

INQUIRY INTO THE DEATH OF DAWN STURGESS

SUBMISSIONS ON BEHALF OF THE FAMILY FOR OPEN PRELIMINARY HEARING ON 24 MARCH 2023

1. The family's proposed directions are attached to these submissions.

Delay

2. At the date of this preliminary hearing, it will be a year since the Inquiry's first preliminary hearing. It has been 1 year and 4 months since the Inquiry was announced, on 18 November 2021. It is approaching 5 years since Dawn's death. The family repeat, without rehearsing, that delay in the Inquiry reaching its conclusions causes significant risks and harm, for a number of reasons.¹
3. The harm caused by the ongoing delay has become acute for Dawn's family: they know no more about Dawn's death than the day the Inquiry was announced; they cannot properly grieve; they are not even able to cling to the hope that learning from Dawn's death may prevent future such tragedies because such learning is far from imminent. That is the relevant, alarming and pressing context within which the family make these submissions.

Restriction order applications

4. HMG and Operation Verbasco state they will not be able to make restriction order (RO) applications until the end of July 2023. They give no explanation as to why that cannot be done now given that such preliminary RO applications will be based on sensitivity categories which HMG and Operation Verbasco have already identified (HMG §3, 13 and 17; Operation Verbasco §3(c) and 11(e)).
5. CTI's submissions at §2(3-5), 7-10, and 22(iii-iv) suggest that preliminary RO applications can be made without further delay. The family invite HMG and Operation

¹ Family submissions dated 4 July 2022 for 15 July 2022 preliminary hearing, §2-6 and 28.

Verbasco to explain why it will take them 4½ months to make RO applications (given that such applications must have been contemplated for getting on for 3 years, or more). If they cannot give a cogent explanation, the family invite the Chair to direct that RO applications are made by 23 May 2023, which will give sufficient time to prepare.

6. Operation Verbasco state that it will not be able to make a RO application at this stage in respect of the draft police report (§11(f)). This is difficult to understand. This RO application will be preliminary only. There will be an opportunity for further applications. All ROs can be varied (s.20(4) Inquiries Act 2005). It is not therefore necessary for the police report to be finalised before the initial RO application. Yet it is likely to considerably assist the process – and avoid delay at the stage of later RO applications – if the initial RO application includes the draft police report.
7. As to further RO applications, Operation Verbasco state at §11(k) that it should be able to make a second RO application by the end of October 2023. That date is used in the family’s proposed directions.
8. When RO applications are made, the family reiterate previous submissions on the approach:
 - a. In adopting a sample-based approach, the sample selection must include not only all the species of security sensitivities that are likely to be relied on, but also (if applicable) a range of documents engaging differing degrees of such sensitivity. That is important in order to avoid a situation in which documents engaging the highest degrees of sensitivity are advanced in the sample application, with the outcome of that sample application then being applied to later documents that do not engage the same degree of sensitivity.
 - b. RO applications should be made in accordance with the Inquiry’s detailed RO protocol. That will assist in ensuring that as much as possible of the grounds and supporting evidence are provided in OPEN and by providing a framework for consideration of Rule 12 (as the Inquiry’s protocol anticipates the use of Rule 12: §§5(b) and 6(c)).

Redactions and gists

9. The family are mystified by HMG's submissions. In particular, HMG submit that it will take HMG until summer 2024 for it to apply redactions and gists to the documents which will be disclosed to CPs (HMG §21-23). HMG suggest it will take over year from its category-based RO application to apply redactions and gists (HMG §13 and 23). That is in spite of the fact that, on HMG's own submission, the "thematic RO application is likely to be applicable to the vast majority of material" and will allow "acceptable redactions" to be applied "more generally to documents before Stage 2 disclosure" (HMG §13-14).
10. HMG has already had nearly 5 years since Dawn's death to perform this task. Surely in that time HMG has identified what it considers is sensitive and should be redacted? HMG ought to explain:
 - a. Whether it has not yet conducted a preliminary review of what is sensitive from the material that is likely to be disclosed. If not, why not?
 - b. If it has conducted the preliminary review, and bearing in mind that HMG has already produced a schedule of sensitivities (HMG §3), why will it take well over a year to conduct a final cross-check of the material ILT identify as relevant?
11. The family readily accept there are a considerable number of documents and they contain some very sensitive information. But it is impossible to understand why it requires more than 6 years to identify sensitive material in relevant documents. Other national security-related inquiries have proceeded to CP disclosure, via RO applications, far more quickly, e.g. see the Manchester Arena Inquiry which examined the terror attack in May 2017 and has just concluded. The reason for the slow pace at which HMG is disclosing material in this Inquiry must be that it is not a priority.
12. HMG suggest that the extensive further delay they are proposing is required because of the risks of mosaic or jigsaw identification (§5-7). The family are concerned that this does not justify the proposed delay, and they invite the Inquiry to subject this to careful scrutiny. That is because:
 - a. The proposed delay would have a significant adverse impact on the Inquiry and on the family.

- b. As noted above, HMG has had years to consider what words will, when taken together, risk national security if disclosed.
 - c. The family invite the Chair to consider the likely volume of open disclosure, and whether well over a year more for a final HMG cross-check is justified, in light of that volume.
 - d. We note that Op Verbasco state, at §11(l), that it will take 9 weeks to cipher 3,000 documents and to cipher and redact 1,000 documents. It is also notable that HMG suggests the family will need about 2 months to read and consider the relevant open material, then to carry out all of the necessary preparations for the final hearing (§28). It is impossible to understand why HMG will need several years in total to identify words which are sensitive in that same open material.
13. For the reasons above, the family invite the Chair to direct that HMG produce to the ILT redacted and gisted material for Stage 2 disclosure (subject to further RO applications) **within 4 months** of the Chair's ruling on the first RO application. If that requires prioritisation and/or greater resources, that should happen.
14. Operation Verbasco suggest at §11(h to j) that HMG and Operation Verbasco will identify redactions consecutively. It is difficult to understand why this cannot be done concurrently: HMG identify redactions on one copy, while Operation Verbasco do so on another copy.

Post-disclosure preparation

15. Stage 2 disclosure of relevant material is the starting point for preparation for CPs (other than those who have already seen the relevant material). The family are unable to take any substantive steps to prepare before that, since they have, to date, been given barely any evidence about the circumstances of Dawn's death.
16. The attached directions indicate that part of Stage 2 disclosure should be made on a rolling basis and by the end of December 2023. It is unknown how much material will be disclosed, but it appears that it will include documents, video evidence, witness statements, and other material. Once CPs have received the relevant material, they should have the opportunity to:
- a. Read and consider it.

- b. Take instructions.
 - c. Identify the witnesses they consider should give evidence.
 - d. Identify witness who should be asked, under Rule 9, to produce a witness statement, or a further witness statement.
 - e. Identify any redactions or gists which appear inappropriate.
 - f. Identify any gaps in the disclosure: material which ought to be disclosed but which has not been.
 - g. Identify any further inquiries which ought to be made.
 - h. Consider whether expert(s) should be instructed.
 - i. Prepare submissions about (c to h) above.
17. Without knowing how much will be disclosed and when, it is very difficult to estimate how long this will take. The more that is disclosed early on a rolling basis, and the less material there is, the less time will be required. The family suggest that CPs should be given 2-3 months to complete the above process and produce submissions about (c to h) above. There ought then to be a hearing to resolve any matters in dispute, together with anonymity and special measures applications.
18. There should be no less than 3 months after the determination resulting from that hearing before the start of the evidence hearings. This is to allow for preparation including, *if directed*:
- a. An expert/experts to be instructed and reports to be produced.
 - b. Further inquiries to be carried out and material disclosed.
 - c. Redactions or gists amended.
 - d. Further witness statements and disclosure to be obtained and disclosed.
 - e. Any new material from (a to d) above to be considered by CPs.
 - f. Ciphers to be added to witness statements.
 - g. Further submissions to be made, such as whether any of the new witnesses should be called.
19. It may be that the Chair does not direct some or all of these steps. But it is important that sufficient time is made available so that, if the Chair does direct these steps take place, that can happen without requiring an adjournment of the evidence hearings.

20. There seems to be no point in ILT producing a witness list and list of issues until Stage 2 disclosure has been made, since CPs will have no basis to make submissions about those lists until they have received and digested the Stage 2 material.
21. HMG and Operation Verbasco appear to suggest that the period of time between disclosure and the final hearing should be around 2 months, in about mid-2024 (HMG §28; Operation Verbasco §12). This would mean that HMG and Operation Verbasco had 6 years to consider what documents they would disclose. There would then be 2 months for the family to read and consider all of the disclosure and carry out every necessary preparatory step. This is insulting, unrealistic and very far from balanced. HMG and Operation Verbasco appear to want the family to have no real input into preparation for and participation in the hearing into Dawn's death.

International material

22. Operation Verbasco state at §10 that rules of law presently prevent Operation Verbasco from disclosing 'International Material' to the Inquiry. The family invite Operation Verbasco (or CTI) to explain the legal issue to CPs, so that CPs can make submissions about it. This is consistent with the requirement for family participation in article 2 ECHR and CP participation under the Inquiries Act 2005/Inquiry Rules 2006, assuming there is no RO application contemplated in respect of the legal issue involved.

Non-sensitive disclosure

23. At the last OPEN preliminary hearing on 11 November 2022, the Chair helpfully indicated that steps should be taken to identify and disclose non-sensitive material over which ROs would not be made.² This was reflected in §3(b), 4(b) and 5(b) of the Chair's Directions that followed the 11 November hearing: the purpose of HMG, Operation Verbasco and Wiltshire Police providing the Inquiry with lists of documents in respect of which no RO application will be made was to ensure onward disclosure to CPs. Any outstanding non-sensitive disclosure should be produced as soon as possible to minimise further delay.

² Transcript 49/5-17 and 63/8-23.

Disclosure update

24. HMG state that witness statements will provide a narrative and chronology, so reducing the need for underlying documents to be disclosed (§11). The family submit that this approach is not appropriate. There is a real risk that relevant content is mis-summarised, sanitised or omitted altogether. Witness statements should not replace disclosure of relevant underlying material.

Draft hearing protocol

25. At §11 of CTI's submissions, CPs were invited to provide any observations on the draft hearing protocol. The family have no observations to make.

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13 March 2023