

INQUIRY INTO THE DEATH OF DAWN STURGESS

SUBMISSIONS ON BEHALF OF HER MAJESTY'S GOVERNMENT

FOR THE OPEN DIRECTIONS HEARING ON 25 MARCH 2022

1. On 9 March 2022, the Home Secretary wrote to Lord Hughes confirming his appointment to the role of Chair of the Inquiry into the Death of Dawn Sturgess ('the Inquiry'). She confirmed that the Inquiry would commence seven days after the formal announcement, which took place on 10 March 2022.

2. On 11 March 2022, Lord Hughes set directions for written submissions in advance of an OPEN directions hearing on 25 March 2022 and a CLOSED hearing shortly thereafter. He identified the issues to be covered. The following issues - as identified in the directions - are addressed within these submissions and CLOSED Annex:
 - a. Application for Core Participant status;
 - b. Stage 1 disclosure;
 - i. Security reviews;
 - c. Realistic timescale;
 - d. Factors affecting the timetable;
 - e. Restriction Orders and Restriction Notices;
 - f. A practical way forward: a two-stage Inquiry.

3. In accordance with paragraph 1.f. of the Directions, these submissions are provided with a CLOSED Annex containing further detail regarding disclosure, Restriction Order applications, and Restriction Notices that cannot be included in these OPEN

submissions. Insofar as it is possible to say in OPEN, the CLOSED Annex addresses the following:

- a. Disclosure to date (including the disclosure strategies) provided by:
 - i. UK Intelligence Community;
 - ii. Home Office;
 - iii. Cabinet Office;
 - iv. Foreign Commonwealth and Development Office ('FCDO');
 - v. Ministry of Defence (including the Defence Science and Technology Laboratory ('DSTL'));
 - vi. Government Office for Science ('GO Science') which is responsible for the administration of the Scientific Advisory Group for Emergencies ('SAGE');
 - vii. Department for Environment, Food and Rural Affairs ('DEFRA'); and
 - viii. Department for Health and Social Care¹;
- b. The process for reviewing documents and safely releasing them to the Inquiry Legal Team and/or into OPEN;
- c. Further detail on the impact of the ongoing crisis in Ukraine following the Russian invasion on the timescales and work of the Inquiry;
- d. Further detail on Restriction Orders and Restriction Notices.

Core Participant Status

4. Rule 5(1) of the Inquiry Rules 2006 provides that the Chair may designate a person as a core participant at any time during the course of the inquiry provided that person

¹ There are further disclosure strategies being prepared for Public Health England (now the UK Health Security Agency), the Department for Levelling Up, Communities and Housing and the Joint Intelligence Organisation/Committee. These will be provided to the Chair and ILT as soon as possible.

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.*

5. The Secretary of State was granted Interested Person status in the inquest by the Senior Coroner which was maintained by Lady Hallett. The Secretary of State also acted in a representative capacity for numerous branches of government (and the requisite Secretaries of State).

6. The Secretary of State now applies to be designated a Core Participant in the Inquiry because she has a significant interest in important aspects of the matters to which the Inquiry relates in that she holds overall responsibility for all Home Office business including oversight of the Security Service. She also applies to act as a Core Participant in a representative capacity for the following branches of government, all of whom played or may have played a direct and significant role in relation to the matters to which the Inquiry relates and have a significant interest in important aspects of those matters:
 - a. Cabinet Office (including the Joint Intelligence Organisation and Committee);
 - b. GO Science;
 - c. DEFRA;
 - d. FCDO (including the Secret Intelligence Service and the Government Communications Headquarters);
 - e. Ministry of Defence (including DSTL);
 - f. Department for Levelling Up, Communities and Housing; and

- g. Department for Health and Social Care (including PHE/UK Health Security Agency Porton Down).

7. Accordingly, these submissions are – for ease of reference – made on behalf of Her Majesty’s Government (HMG), comprising here the departments and agencies identified above.

The Threat from Russia

8. This Inquiry is investigating what the then-Prime Minister Theresa May described to Parliament on 5 September 2018 as:

...a sickening and despicable act in which a devastating toxic nerve agent – known as Novichok – was used to attack our country. It left four people fighting for their lives and one innocent woman dead.

...this chemical weapons attack on our soil was part of a wider pattern of Russian behaviour that persistently seeks to undermine our security and that of our allies around the world.

They have fomented conflict in the Donbas, illegally annexed Crimea, repeatedly violated national airspace of several European countries and mounted a sustained campaign of cyber-espionage...

...We were right to act against the Russian State in the way we did. And we are right now to step up our efforts against the GRU.

We will not tolerate such barbaric acts against our country.

And – together with our allies – this government will continue to do whatever is necessary to keep our people safe.

9. On 21 June 2020, the Intelligence and Security Committee of Parliament (‘the ISC’) published its report on Russia. In the Open version of this report, the ISC made the following observations:

- a. ‘[Russia] heavily resources its intelligence services and armed forces, which are disproportionately large and powerful.’ (paragraph 3);

- b. 'It appears that Russia considers the UK one of its top Western intelligence targets...' (paragraph 6)
- c. '...it appears to the Committee that Putin considers the UK to be a key diplomatic adversary.' (paragraph 7);
- d. 'We have been told, repeatedly, that the Russian Intelligence Services will analyse whatever we put in the public domain...' (paragraph 10);
- e. 'GCHQ assessed that Russia is a highly capable cyber actor with a proven capability to carry out operations which can deliver a range of impacts across any sector...GCHQ has also advised that Russian GRU [the Main Intelligence Directorate of the General Staff of the Russian Armed Forces] actors have orchestrated phishing attempts against Government departments – and to take one example, there were attempts against...the Foreign and Commonwealth Office (FCO) and the Defence Science and Technology Laboratory (DSTL) during the early stages of the investigation into the Salisbury attacks.' (Phishing is described as 'the fraudulent practice of sending emails purporting to be from a reputable organisation in order to reveal personal information, such as passwords and credit card numbers') (paragraph 13);
- f. 'Russia's cyber capability, when combined with its willingness to deploy it in a malicious capacity, is a matter of grave concern, and poses an immediate and urgent threat to our national security.' (paragraph 15);
- g. It also describes the attribution to Russia of 'the attempted hacking of the Organisation for the Prohibition of Chemical Weapons (OPCW) in the Hague' and the joint statement that was made on this subject by the then-Prime Minister, the Rt Hon. Theresa May MP, and the Prime Minister of the Netherlands, Mr Mark Rutte, on 4 October 2018 (paragraph 20);

h. Russia's promotion of disinformation and attempts at broader political influence have included "hack and leak": the US publicly avowed that Russia conducted "hack and leak" operations in relation to its presidential election in 2016, and it has been widely alleged that Russia was responsible for a similar attack on the French presidential election in 2017' (paragraph 28).

10. As developed before and reiterated below, it is within this highly unusual context that the exceptionally complex and sensitive disclosure exercise demanded by this Inquiry must be undertaken.

Stage 1 Disclosure

11. The disclosure process that is underway concerns some of the most sensitive material in HMG's possession. It is no overstatement to say that any inadvertent disclosure could endanger individual lives and put national security at risk. It must be conducted with the utmost care.

12. The disclosure processes that HMG has been conducting were described in the submissions for the Pre-Inquest Review hearing on 22 September 2021 at paragraphs 8 to 19. Since then, HMG has provided the ILT with detailed disclosure strategies covering most of the government departments, agencies or organisations that have been identified as holding relevant or potentially relevant material. These are the 'bespoke plans' described at paragraph 18 of the submissions for the PIR on 22 September 2021. ILT has given feedback on those strategies and, in some cases, made further additional requests. We welcome this input. These strategies explain the work that has been done to date, how documents have been located to give the ILT the key and core documents

and details the searches which are now underway to locate all further potentially relevant material for disclosure².

13. In addition to searches for documents, for some departments, agencies or organisations, statements have been or are being drafted to explain the work that was carried out by them at the time of the incident (in particular by DEFRA and DSTL though it is envisaged that further statements may assist in due course). The intention is that these statements can be disclosed to other Core Participants in OPEN. This procedure has been volunteered for two reasons: either where the work conducted was technical and HMG felt that the ILT (and in due course Core Participants) would be assisted by an explanation; or where the nature of a department or organisations' involvement in the events of 2018 is not anticipated to be of interest to the Inquiry.

Security Reviews

14. All material that is being provided to HMG Counsel, the ILT and in due course, the other Core Participants and the public must be considered for security issues. For reasons which have already been explained, the tragic events underlying this Inquiry precipitated as they were by a chemical weapons attack on UK soil by a foreign state - necessarily mean that the disclosure exercise to be undertaken here is incredibly demanding given, in particular, the national security considerations at stake. As the Inquest Legal Team previously helpfully highlighted (submissions, dated 01.12.21), there are special sensitivities in this case, which require an exceptionally careful, complex and therefore necessarily time-consuming process for all stages of disclosure. The sensitivities in this case cannot be overstated and every aspect of the disclosure

² Where the disclosure strategies are being finalised, the disclosure work in those departments has nevertheless continued in parallel.

exercise needs to take place with the utmost care in order to protect the UK from threats to our national security, including the very threat which is the subject of this inquiry.

15. By way of short example, how the different branches of HMG responded to a chemical weapons attack is itself exceptionally sensitive: this information, especially if gathered together unredacted in one place, could be used by committed adversaries to make future attacks more deadly and to thwart future efforts to keep the public safe. Indeed, even seemingly innocuous documents can in this context contain information that could, alone or when considered alongside others, provide useful information to those who would wish to conduct attacks in future. (The CLOSED Annex provides examples where inadvertent disclosure has already been prevented.)

16. Against that background, HMG maintains and does not repeat the submissions on both the risks presented by the disclosure exercise and the review process which must be adopted to seek to mitigate that risk: see submissions, dated 08.09.21, at paragraphs 5-12. In short, every potentially relevant document needs to be reviewed by those with an overarching understanding and expertise, often in consultation with subject matter experts and others, to ensure that suitable precautions are taken. This is necessarily and as explained before a very time-consuming process. Further information is provided in the CLOSED Annex and which will be explained further during the course of the CLOSED hearing.

Realistic Timescales

17. Disclosure is an ongoing process: considerable tranches of material will be provided to the ILT as soon as they are available.

18. While some government departments anticipate completing their Stage 1 disclosure in the summer or even before, overall a realistic timescale for the completion of Stage 1 disclosure (including the security reviews detailed above) is not before the end of the year. A full breakdown of this estimate, department by department, is provided in the CLOSED Annex.

Factors affecting the Timetable

19. Since the last hearing on 25 February 2022, the situation in Ukraine has further deteriorated. The Russian President Vladimir Putin has made several threats directed at 'the West'. The need to protect the United Kingdom from the threat posed by Russia and other hostile agents has never been more acute. While HMG recognises the importance, above all to Dawn Sturgess's family, of completing this Inquiry, HMG's priority must be on protecting the United Kingdom from imminent threats and this must take precedence. Predictably, there is a significant overlap between those working across HMG to assist this Inquiry and those who are working on the real-time threat posed by the Russian State. Some of the teams working on disclosure for the Inquiry are already being affected by the Russian invasion of Ukraine, and they (and potentially others) would be further impacted if the conflict were to escalate. It is not a matter of drafting in additional resources as this work often requires a high level of security clearance and particular expertise. Regrettably - but with good reason - this Inquiry and the timescales to which HMG can work, may be impacted by the current, ongoing, conflict in Ukraine. That will definitely be the case should the conflict escalate. Again, more detail of this position is provided in the CLOSED Annex.

Restriction Order and Notices

20. HMG can indicate that it is likely that application(s) for a Restriction Order (or Orders) will be made, and that Restriction Notice (or Notices) will be made before the end of the Inquiry.
21. In particular, it is envisaged that restrictions will be sought to cover the names of HMG personnel whose names appear on documents and those of witnesses. Applications for special measures will also be sought for HMG witnesses called to give evidence who are not already publicly avowed as having worked on this matter and where it is assessed there is a risk to them.
22. It is too early to give meaningful outlines of the likely applications or Restriction Notices and further reasons for this are covered in the CLOSED Annex.

A Two-Stage Inquiry?

23. Dawn Sturgess died in 2018. HMG is acutely sensitive to the family's desire that this Inquiry be held and concluded as soon as possible. No doubt the new Chair will share those valid concerns. While HMG would also like the Inquiry to be concluded swiftly, that cannot come at the cost of national security. Nor must any individuals be put at risk.
24. Nevertheless, HMG is keen for progress to continue and therefore proposes that the Chair give consideration to conducting the Inquiry in two stages. The first stage could consider Dawn Sturgess herself and how she came by her death. This phase could largely be held in OPEN with input from her family. It could include the following:

- a. A pen portrait from Dawn's family ((a.i.) in the Provisional Scope);
- b. Events from June 2018 to 8 July 2018 ((a.ii.) in the Provisional Scope) including, for example, the evidence of Charlie Rowley and the medical treatment given to Ms Sturgess;
- c. Medical cause of death ((a.iii.) in the Provisional Scope) including evidence from the pathologist about the post mortem;
- d. Sufficiency of medical treatment ((a.iv.) in the Provisional Scope) including an assessment of the medical treatment and any expert evidence required;
- e. Information in the public domain (or which is not sensitive) about the poisoning of Sergei and Yulia Skripal including:
 - i. The events ((b.i.) in the Provisional Scope);
 - ii. Responsibility for the poisoning ((b.ii.) in the Provisional Scope);
- f. Information in the public domain (or which is not sensitive) about the steps taken by UK authorities to ensure public safety following the Skripal poisoning, focussing on the search for any remaining poison and relevant aspects of the police investigation and public health response ((c) in the Provisional Scope);
- g. Information in the public domain (or which is not sensitive) about connection between the Skripal poisoning and the death of Dawn Sturgess ((d) in the Provisional Scope).

25. The second phase could then go on to look at the more sensitive and CLOSED evidence in relation to those matters and would also cover whether the UK authorities took appropriate precautions in early 2018 to protect Mr Skripal from being attacked ((b.iii.) in the Provisional Scope).

26. The benefit of this approach is that it would allow the Sturgess family and Charlie Rowley to give their evidence to the Inquiry as soon as possible. It will also allow them to hear the OPEN evidence, to which they are entitled, as soon as possible rather than waiting for the CLOSED aspect of the Inquiry – and the considerable work that entails – to be ready to get underway. That work can continue in the background while OPEN hearings take place.

27. While HMG would not presume to suggest that such an approach would give the family closure after Dawn's tragic death, it is anticipated that such an approach might alleviate some of the distress and uncertainty incumbent in this process, particularly given the effect on the timetable of the Russian invasion of Ukraine.

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18 MARCH 2022