

INQUIRY INTO THE DEATH OF DAWN STURGESS

JOINT SUBMISSIONS OF THE METROPOLITAN POLICE SERVICE

AND THAMES VALLEY POLICE

In response to the directions dated 4 April 2022

INTRODUCTION

1. These OPEN submissions are prepared on behalf of the Commissioner of Police of the Metropolis and the Chief Constable of Thames Valley Police (jointly “Operation Verbasco”, the Counter-Terrorism Policing response to the Inquest and Inquiry into the death of Dawn Sturgess).
2. The submissions are made in response to the 4 April 2022 directions of the Chair that:
 - a. Operation Verbasco is to file any application in principle for a restriction order in respect of names by 31 May 2022; and
 - b. Operation Verbasco is to provide a position statement on any further contemplated restriction order applications/notices by 31 May 2022.
3. In response to each of those directions, Operation Verbasco has filed two sets of CLOSED documents.
 - a. As to a restriction order concerning names, Operation Verbasco relies in CLOSED upon a Damage Assessment and supporting documents, written submissions, and a witness statement of the Assistant Commissioner of Specialist Operations, Matt Jukes (“ACSO”).
 - b. In response to the second direction set out above, Operation Verbasco has filed a CLOSED position statement.

4. The purpose of this OPEN document is to set out as much as can be said in OPEN in respect of both directions, so as to enable other Core Participants to engage in the applications. The CLOSED submissions which Operation Verbasco has filed in respect of anonymity are structured as a supplement to this OPEN document.

RESTRICTION ORDER IN RESPECT OF NAMES

The application in outline

5. The Restriction Order which Operation Verbasco invites the Chair to make is for the names of all CTP staff, save for those who have been avowed by CTP, to be ciphered throughout the course of the Inquiry. This is an application which is not made lightly.
6. The application relies upon matters unique to the facts of this Inquiry.
7. Operation Verbasco proposes to allocate a unique cipher to all anonymous staff (as opposed to redacting those names entirely, or replacing them with monikers such as "MPS Officer" or "TVP Officer"). In this way, any inhibition on transparency and the allaying of public concern will be as slight as possible and, in any event, proportionate to the risk of serious harm to national security.

LEGAL FRAMEWORK

Section 19 of the Inquiries Act 2005

8. Section 19 of the Inquiries Act 2005 empowers the Chair to make restrictions upon the attendance of the public at the inquiry and on the disclosure or publication of any evidence or documents provided to the inquiry.
9. Section 19(3) provides that, in making a restriction order, the Chair must specify only such restrictions:
 - a. As are required by any statutory provision, retained enforceable EU obligation, or rule of law (section 19(3)(a)); or
 - b. As the Chair considers to be conducive to the inquiry fulfilling its terms of reference or to be necessary in the public interest (section 19(3)(b)).

10. When considering whether a restriction order should be imposed under section 19(3)(b), the Chair must have regard “in particular” to the matters set out in section 19(4):
 - a. The extent to which any restriction on attendance disclosure or publication might inhibit the allaying of public concern;
 - b. Any risk of harm or damage that could be avoided or reduced by such a restriction;
 - c. Any conditions as to confidentiality subject to which a person acquired information that he is to give, or has given to the inquiry;
 - d. The extent to which not imposing any particular restriction would be likely-
 - i. To cause delay or to impair the efficient or effectiveness of the inquiry, or
 - ii. Otherwise result in additional cost (whether to public funds or to witnesses or others).
11. Section 19(5) provides that (for the purpose of section 19(4)(b) above) a risk of harm or damage includes “in particular” a risk of: a) death or injury; b) damage to national security or international relations; c) damage to the economic interests of the UK or any part of the UK; d) damage caused by disclosure of commercially sensitive information.
12. Where the basis for an application for a restriction order is risk of serious harm to national security, the approach which would be taken by the courts in resolving a claim for public interest immunity (“PII”) is informative.
13. In *R (Mohamed) v Secretary of State for Foreign and Commonwealth Affairs (No 2)* [2009] 1 WLR 2653 at [34] the Divisional Court set out the four questions which should be posed in resolving a PII application: (1) whether there is a public interest in bringing the material into the public domain; (2) whether disclosure will bring about a real risk of serious harm to an important public interest and, if so, which interest; (3) whether the real risk of serious harm to national security and international relations can be protected by other methods or more limited disclosure; and (4) if the alternatives are insufficient, where the public interest lies.
14. In *Secretary of State for Foreign and Commonwealth Affairs v Asst Deputy Coroner for Inner North London* [2013] EWHC 3724 (Admin) (the “*Litvinenko Case*”) from [53] to [61], Goldring LJ set out nine key principles in respect of PII applications in inquests, with a particular

emphasis on national security. Although this is neither a PII application nor an inquest, there are significant parallels:

- a. First, it is axiomatic that public justice is of fundamental importance. Even in cases in which national security is said to be at stake, it is for the courts, not the Government, to decide whether or not a claim to PII should be upheld [53];
 - b. Secondly, the context of the balancing exercise, and whether it concerns national security, is critical [54];
 - c. Thirdly, there must be evidence to support an assertion that there is a real risk of damage to national security [55];
 - d. Fourthly, where there is “such evidence and its disclosure would have a sufficiently grave effect on national security, that would normally be an end to the matter” and enough for disclosure to be withheld. Only in less clear cases need the balancing exercise be carried out [56];
 - e. Fifthly, the Secretary of State’s view as to the nature and extent of damage to national security which will flow from disclosure should be accepted unless there are cogent or solid reasons to reject it [57];
 - f. Sixthly, “the Secretary of State knew more about national security than the Coroner. The Coroner knew more about the proper administration of justice than the Secretary of State” [58];
 - g. Seventhly, “a real and significant risk of damage to national security will generally, but not invariably, preclude disclosure.” The decision is for the coroner, not the Secretary of State [59];
 - h. Eighthly, in rejecting a Certificate from the Secretary of State, the Coroner must conclude that damage to national security is outweighed by damage to the administration of justice [60]; and
 - i. Ninthly, a Coroner must give reasons for a decision [61].
15. It is not for a Court to simply salute a ministerial flag: *Mohamed v Secretary of State for the Home Department* [2014] 3 All ER 760 at [20]. However, the Chair may recognise the relative

institutional competences of the Inquiry and the applicant, a point recently re-iterated by the Supreme Court in *R(Begum) v Special Immigration Appeals Commission* [2021] UKSC 7; [2021] AC 765 at [55-62,109].

16. While much of the caselaw (such as *Mohamed*) refers to Ministerial judgement and assertion of national security, this is not an absolute requirement, particularly where an organisation not headed by a Minister is involved. In *R v Chief Constable of West Midlands Police ex parte Wiley* [1995] 1 AC 274, public interest immunity was asserted by the Chief Constable personally. In *Kelly v Commissioner of Police of the Metropolis* (CA, The Times, August 20, 1997), it was suggested that public interest immunity could be waived by an officer of Commissioner or Assistant Commissioner rank. Operation Verbasco submits that the judgement of a police officer of Assistant Commissioner rank is sufficient to ground a claim to restrict material on the grounds of national security, and should be accorded a similar level of respect given the respective institutional competences of the police and Inquiry.

Restrictions required by statutory provision

17. Restrictions may be “required” under s.19(3)(a) by virtue of s.6 of the Human Rights Act 1998 (HRA 1998), and the obligation thereby imposed on public authorities not to act in a manner that is incompatible with rights under the European Convention on Human Rights (ECHR).
18. Article 8 may be involved to prevent or mitigate infringements of:
 - a. Private and family life;
 - b. Reputation (*Pfeifer v Austria* (2009) 48 EHRR 8 at [35]); and
 - c. Professional life and the pursuit of a chosen career or livelihood (*Niemietz v Germany* (1993) 16 EHRR 97 at [29]).
19. Any interference with Article 8 rights must be both necessary and proportionate to be permissible. In determining whether Article 8 affords a ground for granting anonymity, the Chair should therefore conduct the following three stage enquiry:
 - a. Would the refusal of anonymity and/or other restrictions and the subsequent disclosure of the applicant’s identify result in an interference with the applicant’s rights under Article 8?

- b. If so, can that interference be justified as being necessary in a democratic society in the interests of the rights and freedoms of others?
 - c. If so, is the interference a proportionate measure in pursuit of that justification?
20. The Inquiry is under a statutory duty to act fairly (see s.17 of the 2005 Act). This is coextensive with the common law duty of fairness which is described in the following paragraphs

Restrictions required by rule of law

21. The common law duty of fairness can give rise to a requirement for restrictions to be ordered. Considerations under the common law test and of ECHR rights will overlap, but the common law test is broader in scope.
22. In general terms, the Chair is asked to consider whether greater unfairness results from the public identification of the applicant or from restricting the presumption of open justice to the extent requested.
23. Matters which have been held to be relevant to the balancing exercise (in the context of witness anonymity) include:
- a. Objective threats to Convention rights. The rights of the applicant under the ECHR (including the rights enshrined in Article 8 as outlined above) are relevant considerations at common law.
 - b. Subjective fears of harm. The principle that “it is unfair and wrong that witnesses should avoidably be subjected to fears arising from their giving evidence” is well established (*Re Officer L* [2007] 1 WLR 2135 at [22]). Unlike the test in Article 2, it is not necessary for these subjective fears of harm and injury to be objectively well-founded. If the Chair is satisfied the fears are genuinely felt, this may be a powerful factor weighing in favour of granting restrictions. In considering the applicant’s subjective fears, the following questions should be addressed (set out in *Re Officer L* at [14], citing the decision of the inquiry that was subject to appeal, which was duly approved at [26] of Lord Carswell’s judgment:
 - i. How serious is the applicant’s fear?

- ii. What is the reason for the applicant's fear?
- iii. What impact would the granting of anonymity and/or other measures sought have in reducing the applicant's fear?

The weight to be attached to an applicant's subjective fears is influenced by the reasonableness of these subjective fears (see *Application by A and Others (Nelson Witnesses)* [2009] NICA 6, at [41]) and the extent to which the subjective fears are supported by the objective evidence (see *R (A) v Lord Saville of Newdigate* [2002] 1 WLR 1249 at [31]).

- c. Public interest in maximising police resources. The ability of the applicants or other individual to continue to perform their jobs is an important consideration (see *R v Bedfordshire Coroner, ex p Local Sunday Newspapers* [2000] 164 J.P. 283). There is a clear public interest in maintaining valuable police resources and the availability of officers for specialist roles such as covert policing (see *R v Mayers* [2009] 1 Cr.App, R. 30 at [30]).
 - d. The Inquiry's ability to arrive at the truth. (See *Re Officer L* at [14]).
 - e. The public's ability to follow and understand the evidence. (See *Re Officer L* at [14].)
24. The evaluation of these factors should have regard to the balance of convenience to the respective parties. The grant of anonymity is often of great significance to the witness and his or her family but viewed objectively of "no great significance" to the families of the deceased. In *R v Lord Saville of Newdigate and others* [2000] 1 WLR 1855, in allowing an appeal against the refusal of anonymity in the Bloody Sunday Inquiry, the Court of Appeal said, at paragraph 68(4):

"However, while of course the tribunal had fully in mind the risks to the soldiers, it does not seem to have paid sufficient attention to the fact that to deny the soldiers anonymity would certainly affect their perception of the fairness to the Inquiry. It is here that the importance of the requirement of fairness to the soldiers and their families become significant. From the point of view of the families of the dead and wounded, the harm of concealing the names is objectively of no great significance. To the soldiers and their families it is of great significance."

Submissions

25. The application is made pursuant to s.19 Inquiries Act 2005. The Chair may make a restriction order where (1) to do so is required by statutory prohibition or rule of law; or (2) as he considers to be conducive to the inquiry fulfilling its terms of reference or to be necessary in the public interest, having regard to the matters mentioned in subsection (4).
26. The primary basis on which Operation Verbasco puts the application is that the order is necessary so as to avoid or reduce damage to national security. In considering the application, the Chair will wish to balance the various public interests in play, both those specified in s19(4), to which he shall have "*regard in particular*", and others which are relevant. This is akin to the *Wiley* balance which a Court would undertake in respect of an application for public interest immunity.
27. Although we can say very little in OPEN about the species of damage to national security which are engaged by this application, we can say more about the other side of the *Wiley* balance. The public interest in disclosure to Core Participants ("CPs") and the publication of the names of CTP staff is comfortably outweighed by the public interest in the names being withheld. In making that submission, Operation Verbasco keeps well in mind that while it has expertise in national security, it does not have the Chair's expertise in what is relevant to his Inquiry.
28. It is the actions of staff, rather than their identities, which is the matter of primary relevance to the Inquiry, and of most interest to CPs and the public.
 - a. First, Operation Verbasco invites the Chair to conclude that the names of certain staff who played particularly minor roles in matters within the Inquiry's Terms of Reference are of no relevance to the Inquiry. Those staff are those whose role was limited to (a) house to house enquiries; and (b) the continuity of evidence. We do not anticipate the Inquiry or CPs will wish to explore any such questions of fact to any significant degree. If the Chair agrees that these names are of no relevance, there is no basis for their disclosure; a restriction order would not fall to be made.
 - b. Secondly, as to the names of all other CTP staff, the issues raised by the Terms of Reference may be explored, without inhibition, by every staff member being given a unique cipher. Operation Verbasco proposes that it ciphers all documents before they are given to the Inquiry Legal Team ("ILT") for onward disclosure, so as to take the

burden of this task from the Inquiry. However, the ILT will be able to inspect documents containing the names at secure locations, should it consider it of assistance to do so.

29. By ciphering the names of all staff of any relevance, even where the relevance of those names is minimal, the Inquiry can strike a fair balance between the protection of national security and the public interest in disclosure, openness and transparency. Although Operation Verbasco accepts that ciphering makes the narrative of marginally less interest to readers of the press, ciphering does not in any way affect the ability of the press to report the factual narrative which will be explored in evidence by the Inquiry.
30. This application is not made in respect of individuals who will be called to give evidence. Separate applications will be made in respect of a small number of such individuals where their individual circumstances require it. Accordingly, the instant application will have little if any effect of the extent to which CTP staff will be held accountable for their actions. Anyone in respect of whom accountability is a matter of concern is likely to be a witness called by the Chair.
31. On the other side of the *Wiley* balance, weighing in favour of the application being granted, is the risk of serious harm to national security. In its CLOSED documents, Operation Verbasco relies upon various matters including, but not limited to:
 - a. Serious harm to national security by way of harm to CTP assets, CTP methodology and CTP staff;
 - b. Serious harm to national security caused by anything which inhibits the effective working relationship between CTP and its partners; and
 - c. Serious harm to national security if staff do not volunteer to work in this area.
32. The CLOSED documents also place some weight on the Article 8 ECHR rights and rights to fairness (both at common law and pursuant to s17 Inquiries Act 2005) of CTP staff as a further reason in support of the application.

Practical matters

33. Operation Verbasco proposes that CTP staff should be allocated a unique cipher in the form PC VNxxx where "PC" is the staff member's rank or title (where this already features in the

document) “VN” stands for “Verbasco Nominal” and xxx is a three digit number. An example document is provided with this application to illustrate that ciphered documents will be readily legible.

34. There are various options for the appearance of ciphering in documents. One option is to overlay a black box on top of the original document, with white text stating the cipher. Operation Verbasco considers that this makes documents less easy to read. It is also slower for Operation Verbasco to apply ciphers in this way, because of the limitations of the software available on Operation Verbasco’s secure systems. Instead, Operation Verbasco intends to edit the text of its documents to remove names and insert the ciphers in the original text, with asterisks around the cipher to ensure it is readily identifiable. Operation Verbasco believes this will be both the most efficient method by which it can apply ciphers and will result in the most user friendly documents.
35. Given that it is too early in the Inquiry process for the list of witnesses whom the Chair will call to be known, it would be premature either (1) for Operation Verbasco to make those applications now or (2) for those witnesses who will not be the subject of anonymity applications to be named. Therefore, Operation Verbasco proposes this pragmatic course of action:
 - a. If the application for anonymity of CTP staff is granted, then the names of all relevant CTP staff (save for those who are avowed) should be ciphered, whether or not it is likely that an individual will be called as a witness.
 - b. When the Inquiry indicates that an individual will be called as a witness, Operation Verbasco can consider whether an application for that individual’s anonymity falls to be made.
 - c. If such an application is made and granted, then no action is required.
 - d. If such an application is not made or is refused, then that individual’s name and cipher should be given to CPs.

POSITION STATEMENT ON OTHER RESTRICTION ORDERS

36. Operation Verbasco has indicated in a CLOSED position statement that it will seek restriction orders in respect of a small number of topics. One of those is police methodology

and tactics in respect of the investigation of matters of national security. A second concerns the sharing of information with law enforcement partners. It is not possible in an OPEN document to say anything meaningful as to the other information in respect of which restriction orders will be sought.

37. The position statement is not an application for a restriction order but an indication of the topics in respect of which applications will be made in the future. When those applications are made, Operation Verbasco will of course again consider what can be said in OPEN.
38. Finally, the position statement contains an indication that Operation Verbasco will make or support a small number of applications for restriction orders giving anonymity to individuals likely to be witnesses in the Inquiry. Operation Verbasco does not ask the Chair to include those individuals in the wider restriction order in respect of names which is addressed above.

Counsel for the Commissioner

**Lisa Giovannetti QC
Aaron Moss
Dan Mansell
Ruby Shrimpton**

Counsel for the Chief Constable

**Jason Beer QC
John Goss**

31 May 2022

WITNESS STATEMENT

Criminal Procedure Rules, r27.2; Criminal Justice Act 1967, s.9; Magistrates' Courts Act 1980, s.5b

Statement of: ***VN102***

Age if under 18: Over 18 (if over 18 insert 'over 18')

Occupation: POLICE OFFICER

This statement (consisting of 1 page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false, or do not believe to be true.

Signature: ***VN102***

Date: 07/08/2018

Tick if witness evidence is visually recorded (supply witness details on rear)

I am Detective Constable ***VN102*** of the Thames Valley Police stationed with CTP SE Investigations.

At approximately 1100 hours on Wednesday 1st August 2018, together with DC ***VN135***, I met Charles Rowley 19/05/1973 by appointment at Salisbury Library, Market Place, Salisbury, Wiltshire. The purpose of meeting Charles was to establish what he could remember about what he was doing for an approximate hour-long period and another hour-and-a half-long period of time on 29th June 2018. These periods of time were unaccounted for on the police CCTV timeline.

The video-recorded interview was commenced in a private office of Salisbury Library at 1118 hours and concluded at 1246 hours. I can produce and identify the 'DVD of witness interview with Charles Rowley reference 010818/01' by the exhibit mark ***VN102***

The DVD was sealed inside a tamper-proof evidence bag, seal number MPSA19916875 refers.

Signature: ***VN102***
2022

Signature witnessed by:

OFFICIAL

Statement of:

****VN102***

Form MG11(T)

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Signature:
2022

****VN102***

Signature witnessed by:

OFFICIAL



Title	<u>OPEN</u> Damage Assessment – The Risk to Counter Terrorism Policing (CTP) and its staff CTP Names in Material – Operation Verbasco
Authorised by	DCI Luke Williams
Creating Branch	CTP – Counter Terrorism Policing
Date created	26 May 2022

Introduction

1. This OPEN damage assessment has been prepared in connection with Counter Terrorism Policing’s (CTP) application for a restriction order giving anonymity by way of redaction of the names of all CTP staff save for those who have been publicly avowed.
2. This document reflects, so far as is possible, the CLOSED damage assessment prepared by CTP in connection with that application. By necessity, this OPEN document is brief. Not all matters referred to in the CLOSED document are capable of being meaningfully but safely summarised in OPEN proceedings.
3. At the outset it is recognised that individual CTP staff do generally give evidence in court and in usual circumstances their names would be publicly avowed. Policing is normally public-facing and transparency is key to the public’s confidence in the service. In this case, however, CTP’s assessment is that the order sought is necessary. The circumstances surrounding this case are unique. In considering the scope of the order which it is necessary to seek, CTP have approached the assessment of risk to its officers by reference to the following categories:
 - a. Baseline Risk
 - b. Heightened Risk
 - c. Russia Specific Risk

4. At each stage in conducting its assessment of damage, CTP has had regard to both the public interest in safeguarding and maintaining effective counter-terrorism policing within the UK, and the rights of individual CTP officers and their families. This includes their Article 8 ECHR rights and their rights to be treated fairly in the Inquiry, both pursuant to the Inquiry's statutory duty and its duty at common law.
5. CTP's assessment is informed by a number of specific incidents over recent years. It is not possible to provide a gist of this information in OPEN.
6. The CLOSED damage assessment has been reviewed and confirmed by senior officers within CTP, including the Assistant Commissioner for Specialist Operations within the MPS, Matt Jukes, who is head of the national counter-terrorism policing network.

A. Baseline Risk

7. Publicly naming individually vetted officers presents a baseline risk to those individuals, other CTP staff, and CTP-related national security, because of the nature of the work inherent in counter-terrorism policing. CTP may be of interest to all types of hostile actor, from lone wolf terrorist attackers who wish to cause harm to a police officer, to hostile foreign state actors.
8. All CTP staff are vetted to "SC" (Security Check) as a minimum, and a significant number are cleared to "DV" (Developed Vetting) status. Both levels of vetting allow staff to have access to SECRET and TOP SECRET information to varying degrees and to the extent required by the particular role occupied by a given officer.
9. When individual officers give evidence in criminal proceedings with special measures which stop short of anonymity, or when individual officers make inquiries with a witness using their real name, some degree of risk arises. That risk is relatively low and can ordinarily be reviewed and managed on a case-by-case basis. CTP have concluded that the baseline risk is significantly elevated, however, in the particular circumstances of this Inquiry.

B. Heightened Risk

10. The scale of risk to CTP is heightened by the cumulative effect of the baseline risk in circumstances where:
 - a. a comparatively significant number of CTP officers are involved to varying degrees;
 - b. the case is high-profile; and
 - c. the case is one in which particularly sensitive material may fall to be considered.

C. Russia-Specific Risk

11. As a result of the CTP investigations into the matters with which this Inquiry is concerned, HMG has concluded that it is highly likely individuals affiliated with Russia's military intelligence agency are directly responsible for the Novichok poisoning in Salisbury.
12. It is a matter of public record that Russia is suspected of substantial and severe hostile state activity abroad. CTP assess that this factor significantly elevates the risk to its staff and interests should the requested ciphering of names be refused.
13. The 2020 Intelligence and Security Committee report in respect of Russia ("the Russia Report") provides a notable example of Russia's recorded hostile activity within the United Kingdom in recent years. The Russia Report concluded that in the past the U.K. has underestimated the threat posed by the Russian state and that the U.K. is in effect still playing "catch-up".
14. Open-source reports identify concerns regarding comparable suspected hostile-state activity by Russia in other jurisdictions. Russia is suspected of having intimidated lawyers representing the victims of Malaysian Airlines flight MH17, which was shot down in July 2014. Reports relayed incidents involving lawyers being followed to their homes from the court building, and suspicious men lingering outside their properties.¹ Similarly, open-source reports from the United States that Russia may have been involved in a large-scale cyber-attack against the US court system in 2020.² Further cyber-attacks, suspected to be backed by Russia, have been reported in recent years against the World Anti-Doping Agency³, the International Olympic Committee⁴, and the Organisation for the Prohibition of Chemical Weapons⁵.

Conclusion

15. For the reasons developed in the CLOSED documents, CTP's assessment is that a restriction order is necessary in order to avoid serious harm/damage to national security by reducing the heightened Russia specific risk posed to its interest and staff to baseline level which can be appropriately managed by CTP.

¹ "Dutch TV: Russia suspected of intimidating MH17 lawyers", Algemeen Dagblad, 28 October 2021; <https://www.reuters.com/world/lawyers-mh17-victims-intimidated-during-dutch-trial-rtl-news-2021-10-28>

² "Russian hack brings change and uncertainty to US Court system", 31st January 2021, www.latimes.com/world-nation/story/2021-01-31/Russian-hack-brings-changes-uncertainty-to-us-court-system

³ <https://lawinsport.com/news/item/wada-confirms-attack-by-russian-cyber-espionage-group>

⁴ <https://www.theguardian.com/world/oct/19/russia-planned-cyber-attack-on-tokyo-olympics-says-uk>

⁵ <https://www.nsc.gov.uk/news/reckless-cyber-campaign-cyber-attacks-russian-military-intelligence-service-exposed>

