

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 17 DECEMBER 2021**

Introduction

1. This is the third 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 on 30 March 2021 and the second on 22 September 2021.
2. The Coroner made a series of directions at the first PIR, and subsequently issued an explanatory ruling dated 8 April 2021. She made further directions at the second PIR. Copies of the directions and the ruling were sent to Interested Persons (“IPs”), and these documents can be found on the inquest website: <https://dawnsturgessinquest.org.uk>.
3. Substantial progress has been made in the period of just less than 3 months since the last PIR.
4. Firstly, following the Coroner’s request at the last PIR, on 18 November 2021, the Secretary of State for the Home Department (“the Secretary of State”) agreed to establish a public inquiry into the death of Ms Sturgess. She has invited the Rt Honourable the Baroness Heather Hallett DBE to chair that inquiry. We thank the

Secretary of State for reaching a decision within the timescale requested at the last PIR.

5. Secondly, the Inquest Legal Team (“ILT”) commenced making disclosure to IPs on 4 November 2021. The ILT has, in parallel to this, continued to engage extensively with IPs, and in particular with Operation Verbasco and the Government Legal Department (“GLD”), which between them hold the greatest volume of material for disclosure, to maintain the progress that is being made in the disclosure exercise.
6. As we observed in our previous submissions of 24 August 2021 at §3, the special sensitivities of this case have required and will continue to 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, as anticipated at the previous PIR, stage 2 has now commenced; the disclosure process is gathering pace; and the decision to convert the inquest to a public inquiry is likely to assist, removing as it does the need for Public Interest Immunity applications. There are, however, a number of procedural steps to be taken to ensure that the transfer from inquest to public inquiry is conducted in a timely and efficient manner, and we address these below.
7. The Coroner’s intention is that substantive inquiry hearings will commence in late February 2023. Whilst we are aware of the family’s desire to hold the hearings as soon as possible, we consider that to be the earliest realistic start date in light of the procedural steps that need to be taken in advance of the hearings. As set out below, we hope that the formal steps towards establishing the inquiry can now be conducted speedily and that the first hearing of the inquiry can take place on **24 February 2022**. Our intention is that, at that hearing, detailed directions will be given leading to the commencement of substantive hearings in February 2023.

Public Inquiry

(i) Update

8. At the last PIR on 22 September 2021, having heard submissions from the family in support of conversion and no contrary submissions from any other IP, the Coroner formally requested that the inquest be converted to a public inquiry. This request was confirmed in a letter to the Secretary of State dated the same day.

9. By letter dated 16 November 2021 the Secretary of State indicated that she had decided to establish a public inquiry and invited the Coroner to chair the inquiry. On 18 November 2021 the Secretary of State made the following statement:

I am announcing today the Government's decision to establish an inquiry under the Inquiries Act 2005, to investigate the death of Dawn Sturgess in Amesbury on 8 July 2018, after she was exposed to the nerve agent Novichok.

The inquiry will be chaired by the honourable Baroness Heather Hallett DBE.

Baroness Hallett is a Crossbench Life peer who was nominated by the Lord Chief Justice to lead the investigation and inquest into Dawn Sturgess' death. In accordance with section 3(1) of the Act, this inquiry will be undertaken by Baroness Hallett alone as Chair.

The Government is establishing an inquiry after careful consideration of advice from Baroness Hallett that this is necessary to permit all relevant evidence to be heard. This is an important step in ensuring that the family of Dawn Sturgess get the answers they need.

The current inquest will be adjourned after the establishment of the inquiry.

I will place a copy of the terms of reference for the inquiry in the Libraries of both Houses.

The inquiry's investigations will be a matter for the Chair. As the sponsoring department, the Home Office will provide support and ensure that the inquiry has the resources that it needs.

This statement and all material correspondence relating to this issue is available on the inquest website: <https://dawnsturgessinquest.org.uk>.

(ii) Establishment of public inquiry

10. As stated above, the Coroner's intention is that the substantive inquiry hearings will commence in late February 2023. In order for this date to be effective, a series of immediate and longer-term processes will need to be completed.
11. There are immediate steps to be taken by the Home Office to establish the inquiry and enable a first hearing to take place.
12. One such step is the appointment of Solicitors and Counsel to the Inquiry. The ILT is currently liaising with the Secretary of State's officials to meet the Government's procurement requirements and to facilitate the relevant appointments.
13. It will also be necessary for a Secretary to the Inquiry to be appointed. The Secretary is responsible for the administration of the inquiry, working with Solicitors and Counsel to the Inquiry. The Secretary's primary responsibility is for managing the inquiry's finances subject to the Chair's overriding duty in this regard.
14. Finally, as part of these arrangements, a formal setting up date for the inquiry will need to be identified. We hope that these matters can be progressed speedily to enable a first hearing in the inquiry to take place on **24 February 2022** – we imagine either on or shortly after the setting up date.

(iii) Immediate Practical Matters

15. We anticipate that the Chair will wish to deal with the following immediate practical matters at the first hearing of the inquiry.

(a) Suspension of the inquest

16. As the Secretary of State's statement makes clear, the purpose for which the inquiry is to be established is to serve as a substitute for the inquest. It follows that it will be necessary to suspend the inquest once the inquiry has been set up. It will be necessary in this regard to consider the terms of Schedule 1 of the Coroners and Justice Act 2009.

(b) Designation of Core Participants

17. Pursuant to r5 of the Inquiry Rules 2006 ("the 2006 Rules"), the Chair can designate a person as a core participant ("CP") at any time during the course of an inquiry, provided the person consents to being so designated. In deciding whom to designate, the Chair is obliged to consider whether the person (i) played, or may have played, a direct and significant role in relation to the matters to which the inquiry relates; (ii) has a significant interest in an important aspect of the matters to which the inquiry relates; or (iii) may be subject to explicit or significant criticism during the inquiry proceedings, or in the report, or in any interim report.
18. In this inquiry, we submit that, subject to agreement by each proposed CP, the Coroner ought to designate all those who have been recognised as IPs in the inquest as CPs in the first instance, without the need for a formal application. If any other person intends to apply for CP status, the ILT would welcome any such application in advance of the next hearing.

(c) Funding Applications

19. The Chair has responsibility within the inquiry for its expenditure and she will accordingly have regard to the need to avoid any unnecessary cost when making any decision as to the conduct of the inquiry.
20. In accordance with this duty, the Chair will ensure that arrangements are made pursuant to section 40 of the Inquiries Act 2005 ("the 2005 Act") and rules 20-34 of the 2006 Rules, that is, to enable her to exercise her power to make awards of

legal and other expenses to CPs and others. Prospective CPs are invited to consider preparing any relevant applications as soon as possible, as we will be requesting these with a short turnaround at the first preliminary hearing.

(d) Further Undertakings

21. IPs in the inquest have been required to sign confidentiality undertakings in order to receive disclosure. Further undertakings specific to the inquiry will be prepared and will need to be signed by CPs so that they may receive disclosure in the inquiry. Statements of approach will, in due course, set out the inquiry's processes regarding disclosure and publication of information.

(iv) Further Procedural Matters

22. Once the inquiry is established, further procedural matters will form the agenda for the preliminary inquiry hearing, however, we highlight some of the key processes now, so that IPs/proposed CPs have advanced notice and can assist with the work required to progress the relevant issues.

(a) Requests for Disclosure

23. A summary update regarding disclosure is set out below. We intend that, at present, existing requests for disclosure will be rolled over into the inquiry. However, disclosure will be kept under constant review by the ILT and there will be further requests. Once the Terms of Reference, List of Issues, procedures documents and costs protocol are finalised, STI will write to relevant individuals and bodies with formal requests for documentary or other evidence.¹

(b) Requests for Witness Evidence

24. As disclosure begins to gather momentum, the ILT has started to draw up a list of potential witnesses. This is in its very early stages and it has become apparent that it will assist and speed the process, if the Metropolitan Police Service ("MPS") were to

¹ Inquiry Rules 2006, r9(2)

provide an overarching corporate witness statement from a senior officer involved in the investigations, setting out the narrative of events leading to Ms Sturgess' death and the investigations that took place regarding the Skripal poisonings and Ms Sturgess' death. The ILT therefore held a meeting with the MPS on 30 November 2021 to make this request. The MPS has agreed to prioritise this matter and we anticipate that they will wish to address this further in their submissions. It is fully anticipated that there will need to be OPEN and CLOSED versions of this statement.

25. Once the statement is received and reviewed, and the provisional witness list more developed, STI will make contact with each individual. It is too early to provide a timescale for this, but an update will be provided at the next hearing.

(c) Disclosure Update

26. We repeat the comments we made at §20 of our written submissions of 24 August 2021, that due to the particular security sensitivities in these proceedings, disclosure is not as advanced as the ILT would wish. However, significant work has been undertaken by the ILT and document providers and the ILT has received a quantity of further material by way of stage 1 disclosure. Also, in accordance with ILT's expectations set out at the last PIR, stage 2 disclosure has commenced, with two tranches of material being disclosed to IPs, on 4 November 2021, and 19 November 2021 respectively.

27. By way of update to the work undertaken by ILT as described at §21 of our written submissions of 24 August 2021:

- a. ILT has received further stage 1 disclosure from:
 - Op Verbasco (c.1686 documents / 6,292 pages in three tranches) (ILT reviewed these documents and provided highlighted indices identifying those for priority disclosure);
 - GLD (c104 documents / 472 pages)

- b. ILT has continued to conduct regular meetings and videoconferences, and engage in correspondence with IPs, in particular, GLD and Op Verbasco to monitor disclosure workflows. The latter has established a performance dashboard to track the progress of disclosure and witness management and will share fortnightly with the ILT the following metrics:
- number of documents in CTP’s possession
 - number of documents scheduled
 - number of documents awaiting security reviews
 - number of relevant witnesses contacted
 - number of witnesses requesting anonymity.
- c. Following preliminary inspection of documents from GLD at a secure location, STI made two formal requests for stage 1 disclosure of the vast majority of documents reviewed, on 12 October 2021 and 9 November 2021. The documents emanated from the Home Office; the Cabinet Office; the Foreign, Commonwealth and Development Office, the Ministry of Defence, the Department for Environment, Food, and Rural Affairs, Public Health England, the Department of Health and Social Care and the Government Office for Science. The correspondence included requests for inspection of further material referenced within the documents already inspected.
- d. On 4 November 2021, ILT commenced stage 2 disclosure to IPs. Tranche 1 comprised 101 documents / 414 pages of open source documents from GLD and STI (public statements, interviews and articles made by ministers, HMG departments, police and others in relation to Salisbury and Amesbury).
- e. On 19 November 2021 ILT provided a second tranche of stage 2 disclosure to IPs. This consisted of 46 witness statements provided by Op Verbasco originating from the police investigation into Dawn Struggess’

death and two open source documents provided by GLD. We remind IPs that all stage 2 disclosure is subject to the confidentiality undertaking and conditions set out in ILT's letter of 19 November 2021 to IPs.

28. The material that has yet to be disclosed to IPs is currently being reviewed for relevance and sensitivities. As we foreshadowed in our written submissions of 24 August 2021 at §25, IPs have begun to receive stage 2 disclosure but, given the exceptional security sensitivities pertaining to this matter, it was always unrealistic to expect stage 2 disclosure to be nearing completion by Christmas. This PIR was intended to monitor disclosure and maintain progress in the inquest. It is not yet possible to provide a timescale for completion of disclosure but now that the inquiry start date has been set, IP/CPs will need to resource their work with that focus.

(e) Scope / Terms of Reference

29. In her Ruling following the first PIR, the Coroner set provisional scope for the inquest. ILT uploaded to the inquest website a document setting out provisional scope on 4 November 2021. Now that there has been a decision by the Secretary of State to convert the inquest to a public inquiry, this issue will be substituted with Terms of Reference and a List of Issues. In our written submissions of 24 August 2021 at §19 we proposed the following as regards the ToR:

- (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).
30. By her letter of 16 November 2021 the Secretary of State indicated that she agreed that the ToR should build on the requirements of Section 5(1) of the Coroners and Justice Act 2009 as CTI had previously set out.
31. Subject to any contrary representation by IPs, we submit that it is unnecessary to consider this matter prior to stage 2 disclosure nearing completion and/or the formal establishment of the public inquiry.

(f) Restriction Order / Restriction Notice

32. By Section 18(1) of the 2005 Act, there is a presumption that a public inquiry will be held in public. However, ss19 and 20 of the 2005 Act and r12 of the 2006 Rules establish a regime of ministerial restriction notices and inquiry restriction orders to allow documents or information to be withheld if it is in the public interest. The sections provide as follows:

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.

20 Further provisions about restriction notices and orders

(1) Restrictions specified in a restriction notice have effect in addition to any already specified, whether in an earlier restriction notice or in a restriction order.

(2) Restrictions specified in a restriction order have effect in addition to any already specified, whether in an earlier restriction order or in a restriction notice.

(3) The Minister may vary or revoke a restriction notice by giving a further notice to the chairman at any time before the end of the inquiry.

(4) The chairman may vary or revoke a restriction order by making a further order during the course of the inquiry.

(5) Restrictions imposed under section 19 on disclosure or publication of evidence or documents (“disclosure restrictions”) continue in force indefinitely, unless—

(a) under the terms of the relevant notice or order the restrictions expire at the end of the inquiry, or at some other time, or

(b) the relevant notice or order is varied or revoked under subsection (3), (4) or (7).

This is subject to subsection (6).

(6) After the end of the inquiry, disclosure restrictions do not apply to a public authority, or a Scottish public authority, in relation to information held by the authority otherwise than as a result of the breach of any such restrictions.

(7) After the end of an inquiry the Minister may, by a notice published in a way that he considers suitable—

(a) revoke a restriction order or restriction notice containing disclosure restrictions that are still in force, or

(b) vary it so as to remove or relax any of the restrictions.

(8) In this section “restriction notice” and “restriction order” have the meaning given by section 19(2).

33. A restriction notice may be made at any time before the end of an inquiry, including before an inquiry has been set up and so we invite the Secretary of State to give early consideration to this issue. A restriction order may only be made once the inquiry has been set up. We intend to provide and invite submissions as to the arrangements and timings both for restriction order applications at the next hearing, and for applications for anonymity and special measures. The Secretary of State will also be invited to make any relevant submissions concerning whether and to what extent restriction notices have been considered or are envisaged.

Substantive hearings – venue / timing

34. As we confirmed at the last PIR, there has been provisional agreement with the City Council that the Guildhall in centre of Salisbury will be made available for public hearings. It is very 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.

Next PIR

35. In order to progress the conversion of this inquest into an inquiry as efficiently as possible, we suggest the Coroner schedule a further hearing for **24 February 2022**. It is anticipated that by this stage, substantial further progress will have made regarding stage 2 disclosure and the inquiry will have been formally established.

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EMILIE POTTLE

1 December 2021