

IN THE WILTSHIRE AND SWINDON CORONER'S COURT

BEFORE THE RIGHT HONOURABLE THE BARONESS HALLETT DBE

IN THE MATTER OF THE INQUEST TOUCHING THE DEATH OF DAWN STURGESS

**WRITTEN SUBMISSIONS OF COUNSEL TO THE INQUEST
FOR THE PRE-INQUEST HEARING ON 22 SEPTEMBER 2021**

Introductory

1. This is the second pre-inquest review (“PIR”) hearing for the inquest into the death of Ms Dawn Sturgess, who died on 8 July 2018. The first PIR took place earlier this year, on 30 March 2021.
2. The Coroner made a series of directions at the first PIR, and subsequently issued an explanatory ruling dated 8 April 2021. Copies of the directions and the ruling were sent to Interested Persons (“IPs”), and both documents can be found on the inquest website: <https://dawnsturgessinquest.org.uk>.
3. Significant progress has been made in the 4½ months since the first PIR. Sensitive Government (“HMG”) documents have been reviewed both by the Inquest Legal Team (“ILT”) and by the Coroner with a view to expediting resolution of the inquest / inquiry issue. Requests for disclosure have been made and the ILT has engaged extensively with document providers in order to progress the disclosure exercise. It has become apparent that the special sensitivities of this case will require an unusually complicated – and, therefore, time-consuming – process for both stage 1 (provision of documents from IPs to the Coroner) and stage 2

(disclosure by the Coroner to IPs) disclosure. However, progress is now being made and it is expected that the process will gather pace in the coming months.

4. These submissions address the following issues:
 - a. Inquest or Public Inquiry?
 - b. Disclosure
 - c. Scope
 - d. Substantive hearings / venue / timings
 - e. Next PIR

5. The Coroner has repeatedly stated that she does not wish these proceedings to be delayed unnecessarily. It is important that momentum is maintained. With that in mind, we intend to ask the Coroner to list a further PIR before Christmas, on 17 December 2021.

Inquest / Inquiry

6. In written submissions dated 28 February 2021 and served in advance of the first PIR, we raised the possible need to convert these inquest proceedings into a public inquiry established under section 1 of the Inquiries Act 2005. We advanced a number of detailed arguments in this regard, which we do not repeat here. In summary, we submitted that if the issue of possible Russian State responsibility for Dawn Sturgess's death was to be included within the scope of the inquest, then (a) it was most unlikely that it would be possible to conduct a full and fair investigation into that issue solely on the basis of evidence that could be heard in public session; and (b) that there were therefore strong grounds for making an immediate request to the Secretary of State for the Home Department ("the Secretary of State") for conversion to an inquiry.

7. The Secretary of State's position (again, in summary) was that an immediate request for conversion would be premature. Those acting for the Secretary of State indicated that a set of sensitive overarching reports could be made available

for inspection by ILT and by the Coroner, and that any request for conversion should be deferred until after that inspection had taken place. The Secretary of State's written submissions added that (paragraph 14):

“If it is the case that, on sight of certain material, the Coroner takes the view that it is clearly too sensitive to be shared openly, but also that it is needed for her investigation, at that point, the Coroner may need to request conversion to an inquiry, without first going through all of the formal stages required by the PII application process.”

8. In further written submissions dated 26 March 2021 and filed prior to the hearing, we agreed that this was an appropriate course to take and invited the Coroner to give directions providing for the inspection of the overarching reports within a short period.

9. The Coroner heard oral submissions on this issue at the first PIR, and adopted the course that was proposed. Paragraph 7 of the directions made at the hearing provided that:

“The Secretary of State for the Home Department is to make accessible to the Inquest Legal Team for review a set of overarching reports, within 3 weeks (by 20th April 2021), with liberty to apply if further time is required.”

10. The Coroner addressed this issue further in her Ruling of 8 April 2021. At paragraph 51 of the Ruling, she summarised what was then her view on this issue in the following terms:

“I think it is highly likely that I too will reach the stage when I must invite the establishment of a public inquiry but as yet I have a limited knowledge of the nature and extent of the material. I shall therefore reserve my decision until the Inquest Legal Team and I have a better understanding of the material to be disclosed.”

11. Since that time, the sensitive ‘overarching reports’ have been reviewed on a number of occasions by members of the ILT. As part of that process, further documents have been requested from and provided by HMG. Finally, in July, the Coroner inspected all the sensitive documents in this category that had been made available to ILT.

12. In summary, therefore, the process suggested by those acting for the Secretary of State at the last hearing has been completed. It is right to record that this has involved a considerable amount of work on the part of the Secretary of State's legal team and members of staff at the government departments involved.

13. Having inspected the sensitive overarching reports, the Coroner has reached a clear view on the inquest / inquiry issue. The Coroner considers that these proceedings should now be converted into an inquiry. The Coroner's reasoning is set out in detail in her letter to the Secretary of State dated 29 July 2021. A copy of that letter is appended to these submissions. In the letter the Coroner expresses this view in provisional terms. As she explains, however, that was simply because she did not wish to express a concluded view (and make a formal request for conversion) before hearing submissions from IPs, in particular Dawn Sturgess's family. Paragraphs 14 and 15 of the letter read:

“14. Having reviewed these documents, I have no doubt that they are relevant (in some respects highly relevant) to the issues of scope set out at paragraphs 3(b), (c) and (d) above. I am well aware of the early stage of these proceedings, and I make it clear that I am not pre-judging any applications that might in due course be made to me. That said, having considered these documents with care, it seems to me to be very likely that, if these proceedings remain as an inquest, most of the content of the documents will have to be excluded by operation of Public Interest Immunity and it will not be possible to provide open gists capturing the important and relevant detail (in particular that relating to issue 3(b)) that the documents contain. In that eventuality – an eventuality that, as I have said, I regard as very likely to arise – it would be impossible for me to discharge my duty to conduct a full, fair and fearless investigation into the circumstances of Dawn Sturgess' death.

15. In the circumstances, my provisional view is that I will need to ask that you take steps to establish, a 2005 Act public inquiry (an inquiry that I would, of course, be happy to chair). Such an inquiry should, as a minimum, be asked to ascertain how, where and in what circumstances Ms Sturgess came by her death on 8 July 2018. Broad Terms of Reference to reflect these purposes would be consistent with the approach taken in the Litvinenko Inquiry. A

statutory inquiry would permit me to allow some evidence to be heard in closed session from which members of the public and Core Participants may be excluded. Although such a closed hearing would, in usual circumstances, be undesirable, the national security concerns in this case mean that the sensitive evidence is likely only be able to be examined and tested in a closed hearing, or not at all.”

14. The Coroner invited the Secretary of State, in light of all the matters set out in her letter, to indicate her provisional view as to the conversion of these proceedings into an inquiry. The request was that the Secretary of State provide this provisional view in advance of the next PIR. It was explained that the purpose of the request was to enable interested persons to make meaningful submissions at the next hearing (see generally paragraphs 4 and 17 of the Coroner’s letter).
15. The Secretary of State responded by brief letter dated 16 August 2021. The letter stated, materially, as follows:

“With regret, I am unable to provide the provisional indication you seek.

As I hope you will understand, it would be inappropriate for me to consider whether or not to establish a public inquiry ahead of any request from you to do so. I can assure you, though, that I will consider any such request you choose to make with urgency and care.”
16. A copy of the Secretary of State’s letter is attached to these submissions.
17. It is a matter of considerable regret that the Secretary of State has not engaged more constructively with the Coroner’s request. The Coroner has now reached a clear view as to the need for an inquiry, and it would assist all involved to know the Secretary of State’s provisional view on this issue. The Secretary of State’s assertion that it would be “*inappropriate*” for her to provide the provisional indication sought and that she is therefore “*unable*” to meet the Coroner’s request is both inaccurate as a matter of public law and also inconsistent with the Secretary of State’s own actions in relation to the current Manchester Arena Inquests / Inquiry, where she included in her Public Interest Immunity (“PII”)

certificate a voluntary indication that she would be minded to convert the proceedings into an inquiry if asked to do so (an indication subsequently repeated orally and in writing by counsel acting on her behalf). That indication provided helpful context (as had been the intention in these proceedings) for submissions on the question of conversion that were then made by interested persons to Sir John Saunders, the coroner in that case, and it was also referred to in Sir John's subsequent letter formally requesting the establishment of an inquiry. A copy of that letter, dated 27 September 2019, is attached to these submissions (see in particular the second paragraph).

18. As stated in her letter, the Coroner will make a final decision on whether to request the establishment of an inquiry having heard submissions at the PIR. We note the Secretary of State's commitment to dealing with any request that is made with urgency.
19. If the Coroner, having carefully considered the written and oral submissions of IPs, makes a formal request to the Secretary of State for conversion to an inquiry, we submit that in her letter of request she ought to suggest that the following broad Terms of Reference (which are modelled on the Terms of Reference of the Litvinenko Inquiry) should be set:
 - (1) Subject to paragraph 2 below, the Chair is to conduct an investigation into the death of Dawn Sturgess in order to:
 - a. Ascertain, in accordance with section 5(1) of the Coroners and Justice Act 2009 who the deceased was; how; when and where she came by her death; and the particulars (if any) required by the Births and Deaths Registration Act 1953 to be registered concerning the death;
 - b. Identify, so far as consistent with section 2 of the Inquiries Act 2005, where responsibility for the death lies; and
 - c. Make such recommendations as may seem appropriate.

- (2) That investigation is to take into account the investigations which have already been conducted by the Coroner (Lady Hallett).

Disclosure process

20. Introductory remarks

- a. Disclosure is not as far advanced as the ILT would wish. The ILT has so far received a small volume of fresh material by way of stage 1 disclosure relative to that which it expects to receive, and it has not yet been possible to disclose this material to IPs by way of stage 2 disclosure. The frustration that this will undoubtedly have caused is understood.
- b. However, progress has been made. Considerable work has been undertaken, both by ILT and document providers, and further detail is set out below.
- c. It has become apparent that the range of security sensitivities relating to this inquest will be a significant delaying factor in the disclosure process. Categories of documents need to be handled in different and particular ways (in particular, we have been asked to inspect / handle documents in accordance with protocols that are far more demanding than their classification would ordinarily require). We are told that a great many documents will need to be reviewed even more carefully than is usual for security sensitivities, which will involve consultation with particular or multiple individuals or departments. There are more processes and authorities required to check what is being disclosed. There may also be applications for anonymity / cipherng. These issues apply to a great proportion of documents to be disclosed by the Police and HMG – the two most significant document providers both in terms of quantity of material and also in terms of the relevance of the material they hold to the lines of inquiry.
- d. It is however, anticipated that stage 2 disclosure will at least commence shortly after the forthcoming PIR. We invite IPs, and in particular HMG and the Police, to set out in their written submissions for the PIR as much

detail as possible regarding the particular processes that they consider are necessary to address security sensitivities in undertaking stage 1 disclosure, as well as realistic expectations for the progress and conclusion of the full disclosure exercise.

21. Work undertaken by ILT:

- a. Requests for stage 1 disclosure were made by STI immediately after the last hearing to the following:
 - Birnberg Pierce (Re. The family of Dawn Sturgess, and Charlie Rowley)
 - Government Legal Department (“GLD”) (Re. Her Majesty's Government, including: the Home Office; the Cabinet Office; the Department of Health and Social Care; the Defence Science and Technology Laboratory; the UK Health Security Agency / Public Health England; GCHQ; MI5; and, MI6)
 - Metropolitan Police Service (“MPS”)
 - Thames Valley Police
 - Wiltshire Police
 - South Western Ambulance Service NHS Foundation Trust (“SWASFT”)
 - Salisbury NHS Foundation Trust
 - Wiltshire Air Ambulance Charitable Trust
 - Wiltshire Council
 - Bellingcat
 - Crown Prosecution Service (“CPS”)

- b. A document management platform (Relativity) has been procured and work has been undertaken to set up coding for incoming disclosure.

- c. STI have liaised with the following document providers variously through email, telephone and video correspondence and meetings, with a view to facilitating and progressing disclosure:
- Operation Verbasco (the joint response of CTPSE, MPS and Thames Valley Police to the inquest)
 - Wiltshire Police
 - GLD
 - Wiltshire Air Ambulance
 - Salisbury NHS Foundation Trust
 - SWASFT
 - Wiltshire Council
 - Bellingcat
 - CPS
- d. ILT undertook a preliminary inspection of HMG documents in order to make a provisional assessment of relevance. The documents emanated from the following Government departments and were reviewed by appointment in a secure environment due to security sensitivities:
- Home Office
 - Cabinet Office
 - Foreign Commonwealth and Development Office
 - Ministry of Defence
 - Department for Environment, Food and Rural Affairs
 - Public Health England
 - Department of Health and Social Care
 - Government Office for Science

Following this initial review, STI have recently made a formal request in writing to the Secretary of State for the documents to be made available for a full relevance review to be conducted by ILT. As part of that request, the Secretary of State has been asked to bring all HMG material

together in one place to facilitate the review process. It is understood that the Secretary of State is currently considering PII issues in relation to this material. It is apparent to us that there are some fundamental questions that will need to be addressed as to how this material may be provided to IPs by way of stage 2 disclosure given security sensitivities that have been explained to us.

22. The following have responded to ILT's disclosure requests, providing limited stage 1 disclosure:
- Wiltshire Air Ambulance
 - Salisbury NHS Foundation Trust
 - Birnberg Pierce
 - CPS (nil return at present due to their being no live criminal prosecution)
 - SWASFT
 - Wiltshire Council
 - Operation Verbasco
23. This material has been reviewed by STI and uploaded to Relativity. It is anticipated that it will be provided to IPs in advance of the next PIR in December once the requested final reviews for security sensitivities have taken place and police (and any other IP) have confirmed whether any applications for anonymity/ciphering/redactions will be made.
24. Again, we invite the police, in their written submissions for the PIR, to explain the processes they have in place to address these matters with timescales where possible. Operation Verbasco has provided to ILT a provisional timeline for stage 1 disclosure. ILT anticipates that it will require on average 2 weeks from the date of receipt of stage 1 disclosure, to review and confirm documents required for stage 2 disclosure. This process will take place by tranche, on a rolling basis, to minimise delay. We invite Operation Verbasco to confirm anticipated timescales

required for their final security reviews and applications for redaction/anonymity following these decisions by ILT.

25. ILT anticipate that IPs will start to receive stage 2 disclosure material in the next few months. We will endeavour to provide as much disclosure to IPs as possible within this timescale, but, given the exceptional security sensitivities attaching to this matter, it is unrealistic to expect that stage 2 disclosure will be nearing completion by Christmas. That is why we have suggested that the Coroner schedule a further PIR in December – to monitor disclosure and to maintain progress in the inquest. A request by the Coroner for conversion to an inquiry, and the Secretary of State’s urgent consideration of the same, may well impact upon disclosure and so the progress of this issue too will be kept under close review.
26. Finally in relation to disclosure, signed confidentiality undertakings must be provided to the Coroner by IPs in order to ensure the confidentiality of inquest documents that they receive, including submissions such as these and, in due course, stage 2 disclosure. Blank undertakings were circulated following the last PIR (a slightly amended form of words was agreed with GLD and with the MPS to enable them to use disclosed documents in performing their ongoing investigative duties). Signed undertakings are still awaited from MPS, GLD and SWASFT, and it is hoped that they will be provided prior to the PIR. In the meantime, these submissions are served confidentially for the purposes of the inquest proceedings only.

Scope

27. In her Ruling following the last PIR, the Coroner set provisional scope. Subject to any contrary representation by IPs, we submit that it is unnecessary to review the issue of Scope at this PIR or prior to stage 2 disclosure. If, in the meantime, there is a final request and decision by the Secretary of State to convert the inquest to a Public Inquiry, then this issue will be substituted with Terms of Reference and a List of Issues.

Substantive hearings – venue / timing

28. In accordance with the directions following the first PIR, STI have made enquiries regarding the availability of suitable accommodation in Salisbury to hold public hearings there. There has been provisional agreement with the City Council that the Guildhall in the centre of Salisbury will be made available for hearings. It is likely that some hearings will also be held in London. The question of how hearings are to be ‘split’ between Salisbury and London will be reviewed when matters are further advanced.

29. It had been hoped that it would be possible to hold substantive hearings towards the end of next year. Whether that will be possible remains uncertain. It depends on a number of factors. One such factor is the timing of the inquest / inquiry decision and consequential procedural steps. Another significant factor, and probably the most significant, is the disclosure process, including related matters such as applications for PII and/or restriction orders. We propose to review these issues at the December PIR hearing.

Next PIR

30. In order to progress the Inquest as efficiently as possible (and as indicated above), we suggest that the Coroner schedules a further PIR on 17 December 2021. It is anticipated that by this stage, stage 2 disclosure will be underway.

ANDREW O’CONNOR QC
FRANCESCA WHITELAW
EMILIE POTTLE

24 August 2021