

INQUIRY INTO THE DEATH OF DAWN STURGESS

SUBMISSIONS OF COUNSEL TO THE INQUIRY FOR THE OPEN PRELIMINARY INQUIRY HEARING ON 11 NOVEMBER 2022

Introduction

1. This is the third 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 followed. The second OPEN directions hearing took place on 15 July 2022 with a CLOSED directions hearing shortly after that.

2. After the July hearings, the Chair gave a Ruling on restriction order applications relating to names made by HMG and Operation Verbasco (see further below), and also made the following directions, dated 19 August 2022:
 - 1) Upon HMG and Operation Verbasco consenting thereto, Police material in classes A and C now in the hands of HMG is to be provided to the Inquiry Legal Team ("ILT") within 14 days of this Order and without further preliminary security review. Further such Police material is to be provided to the ILT without further preliminary security review.
 - 2) All such Police material of classes A and C is to be provided under secure conditions, under arrangements agreed from time to time between the ILT, HMG and Operation Verbasco.
 - 3) There may be no further disclosure of this material outside the ILT and Inquiry Chairman without the consent of HMG and Operation Verbasco, or further order.

- 4) HMG and Operation Verbasco are to make submissions in due course to the Inquiry as to the form in which these and other documents should be disclosed to core participants at stage 2.
 - 5) There shall be a further OPEN preliminary hearing at 11.00 on Friday 11 November 2022.
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. These submissions address the following matters, which will also form the agenda for the forthcoming OPEN hearing on Friday 11 November 2022:
 - 1) Disclosure Update
 - 2) Restriction Notice
 - 3) ‘The way ahead’
 - 4) Venue for substantive hearings
 - 5) Next hearing
5. A CLOSED preliminary hearing may or may not be required following the OPEN hearing on 11 November. A decision as to the need for a CLOSED hearing will be taken by the Chair following the OPEN hearing. CPs should indicate their views prior to the OPEN hearing if they are in a position to do so. If a CLOSED hearing is considered necessary, it will take place at a secure London location at some time shortly after the OPEN hearing. The Chair may decide to defer any rulings he wishes to make following the OPEN hearing until after any necessary CLOSED hearing has taken place.

Disclosure Update

6. We repeat without rehearsing here the special sensitivities of this case, to which we have referred in our previous submissions¹ and which will continue to challenge every stage of this Inquiry, particularly the disclosure process at both Stage 1 (provision of documents by CPs and others to the Chair) and now more particularly at Stage 2 (disclosure of relevant documents by the Chair to CPs).

Stage 1 Disclosure – Operation Verbasco

7. The preliminary inquiry hearings in July have achieved very significant progress in speeding up the disclosure exercise. Primarily, as indicated by the Chair’s directions set out above, the preliminary security review which was causing significant delay to Stage 1 disclosure has been removed. This has meant that on 15 August 2022, Operation Verbasco was able to deliver to the ILT a first tranche of Stage 1 disclosure, comprising approximately 3,500 documents (which were separated into “priority” and “non-priority” documents using categories agreed between the ILT and Operation Verbasco).² On 16 September 2022, Operation Verbasco delivered a second tranche of approximately 1,000 further documents. We understand that the next tranche of Operation Verbasco documents to be delivered will be considerably larger – in the region of 12,000 documents.
8. The ILT is currently engaged on the work of assessing the 4,500 Operation Verbasco documents for relevance. The work on the “priority” documents contained in the first tranche (approximately 1,250 documents) was completed in late September and the results communicated to Operation Verbasco. Further progress will be made in the coming weeks and an update will be provided either shortly before or at the 11 November hearing.

¹ CTI’s submissions of 24 August 2021 at §3; 1 December 2021 at §6; 23 March 2022 at §5; 22 June 2022 at §7.

² See §18 of CTI’s submissions of 22 June 2022.

Stage 1 Disclosure – Other CPs

9. During the same period, the ILT has also received further Stage 1 disclosure from HMG (9 lever arch files), Wiltshire Police (6 lever arch files), and Wiltshire Council (2 lever arch files). The ILT is working on relevance reviews of this material in parallel with the Operation Verbasco review described above.

Stage 2 Disclosure

10. On 11 July 2022 Tranche 5 was disclosed to IPs (40 documents) and on 18 July Tranche 6 was disclosed (2 documents).

ILT liaising with CPs to Progress Disclosure

11. The ILT has continued its practice of holding regular meetings, and in engaging in correspondence, with all CPs, but in particular Operation Verbasco and HMG (through the Government Legal Department (“GLD”)) (which between them hold the vast majority of documents), to progress disclosure workflows. HMG has now provided disclosure strategies covering 13 departments or agencies which it represents and the ILT has provided input into these documents. Operation 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 Operation Verbasco has now scheduled approximately 43,000 of the 60,000 odd documents that it holds.
12. We invite Operation Verbasco and HMG to indicate in their written submissions whether they remain on course to provide all material they hold to ILT by way of Stage 1 disclosure by the end of December this year. At the hearing we will invite the Chair to consider directing Operation Verbasco and HMG to write to Solicitor to the Inquiry (“STI”) providing updates in this regard in December 2022 and January 2023.

Restriction Notice

13. In August this year, GLD served on the ILT a Restriction Notice signed by the (then) Home Secretary dated 27 July 2022. A copy of the Notice is attached. Having received the Notice, it was clear to us that CPs would wish to know as much as possible about the material that it covers (referred to in the Notice as the ‘Schedule Material’). We have discussed this matter with HMG and consent has been given to provide the following form of words:

“The Restriction Notice only covers a small set of documents which represent an extremely small proportion of the total number of documents that have been provided, or are being provided, to the ILT by HMG.”

14. For ease of reference, section 19 of the Inquiries Act 2005 provides (emphases added in bold type):

19 Restrictions on public access etc

(1) Restrictions may, in accordance with this section, be imposed on—

- (a) attendance at an inquiry, or at any particular part of an inquiry;
- (b) disclosure or publication of any evidence or documents given, produced or provided to an inquiry.**

(2) Restrictions may be imposed in either or both of the following ways—

- (a) by being specified in a notice (a “restriction notice”) given by the Minister to the chairman at any time before the end of the inquiry;**
- (b) by being specified in an order (a “restriction order”) made by the chairman during the course of the inquiry.

(3) A restriction notice or restriction order must specify only such restrictions—

- (a) as are required by any statutory provision, retained enforceable EU obligation or rule of law, or

(b) as the Minister or chairman considers to be conducive to the inquiry fulfilling its terms of reference or to be necessary in the public interest, having regard in particular to the matters mentioned in subsection (4).

(4) Those matters are—

(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 any such 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 efficiency or effectiveness of the inquiry, or

(ii) otherwise to result in additional cost (whether to public funds or to witnesses or others).

(5) In subsection (4)(b) “harm or damage” includes in particular—

(a) death or injury;

(b) damage to national security or international relations;

(c) damage to the economic interests of the United Kingdom or of any part of the United Kingdom;

(d) damage caused by disclosure of commercially sensitive information.

‘The Way Ahead’

Stage 2 Disclosure / Witness Statements

Sample Restriction Order Applications

15. As we have indicated above, since the last preliminary inquiry hearings, considerable progress has been made towards accelerating the Stage 1 disclosure process. Subject to any CP submissions to the contrary, the ILT understands that CPs are on course to complete Stage 1 disclosure by the end of this year.

16. We submit that it is now, therefore, appropriate to focus on the process for Stage 2 disclosure and, in particular, the extensive restriction order applications that we anticipate will be made seeking redactions to documents to be disclosed.
17. The Chair has of course already considered one discrete issue that will arise, namely the redaction of names. We return to that issue below. Our focus here is on the more general applications for national security sensitivity redactions that we expect to be made. We submit that at this hearing the Chair should hear submissions on, and give at least some directions for, a process by which these applications can be determined in a thorough yet efficient manner.
18. We propose to discuss these matters with CPs informally prior to the hearing, but for present purposes we make the following outline proposal:
 - a) There is now available a substantial (and growing) body of documentation that has passed through the Stage 1 disclosure process and has been deemed relevant, but which has not yet been disclosed to CPs under Stage 2 because of unresolved sensitivity issues.
 - b) HMG, Operation Verbasco and CTI should liaise to identify by agreement a selection of sample documents. The selection should be designed to capture as many as possible of the different species of sensitivity claim likely to be advanced, so that the Chair's ruling on this first set of applications can serve as an effective guide for later applications.
 - c) If this proposal is adopted, we will invite the Chair at the hearing to give directions for (a) a date by which the set of sample documents is to be agreed; (b) a date by which HMG and Operation Verbasco are to make restriction order applications in respect of sensitive contents of those documents; and (c) dates for OPEN and CLOSED hearings to enable those applications to be determined.

Police Report Update

19. The Chair's Directions of 4 April 2022 included a direction that:

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.

20. Whilst Operation Verbasco did provide the Draft Police Report in a timely manner pursuant to this direction, it is right to recognise that identifying the relevant sensitivities involved Operation Verbasco liaising with and relying upon HMG. The ILT held a meeting with both of these CPs on 13 September 2022, the purpose of which was to query some of the identified sensitivities and to encourage as much material as possible to be put into OPEN. Further time was allowed for HMG and Operation Verbasco to respond to ILT's feedback. We understand that the results of this exercise will be made available to ILT shortly. We will provide an update at the hearing.

Rule 9 Requests for Evidence

21. As we identified in our submissions for the previous hearing, requests for evidence pursuant to Rule 9 of the Inquiry Rules 2006 were made on 16 June 2022 (one request) and on 17 June 2022 (eight further requests). On 12 July a tenth request was made, and on 15 July three further requests were made. Responses to four of these requests have now been received. It is likely that further Rule 9 requests will be made as a result of the ongoing review of documents under Stage 1 disclosure process.

Restriction Order Applications in respect of Names

22. In advance of the last preliminary inquiry hearings, and pursuant to a previous direction from the Chair, on 31 May 2022 HMG and Operation Verbasco each served applications for restriction orders in respect of names. On 10 June 2022 CTI served a Note requesting clarification of certain points and seeking to bring into OPEN some of the matters to which reference was made. The Note was subsequently appended to our submissions for preliminary hearing dated 22 June

2022. The applications were summarised in our previous submissions³ and were invited in order to identify as soon as practicable the issues that were likely to fall for consideration. Neither application sought a restriction order in relation to any person due to be called as a witness (for which separate applications will be required): but were limited to the disclosure process. The applications formed the subject of oral submissions at the last hearings in July.

23. The Chair gave a Ruling on the applications dated 19 August 2022.⁴ The Ruling stated:

11. The responsibility for the events in Salisbury and Amesbury in 2018 is what is to be decided by this Inquiry. This is, however, at least a prima facie case (denied by those accused) that those responsible were Russian nationals acting in the interests of the Russian state and allegedly under its direction. The risk of damage to national security here lies in the risk that hostile actors, whether State or otherwise and, if State, whether Russian or otherwise, might target individuals identified as concerned in the UK reaction to those events, and/or might use access to their names as a means of disrupting UK public functions. I am satisfied, on all the material I have seen, both OPEN and CLOSED, that these are marked real risks to some of those who were involved in the 2018 events, and that Russia in particular has both an interest in such activity and a known capacity to carry it out. For most of these persons therefore, a restriction order is likely to be necessary. There will, however, be some officials, particularly but not only in relatively high-profile positions, for whom the risks explained exist, but who are already sufficiently identified publicly, and/or sufficiently resilient to the risks inherent in their posts, for a restriction order not to be justified because it would serve little or no purpose.

12. [...]

I am satisfied that no practical alternative to restriction orders exists which would avert the risks of danger to national security in this case.

³ CTI's submissions of 22 June 2022 at §§19-22.

⁴ [2022-08-19-Restriction-Order-Ruling.pdf](https://www.dawnsturgess.independent-inquiry.uk/2022-08-19-Restriction-Order-Ruling.pdf) (dawnsturgess.independent-inquiry.uk)

24. The Chair indicated as follows in respect of the Operation Verbasco application (emphasis added in bold type):

*13. **These risks apply, I am satisfied, to any police Counter-Terrorism officer or staff, whether still working in that capacity or not.** Such people have, as a result of their training and casework experience, access to secret information which would be of great value to hostile actors, and they are particularly vulnerable to attack by cyber and other means. It may well be that in lower-profile cases, or those not involving direct accusations made against a hostile State, Counter-Terrorism officers may be able to give evidence openly, but the risk to them has to be assessed case by case. I have no doubt that for such people in the present case the twin risks explained are real and marked. Nor do I think there is sufficient public interest in their being named in disclosed documents to justify overriding the risk involved in their names being public at this stage. **I anticipate making a restriction order preventing the disclosure of the names of any such persons, save those publicly avowed by Counter-Terrorism authorities as connected to the 2018 events.** If any are called as witnesses, their cases will be separately considered.*

25. In respect of the HMG application, the Chair materially indicated as follows (emphasis added in bold type):

*14. **I am similarly satisfied that these same risks will apply also to many employed by, or acting for, HMG.** A hostile actor would have a real interest in the UK reaction to the attack which occurred in Salisbury in 2018, in its investigation and in counter-measures taken, and in those who have functions associated with those reactions. It would have a similar interest in anyone amongst government staff who carried out any sensitive role; an obvious example would be any person concerned in the work of intelligence agencies, or other covert activities, but the risk will not be limited to them. General disclosure of the names of persons subject to these risks would indeed present a hostile actor with a convenient directory of suitable targets and/or a list of sensitive functions which would be of considerable value to a hostile actor accumulating intelligence about UK security and government systems.*

15. It does not, however, follow, that these risks, or either of them, apply to everyone who has any kind of central government employment or commission. The material I have already seen demonstrates that some people in those categories fulfilled entirely innocuous and mundane functions. A simple example might be those who assisted in the cleaning up of toxic contamination, but again the case is not limited to that instance. There is no reason to fear hostile actor interest in such people or in their functions. For this reason, it is not appropriate to make a restriction order covering every person who has, or has had, any kind of central government employment or commission, as the presently drafted Order does.

16. I have considered the additional submission of HMG that there is a necessity to make such a general restriction order now, as a precautionary measure. That might enable one to protect all such names from disclosure to core participants, whilst reserving the possibility of removing from the order those found on inspection to have no sensitive function carrying one or other of the twin risks explained. This cannot be a proper basis for making a restriction order unless there is no sensible alternative, because unless there is no alternative the order is not necessary. I have concluded that such an order is not necessary. I have directed that material disclosed to the ILT must be disclosed (on terms preserving security) largely unredacted, although with scope for suggested future redactions to be identified. Unavoidably, all such material has to be assessed by the ILT for relevance to the Inquiry. Unavoidably also, the question of redactions, whether of names or other content, must then be addressed by me in relation to everything potentially relevant, with the help of submissions by HMG, the Police, the ILT and others, before second stage disclosure to core participants. Since that has to be done in any event, the question of which names require redaction can and will be addressed then, alongside other questions of redaction. In the meantime, I shall be content to make a restriction order in relation to names if, but only if, one or more descriptors can be devised which identify government staff who attract one or both of the twin risks identified above.

17. A separate question raised in argument concerns persons who are identified not only by name but also by job descriptions or similar label, where the description or label will readily enable any hostile actor to discover the name. A

*hypothetical example given in OPEN court was a document naming Mr Boris Johnson, alongside the description "Prime Minister". Some such persons will be those considered at the end of paragraph 11 above, for whom restriction orders are inappropriate in any event. But if such a person is in need of protection, it is plainly pointless to make a restriction order preventing disclosure of the name without also preventing disclosure of the job description. **If such a case arises, where I am satisfied that a real risk attaches to the person, I anticipate making a restriction order which prevents disclosure of the description as well as of the name.***

26. In response to the Ruling and in particular paragraph 16 above, GLD on behalf of HMG wrote to ILT on 8 September 2022:

[...] to seek a Restriction Order in respect of the names, identifying details and designations (if appropriate) of all HMG staff and advisers to HMG who have held at any time and/or who currently hold security clearance that allowed or allows them access to material classified as Secret or above, unless the individuals in question have already been officially publicly linked with the events of 2018.

As a result of subsequent discussions with those representing HMG, we understand their position to be that the restriction order should attach to the names etc of those who in fact did have access to classified material, as opposed to merely holding a level of clearance that entitled them to such access.

27. A copy of the letter is appended to these submissions. GLD indicated that it would *'keep under review the question of whether there are further categories of HMG staff who would attract one or both of the twin risks identified'*.
28. It seems to us that it would be premature to address this issue further at the forthcoming hearing and that the appropriate time to return to this will be when Stage 1 disclosure is at or nearing completion and the ILT has completed the

substantial part of its relevance reviews of the Stage 1 material. Only then will it be possible to convert the hitherto more limited and theoretical examples to practical application of the categories proposed by HMG in the letter of 8 October 2022 to the documents identified for Stage 2 disclosure.

Date for Substantive Hearings

29. We have very carefully considered whether it is yet possible to set a realistic date for commencement of the substantive hearings. It is a matter of considerable regret that we do not consider this possible, notwithstanding the substantial progress that has been made since the last hearings. However, the steps outlined regarding Stage 2 disclosure and witness statements above are intended to progress matters sufficiently in the next few months that the Chair will be in a position to set a date at the next hearing. We invite all CPs involved in the disclosure process to devote focus, commitment and resources to ensuring this is possible.

Venue for Substantive Hearings

30. The Chair has previously indicated an intention to conduct OPEN hearings of the Inquiry in Salisbury. The Inquiry Secretariat has been undertaking scoping work relating to possible venues for OPEN hearings and associated practical arrangements. There are, inevitably, a wealth of competing practical, logistical and financial considerations. In the broadest of terms, there are three possible ways in which the OPEN hearings could be configured – that is (a) all OPEN hearings conducted at a venue in Salisbury; (b) some OPEN hearings in Salisbury (focused on the evidence particularly related to the immediate circumstances of Dawn Sturgess’ death), with the remaining OPEN evidence heard in London with a video link to a venue in Salisbury; and (c) all OPEN hearings in London with a video link to Salisbury. Since the time is approaching when final decisions on these matters will have to be made, the Chair would be assisted by any submissions that CPs would wish to make on these alternatives.

Next Hearing

31. To maintain the established momentum of the Inquiry and in particular to ensure that Stage 1 disclosure is complete; to progress Stage 2 disclosure; and - we very much hope - to set a date for the commencement of substantive hearings, we suggest that the Chair schedule another directions hearing for a date in February / March 2023. If the Chair is minded to direct that sample restriction order applications are made, considerations relating to the timing of those applications may affect the date of this hearing.

ANDREW O'CONNOR KC
FRANCESCA WHITELOW
ÉMILIE POTTLE

17 October 2022