

INQUIRY INTO THE DEATH OF DAWN STURGESS

SUBMISSIONS OF COUNSEL TO THE INQUIRY FOR THE OPEN PRELIMINARY INQUIRY HEARING ON 15 JULY 2022

Introduction

1. This is the second OPEN directions hearing in the Inquiry into the death of Dawn Sturgess, who died on 8 July 2018. Following the Chair’s appointment on 9 March 2022 and the setting up of the Inquiry on 17 March 2022, the first OPEN directions hearing took place on 25 March 2022. A CLOSED directions hearing took place shortly afterwards.
2. The Chair made the following directions, dated 4 April 2022 (“the Chair’s directions”):
 - 1) Her Majesty's Government (“HMG”) is to respond to the three requests made by the Solicitor to the Inquiry for documents (dated 12 October 2021, 8 November 2021 and 3 February 2022) by 24 June 2022; identifying any parts which in its submission need to be CLOSED, redacted or gisted.
 - 2) Op Verbasco is to provide an advanced draft statement of events and underlying material (identifying any parts which in its submission need to be CLOSED, redacted or gisted) by 24 June 2022.
 - 3) The Solicitor to the Inquiry is to promulgate a protocol for applications for restriction orders by 15 April 2022.

- 4) HMG is to file any application in principle for a restriction order, or to make any restriction notice, in respect of names by 31 May 2022.
 - 5) Op Verbasco is to make any similar applications for restriction orders by 31 May 2022.
 - 6) HMG and Op Verbasco are to provide a position statement on any further contemplated restriction order applications/notices by 31 May 2022.
 - 7) An OPEN directions hearing is to be listed for 15 July 2022; any representations on the listing are to be made to the Solicitor to the Inquiry within 7 days.
3. Copies of the directions were sent to Core Participants (“CPs”), and can be found on the Inquiry website: <https://www.dawnsturgess.independent-inquiry.uk/>
4. On 13 June 2022, Solicitors to the Inquiry (“STI”) wrote to CPs providing the OPEN restriction order applications which had been filed in accordance with the Chair’s directions 4, 5 & 6 and the following agenda for this hearing:
 - 1) Disclosure Process
 - 2) Restriction Order applications in respect of names:
 - a. Her Majesty's Government
 - b. Operation Verbasco
 - 3) Any other business
5. CPs were informed that, given the nature of the restriction order applications, enquiries would be made as to whether representatives of the media would wish to make written or oral submissions for the Chair’s consideration at the hearing (see further at §24 below). Written submissions from CPs were requested by 4pm on 4 July 2022.
6. CPs were advised that a CLOSED preliminary hearing would follow shortly after the OPEN hearing of 15 July 2022. Arrangements are being made for the latter hearing to take place at a secure London location. The Chair may decide to defer

any rulings he wishes to make following the OPEN hearing until after the CLOSED hearing has taken place.

The Disclosure Process

7. As we have recognised from the outset,¹ the special sensitivities of this case have presented, and will continue to present, very significant challenges to the conduct of the disclosure process in this Inquiry, both at stage 1 (provision of documents by CPs and others to the Chair) and also at stage 2 (disclosure of relevant documents by the Chair to CPs). Those representing Her Majesty's Government ("HMG") observed in their submissions for the last hearing that the sensitivities relating to this case have been made more pressing and complex by the outbreak of war in Ukraine.²
8. The Chair's directions of 4 April 2022 were designed to begin to address some of the challenges connected with disclosure, and it is intended that further progress will be made in forthcoming preliminary hearings.
9. The ILT and CPs have undertaken a substantial amount of work in the period of approximately 3 months since the last hearing with a view to continuing to ensure that (1) all relevant material is made available to the Inquiry, and that as much as possible is provided in OPEN to CPs; (2) this material appropriately respects the unusual sensitivities of the material involved in this case; and (3) disclosure takes place as quickly as possible.
10. Firstly, the ILT has continued to hold regular meetings, and to engage in correspondence, with CPs, in particular HMG (through the Government Legal Department ("GLD")) and Operation Verbasco ("Op Verbasco") (which between them hold the vast majority of documents), to monitor disclosure workflows. The

¹ CTI's submissions of 24 August 2021 at §3; 1 December 2021 at §6; and 23 March 2022 at §5.

² HMG's submissions of 18 March 2022 at §19.

former has provided to ILT disclosure strategies which cover twelve departments or agencies which it represents (one remains outstanding); the process is that ILT comments upon these strategies and GLD incorporates ILT's feedback. Op Verbasco continues to share with ILT fortnightly its performance dashboard tracking the metrics for the number of documents held, scheduled and provided for security review, as well as the number of relevant witnesses contacted and requesting anonymity. ILT understands that Op Verbasco has now scheduled 50% of the documentation it holds.

11. Secondly, the ILT has continued to review material from HMG and Op Verbasco as it is provided, in CLOSED conditions. The ILT has returned to Op Verbasco tranches of such material provided at the end of March 2022 and the end of May 2022 indicating those items relevant for disclosure. Such items will be prioritised for security sensitivity reviews. ILT recently received a further tranche of sensitive material from HMG, which it is now in the process of reviewing for relevance.
12. Thirdly, there has been compliance with the Chair's directions 3-7. ILT has been assured that HMG and Op Verbasco will also meet directions 1-2 by 24 June 2022 (or in the week thereafter allowing short extensions due to the national train strikes taking place on 21, 23 and 25 June 2022). Directions 1-2 represent a significant amount of work on the part of both the ILT and those CPs. The directions were intended not only to progress stage 1 disclosure, but direction 2 in particular will begin the process of identifying for ILT the likely boundaries between OPEN and CLOSED material which is necessary for progressing stage 2 disclosure.
13. Fourthly, ILT has been preparing a fifth tranche of stage 2 disclosure, which is currently with Op Verbsco for a security review. Disclosure of this batch of documents has been delayed by the need to apply provisional redactions to names pending the outcome of the restriction order applications.

14. Fifthly, from its thorough review of the relatively limited material provided to it in CLOSED conditions, as anticipated at the last hearing, the ILT has been able to commence the process of drafting and issuing requests for evidence pursuant to Rule 9 of the Inquiry Rules 2006. One request was made on 16 June 2022 and eight further requests were made on 17 June 2022, with a further request ready but awaiting disclosure of two witness statements from Op Verbasco to the ILT. Even these requests have been complicated by the need for security sensitivity checking and, in some cases, issue of the Rule 9 in CLOSED conditions.
15. Notwithstanding the effort and progress outlined above, CTI recognises the frustrations the Family and other CPs are likely to feel at the limited volume of material that has so far been provided by way of stage 2 disclosure. These are frustrations shared by the Chair and ILT and every effort is being made to address the obstacles preventing a swifter process.
16. At the last directions hearings, the Chair heard detailed submissions (both in OPEN and CLOSED) regarding the detail of the disclosure process, focusing on the additional steps that are considered necessary in this case by reason of the special sensitivities to which we have already referred. We do not propose to survey the entire process again. However, there is one particular stage of the process that has caused (and, more importantly, will continue to cause) significant extra delay, which we submit is worthy of further discussion at this hearing. That stage is a preliminary security review, at which point a large proportion of HMG and police documents are reviewed by HMG for sensitivity *before* they are shown to ILT in CLOSED conditions for relevance review.
17. This process is time consuming, and we believe will continue to be so. It is also inefficient. Because documents are put through this preliminary security review before ILT has reviewed them, time is spent reviewing documents for sensitivity that may ultimately prove to be irrelevant.

18. ILT has been exploring with HMG and Op Verbasco a range of possible ways of avoiding or minimising this problem. Attempts to remove requirements for material to be checked *before* it is seen by the ILT have been unsuccessful. The statement sought by the Chair's direction 2 has been one way of prioritising material for the preliminary security review and therefore ultimately disclosure. Op Verbasco is also currently, at the request of the ILT, compiling a list of categories of material for prioritisation. However, no doubt the Chair will be assisted by OPEN submissions that are as full as possible from CPs on this issue, including statistics from Op Verbasco relating to the time that documents have so far spent undergoing the preliminary security review. We anticipate that he will also wish to be addressed on these matters at the CLOSED hearing.

Restriction Order Applications in respect of Names

19. Pursuant to the Chair's direction 4, HMG served an OPEN application dated 31 May 2022 for a restriction order,

To continue in force indefinitely to prevent direct or indirect disclosure of the names and designations (if appropriate) of the following categories of HMG staff: (a) all staff below Senior Civil Servant ("SCS") grade and the military equivalent of below one star rank; (b) all SCS not officially publicly linked to the 2018 events; and, (c) all UK Intelligence Community staff ("UKIC staff"), unless publicly avowed such as the Chief of SIS and MI5's Director General, including any cover names used by such staff...the term "staff" refers to former staff as well as those who continue to work for HMG. It also includes external staff such as contractors or experts who may have been brought in at the time to assist and advise.³

³ HMG's OPEN submissions of 31 May 2022 at §2.

20. In accordance with §5 of the Protocol on Applications for Restriction Orders dated 14 April 2022 (“the Protocol”),⁴ the application comprised an OPEN section, a CLOSED section, and supporting evidence in the form of a CLOSED Damage Assessment and certificate signed by the Secretary of State for the Home Department.
21. Pursuant to the Chair’s direction 5, Op Verbasco made a similar OPEN application dated 31 May 2022 for a restriction order 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.*⁵
22. Op Verbasco also served CLOSED submissions and supporting evidence in the form of a CLOSED Damage Assessment and witness statement of Assistant Commissioner of Specialist Operations, Matt Jukes, in accordance with the Protocol.
23. Following receipt of these submissions and in accordance with §6 of the Protocol, the ILT made a request for clarification of certain points, and to bring into OPEN, some of the matters to which reference was made. A copy of CTI’s Note, which was initially served on GLD on 10 June 2022 (it was subsequently provided by GLD to Op Verbasco on 13 June 2022) as a CLOSED note pending security sensitivity checking, is now appended to these submissions as an OPEN note with very limited redaction.
24. Also in accordance with §6 of the Protocol and as indicated at §5 of these submissions, the ILT has notified representatives of the media of the applications, subject to confidentiality undertakings, in order to ascertain whether the media would like to make representations in advance of or at the forthcoming hearing. No substantive response has yet been received.

⁴ <https://dsiweb-prod.s3.eu-west-2.amazonaws.com/2022-04-14-Protocol-on-Applications-for-Restriction-Orders.pdf>.

Preliminary Observations

25. We make the following observations regarding the applications. Firstly, the applications are extremely wide-ranging and will have a significant impact on disclosure and far reaching consequences for the conduct of the Inquiry and for the content of the Report. HMG explicitly recognises in its submissions, that its application is “*unusual and probably unique*”.⁶ Were the applications to be granted in the terms sought they would be, in our experience, without precedent. However, we also recognise the serious nature of the risks that the applications seek to avoid - that is, primarily harm to individuals and to national security.⁷
26. Secondly, the applications form part of a picture which we consider likely to develop. These applications were invited at an early stage following establishment of the Public Inquiry so that HMG’s and Op Verbasco’s risk assessments could be finalised and made available in order for the Chair and ILT to understand the nature and extent of the assessed risks and the scope of the applications. Other CPs are very likely to have representations upon the applications and may indeed have their own applications to make. Whilst we consider that there will be great value in commencing consideration of these issues at the forthcoming hearing, it may therefore be that the Chair will decide to defer making a final ruling on the two applications that have currently been made until a later date (pending, for example, the making of further linked applications by other parties).
27. Thirdly, and closely linked to the previous point, we do not consider it appropriate to express a view regarding the overall merits of the applications in advance of considering representations from all CPs. We do, however, make the following preliminary observations:

⁵ Op Verbasco’s OPEN submissions of 31 May 2022 at §5.

⁶ HMG’s submissions of 31 May 2022 at §4.

⁷ HMG summarises the relevant risks at §§23-28 of its OPEN submissions of 31 May 2022. Op Verbasco summarises the risks at §31 of its OPEN submissions of 31 May 2022.

- a) HMG and Op Verbasco have each provided useful submissions on the legal framework and relevant authorities.⁸ We do not at this stage envisage any significant disagreement on the relevant legal principles to be applied and/or the approach to be taken. We will of course keep this under review as further submissions are made.
- b) For the avoidance of doubt, the applications made are limited to the redaction of names from documents: they do not concern witness anonymity, which would need to be the subject of separate consideration where it might apply.
- c) As will no doubt be obvious from CTI's Note, we consider that any restriction order of the type sought will need to be very clear in terms of its scope. At present, we suggest that the terms "HMG staff" and "CTP staff" are too vague/ambiguous and we have requested clarification of the meaning of the terms used.
- d) Related to the above, it seems to us that additional questions arise if and to the extent that the proposed restriction orders would cover names of individuals whose names have already been publicly linked to the events surrounding Dawn Sturgess' death. At the very least, it is questionable whether it would be appropriate for such names to be redacted without a separate application. As will be seen, we have sought further information on this aspect of the applications in our Note. Our current view is that any 'general' restriction order made on the current applications should be clearly stated **not** to apply to names already publicly linked to the relevant events, and that separate applications would need to be made in respect of any such names, the merits of which could be considered on an individual basis.
- e) Contrary to the submissions of Op Verbasco (at §28), we do not agree that it is possible to conclude that any categories of staff/names "are of no relevance to the Inquiry": we consider that all names included on relevant documents are potentially relevant to the Inquiry such that, absent a

⁸ HMG's submissions at §§5-11: Op Verbasco submissions at §§8-24.

restriction order or anonymity application, they would ordinarily be disclosed. We do not consider it possible to decide conclusively (and in particular at this early stage) that a name within the categories mentioned has no relevance in understanding the particular document, other documents or a part of the narrative.

- f) We also do not agree the proposal (at §28(b)) that Op Verbasco cipher categories of names *before* documents are provided to the ILT. The consequence of a restriction order, assuming it were to be made, would be that Op Verbasco would be entitled / required to serve on ILT redacted versions of the documents for disclosure to CPs and use in OPEN proceedings and also unredacted versions of the documents for use in CLOSED proceedings. An additional benefit of holding unredacted versions of the documents would be that ILT would be well-placed to keep the relevance of the names in question under review as the evidence develops.
- g) It will be noted that the Op Verbasco application proposes ciphering but the HMG application does not. This is a practical issue that of course will only arise if the Chair decides to make restriction orders. Our provisional views on this issue are that (a) we agree with HMG that ciphering all the names that are the subject of the applications will not be a practical proposition; (b) we do consider, however, that ciphering of the names of ‘core’ individuals will be both necessary and achievable; (c) although it is possible to add ciphers to redacted documents once they have already been disclosed on Relativity, any such process would be very time consuming and should therefore be avoided or at least minimised; (d) our proposal (if the applications are to be granted) is for a list of ‘core’ names to be compiled immediately by ILT in consultation with HMG and Op Verbasco, and for those ciphers to be added to the documents from the outset.
- h) We emphasise that the proposal suggested above does not indicate any view on the merits of the applications at this stage. The Chair is likely to

wish to hear submissions on a range of proposals, and also to understand whether there are in fact less restrictive alternatives to the applications. In CTI's Note, we have asked the applicants to address these questions specifically.

Further Hearings

28. At the last hearing we said that the uncertainties relating to the disclosure process meant that it was not possible to set a realistic timetable leading to final hearings. We said that it might be possible to do so at the next (i.e. this) hearing. We have given this matter careful thought, but we regret to say that there are still too many uncertainties about the length of time the disclosure process will take to set a realistic timetable towards a final hearing. Any attempt to set a final timetable now would, we think, be counterproductive. That is extremely unfortunate given we are currently approaching the fourth anniversary of Dawn Sturgess' death and a fifth is likely to pass before substantive hearings can begin. We will continue to work as hard as we can to progress the disclosure exercise and we invite all CPs to consider every practical way in which they can assist in hastening the disclosure processes both at stage 1 and stage 2.
29. In order to maintain the pressure on disclosure and the Inquiry's progress generally, we suggest that the Chair schedule another directions hearing for a date in October / November 2022. We anticipate further directions being set to address actions required in the interim period.

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FRANCESCA WHITELAW
ÉMILIE POTTLE

22 June 2022