because, without such representation, public confidence in the Inquiry will be undermined.
5. There are two additional reasons why Mr Rowley ought to be designated a Core Participant. Firstly, he "played, or may have played, a direct and significant role in relation to the matters to which the inquiry relates" (rule 5(2)(a)). He found the perfume bottle which contained Novichok and gave it to Ms Sturgess, who then sprayed it on herself, with fatal consequences. He was involved in the response to her death. His actions are a direct and important aspect of 'how and by what means Ms Sturgess died', and therefore fall within the matters which should be ascertained by §1(a) of the Terms

⁶ Members of the Applicants' legal team have acted in, among others, the Litvinenko Inquiry, the inquest into the death of Alexander Perepilichny, the Manchester Arena Inquiry, the inquest into the death of Mark Duggan, the Azelle Rodney Inquiry, the Anthony Grainger Inquiry, the inquests into the Fishmongers' Hall attacks, the Hillsborough inquests, and the inquest into the death of Jean Charles de Menezes.

⁷ Chair's Statement of Intent on Core Participant Status, §25
(<https://www.infectedbloodinquiry.org.uk/sites/default/files/documents/Chairs-Statement-of-Intent-on-Core-Participant-Status-1.pdf>).

⁸ Ruling on survivor CP application, §§ 35-36
(<https://files.manchesterarenainquiry.org.uk/live/uploads/2020/04/07204238/Ruling-on-application-for-Core-Participant-status-on-behalf-of-56-survivors-of-the-Manchester-Arena-attack.pdf>).

of Reference. That is consistent with the Coroner’s conclusion that Mr Rowley was an interested person within the meaning of s.47(2)(f) CJA 2009, namely “a person who may by any act or omission have caused or contributed to the death of the deceased...”. Further, Mr Rowley himself suffered life-threatening poisoning from the Novichok.

6. Secondly, Mr Rowley “may be subject to explicit or significant criticism during the inquiry proceedings or in the report, or in any interim report” (rule 5(2)(c) of the 2006 Rules).

Designation as Recognised Legal Representative

7. Birnberg Peirce Ltd (and specifically Marcia Willis Stewart QC (Hon)) seeks designation as the recognised legal representative, pursuant to rule 6 (1)(a) of the Inquiry Rules 2006, for all of the Applicants.

(b) Funding for an award under s.40 of the Act

8. The Applicants apply for an award under s.40(1) of the Act in respect of legal representation. The remainder of this section of these submissions addresses the relevant criteria in the 2005 Act, the 2006 Rules, then the Home Secretary’s s.40(4) Determination.

Section 40 of the 2005 Act

9. The Applicants have “such a particular interest in the proceedings or outcome of the inquiry as to justify such an award” (see s.40(3)(b)) for the reasons in paragraphs 4-5 above.

Rule 20 of the 2006 Rules

10. As to the requirements of rule 20(2) of the 2006 Rules:
 - a. The nature of the work is to explain and take instructions from our clients in respect of all matters of the Inquiry’s OPEN proceedings; to have conferences with our clients; and to represent their interests in this Inquiry including by reviewing disclosure, attending hearings, making an opening and closing statement, making submissions on procedural issues (such as scope, further inquiries, disclosure, restriction order applications, rule 12 of the 2006 Rules,

and which witnesses will be heard), applying for permission to put questions to witnesses (pursuant to rule 10), and preparing and putting those questions. In addition, we will help Mr Rowley (and any other client) prepare a witness statement, if required.

- b. The work will be required from now until when the Inquiry hearings have been completed. The work will also include considering the Inquiry's final report. The estimated duration of the work will reflect the nature of the work (see above). It will depend in part on the extent of pending disclosure. Comparatively little disclosure has been made thus far, and it appears that there could be a very large amount of pending disclosure. Because we do not know how much there will be, or its nature, it is not possible to provide a more detailed estimate at this stage.
- c. It is proposed that the legal team appointed to assist the Applicants, together with their hourly rates, are as follows:
 - i. Senior Counsel x 2: £180
 - ii. Junior Counsel x 1: £100
 - iii. Solicitor with 8 years PQE x 1: £150
 - iv. Solicitor with 4 years PQE x 1: £125
 - v. Trainee solicitors, paralegals and other fee-earners x 2: £75

Rule 21 of the 2006 Rules

11. The Home Secretary's s.40(4) Determination does not mention the general criteria in rule 21(2) of the 2006 Rules. Read with rule 21(2), this suggests those criteria are not applicable. Alternatively, if those general criteria are applicable, they point in favour of an award:

12. **Financial resources:** As to rule 21(2)(a), the Applicants' financial resources should not be determinative of whether an award is granted. That is because a primary purpose of the Inquiry is to replace and largely replicate the inquest. As of 12 January 2022, public funding for an inquest is no longer means tested: Civil Legal Aid (Financial Resources and Payment for Services) (Amendment) Regulations 2021.

13. Both the Sturgess family and Mr Rowley were funded under legal help for the inquest, with GS receiving Legal Aid for representation at the inquest. Both Mr Rowley and the family are eligible for and have obtained legal funding in relation to these proceedings. Since the Inquiry is aimed at replacing and largely replicating the inquest, granting the family funding for legal representation at this Inquiry is consistent with their statutory entitlement to funding at the inquest under the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
14. Further and in any event, the Applicants do not have sufficient financial resources to be able to fund lawyers for this Inquiry. The Inquiry is likely to be lengthy and require a considerable amount of legal funding. The Applicants' financial means are all limited and very much less than the likely costs of legal representation at this Inquiry. Mr Rowley is currently unemployed and receives state benefits. Because of the submission in §§12-13 above, we have not provided more detail about the Applicants' financial resources, but are happy to do so if that would assist.
15. **The public interest:** As to rule 21(2)(b), making an award is in the public interest. That is for the reasons in §§4-6 above, and the following reasons. Firstly, there is grave and widespread public interest in the circumstances of Ms Sturgess' death (that was essentially accepted by Baroness Hallett: Scope Ruling §38; and by the Divisional Court: [2020] 1 WLR 4889 §88). Although the Chair has the assistance of Counsel to the Inquiry (CTI), and we have every reason to believe they will perform their role with great diligence, there is nevertheless a separate public interest in the Applicants being represented.
16. For example, CTI must remain neutral, whereas it is open to the family to take a particular line of inquiry. Further, ensuring the family can effectively participate is "an ingredient of the overriding need to maintain public confidence" (*Letts*, §59). The depth of public interest in this Inquiry, and the corresponding importance of maintaining public confidence in it, enhances the importance of the Applicants being represented.
17. Secondly, granting legal funding to the family will help achieve 'equality of arms'. The issues which Baroness Hallett included within the provisional scope of the inquest encompass certain conduct of the UK authorities: Scope Ruling §30 ("Response"), §36

and §40-42. The UK authorities were represented at the inquest - and are therefore likely to be represented at the Inquiry - by a considerable number of leading senior and junior counsel (around 6 QCs and 6 juniors at previous hearings). Although the Inquiry is inquisitorial, that battery of lawyers, who are funded at public expense, will no doubt do their best to defend the actions of the UK authorities. The family will be the only Core Participant who will seek to put forward the other side of the picture: that is, to critically examine whether the conduct of the UK authorities was inadequate. Equality of resources as between the family and state parties is important to secure public confidence in the process.

18. Thirdly, the Applicants would not be able to effectively represent themselves at the Inquiry, in the absence of funding for legal representation. The factual, legal and expert issues are likely to be extremely complex. The legal issues are likely to include difficult issues relating to sensitive and national security material. It will be necessary to put questions to witnesses and make complex submissions of fact and law. The Court of Appeal in *Humberstone* recognised that it will often be difficult for a family to question witnesses at an inquest (§79). The same point has been made in a number of recent reports examining inquests and inquiries.⁹ The same applies to this Inquiry. It may also be necessary for the Applicants' lawyers (some of whom have security vetting) to see sensitive information before a decision can be made as to whether the Applicants can do so, pursuant to rule 12 of the 2006 Rules. All of these matters mean that the award sought by the Applicants is in the public interest.

The Home Secretary's s.40(4) Determination

19. It is necessary, fair, reasonable and proportionate to make the award sought, in respect of legal representation. That is for the reasons in §§4-6 and 15-18 above, and the following additional reasons.

⁹ Rt Hon Dame Elish Angiolini DBE QC, Report of the Independent Review of Deaths and Serious Incidents in Police Custody (2017) §16.60: "It is manifestly nonsense to assume that a grieving family could undertake the process of sifting through many hundreds of pages or volumes of evidence in order to formulate pertinent questions, and indeed, face hostile questioning without support. This is not a reflection on their intellect but on the impact of grief, anxiety and the sheer volume and complexity of absorbing material while suffering."

When Things Go Wrong: The response of the justice system (2020), JUSTICE, Committee Chair Sir Robert Owen, §5.18: "Inquests into contested deaths involve complex legal issues, including scope; the application of Article 2 ECHR; public interest immunity; anonymity; and disclosure. State and corporate interested persons are typically able to deploy ranks of solicitors, junior barristers and QCs to advise and advocate on these issues.²⁴¹ In this context, to claim that families' effective participation can be guaranteed by the coroner and the "inquisitorial" nature of the process is to ignore the reality."

20. The proposed legal team includes three barristers: two senior counsel and one junior counsel. The primary reason for that is to allocate a separate barrister to Mr Rowley (a single QC), from the two barristers who will represent the remainder of the Applicants. This is appropriate because there is a risk of a conflict of interest between Mr Rowley and the remainder of the Applicants. Mr Rowley is implicated in Ms Sturgess' death, as the Coroner concluded in designating Mr Rowley as an interested person in the inquest, on the basis that he "may by any act or omission have caused or contributed to the death of the deceased" (s.47(2)(f) CJA 2009). Although the risk of a conflict of interest is not so great as to require a separate firm of solicitors (the Applicants have consented to that), it is a sufficient risk as to require separate barristers.
21. Since Mr Rowley's role and evidence is likely to be a central element of the Inquiry, it is important that the other Applicants are able to freely question him and the numerous other witnesses who give evidence relevant to his actions. This indicates that a separate barrister is proportionate. It is better to start with separate barristers, since instructing a new barrister to represent Mr Rowley at a later stage may cause real disruption to the preparation for the Inquiry.
22. Further, where bereaved family members have a legitimate interest in the conduct of the investigation into the death of their loved one, as is the case here, "they must be accorded an appropriate level of participation" (*Middleton* §18). That appropriate level will be fact-specific. In this case it requires the legal representation set out above. The gravity of the circumstances of Ms Sturgess' death, the public interest that is engaged, the legitimate interests of the Applicants in the conduct of the Inquiry, the need for equality of arms, the complexity of this Inquiry, the assistance that the Applicants' legal team will provide to the Inquiry, and the risk of a conflict of interest all favour that form of representation.

Anonymity

23. On 30 March 2021 Baroness Hallett ruled:

"3. The daughter of Ms Sturgess will be referred to for the inquest proceedings as GS, as she is a child whose name is unlikely to be relevant to the proceedings. If her name does become relevant, the position will be reviewed and a formal application for anonymity considered if necessary."

24. The Applicants respectfully invite the Chair to make an equivalent ruling for the purpose of this Inquiry. The reasons why the daughter of Ms Sturgess should be referred to as GS for the purposes of the Inquiry include that she is a minor, and her name does not appear to be relevant (so anonymity does not significantly interfere with open justice). If the Chair decides a formal application should be made, we would be happy to do so. The reasons will mirror those in the Applicants' submissions to the Coroner dated 17 March 2021.

Michael Mansfield QC

Adam Straw QC

Jesse Nicholls

18 March 2022