INQUIRY INTO THE DEATH OF DAWN STURGESS

SUBMISSIONS ON BEHALF OF THE FAMILY
FOR PRELIMINARY HEARING ON
15 JULY 2022

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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 agenda items set out in the email from STI dated 13 June 2022 and the topics addressed by CTI in their submissions dated 22 June 2022.

Disclosure process

2. The family note the observations of CTI in their submissions dated 22 June 2022 and are grateful for the efforts that the Inquiry Team are making to progress the disclosure process. They are also aware, in general terms, of the scale of the task. That awareness is built into the observations that follow. Nonetheless, as CTI have rightly anticipated (§15), the family have a number of significant concerns regarding the disclosure process and the severe impact it is having on the Inquiry's work.

3. The disclosure process is causing and – unless addressed urgently and effectively, now – will continue to cause significant delays to the progress of the Inquiry. That is against a context of very substantial pre-existing delay to the investigation into Dawn Sturgess' death. It appears from the updates given by CTI in their submissions for the March and July preliminary hearings indicate that such delay is likely to mean the Inquiry will. Not sit for years – far beyond 5 years after Ms Sturgess' death - if the current pace and progress of disclosure is allowed to continue.

4. The need for such delay is impossible to understand. It took just over a month after the attempted assassination of Mr Skripal for the UK's National Security Adviser, Sir Mark Sedwill, to inform NATO on 13 April 2018 of his conclusion that "*it is highly likely that the Russian state was responsible for the Salisbury attack."* Much of the relevant documentation must have been reviewed and processed before he made that announcement. Similarly, it was only 6 months after the incident that, on 5 September

2018, the CPS charged Petrov and Boshirov with a range of criminal offences including attempted murder of Sergei Skripal, Yulia Skripal and Nick Bailey. Again, the relevant material must have been gathered, security reviewed, and considered by a range of lawyers and bodies, for that decision to have been made. In that context, it is simply inexplicable why it is likely to take well over 5 years a similar process to occur for the purpose of this inquiry.

5. Such delay is also unacceptable. It will place a very considerable burden on the family; the fourth anniversary of Dawn's death will shortly arrive and the family are no closer to meaningful answers and an understanding of how and why she died. The prospect that disclosure delays will prolong and exacerbate the family's suffering is not something that should be permitted to occur. Further, significant delay caused by disclosure issues will compromise the effectiveness of the Inquiry. Memories will fade. The gathering of best evidence will be hindered. Any lessons identified by the Inquiry risk being provided too late to ensure the future protection of the public. Public confidence in the Inquiry will be undermined. Clearly that is in no one's interests.

6. The pace of progress since the March preliminary hearing is instructive. Despite CTI's summary of the steps that have been taken (§§10-14), the reality is that in the four months between the March and July preliminary hearings, very little has been provided by way of stage 2 disclosure. The family are particularly concerned by the indication that as at the date of CTI's submissions, Operation Verbasco had only <u>scheduled</u> 50% of the documentation it holds. Given the multiple further steps between scheduling and eventual disclosure to CPs, and the time that will be required between such disclosure and the Inquiry's hearings, this is a matter of very serious concern.

7. There is a danger here of focusing solely on whether the process <u>currently in place</u> is being progressed and directions met. But it is necessary to step back: disclosure must take place as speedily as possible, the current process is not permitting that to occur, so the focus must be on the changes that are needed, urgently, to significantly increase the efficiency, effectiveness and speed of the process. CTI rightly recognise that this is the case: the current process is time consuming and inefficient, and changes are required (§§17-18).

8. CTI, HMG and Operation Verbasco will be best placed to identify, in concrete terms, what changes can be made to improve the efficiency and speed of the process. However, in an effort to assist, the family observe, based on their experience of prior complex inquiries, that the following changes may assist.

9. Firstly, consideration should be given to whether the current process can be streamlined. The family understands the reasons for the numerous stages involved in the current process. But it is plainly cumbersome and extremely time-consuming, as CTI accept (§17).

10. Currently, material is reviewed and scheduled by HMG and Operation Verbasco (including a preliminary security review of a significant amount of material prior to initial provision to the ILT for review in CLOSED), material is then sent to the ILT, it is considered by the ILT for relevance, sent back to HMG and Operation Verbasco for a further security review, sent back to the ILT for consideration of the HMG and Operation Verbasco security review, further considered by the ILT (including consideration of whether ILT agrees with the outcome of the security review which, presumably, may generate further communication with HMG and Operation Verbasco), and ultimately prepared for disclosure to CPs.

11. CTI have indicated that the preliminary security review by HMG and Operation Verbasco "has caused (and, more importantly, will continue to cause) significant extra delay" (§16). It should be removed. Such security reviews are particularly time consuming. They are also unnecessary here because the material being reviewed is subsequently considered by DV cleared CTI <u>in CLOSED</u> (and, if need be, CTI could conduct the relevance review by inspecting the material in government secure premises).

12. The CTI submissions state that "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." (§18). No explanation for that has been provided. The CTI submissions indicate that "statistics from Op Verbasco relating to the time that documents have so

far spent undergoing the preliminary security review" (§18) will assist the Chairman. The family agree, for the reasons already set out above.

13. The family put forward the following further suggestions, for the ILT and others to consider, to reduce delay:

    a. Increasing the resources allocated to scheduling, prioritisation and onward provision to the Inquiry within the HMG and Operation Verbasco disclosure operations.

    b. Increasing the resources allocated to the ILT if any delay to progress is due to the speed with which the current team can consider and process what is received, in particular the CLOSED reviews conducted by the ILT given the restrictions on location, access and timing that can occur during a CLOSED review process.

    c. Setting more and tighter fixed deadlines that the HMG and Operation Verbasco disclosure operations are required to meet. Doing so should not be seen as implying any criticism but rather should be viewed as a necessary mechanism for focusing minds to achieve speedier progress. Such deadlines can also help to identify resource and process changes that would not otherwise become apparent; put simply, if it is clear that the deadlines cannot be met, firm decisions can be made on what is required to meet them.

    d. Greater integration of the Inquiry Team into the HMG and Operation Verbasco disclosure operations may assist. If the pace that is currently occurring is all that HMG and Operation Verbasco can achieve without further assistance from the Inquiry, consideration should be given to greater incorporation of the Inquiry into the primary disclosure sifting process. The Inquiry will know what it considers to be relevant. The Inquiry has the greatest interest in ensuring progress. Direct involvement of the Inquiry within the disclosure process, further upstream, may therefore aid progress.

Restriction Order applications

14. The family readily acknowledge the risk posed by the Russian state in connection with this Inquiry. They are unaware of the evidence given in CLOSED in support of the restriction order (RO) applications. For that reason, they are not in a position either to support or oppose the applications. However, they invite the Chair to take into account the following points when determining the applications.

15. First, the applications are exceptionally broad; it is anticipated that they would result in the names of hundreds of potentially relevant individuals, being withheld forever from the family, all other CPs and the wider public.[1]

16. The applications, if granted, would result in ROs of unprecedented breadth and impact; the family's team are not aware of any previous statutory inquiry in this country which has made an order in anything close to these terms. The family team's experience mirrors CTI's in this regard (§25). That context suggests that the applications should be subjected to close scrutiny.

17. Second, the nature and type of harm relied on in OPEN is broad, generic and appears to be premised on significant speculation. The family make that submission without access to the CLOSED documents.

18. Third, the statutory and common law presumption of open justice and transparency is central to the determination of these applications. Section 18(1) of the 2005 Act imposes a statutory duty on the Chairman to take reasonable steps to secure public access to the Inquiry's proceedings and information. Restriction orders are an exception to that statutory duty and thus to the statutory presumption of openness and public access to the Inquiry's proceedings and information.[2] As Sir Martin Moore-Bick, the Chairman of the Grenfell Tower Inquiry, has observed, "The clear thrust of these

[1] CTI's submission, §27(b), states that "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." Any decision to grant the anonymity sought in these applications cannot imply that witness anonymity should be granted. Witness anonymity gives rise to different issues and must be considered separately.

[2] For example, see the Anthony Grainger Inquiry, Ruling re: applications for anonymity and other protective measures (9 December 2016), §11.

sections [s.18(1) and s.19(1)] is that all aspects of the inquiry must be open to public scrutiny unless there are strong reasons to the contrary."[3]

19. In addition to the duty imposed by s.18(1), the constitutional principle of open justice applies. It is a principle whose significance "has if anything increased in an age which attaches growing importance to the public accountability of public officers and institutions and to the availability of information about the performance of their functions"[4] and which "applies forcefully in proceedings where decisions of public authorities are in issue".[5] Clearly, that is the case here. The courts have long recognised that the open justice principle generally operates to allow the identification and reporting of the names of those involved in legal proceedings.[6]

20. Where national security is relied on to withhold material, public justice remains of fundamental importance.[7] The public interest in the openness and transparency of the Inquiry's process is particularly strong here because aspects of the Inquiry will, unavoidably, take place in closed session, from which the family and the wider public are excluded.[8] Where national security is relied on as a basis for withholding material, the views of the applicant, while they should be given due deference, "should not command the unquestioning acquiescence of the court"[9], and the Chairman should not automatically salute the ministerial flag.[10]

21. Fourth, the applications appear to amount to a class claim. They seek blanket anonymity for multiple classes of public officials who are routinely identified in legal processes. A class immunity is rarely granted and clear and compelling evidence for it is necessary.[11] The reasons for caution about claims made on a class basis – including because doing so results in an incursion into open justice without an individual,

[3] Grenfell Tower Inquiry Ruling on Applications by certain persons to withhold their names from a list of core participants (20 March 2018), §6.
[4] *Khuja v Times Newspapers Ltd* [2017] 3 WLR 35, §13.
[5] *R (British American Tobacco) v Secretary of State for Health* [2018] EWHC 3586 (Admin), §29.
[6] *Re Guardian News and Media* [2010] 2 AC 697, §63; *Khuja v Times Newspapers Ltd* [2017] 3 WLR 35, §29.
[7] *Secretary of State for Foreign and Commonwealth Affairs v Assistant Deputy Coroner for Inner North London* [2013] EWHC 3724 (Admin), §53, per Goldring LJ.
[8] Anthony Grainger Inquiry, Ruling re: applications for anonymity and other protective measures (9 December 2016), §9.
[9] *R (Mohamed) v Foreign Secretary (No 2)* [2011] QB 218, §46.
[10] *SSHD v Mohamed* [2014] 1 WLR 4240, §20.
[11] *R v. Chief Constable of West Midlands Police, ex p Wiley* [1995] 1 AC 274.

evidenced and fact-sensitive assessment, and encourages unjustified secrecy – are of particular relevance here because the RO applications are premised on numerous broad classes of applicant. Public officials are routinely identified in legal processes and in wider public life, including police officers, judges, politicians and civil servants. That is an important aspect of open justice in a free society. These applications run contrary to that important practice.

22. Fifth, the negative consequences of granting the ROs would be very substantial and far-reaching, as CTI rightly recognise (§25: "the applications … will have … far reaching consequences for the conduct of the Inquiry and for the content of the Report."). In the family's submission, those negative consequences include the following:

    a. There is a public interest in this Inquiry being conducted with all potentially relevant evidence available to the family, other CPs and the public. HMG and Operation Verbasco are subject to the Inquiry's investigation and may be subject to criticism. Redaction of names will prevent the "disinfectant" effect[12] of public scrutiny.

    b. Redaction of names without ciphering (which appears to be proposed on a broad scale) will prevent the conduct of relevant staff being understood and examined in public. In line with CTI, the family do not agree that it can be said at this stage that names are of no relevance to the Inquiry (Op Verbasco, §28).

    c. Granting the applications might inhibit the allaying of public concern. The family recognise that the public would be concerned about someone being put at risk by Russia as a result of giving evidence to this Inquiry. On the other hand, the Inquiry is concerned with publicly investigating potential failings by the State, exposing such potential failings to public scrutiny and accountability, and in doing so, confirming or dispelling public concern. It has been recognised in previous inquiries that this public interest factor may be particularly relevant where it is the State which is seeking the RO in question.[13] That is the case here. Allowing the names of

[12] It may lead to further evidence coming forward. As Lord Bingham observed in *R v Shayler* [2003] 1 AC 247, §21: "publicity is a powerful disinfectant. Where abuses are exposed, they can be remedied...". See also, in the inquest context, *SSHD v HM Senior Coroner for Surrey* [2017] 4 WLR 191, §73.
[13] Anthony Grainger Inquiry, Ruling re: applications for anonymity and other protective measures (9 December 2016), §9.

hundreds of State agents to be redacted throughout an Inquiry that has been tasked with investigating the role and responsibility of the State in Ms Sturgess' death may give rise to substantive public confidence concerns.

d. Granting the applications will give rise to significant practical difficulties for the Inquiry. In particular, an already slow and delayed disclosure process will be made slower still by the need to complete, on an ongoing basis, a highly detailed redaction process. The progress of the Inquiry will therefore be further delayed.

23. Sixth, as to ciphering:

a. The family's primary position is that any potentially relevant name for a person who is granted anonymity, should be ciphered. It is unlikely to be possible for the family to decide whether or not the person is relevant to the Inquiry if their name is not ciphered. It will be impossible to understand what their role was in the events. The family agree with CTI that "all names included on relevant documents are potentially relevant to the Inquiry such that, absent a restriction order or anonymity application, they would ordinarily be disclosed." (§27(e)). While the family have confidence in CTI's scrutiny in closed of these matters, ciphering names for the family and public is important to ensure that justice is *seen to be* done. Appearances are important given the public interest in this Inquiry.

b. CTI states that ciphering everyone will not be practical, and proposes that some 'core' names will be ciphered. It appears that, under this proposal, a large number of names will not be ciphered. If so, the family and other CPs would be prevented from assessing and identifying the relevance of particular individuals' roles, responsibilities, acts and omissions as they relate to the investigation and discharge of the Inquiry's Terms of Reference. That would significantly undermine the family's effective participation and the participation of other CPs, and is not conducive to an effective Inquiry nor to public confidence.

c. If CTI's proposal (regarding core names) is adopted, then the threshold for imposing a cipher should be low. That is, an anonymous name should receive a cipher (rather than merely being redacted) unless it is plainly irrelevant.

d. Any ciphering must occur consistently. That is, all relevant bodies (including HMG) must apply the same cipher for the relevant person, consistently across all material.

24. Seventh, the applications appear to seek anonymity even if the individual's name has already been made public in relation to Ms Sturgess' death and the surrounding circumstances.[14] CTI suggest that it is "At the very least … questionable whether it would be appropriate for such names to be redacted without a separate application." (§27(d)). The fact that a person has already been identified in public in connection with the Inquiry is likely to be an important factor against anonymity, which would ordinarily require separate consideration by the Chair.

25. Eigth, HMG refers to Articles 2 and 3 ECHR. Those provisions would justify anonymity if, in respect of a particular individual, there is a real and immediate risk of serious harm or death, which arises if they are not given anonymity. The Chair ought to grant anonymity under those provisions only if that test is met in the case of a specified individual (not on a class basis).

26. Ninth, the applications should be refused if alternative, less restrictive options are available to the Inquiry should the Chairman have concerns about wholesale public identification. CTI have identified some of the options in their Note dated 10 June 2022 (§7(b)-(d)).

27. The family invite the Chair to carefully consider whether there are adequate protections in place already, or whether other protections can be put in place[15]. Names will be disclosed to CPs subject to the terms of the Inquiry's Confidentiality Undertaking. Its terms are clear and stringent. The names will be disclosed within a secure, password-protected Inquiry disclosure platform.

[14] See HMG response to CTI Note dated 10 June 2022, §5: "HMG's application is for a Restriction Order in respect of the names of all those below the rank of SCS or one star in military rank equivalent, regardless of whether there has been any official public link between any such individuals and the relevant events of 2018." (emphasis added).

[15] Examples are: (i) an order preventing CPs from printing certain material containing relevant names; (ii) prior to material being adduced during the Inquiry's evidence hearings, separate RO applications can, if appropriate, be made and considered seeking that names are withheld from onward disclosure to the wider public; (iii) if strictly necessary, disclosure could be limited to lawyers, at least in the first instance.

Further hearings

28. The family have considered the CTI submission on this issue (§§28-29). The prospect of the substantial further delay envisaged by CTI is not just extremely unfortunate, it comes at a significant human cost to the family, and risks undermining the effectiveness of the Inquiry and one of its core purposes (to make recommendations to protect the public). Everything possible should be done to progress the Inquiry as a matter of urgency.

29. The family agree that a preliminary hearing should be set for the autumn. They suggest October rather than November in order to maintain pressure and focus minds. As to listing of the final hearing, the family note CTI's reasons. The family consider that this issue should not be determined until further submissions and responses on the disclosure process, and how it can be expedited, are made.

Michael Mansfield QC

Adam Straw QC

Jesse Nicholls

4 July 2022