IN THE WILTSHIRE AND SWINDON CORONER'S COURT Case No 1380/18

IN THE MATTER OF THE CORONERS AND JUSTICE ACT 2009
AND IN THE MATTER OF CORONERS (INVESTIGATIONS) REGULATIONS 2013
AND CORONERS (INQUESTS) RULES 2013

RE: THE INQUEST TOUCHING UPON
THE DEATH of **DAWN KELLY STURGESS**

RULING IN RELATION TO THE APPLICATION OF ARTICLE 2 EUROPEAN CONVENTION ON HUMAN RIGHTS AND SCOPE

[n.b – This ruling has been approved by the court in its entirety for handing down (subject to editorial corrections)]

Introduction & Background

1. In this ruling I have covered the issues and the law in detail and have tried to use plain English where possible. The reason for this is that I have recognised 2 individuals from Russia as Interested Persons under section 47 Coroners and Justice Act 2009. They may or may not wish to engage in the process and who at this stage have no legal representation and have not given any indication that they wish to participate. Also, the family and Mr Rowley may wish to read for themselves my ruling and I want them to understand my reasoning although the issues relating to the application of Article 2 of the European Convention on Human Rights can be technical. Additionally, it is my intention, due to the interest shown by the media in particular, to make a copy of this ruling available via the Wiltshire Council Press Office.

2. Dawn Sturgess died on 8 July 2018 in Salisbury, Wiltshire in suspicious circumstances. I was notified personally about her death the same day and I commenced a Coronial Investigation the same day pursuant to section 1(1) Coroners and Justice Act 2009. An inquest was formally opened and adjourned into Ms Sturgess' death on 19 July 2018 and having regard to Rule 5(2) Coroners (Inquests) Rules 2013, I listed a Pre-Inquest Review ("PIR") to take place at 1000 on 16 January 2019. Following receipt of a letter from the Crown Prosecution Service ("CPS") on 15 October 2018 I suspended the investigation

into Ms Sturgess' death pursuant to Schedule 1 Part 1 para 1(2)(a) Coroners and Justice Act 2009 on the basis that the CPS had requested the suspension as there was an ongoing criminal investigation and that a person(s) may be charged with a homicide offence. A fresh PIR date was then listed for 1400 on 15 April 2019. A further request seeking a further period of suspension on the same grounds was made by letter from the CPS on the 15 March 2019. I agreed to the request and re-listed the PIR for 1000 on 18 October 2019.

3. On 9 August 2019 I wrote to the CPS indicating that I would need to undertake some preliminary work for the PIR in October 2019 and that I intended to write to all Interested Persons ("IP's") mid-September 2019. Following the Chief Coroner's Guidance Note I wrote to all IP's on 19 September 2019 providing an agenda for the forthcoming PIR; a draft list of suggested witnesses and a preliminary view on the first 4 items on the agenda which included a preliminary view as regards Article 2 of the European Convention on Human Rights including scope. At para 2 of my letter I said as follows:

> ***"2) Form of Inquest involved -*** *having reviewed the evidential documentation and having had a number of meetings with the Senior Investigating Officer in relation to Dawn's death, my provisional view is that Article 2 of the European Convention of Human Rights is not engaged and therefore in terms of scope the Inquest will focus on determining who, when, where and how, meaning the means in this case by which Dawn came by her death in addition to recording the matters required by the Registration legislation of England & Wales. For the avoidance of any doubt the scope of the inquest will cover the movements of the 2 Russian nationals (referred to in Para 1 above) who entered the United Kingdom on 2 March 2018 and left returning to Moscow the following Sunday.*
>
> *I fully appreciate that the family especially may at the present moment of time have unanswered questions, however, an Inquest is not a public inquiry or a substitute for a criminal trial and a number of recent cases in the last few years, most recently the Court of Appeal decision relating to the Birmingham pub bombings (Hambleton), have made this clear. In terms of scope the ultimate decision as regards scope is a matter for the Coroner and my provisional view is that I can see no justification in law, whether it be statute or case law for departing outside the strict remit of a Jamieson Inquest, i.e. focussing on determining who, when, where and how, meaning the means by which Dawn came by her death. It is my view that matters such as why Mr. Skripal was living in Salisbury, Wiltshire and what he was doing insofar as any involvement with UK or other intelligence agencies falls outside the scope of a Jamieson Inquest. My preliminary view is that such matters could potentially fall within the scope of another investigation, but that they fall outside the scope of a Coroner's Inquest being conducted in England and Wales having regard to the current legal requirements of an inquest."*

The reference to "scope" in the context of inquests is a "term of art" used by coroners to list the topics or areas upon which the coroner, exercising judicial discretion, will hear or read relevant evidence at the final hearing so as to be able to answer the 4 key statutory questions, namely, who died and how, when and where that person came by their death.

The reference to Article 2 being engaged was a reference to my provisional view that the form of the inquest would not be along the lines of a *Middleton* type inquest, about which I will elaborate and explain in detail later. Coroners are encouraged to make this distinction as for example it can assist with securing Legal Aid funding which generally is only available for *Middleton* type inquests or where there is a wider public interest although, again for reasons I will elaborate later, in practice there is little distinction between the 2 forms of inquest except when it comes to recording a conclusion on the Record of Inquest.

4. On the subject of scope, I think it is important for me to make clear that any decision on the subject of the form of the final hearing and scope is not set in stone and is something that I keep under review in any inquest that I conduct, until that inquest has been concluded.

5. My directions for filing submissions in response to my preliminary views in relation to scope referred to at para 2 above were varied following receipt of a letter from the Government Legal Department representing the Home Secretary dated 25 September 2019. That letter indicated that the Home Secretary agreed with my preliminary view regarding scope and also as regards my view that there was no need to sit with a jury at the final hearing. My original directions were varied so as to provide for the sequential (staggered) filing of submissions with the Government Legal Department being allowed to file a submission on the subject of agenda items 2 weeks after the original filing date which was set as on or before 1600 on 3 October 2019. This would avoid the need to prepare lengthy submissions if there was a general consensus on the agenda items in broad terms. All those representing engaged IP's requested and received Advanced Disclosure. Birnbirg Peirce solicitors representing Dawn Sturgess' family and Mr Rowley (Dawn Sturgess' partner) filed Mr Mansfield QC and his team's submissions on the afternoon of 3 October 2019. It was clear from a preliminary reading of this document that there was no consensual agreement and that the consideration of the complex legal argument would require careful and proper consideration, so I vacated the scheduled PIR date indicating an intention to list a new PIR date for some time in December 2019/January 2020. In the end the Government Legal Department were allowed until 22 November 2019 to file a response. In so far as the PIR is concerned this has now been listed for 18 February 2020.

Relevant positions in outline

6. I am grateful to both Mr Mansfield QC and his team as well as the submission made by Ms McGahey QC and her team on behalf of the Home Secretary which were filed on 22 November 2019.

7. The position of the Home Secretary remains the same in that she is not fundamentally at odds with my provisional view indicated in my letter dated 18 September 2019 in terms of the requirement for a *Jamieson* style inquest and as regards scope. Her view is summarised at para 2 of the submission, that any investigative duty under Article 2 has already been satisfied by the criminal investigation such that Article 2 is not at present engaged. It is additionally advanced that the scope should not include questions as

regards who was ultimately responsible for Ms Sturgess' death and/or the source of the Novichok. Later in the submission it is also made clear that the "operational duty" under Article 2 has not been triggered to as to fully engage the procedural duty.

8. In broad and basic terms Mr Mansfield QC argues that the procedural duty having regard to Article 2 of the European Convention on Human Rights is triggered for the reasons which are summarised at paras 6a-e of his submission. He argues on two fronts, firstly at paras 16-19 that the procedural duty to fully investigate the death under Article 2 is triggered when it is arguable that the state bore some responsibility for the death. He further argues that the state or state agents need not be from the Home State where the death occurred in order to trigger the Article 2 procedural duty.

9. Dawn Sturgess' death has been the subject of much media and public interest. Mr Mansfield QC and para 11 of his submission helpfully repeats part of the then Prime Minister's statement to the House of Commons about the "Salisbury Incident" that occurred in 2018 which sadly, as a consequence of exposure to the nerve agent Novichok, resulted in the death of Dawn Sturgess and caused serious harm to 4 other individuals including Mr Rowley. In the address the Prime Minister indicated that the Government had concluded that the 2 Russian individuals under suspicion for the attack on Sergei and Yulia Skripal in March 2018, which also resulted also in the poisoning and hospitalisation of Detective Sergeant Nick Bailey, are Russian Military Intelligence Officers from the GRU and that the March 2018 attack was:

"almost certainly approved outside the GRU at a senior level of the Russian State."

At para 17 of his submission Mr Mansfield QC says:

> "17. The first reason that the Article 2 procedural duty is triggered in this case, is that the death was caused by state agents, namely by the two GRU agents who attempted to assassinate Sergei Skripal in Salisbury using a highly dangerous nerve agent. In addition, the state was otherwise responsible for the death, in that Russian state officials commissioned and organised the attempted assassination."

The obligation he says is on the United Kingdom to fully investigate the death even if the killing was commissioned abroad. Mr Mansfield QC relies on the Grand Chamber decision sitting in the European Court of Human Rights in *Guzelyurtlu v Cyprus and Turkey (2019) 69 EHRR12*. He advanced the proposition at para 41 of his submission that *"the "Article 2 procedural duty" referred to is the "enhanced duty" recognised in the case of* Middleton*". He goes on to add that "Following recent cases, particularly* Guzelyurtlu, *that obligation arises in the UK even though the arguable breach of Article 2 was the responsibility of state agents from Russia."*

10. The second front is based on the *Osman duty* (also termed the operational duty), again which I will elaborate about later. Mr Mansfield QC submits that the Article 2 procedural duty is or may be engaged on the basis that "*it is arguable that the UK authorities failed to take reasonable steps to protect members of the public, including Ms Sturgess, from Novichok after it was discovered in early 2018."*

11. In terms of scope and issues to be explored he agrees with me at para 37 that the movements of the 2 Russian suspects in the UK and the question of whether they may

by any act or omission have caused or contributed to Ms Sturgess death should be explored.

12. He further submits that the following issues should also be investigated as part of the "enhanced duty" referred to in *Middleton* as opposed to a lower level investigative obligation (paras 37 and 41 of Mr Mansfield QC's submission). The additional issues are:

> "b. Who was responsible for Ms Sturgess' death.
> c. Whether members of the Russian state were responsible for the death.
> d. The source of the Novichok that killed Ms Sturgess.
> e. Whether appropriate medical care was given to Ms Sturgess"

13. Mr Mansfield QC separately makes a submission at para 45 that the issue as to how the Novichok came to be in Salisbury needs also to be answered.

14. In essence, a widely scoped inquest is sought by Mr Mansfield QC representing the family and Mr Rowley as a requirement to discharge the investigative obligation when the Article 2 procedural duty to carry out such an investigation is triggered. Further submissions on scope were filed on 5 December 2019 but they relate to the same issues already raised and the document simply elaborates on the arguments previously advanced at the same time as rebutting submissions made on behalf of the Home Secretary.

Background Factual Timeline

15. A review of the evidence in my possession gives rise to the following timeline:-

a) 2 March 2018 (Friday) – 2 Russians travelling under the names of Alexander Petrov and Ruslan Boshirov arrive at London Gatwick. They travel to London Victoria and stay at a hotel in East London;

b) 3 March 2018 (Saturday) – Messrs Petrov and Borshirov travel to Salisbury Wiltshire arriving at 1425 and leave at 1611.

c) 4 March 2018 (Sunday) – Messrs Petrov and Boshirov make a second trip to Salisbury arriving at 1148 and then leaving Salisbury at 1350. In the interim they are captured on CCTV at various locations around Salisbury including outside a petrol station on Wilton Road, Salisbury, a short walk from the home of Mr Sergei Skripal at Christie Miller Road.

d) 4 March 2018 - Sergei and his daughter Yulia Skripal found collapsed on a park bench at The Maltings, Salisbury. They are hospitalised along with DS Nick Bailey and a criminal investigation is commenced the following day.

e) 4 March 2018 – Messrs Petrov and Boshirov return to Moscow at 2230 this time via London Heathrow.

f) 30 June 2018 (Saturday) – Mr Rowley gives Ms Sturgess what he believes, as a present, was a bottle of perfume. Shortly after Ms Sturgess applies the liquid from the bottle Paramedics were tasked to attend an unresponsive female at a property in Amesbury (approx. 8 miles north of Salisbury) – they arrive at 1025. The unresponsive female (Ms Sturgess) is taken to Salisbury District Hospital.

g) 30 June 2018 (Saturday) – Paramedics attend the same address in Amesbury shortly after 1820 this time to help Mr Rowley who although is conscious is behaving oddly. In the interim period Mr Rowley has attended a function at a nearby church. Following the attendance by paramedics Mr Rowley is also hospitalised.

h) 8 July 2018 – Ms Sturgess is confirmed dead on ITU at Salisbury District Hospital having never regained consciousness.

i) 11 July 2018 - A perfume bottle is safely removed from Mr Rowley's property in Amesbury. Approximately 2 days later the box and internal wrappings are confirmed to be contaminated with the nerve agent Novichok and the liquid inside the perfume bottle is confirmed as the prohibited nerve agent Novichok.

Legal Framework for the Conduct of Inquests with Particular Reference to Article 2 and Scope - The Law

16. Section 1 of the Coroners and Justice Act 2009 ("the 2009 Act") sets out the circumstances whereby the Coroner's duty to investigate deaths is triggered; it states as follows:

> "1. Duty to investigate certain deaths –
>
> (1) A senior coroner who is made aware that the body of a deceased person is within that coroner's area must as soon as practicable conduct an investigation into the person's death if subsection (2) applies.
>
> (2) This subsection applies if the coroner has reason to suspect that –
>
> (a) the deceased died a violent or unnatural death;
>
> (b) the cause of death is unknown; or
>
> (c) the deceased died while in custody or otherwise in state detention."

17. The purpose of a coronial investigation when triggered and where the investigation is not discontinued is set out in section 5 in the following terms:

> "5. Matters to be ascertained

(1) The purpose of an investigation under this Part into a person's death is to ascertain -

(a) who the deceased was;
(b) how, when and where the deceased came by his or her death;
(c) the particulars (if any) required by the 1953 Act to be registered concerning the death.

(2) Where necessary in order to avoid a breach of any Convention rights (within the meaning of the Human Rights Act 1998 … the purpose mentioned in subsection (1)(b) is to be read as including the purpose of ascertaining in what circumstances the deceased came by his or her death.

(3) Neither the senior coroner conducting an investigation under this Part into a person's death nor the jury (if there is one) may express any opinion on any matter other than -

(a) the questions mentioned in subsection (1)(a) and (b) (read with subsection (2) where applicable);

(b) the particulars mentioned in subsection (1)(c).

This is subject to paragraph 7 of Schedule 5."

18. At the end of an Inquest the procedural requirements of the Coroner or jury are set out in section 10 as follows:

"10. Determinations and findings to be made –

(1) After hearing the evidence at an inquest into a death, the senior coroner (if there is no jury) or the jury (if there is one) must –

(a) make a determination as to the questions mentioned in section 5(1)(a) and (b) (read with section 5(2) where applicable), and

(b) if particulars are required by the 1953 Act to be registered concerning the death, make a finding as to those particulars.

(2) A determination under subsection (1)(a) may not be framed in such a way as to appear to determine any question of –

(a) criminal liability on the part of a named person, or

(b) civil liability."

What is actually recorded by the Coroner or jury is set out in a document called a "Record of Inquest" which is broken down into 5 sections under the following headings:

1. Name of the deceased (if known);
2. Medical cause of death;
3. How, when and where, and for investigation where section 5(2) of the Coroners and Justice Act 2009 applies, in what circumstances the deceased came by his or her death;

4. Conclusion of the coroner/jury as to the death; and
5. Further Particulars required by the Birth and Deaths Registrations Act 1953 to be registered concerning the death.

19. In the context of how inquests should be conducted, Sir Thomas Bingham MR, as he then was, set out 14 general conclusions in his judgment in *R v North Humberside Coroner, ex parte Jamieson [1995] QB1.* I have only set out below paragraphs 1-5 and 14 as I believe they are the paragraphs most relevant to this case. The points are as follows:

> *"General conclusions*
> This long survey of the relevant statutory and judicial authority permits certain conclusions to be stated.
> (1) An inquest is a fact-finding inquiry conducted by a coroner with or without a jury, to establish reliable answers to four important but limited factual questions. The first of these relates to the identity of the deceased, the second to the place of his death, the third to the time of death. In most cases these questions are not hard to answer but in a minority of cases the answer may be problematical. The fourth question, and that to which evidence and inquiry are most often and most closely directed, relates to how the deceased came by his death. Rule 36 requires that the proceedings and evidence shall be directed solely to ascertaining these matters and forbids any expression of opinion on any other matter.
>
> (2) Both in s 11(5)(b)(ii) of the 1988 Act and in r 36(1)(b) of the 1984 rules, 'how' is to be understood as meaning 'by what means'. It is noteworthy that the task is not to ascertain how the deceased died, which might raise general and far-reaching issues, but 'how … the deceased came by his death', a more limited question directed to the means by which the deceased came by his death.
>
> (3) It is not the function of a coroner or his jury to determine, or appear to determine, any question of criminal or civil liability, to apportion guilt or attribute blame. This principle is expressed in r 42 of the 1984 rules. The rule does, however, treat criminal and civil liability differently: whereas a verdict must not be framed so as to appear to determine any question of criminal liability *on the part of a named person*, thereby legitimating a verdict of unlawful killing provided no one is named, the prohibition on returning a verdict so as to appear to determine any question of civil liability is unqualified, applying whether anyone is named or not.
>
> (4) This prohibition in the rules is fortified by considerations of fairness. Our law accords a defendant accused of crime or a party alleged to have committed a civil wrong certain safeguards rightly regarded as essential to the fairness of the proceedings, among them a clear statement in writing of the alleged wrongdoing, a right to call any relevant and admissible evidence and a right to address factual submissions to the tribunal of fact. These rights are not granted—and the last is expressly denied by the rules—to a party whose conduct may be impugned by evidence given at an inquest.
>
> (5) It may be accepted that in case of conflict the statutory duty to ascertain how the deceased came by his death must prevail over the prohibition in r 42. But the scope for conflict is small. Rule 42 applies, and applies only, to the verdict. Plainly the coroner and the jury may explore facts bearing on criminal and civil liability. But the verdict may not appear to determine any question of criminal liability on the part of a named person nor any question of civil liability.

> (14) It is the duty of the coroner as the public official responsible for the conduct of inquests, whether he is sitting with a jury or without, to ensure that the relevant facts are fully, fairly and fearlessly investigated. He is bound to recognise the acute public concern rightly aroused where deaths occur in custody. He must ensure that the relevant facts are exposed to public scrutiny, particularly if there is evidence of foul play, abuse or inhumanity. He fails in his duty if his investigation is superficial, slipshod or perfunctory. But the responsibility is his. He must set the bounds of the inquiry. He must rule on the procedure to be followed. His decisions, like those of any other judicial officer, must be respected unless and until they are varied or overruled.

In summary, an inquest is a fact-finding investigation the focus of which is on determining who died, where and when they died and how they died meaning the means by which that person came by his/her death. The function of an inquest is not to determine any question of criminal liability against a named person or civil liability generally and it is not a process that seeks to apportion guilt or attribute blame. The references to rules 36 and rule 43 relate to the now superseded Coroners Rules 1984 which in broad terms are now reflected in sections 5(3) and 10(2) of the Coroners and Justice Act 2009 with one modification. Rule 43 Coroners Rules 1984, relating to the prohibition of determining matters of liability applied only to the verdict, now termed the conclusion, on the form that is now called a Record of Inquest referred to in para 18 above. The prohibition in section 10(2) now importantly covers anything recorded by the Coroner or Jury on the Record of Inquest and not just in relation to the conclusion/verdict section as before. Para 14 of the *Jamieson* General Conclusions places an onus on the court in any inquest to ensure the facts are fully, fairly and fearlessly investigated. It is with regard to the 14 general conclusions, unless varied by either case law or statute, that gives rise to Coroners referring to a *Jamieson* inquest as opposed to a *Middleton* inquest. I will come back to para 14 of Sir Thomas Bingham's judgment in *Jamieson* shortly.

20. Lord Lane CJ described the task of an inquest in *R v South London Coroner, ex parte Thompson [1982] SJ 625*, which was referred to by Sir Thomas Bingham MR in *Jamieson*, as follows:

> "The Function of an inquest is to seek out and record as many of the facts concerning the death as [the] Public interest requires"

21. Article 2(1) of the European Convention on Human Rights (imported into domestic law by the Human Rights Act 1998) provides that *"everyone's right to life shall be protected by Law…".*

22. Lord Woolf, CJ in *R (Amin) v Secretary of State for the Home Department [2002] EWCA Civ 390, [2003] QB581* at [1] said that

> "Article 2 imposes 2 distinct but complementary obligations on the State…
>
> The first is a substantive obligation not intentionally to take life, and also to take reasonable preventative measures to protect an individual whose life is at risk…
>
> The second is an adjectival procedural obligation to investigate deaths where arguably there has been a breach of the substantive obligation."

For the remainder of this ruling I will refer to those obligations as "the substantive obligation" and "the procedural obligation/duty".

23. Lord Woolf indicated in *Amin* that the substantive obligation requires the State not only to refrain from the intentional taking of life (the negative obligation contained in Article 2 of the European Convention on Human Rights) but imposed on the State and its Agents an obligation (the positive obligation) to take appropriate steps to safeguard the lives of those within its jurisdiction. This part of the duty can in itself be broken down into 2 distinct obligations, firstly, a general obligation owed to all those within its jurisdiction to set up systems of laws which are designed to protect life, often termed general/systemic duty, and secondly, an obligation to take special measures to protect an individual from some particular threat to his or her life.

24. Lord Bingham of Cornhill in the House of Lords Report in the case of *R (Middleton) v West Somerset Coroner [2004] UKHL1* in terms of the general obligation/duty spoke in terms of that obligation as follows at para 2:

> "2. The European Court of Human Rights has repeatedly interpreted Article 2 of the European Convention as imposing on member states substantive obligations not to take life without justification and also to establish a framework of laws, precautions, procedures and means of enforcement which will, to the greatest extent reasonably practicable, protect life. See, for example, *LCB v United Kingdom* (1998) 27 EHRR 212, para 36; *Osman v United Kingdom* (1998) 29 EHRR 245; *Powell v United Kingdom* (App No 45305/99, unreported 4 May 2000), 16-17; *Keenan v United Kingdom* (2001) 33 EHRR 913, paras 88-90; *Edwards v United Kingdom* (2002) 35 EHRR 487, para 54; *Calvelli and Ciglio v Italy* (App No 32967/96, unreported, 17 January 2002); *Öneryildiz v Turkey* (App No 48939/99, unreported, 18 June 2002). "

25. It had been said earlier in the case of *Osman v United Kingdom (1998) 29 EHRR 245* at para 115, examining in terms of what the systemic framework meant, indicated that it required the putting into place:

> "... effective criminal law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions"

26. *Osman* also highlighted that even where there is no breach of the systemic or general duty, that a state may still have an obligation to take special measures to protect a particular individual from some particular threat to his or her life. This obligation is termed the operational obligation or even simply the *Osman* Duty. That obligation is specifically referred to at para 116 as follows:

> "….that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk."

This is the second “positive obligation” that I referred to at para 23 above.

27. As to what is meant by the phrase “real and immediate risk”, Lord Dyson in the Supreme Court decision in *Rabone and Others v Pennine Care NHS Foundation Trust [2012] UKSC 2* found at para 38 of his judgment that a risk was real if:

> “….it was a substantial or significant risk and not a remote or fanciful one.”

As to the interpretation of what is meant by immediate, Lord Dyson said at para 39 as follows:

> “In the case of *In re Officer L* [2007] 1 WLR 2135, para 20, Lord Carswell stated that an apt summary of the meaning of an "immediate" risk is one that is "present and continuing". In my view, one must guard against the dangers of using other words to explain the meaning of an ordinary word like "immediate". But I think that the phrase "present and continuing" captures the essence of its meaning.”

28. What amounts to “*real and immediate*” will always be fact specific relative to what was known at the time without the benefit of hindsight.

29. The consequences of it being “arguable” *(see R (Palmer) v HM Coroner for Worcestershire [2011] EWHC 1453 (Admin)* at para 60 in conjunction with *Amin* para 22 above) that there has been or that there may have been a breach of a substantive obligation (para 23 above) was again dealt with by Lord Bingham in *Middleton* at para 3 as follows:

> “The European Court has also interpreted Article 2 as imposing on member states a procedural obligation to initiate an effective public investigation by an independent official body into any death occurring in circumstances in which it appears that one or other of the foregoing substantive obligations has been, or may have been, violated and it appears that agents of the state are, or may be, in some way implicated. See, for example, *Taylor v United Kingdom* (1994) 79-A DR 127, 137; *McCann v United Kingdom* (1995) 21 EHRR 97, para 161; *Powell v United Kingdom, supra* p 17; *Salman v Turkey* (2000) 34 EHRR 425, para 104; *Sieminska v Poland* (App No 37602/97, unreported, 29 March 2001); *Jordan v United Kingdom* (2001) 37 EHRR 52, para 105; *Edwards v United Kingdom, supra,* para 69; Ö*neryildiz v Turkey, supra,* paras 90-91; *Mastromatteo v Italy* (App No 37703/97, unreported, 24 October 2002). “

30. In terms of any changes to the coronial purpose, when the procedural obligation is triggered requiring the initiation of an effective public investigation, in the circumstances highlighted by the previous paragraph, this was specifically covered by Lord Bingham at para 35 in *Middleton* as follows:

> Only one change is in our opinion needed: to interpret "how" in section 11(5)(b)(ii) of the Act and rule 36 (1)(b) of the Rules in the broader sense previously rejected, namely as meaning not simply "by what means" but "by what means and in what circumstances".

This change referred to by Lord Bingham above is now reflected in statute specifically at section 5(2) Coroners and Justice Act 2009 (para 17 above).

31. The Court of Appeal in *R (D) v Secretary of State for the Home Department [2006] EWCA Civ 143* at para 9 summarised, taking into account a variety of earlier authorities (*Jordan v United Kingdom (2001) EHRR 52* at paragraph 106-109, *Edwards v United Kingdom (2002) EHRR 487* at paragraphs 69-73 and *R (Amin) v Secretary of State for the Home Department [2003] UKHL 51; [2004] 1 AC 632 at paragraph 25*), the minimum requirements when the procedural obligation/duty is triggered, namely:

> "(a) the authorities must act of their own motion;
>
> (b) the investigation must be independent;
>
> (c) the investigation must be effective in the sense that it must be conducted in a manner that does not undermine its ability to reach the relevant facts;
>
> (d) the investigation must be reasonably prompt;
>
> (e) there must be a 'sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory; the degree of public scrutiny required may well vary from case to case'....;
>
> (f) there must be involvement of the next of kin 'to the extent necessary to safeguard his or her legitimate interests'....".

32. In so far as the investigation covered by an inquest is concerned, I indicated earlier at the end of para 19 above that I would come back to Sir Thomas Bingham's general conclusion in *Jamieson* numbered 14. It is well established and accepted that in making a decision on the subject of scope, that a coroner has a broad discretion and as regards *Jamieson* general conclusion 14, it is for the coroner to set the bounds of the inquiry. It is for the coroner to rule on the procedure to be followed and it is the coroner's decision(s), like any other judicial office holder that must be respected unless and until they are varied or overruled.

33. Simon Brown LJ in *R v Inner West London Coroner, ex parte Dallaglio [1994] 4 All ER 139* at para 155, after reference to general conclusion number 14 in *Jamieson*, said as follows:

> "… The inquiry is almost bound to stretch wider than strictly required for the purposes of a verdict. How much wider is pre-eminently a matter for the coroner whose rulings upon the question will only exceptionally be susceptible to judicial review."

34. The exercise of judicial discretion is also covered by reference to other cases in addition to *Jamieson* and *Dallaglio* cited in the Chief Coroner's Law Sheet No.5 dated 16 February 2015 at paras 3 – 8.

Discussions and Conclusions

A) The *Osman* Duty

35. A coroner in any investigation triggered by section 1 Coroners and Justice Act 2009 takes an active and leading role in the coronial investigation. In Ms Sturgess' investigation this responsibility has not been delegated by me to anyone else and has involved numerous meetings with the relevant Senior Investigation Officer, Det. Chief Inspector Murphy from the Counter Terrorism Policing - South East. From my involvement very early on and on virtually every occasion that we have met since Ms Sturgess' death in July 2018, I have specifically made enquiries as to whether the police investigation has revealed any evidence that points to an arguable breach of the *Osman* duty. I have been told by the Senior Investigating Officer and have no reason to disbelieve what he has said that there is nothing pointing to such a breach. I have also viewed relevant documentation which I will summarise later that also supports that view.

36. The incident in Salisbury and the use of a prohibited chemical weapon nerve agent, Novichok, was unprecedented anywhere in the world and it was clear from the Police investigation that Counter Terrorism Policing had no evidence in the early days as to the exact method by which Mr Skripal and his daughter Yulia had been exposed to the nerve agent. Even when the evidence pointed to the contamination occurring at his home address in Christie Miller Road in Salisbury there was no evidence pointing as to what the device used to disperse the nerve agent looked like or that it had been discarded in the locality.

37. Searches of the immediate locations where Mr Skripal lived and where he had visited before his collapse were undertaken but nothing was found assisting in the identification of the device used in the attack.

38. Evidence will be presented at the final hearing by DCI Murphy, that the confirmation that the perfume bottle found at Mr Rowley's property contained Novichok was the first time that they had evidence that something from the March 2018 attack had been left behind.

39. I have additionally examined the Senior Investigating Officer, Detective Superintendent Doak's policy document relating to the March incident and it is clear that the safety of the public and police and together with other personnel was of paramount importance in his decision making. Some entries even make a direct reference to Article 2 of the European Convention on Human Rights.

40. In addition, I have also viewed a series of press release logs relating to information that was given to the public post the March 2018 incident by Public Health England. It is of particular note that in the aftermath of the attack the focus was very much on the concern for public safety even more so when a serving police officer, DS Nick Bailey, became seriously ill having somehow also come into contact with the nerve agent. It was later confirmed that he was exposed to the agent when he touched the door handle of Mr Skripal's home even though he was wearing protective gloves (referred to in the press logs) . It is also worthy of note that I work in Salisbury and live in the Salisbury area. All this was happening on my doorstep and as Senior Coroner for the area in which the incident occurred it would be naive to think that I was not taking a very close interest in respect of everything that was happening in the aftermath of not only the March 2018 incident but also following the poisoning of Ms Sturgess and Mr Rowley. As a judicial office holder, I was in a very unusual position to observe what was happening from both the perspective of being a member of the general public but also accessing sensitive information, as part of my judicial function. This has proved to be most helpful in directing my enquiries and in the consideration of the matter relative to the *Osman* duty. I am firmly of the view that no other judicial office holder will have that level of knowledge.

41. I have already highlighted the *Osman* test at paras 26 – 28 above. I have also identified following an examination of the relevant law relating to the triggering of the procedural obligation in that it only has to be "arguable" that there has or that there may have been a breach on the part of the state or its agents of one of the substantive obligations to protect life under Article 2 of the European Convention on Human Rights – para 29 above.

42. I accept Mr Mansfield QC's submission having regards to *Sarjantson v Chief Constable of Humberside [2014] QB 411* at paras 18-21 that the positive operational duty is not limited to a single individual and can extend depending on the facts to a section of the public at risk of death.

43. What I do not accept in his submissions from paras 28 – 32 is that the risk of death to the public could be categorised as real and immediate, applying the definitions that I highlighted in para 27 above, at the time Ms Sturgess was poisoned at the end of June 2018. Had Ms Sturgess been poisoned in the few weeks after the March 2018 attack then I could see the argument that such a risk was present, but, by June 2018 the emphasis was very much on the Recovery Programme including the clean-up operation and attempting to return Salisbury to some degree of normality. Of particular note is a press release on 8 May 2018 in which reference is made to "*the city* (meaning Salisbury) *is safe and is open for business*". That accords with my recollection of events. It is my view that there was no risk at the time of the late June 2018 incident that was known or ought to have been known relative to the public at large and I am satisfied that both Ms Sturgess' and Mr Rowley's poisoning came as surprise to everyone.

44. Even if I was hypothetically wrong as regards my analysis in the previous paragraph, I have found no evidence that leads me to form the view that the UK state or agents of the UK state *"failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk."*. I do not realistically see what more the authorities could have done apart from evacuate the whole area which would have been wholly disproportionate to what was known at the relevant time. To suggest that the authorities should have done more is something I am unable to see from what I have been told and viewed. The expression of "looking for a needle in a haystack" comes to mind. The phrase is used to generally describe something that is impossible or extremely difficult to undertake. The task that faced the authorities here was more akin to a suggestion that there might be something of interest in the haystack or there might not be and if there is something in the haystack it is not known what the item of interest looks like – a wholly impossible task. In consideration of the public health logs, I am of the view that the notifications to the public were proportionate, reasonable and commensurate with the information available to the authorities that was available after the March 2018 incident up to the poisoning of Ms Sturgess at the end of June 2018. I additionally agree with Ms McGahey QC's submissions on this issue (paras 25 – 34 of her submission) which broadly speaking mirror my own views.

45. It was having regards to my hands-on approach to the investigation that I am able to form the view that there is no prima facie case here to suggest that it is arguable that there has been a breach or that there may have been a breach of the operational obligation in relation to Ms Sturgess' death. Consequently, on this point, I am not of the view that a *Middleton* inquest has been triggered whereby the determinations required to be recorded by virtue of section 5(1) as modified by section 5(2) Coroners and Justice Act 2009 should in terms of how Ms Sturgess died, encompass not only by what means she came by her death but also the circumstances of her death.

46. This ruling as indicated at para 2 above will be of course kept under review. In making this ruling I am conscious of the need for transparency and the need to engage with in particular the family as part of the process. With this in mind I will be making available as part of Advanced Disclosure copies of the redacted policy booklets that I have referred to above and the press release logs relating to the information supplied to the public that I have seen which has led me to this ruling at this time. The documents, in particular the SIO Policy documentation, will be subject to redactions having regard to rule 15(d) Coroners (Inquests) Rules 2013, as there is still technically an ongoing criminal investigation and the CPS have yet to indicate whether there is sufficient evidence to instigate criminal charges in respect of the incident that resulted in the death of Ms Sturgess and resulted in the hospitalisation of Mr Rowley.

47. In addition to the above I will also be making available two witness statements from senior police officers assigned to the strategic and tactical command groups created following the March 2018 attack. The statements give an overview as well as producing as exhibits the two documents that I have in particular referred to above and relied upon in making this ruling on this issue. In addition, there is a statement from the senior investigating officer that I have been primarily relying on to assist in the gathering of evidence in relation to Ms Sturgess' death, Detective Chief Inspector Phillip Murphy. The disclosure of this information, I hope, will address Mr Mansfield QC's concerns at para 53 of his second submission dated 4 December 2019.

B) Has the Article 2 Procedural Duty Been Triggered Under Any Other Circumstances? If So, What Are the Necessary Investigative Requirements To Discharge The Duty? Have "The Matters To Be Ascertained" At The End Of The Inquest Been Varied By Section 5(2) Coroners & Justice Act 2009?

Has the Article 2 Procedural Duty Been Triggered Under Any Other Circumstances?

48. At para 9 above, I summarised in basic terms Mr Mansfield QC's submission on this point. He relied on paras 183-184,195, 220,221, 231, 233 and 234 of the Grand Chamber decision sitting in the European Court of Human Rights in *Guzelyurtlu v Cyprus and Turkey (2019) 69 EHRR12*. He advanced the proposition at para 41 of his submission that *"the "Article 2 procedural duty" referred to is the "enhanced duty" recognised in the case of* Middleton". He goes on to add that, *"Following recent cases, particularly* Guzelyurtlu, *that obligation arises in the UK even though the arguable breach of Article 2 was the responsibility of state agents from Russia."*

49. I do not accept the above submission. *Guzelyurtlu* does not support the proposition advanced that a *Middleton* inquest resulting in the modification of the "matters to be ascertained" having regard to sections 5(1) and (2) Coroners and Justice Act 2009 arises as a result of the actions of a foreign state or agents of that foreign state in another territorial jurisdiction such as the United Kingdom.

50. Article 1 of the European Convention on Human Rights ("the Convention") says as follows:

*"**ARTICLE 1 - Obligation to respect Human Rights***
The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.."

51. The onus on a state is clear in that it is an engagement undertaken by a Contracting State with a view to securing the listed rights and freedoms referred to in the Convention within its <u>own jurisdiction</u>. It is an obligation on the part of the "home" state having regard in this case in particular to Article 2, to protect the "Right to Life" of all those within that territorial jurisdiction over which it exercises control. In order to trigger the Article 2 procedural duty, referred to by Mr Mansfield QC as the enhanced duty recognised in *Middleton* (as stated by Lord Bingham at para 29 above in that case), the test is that it has to be arguable that there has or that there may have been a breach of

one or other of the substantive obligations to protect the "Right to Life" on the part of the contracting state exercising control, normally in relation to its own territorial jurisdiction.

52. The above paragraph makes perfect sense. In *Middleton,* which involved the death of a prisoner in state detention, the person who died at the time was in the care of the state. It is therefore entirely reasonable and logical that the state should provide a plausible explanation for the unnatural death of someone under its care and control. The objective in discharging the procedural duty under Article 2 in such circumstances is to conduct a thorough and effective investigation and as identified by Lord Bingham in *R (Amin) v Secretary of State for the Home Department [2003] UKHL 51* at para 31 as follows:

> "…to ensure so far as possible that the full facts are brought to light; that culpable and discreditable conduct is exposed and brought to public notice; that suspicion of deliberate wrongdoing (if unjustified) is allayed; that dangerous practices and procedures are rectified; and that those who have lost their relative may at least have the satisfaction of knowing that lessons learned from his death may save the lives of others. "

A state's jurisdiction within the meaning of Article 1 is primarily territorial with the European Court of Human Rights usually considering the notions of imputability and responsibility as going together, the state only engaging its obligations under the Convention if the alleged violation could be imputed to it.

53. *Guzelyurtlu* referred to at para 48 above concerned the murders of several former residents of the "Turkish Republic of North Cyprus" ("TRNC") in the territory of the Republic of Cyprus. The acts involved were not undertaken by any state or agents of that state whether they were foreign or home in nature. Following the incident, the deceased were re-patriated into the TRNC and a number of suspects after the incident either crossed the border into TRNC or escaped to Turkey. The TRNC authorities instituted their own criminal investigation into the murders as required by domestic law and suspects were arrested and held. This investigation was in addition to the criminal investigation commenced by the Republic of Cyprus authorities. The TRNC is not recognised under International law and was held by the court to be under the effective control of Turkey. The Grand Chamber found that having regard to the investigation commenced by TRNC and the effective control exercised by Turkey over the TRNC was such that it created a jurisdictional link and that there was an obligation on both Turkey and the Republic of Cyprus to conduct an effective investigation compliant with the procedural obligation under Article 2 into the deaths of those murdered. Other issues such as co-operation between states in terms of each other's investigation including the extradition of suspects were also covered but are not of assistance in this case. I agree with Ms McGahey QC's interpretation as regards the applicability of this case. It simply does not establish a new proposition of law and most definitely not the one advanced by Mr Mansfield QC that a homicide perpetrated by another Contracting State engages the enhanced procedural duty requiring a *Middleton* inquest. The case deals with a fact specific exception to the jurisdictional territorial principle contained in Article 1 of the Convention. The Convention is a living instrument and over time the European Court of Human Rights has developed its case law to provide for extraterritorial exceptions to the general territorial principle contained in Article 1.

54. At para 219 of *Guzelyurtlu,* the general principles relating to the procedural obligation to investigate under Article 2 were repeated as they had already been restated in *Mustafa Tunc and Fecire Tunc v Turkey [GC], no 24014/05* at paras 169 – 181 as follows:

> "169. ... The investigation must be, *inter alia*, thorough, impartial and careful (see *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 161-163, Series A no. 324).
> 170. The form of investigation required by this obligation varies according to the nature of the infringement of life: although a criminal investigation is generally necessary where death is caused intentionally, civil or even disciplinary proceedings may satisfy this requirement where death occurs as a result of negligence (see, *inter alia*, *Calvelli and Ciglio v. Italy*, cited above, § 51; *Mastromatteo v. Italy* [GC], no. 37703/97, § 90, ECHR 2002-VIII; and *Vo v. France*, cited above, § 90).
> 171. By requiring a State to take appropriate steps to safeguard the lives of those within its jurisdiction, Article 2 imposes a duty on that State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. This obligation requires by implication that there should be some form of effective official investigation when there is reason to believe that an individual has sustained life-threatening injuries in suspicious circumstances, even where the presumed perpetrator of the fatal attack is not a State agent (see *Menson v. the United Kingdom* (dec.), no. 47916/99, ECHR 2003-V; *Pereira Henriques v. Luxembourg*, no. 60255/00, § 56, 9 May 2006; and *Yotova v. Bulgaria,* no. 43606/04, § 68, 23 October 2012).
> 172. In order to be 'effective' as this expression is to be understood in the context of Article 2 of the Convention, an investigation must firstly be adequate (see *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 324, ECHR 2007-II). That is, it must be capable of leading to the establishment of the facts and, where appropriate, the identification and punishment of those responsible.
> 173. The obligation to conduct an effective investigation is an obligation not of result but of means: the authorities must take the reasonable measures available to them to secure evidence concerning the incident at issue (see *Jaloud v. the Netherlands* [GC], no. 47708/08, § 186, ECHR 2014; and *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 160, ECHR 2005-VII).
> 174. In any event, the authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk falling foul of this standard (see *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 301, ECHR 2011).
> 175. In particular, the investigation's conclusions must be based on thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of inquiry undermines to a decisive extent the investigation's ability to establish the circumstances of the case and, where appropriate, the identity of those responsible (see *Kolevi v. Bulgaria*, no. 1108/02, § 201, 5 November 2009).
> 176. Nevertheless, the nature and degree of scrutiny which satisfy the minimum threshold of the investigation's effectiveness depend on the circumstances of the particular case. It is not possible to reduce the variety of situations which might occur to a bare check-list of acts of investigation or other simplified criteria (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, §§ 101-110, ECHR 1999-IV; and *Velikova v. Bulgaria*, no. 41488/98, § 80, ECHR 2000-VI).
> 177. Moreover, the persons responsible for the investigations should be independent of anyone implicated or likely to be implicated in the events. This means not only a lack of hierarchical or institutional connection but also a practical independence (see *Anguelova v. Bulgaria*, no. 38361/97, § 138, ECHR 2002-IV).
> 178. A requirement of promptness and reasonable expedition is implicit in this context (see *Al-Skeini and Others*, cited above, § 167).
> 179. In addition, the investigation must be accessible to the victim's family to the extent necessary to safeguard their legitimate interests. There must also be a

sufficient element of public scrutiny of the investigation, the degree of which may vary from case to case (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 109, ECHR 2001-III). The requisite access of the public or the victim's relatives may, however, be provided for in other stages of the procedure (see, among other authorities, *Giuliani and Gaggio*, cited above, § 304; and *McKerr v. the United Kingdom*, no. 28883/95, § 129, ECHR 2001-III).

180. Article 2 does not impose a duty on the investigating authorities to satisfy every request for a particular investigative measure made by a relative in the course of the investigation (see *Ramsahai and Others*, cited above, § 348; and *Velcea and Mazăre v. Romania*, no. 64301/01, § 113, 1 December 2009).

181. The question of whether an investigation has been sufficiently effective must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work (see *Dobriyeva and Others v. Russia*, no. 18407/10, § 72, 19 December 2013; and *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 147, 17 July 2014)."

55. Of help in this case is the reference at para 171 of the above general principles to the case of *Menson v the United Kingdom (2003) 37 ECHR 2003.* Referencing it here in *Guzelyurtlu* is in my view indicative that it is still good law. Michael Menson was unlawfully killed but there was no suggestion that the State had in any way been responsible for his death. The complaint related to the submission that there had not been an effective independent investigation as required by Article 2 into his death. At pages CD229 - CD230 of the decision the Chamber said:

"….the absence of any direct State responsibility for the death of Michael Menson does not exclude the applicability of Art.2. It recalls that by requiring a State to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, judgment of 9 June 1998, *Reports* 1998-III, p. 1403, § 36), …, Art.2(1) imposes a duty on that State to secure the right to life by putting in place effective criminal law provisions to deter the commission of offences against the person, backed up by law enforcement machinery for the prevention, suppression and punishment of breaches of such provisions ….

With reference to the facts of the instant case, the Court considers that this obligation requires by implication that there should be some form of effective official investigation when there is reason to believe that an individual has sustained life-threatening injuries in suspicious circumstances. The investigation must be capable of establishing the cause of the injuries and the identification of those responsible with a view to their punishment. Where death results, as in Michael Menson's case, the investigation assumes even greater importance, having regard to the fact that the essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life ….

The Court recalls that in its judgments in cases involving allegations that State agents were responsible for the death of an individual, it has qualified the scope of the above-mentioned obligation as one of means, not of result …. Thus, the authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including *inter alia* eye witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death. Any deficiency in the investigation which undermines its ability to establish the cause of death, or the person or persons responsible will risk falling foul of this standard.

> What form of investigation will achieve those purposes may vary in different circumstances …. While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities in investigating a use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts ….
> Although there was no State involvement in the death of Michael Menson the Court considers that the above-mentioned procedural requirements apply with equal force to the conduct of an investigation into a life-threatening attack on an individual regardless of whether or not death results. The Court would add that where that attack is racially motivated, it is particularly important that the investigation is pursued with vigour and impartiality, having regard to the need to reassert continuously society's condemnation of racism and to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racist violence.
> Against this background, the Court must have regard at the outset to the fact that the police investigation into the death of Michael Menson ultimately led to the identification and arrest of the culprits between March 1999 and May 1999. They were all convicted and received heavy prison sentences later that same year. It is also to be observed that a public inquest into the cause of Michael Menson death was held shortly after he died and a Coroner's jury returned a verdict of unlawful killing September 1998"

56. I specifically highlight in the above quote in *Menson* the following*:*

> "What form of investigation will achieve those purposes may vary in different circumstances."

This point was also referred to by Mr Mansfield QC by reference to *Guzelyutlu* at para 233 of the Grand Chamber decision. It is also referred to as part of the general principles at para 176 of *Tunc* referred to at para 54 above. It is nothing new.

57. Taking the above case law into account, I am satisfied that there is a procedural duty, having regard to Article 2 of the Convention, to carry out an effective investigation into Ms Sturgess' death solely because her death occurred in suspicious circumstances even though there is no suggestion that the death involved the state or agents of the state in whose territorial jurisdiction the death occurred.

If So, What Are The Necessary Investigative Requirements To Discharge The Duty?

58. The above approach at para 57 is entirely consistent with the approach taken by Lord Justice Richards in *R(Litvinenko) v Secretary of State for the Home Department [2014] EWHC 194 (Admin).* This case challenged the Home Secretary's decision to refuse to set up a statutory inquiry under section 1(1) of the Inquiries Act 2005. The case involved facts that bear a remarkable similarity to the belief that the attack on Mr Skripal in March 2018 was carried out by agents of the Russian state on the instruction of the Russian state. Alexander Litvinenko was taken ill on 1 November 2006 and he died on 23 November 2006 in University College Hospital London from radiation poisoning having ingested polonium 210. The concern in relation to Mr Litvinenko's death was that he

died as a result of a Russian state sponsored attack carried out by agents of the Russian state.

59. The Litvinenko case's similarity with the incident involving Mr Skripal, his daughter Yulia and DS Bailey here in Salisbury, although fortunately none of the 3 died following the Salisbury attack, continues in that in Litvinenko, a full and detailed criminal investigation revealed 2 Russian Nationals who were suspected of his murder. On all fours with Mr Litvinenko's death in relation to the March 2018 incident here in Salisbury, the CPS confirmed in September 2018 that there was sufficient evidence to charge serious homicide criminal offences as well as other criminal offences relating to the March 2018 attack. As has been highlighted by Mr Mansfield QC at para 6e of his submission, Russia does not extradite its nationals. This was also the difficulty confronting the authorities in relation to Mr Lugovoy and Mr Kovtun (the 2 Russian suspects involved in Mr Litvinenko's death) which resulted in no criminal trial in relation to Mr Litvinenko's death and I have no doubt that it will be the same as regards Mr Borishirov and Mr Petrov, who are the identified suspects in relation to the attack here in Salisbury in March 2018.

60. In the *Litvinenko* case, also consistent with my preliminary view in this case, there was no suggestion that it was arguable that there has been or that there may have been a breach of the *Osman* duty.

61. Having analysed the relevant case law, Lord Justice Richards described the duty to carry out an effective investigation under Article 2 as follows, at para 49 in *Litvinenko*:

> *"*The Menson duty of effective investigation is simply an aspect of the duty under Article 2 to put in place effective criminal law provisions, backed up by effective enforcement, to deter the commission of offences against the person. It should not be forgotten that in itself the court considered it decisive that the legal system of the state had "ably demonstrated, in the final analysis and with reasonable expedition, its capacity to enforce the criminal law against those who unlawfully took the life of another""

62. In deciding whether the state had discharged the procedural duty to investigate under Article 2, noting that there has been a full and detailed criminal investigation, and that no inquest or public inquiry at the time of the judgment had taken place, Lord Justice Richards concluded at para 52 that:

> "It seems to me that the steps that have been taken are amply sufficient to fulfil the Menson duty in relation to the death of Mr Litvinenko. An exceptionally detailed police investigation has led to the identification of two named suspects and to the making of all reasonable efforts to bring them to trial. It is common ground that the duty is one of means not result, so that the failure to secure their extradition despite those efforts is not a ground of objection. The state's capacity to enforce the criminal law so far as it reasonably can against those who unlawfully take the life of another has been demonstrated."

He summarised the position in so far as the discharge of the procedural duty under Article 2 at para 54 of his judgment as follows:

> "Mr Emmerson stressed the role performed by an inquest in meeting the procedural obligations under Article 2. That point is of particular importance in cases of alleged state

> responsibility for a death, but I accept that an inquest is also a relevant factor in determining whether there has been a sufficient investigation for the purpose of the Menson duty: the court in Menson itself noted the existence of the inquest as well as the police investigation and the criminal trial. In this case the inquest will not investigate the Russian state responsibility issue or, therefore, the responsibility of individual agents of the Russian state. That would be a problem, however, only if there had not otherwise been a sufficient investigation, so that there really was a gap that the inquest needed to fill. In terms of the Menson *duty*, for the reasons I have given, I do not think that there is any such gap. There are certainly strong reasons of public interest why the Russian state responsibility issue should be investigated, but I do not accept that there is a requirement to carry out any further investigation for the purposes of meeting the United Kindom's obligations under Article 2."

63. In summary, Lord Justice Richards in *Litvinenko* concluded, having regard to *Menson,* that in circumstances where the "home" state was not in any way responsible for the death of the person, the subject of the investigation; applying the principle that the procedural duty under Article 2 is one of means and not result; and the fact that there had been a full and detailed criminal investigation that had identified 2 suspects for the purposes of a prosecution, that the United Kingdom had discharged its obligation under the procedural duty to carry out an effective investigation under Article 2. He concluded that there was no gap that an inquest needed to fill in terms of discharging the procedural duty.

64. Mr Mansfield QC describes the investigation in *Litvinenko* at para 41 of his submissions as a *"lower level obligation"* and in his notes at the bottom of the page he says that *"Since* Litvinenko*, caselaw from Strasbourg such as* Guzelyurtlu *has established that the full procedural duty will arise in the UK in respect of a killing by Russian state Agents".* If that were the case and the correct interpretation of the decision in *Guzelyurltu,* I would have expected Mr Mansfield QC to have highlighted and quoted the relevant sections of the decision(s) that explicitly support that very specific proposition of law and I have already indicated my view that I do not agree with his interpretation of the law at para 49 above. *Guzelyurtlu* was a case that did not even involve an allegation of state involvement in the deaths and it is difficult to see how Mr Mansfield QC reaches the conclusion he has that the full procedural duty arises in this case. The General Principles concerning the procedural duty to investigate under Article 2 as set out in para 54 above, as restated in the *Tunc* case, as far as I can see, relate to case law pre-dating Lord Justice Richards decision in *Litvinenko* and were a restatement of established and well recognised principles that have been noted in domestic law cases as highlighted at para 31 above when examining the procedural duty. It is nothing new. As was recognised by Lord Justice Richards when referring to *Menson* in *Litvinenko at* para 45 of his decision*,* and having regard to the general principles relating to the procedural duty as restated *in both Tunc and Guzelyurltu,* the nature and degree of public scrutiny will vary on a case by case basis.

65. At Para 23 of Mr Mansfield QC's submissions, he refers to para 234 of the *Guzelyurltu* decision but I am of the view that the paragraph was specific to what the Grand Chamber had to decide relative to the co-operation as between Contracting States in relation to the procedural aspect of Article 2, relative to the case they were deciding and is not of any assistance in this case.

66. At para 231 in *Guzelyurltu* referring to paras 220-221 in the same case the Grand Chamber talked of the obligation in that case to carry out an "Article 2 compliant investigation".

67. A distinction as between 2 levels of investigation relative to Article 2 is not the first time that such a distinction has been made and Mr Mansfield QC highlights this again at para 41 of his submission referring to *R (Humberstone) v Legal Services Commission [2011] 1 WLR146* at para 67 where Lady Justice Smith says:

> "I am satisfied from examination of all these authorities that, in respect of duties of investigation, there are two senses in which Article 2 may be said to be engaged. It may be engaged in a very wide range of cases in which there is an obligation to provide a legal system by which any citizen may access an open and independent investigation of the circumstances of the death. The system provided in England and Wales, which includes the availability of civil proceedings and which will in practice include a coroner's inquest, will always satisfy that obligation. In addition, Article 2 will be engaged in the much narrower range of cases where there is at least an arguable case that the state has been in breach of its substantive duty to protect life; in such cases the obligation is proactively to initiate a thorough investigation into the circumstances of the death. "

68. In conclusion, I have already expressed the view that there is no prima facie evidence to support that it is even arguable there has been a breach or that there may have been a breach of a substantive obligation to protect life in this case on the part of the United Kingdom (see paras 48 and 49 above). I have also indicated that I am not satisfied that the actions of a foreign state or its agents, capable of amounting to an arguable breach of Article 2, within this jurisdictional territory triggers by itself the enhanced Article 2 procedural duty (see paras 49-53 above). In the circumstances of this case, I can only logically conclude that the effective investigation required here need only be Article 2 compliant at the lower level and that unless there have been any investigative gaps, relying on Lord Justice Richards decision in *Litvinenko*, the procedural obligation to investigate Ms Sturgess' death has already been discharged. In my view the only difference between the two investigations in this case and the one relating to Mr Litvinenko's death relates to the fact that the CPS have yet to announce (unlike the March 2018 incident) whether any criminal charges will be levelled against the 2 suspects, Mr Petrov and Mr Boshirov in relation to Ms Sturgess' death and Mr Rowley's poisoning. It is my view that the scope of the inquest as indicated by me as outlined in my letter of 18 September 2019 will satisfactorily plug that gap in the investigation. I therefore for this reason disagree, on this point alone with Ms McGahey QC's submissions, that the procedural duty has already been discharged and satisfied by virtue of the criminal investigation. It seems to me that the investigation can only be concluded when a decision has been made as regards whether or not there is enough evidence to charge and if so the nature of the offences that would then form the basis of the charge.

Have "The Matters To Be Ascertained" At The End Of The Inquest Been Varied By Section 5(2) Coroners & Justice Act 2009?

69. Having reached the conclusion above at para 68, the above question needs to be asked. The answer simply is no because Lord Bingham in *Middleton* at paras 29 and 30 above made it clear that the variation in wording, in so far as the purpose of the inquest

is concerned, in terms of the meaning of "How" (by what means) someone died is only extended to cover the "by what means and in what circumstances" the person died when there has or that there may have been a breach of a substantive obligation on the part of the state. In this case the state means a reference to the United Kingdom and my current view is that this is not even arguable on the facts currently known.

70. The wording as to the matters to be ascertained (the purpose of an investigation) will therefore remain as set out in section 5(1) Coroners and Justice Act 2009 (see para 17 above) with the interpretation as to the meaning of "how" remaining as the one given by Sir Thomas Bingham at para 2 of his General Conclusions relating to the conduct of inquests in *Jamieson* (see para 19 above). This difference relative to "how" someone died is why coroners refer to an inquest being either a *Middleton* inquest or a *Jamieson* inquest. The point here is that even a *Jamieson* inquest, being Article 2 compliant, is capable of discharging the procedural duty under Article 2 when required as pointed out by Lady Justice Smith in *Humberstone* at para 67 above in cases where there is no state or agents of the state involvement in the death.

C) Scope of the Inquest

71. I have set out at paras 16 – 34 above the coroner's functions when the duty under section 1 of the Coroners and Justice Act 2009 is triggered. An inquest is not an adversarial process and as stated in my preliminary view to the Interested Persons in September 2019, it is not a public inquiry or a substitute for a criminal trial (or civil trial).

72. The purpose of the inquest in this case, as I have already ruled, is to determine the answers to the matters to be ascertained at section 5(1) Coroners and Justice Act 2009 and at the end of the inquest to record these determinations on the "Record of Inquest". Any issue that falls within scope, in my view, must be an issue involving the examination of evidence that is relevant to ascertaining the answers to the four statutory questions which will ultimately be recorded on the Record of Inquest, if the evidence supports the making of those determinations.

73. It is accepted that as a coroner conducting an inquisitorial process, that I have a broad discretion in relation to the scope of the inquest including what witnesses to call and the evidence to be adduced at the final hearing. It is a process in respect of which I am entirely responsible for.

74. In exercising both judgment and judicial discretion, any decision on scope will incorporate my view as to what is necessary, desirable and proportionate to ensure that the statutory function given to me under the Coroners and Justice Act 2009 is discharged.

75. In the exercise of that discretion sometimes scope does extend beyond determining the matters to be ascertained having regard to section 5(1) Coroners and Justice Act 2009.

That can arise in particular when as part of the investigation a concern may arise that may form the subject or a Regulation 28 report to prevent future deaths having regard to the Coroners (Investigations) Regulations 2013. I have not as part of my investigation revealed any hint of an issue that may give rise to the possibility of such a report in this case.

76. In this case I have considered the issue of scope by reference to discharging the procedural duty under Article 2 with a view to ensuring that the inquest will be Article 2 compliant and as regards in particular answering the four main statutory questions that I am required to undertake as part of conducting a *Jamieson* inquest – who died, when and where and how (by what means) that person came by their death? I have also considered the existence in law of any limitations on what I am able to record on the Record of Inquest when it comes to the matters to be ascertained. I will now cover all the issues that have been raised in the submissions.

The movements of the 2 Russian nationals who entered the United Kingdom on 2 March 2018 and left returning to Moscow the following Sunday and whether they may by act or omission have caused or contributed to Ms Sturgess' death (including how the Novichok came to be in Salisbury)

77. I have already indicated in my preliminary view that this issue should form part of the scope of the inquest and this is acknowledged and accepted by Mr Mansfield QC at para 36 of his submission and by Ms McGahey QC in her submission at para 43. As a result of reviewing the evidence, I have made both Mr Petrov and Mr Boshirov Interested Persons on the basis that they may by an act or omission have caused or contributed to Ms Sturgess' death. The investigation will include examining their movements in the United Kingdom following their arrival on 2 March 2018 until their departure on 4 March 2018. This will include what is known as regards their movements relative to the March 2018 incident here in Salisbury and in particular the attack on Mr Skripal and his daughter Yulia. It will also examine in detail their movements after they were spotted by a CCTV camera on the Wilton Road in Salisbury, a location which is in close proximity to Mr Skripal's home, and when they were subsequently picked up by other cameras closer to and in the centre of Salisbury. It will look at to what extent they were individually involved in bringing Novichok to Salisbury and what happened to the Novichok once it had been used in the attack relative to the appearance of Novichok again at the end of June 2018 in the town of Amesbury a few miles to the north of Salisbury. This part of the investigation is essential as, in discharging my judicial role and hearing the evidence, I may have to consider whether the evidence supports the finding of a conclusion of "Unlawful Killing" in respect of Ms Sturgess' death. This in my view would fill in any investigative gap as regards the investigation into Ms Sturgess' death as unlike the position in relation to the death of Mr Litvinenko and the March 2018 incident, the CPS have not made a decision as regards criminal charges in relation to Ms Sturgess' death. As stated already at para 68 above this in my view will plug any deficiency or gap in relation to fully discharging the procedural duty under Article 2 by conducting an Article 2 compliant *Jamieson* inquest.

Who was responsible for Ms Sturgess death?

78. For reasons that I will elaborate on with regard to the next issue in relation to scope, provided it is limited to the acts and omissions of the two suspects, Mr Petrov and Mr Boshirov and of course Mr Rowley, who gave her the bottle of what he believed was perfume, then this will be covered in the inquest investigation. I have already given my

reasons as to why I do not believe the United Kingdom as a state or through the actions of its agents has triggered the enhanced procedural obligation under Article 2 (the *Osman* duty) although I will keep that under review.

Whether members of the Russian state were responsible for the death?

79. This issue for me causes a problem on 3 fronts. Firstly, I am prohibited from determining matters of criminal liability on the part of a named person as this would directly contravene section 10(2)(a) Coroners and Justice Act 2009 (para 18 above). If as part of an investigation and upon considering the evidence I identify individuals involved, then they could not be named in the Record of Inquest as the death of Ms Sturgess has undoubtedly involved the commission of a criminal act e.g. the usage of an organo-phosphate nerve agent which is prohibited under International Law and Domestic Law. To contravene and ignore section 10(2) referred to above would be unlawful.

80. Secondly, this issue not only refers to potentially identifying individuals but also linking them to a foreign state. The determination of such a link would in my view be a direct violation of section 10(2)(b) Coroners and Justice Act 2009 which prohibits me determining matters of civil liability generally and would therefore be unlawful. Whilst states do not generally attract criminal liability (unless legislation says otherwise) they are recognised in law as a separate legal personality in the sense that a state can sue and be sued. Mr Rowley has indicated only recently in the press that he intends to sue Russia for £1 million pounds[1]. That would be a civil claim. The family may also possibly be able to sue for example under the Fatal Accidents Act 1976, an alternative civil claim.

81. Leading on from the above, if such a connection were to be found having analysed the evidence, then that potentially could amount to a violation of the European Convention on Human Rights in respect of the "Right to Life". The Russian Federation ratified the European Convention on Human Rights in 1998. It is for the purposes of the said Convention a Contracting State. Generally, the obligation to protect life under the Convention is the responsibility, as I have already stated, of the state within whose territory the individual(s) exist. The Convention is living instrument and over the years case law, as already highlighted, has developed exceptions to the jurisdictional territorial principle contained in Article 1 of the Convention. The *Guzelyurltu* case I have already highlighted as a prime example insofar as placing an obligation under Article 2 to investigate the deaths of individuals that occurred, in that case, within the territory of another Contracting State. Another example recognised by the European Court of Human Rights is where there is a use of force by a state's agents operating outside its own territory (see para 13 of Ms McGahey QC's submission referencing the case of *Al Skeini and others v United Kingdom (2011))*. This is something that has been suggested by Mr Mansfield QC in his submission and the United Kingdom Government insofar as the Russian Federation is concerned in relation to the March 2018 incident here in Salisbury. The Chamber of the European Court of Human Rights in the case of *Issa and others v Turkey no. 31821/96 (2004) at para 71* found that Article 1 of the Convention (see para 50 above) cannot be interpreted so as to allow a state party to perpetrate violations of the Convention on the territory of another state, which it could not perpetrate on its own territory. Such a civil claim would be founded on the European Court of Human Rights power under Article 41 of the Convention to award "just

[1] https://www.salisburyjournal.co.uk/news/17922698.novichok-victim-charlie-rowley-vows-sue-russia-1m/

satisfaction" to those who have suffered violations of their Human Rights. It is an award relative to a claim for compensation or damages to an injured party. Such a claim is also a civil claim so the identification and determination of any wrongdoing here involving a foreign state would again be unlawful and contravene section 10(2)(b) Coroners and Justice Act 2009.

82. The final concern relates to my exercise of judicial discretion relative to determining how, meaning by what means, Ms Sturgess came by her death. There is no evidence that points to Ms Sturgess being the intended target of the March 2018 attack. Evidence points to that individual being Mr Skripal. The incident involving Ms Sturgess occurred nearly four months after the attack on the 4 March 2018. Ms Sturgess, on the face of the evidence I have seen, appears to have been in the wrong place at the wrong time and her death may well have arisen as a result of "collateral damage", a phrase that I apologise in using but I am unable to express it any other meaningful way. Ms McGahey QC described Ms Sturgess as a victim of unpredictable misfortune. In my view issues to do with the possible involvement of a foreign state and members of that state relative to conducting a *Jamieson* inquest are too remote in circumstances where my focus should be on matters that are directly causative or contributory to the death and as a consequence of the above three concerns, I rule that they fall outside the scope of this inquest.

The source of the Novichok that killed Ms Sturgess?

83. Again, for the same reasons I have given in the previous paragraphs numbered 79 – 82, I rule that it falls outside the scope of this inquest for being too remote in respect of a *Jamieson* inquest and to determine the source of the Novichok would I fear involve determining a country of origin which is likely to give rise to a determination of civil liability which in itself would be unlawful.

84. In relation to this issue and the previous issue above, as I alluded to in my preliminary view dated 19 September 2019 which was sent to all the Interested Persons, the case of *Coroner for Birmingham Inquests (1974) v Hambleton [2018] EWCA Civ 2081* provided helpful confirmation of the existing case law. When it came to the perpetrator issue and the identification of those involved in relation to the pub bombings, the Lord Chief Justice, Lord Burnett said as follows at para 56 in relation to the perpetrator issue:

> "It is difficult to criticise the coroner, still less to stigmatise as unlawful a decision to refuse to explore a distinct question which the jury is prohibited by statute from answering."

The reference above of course is to the prohibition on appearing to determine matters, in an inquest, of criminal liability on the part of a named person or civil liability generally. He had earlier indicated at para 51 of his judgment in relation to the coroner's approach to the issue of scope as follows:

> "The Coroner was correct to consider the question of scope in the context of providing evidence to enable the jury to answer the four statutory questions. The scope of an inquest is not determined by looking at the broad circumstances of what occurred and requiring all matters touching those circumstances to be explored."

This has very much been my approach when initially considering the issue of scope back in September 2019 and now, focussing on what evidence I need to examine so as to enable me, in accordance with the Coroners and Justice Act 2009 to ascertain the answers, subject to the evidence, to the four statutory questions namely, who, when, where and how (by what means) the deceased died.

Whether appropriate medical care was given to Ms Sturgess?

85. I am grateful to Mr Mansfield QC for raising this issue as I was unaware that it was of concern to his clients. I have discussed the matter with DCI Murphy and understand that it related to evidence given by paramedics concerning an "antidote" that was given to Mr Rowley along with other drugs when paramedics attended him at his home mid-afternoon on 30 June 2018 but was not given to Ms Sturgess. I am unaware from my investigation that there is an antidote as such to Novichok poisoning. I have however tasked DCI Murphy to gather evidence relating to what treatment was given that varied as between Mr Rowley and Ms Sturgess and if there was a reason for that variation to explain why and the impact that difference may have made in relation to the outcome insofar as Ms Sturgess was concerned. Further advanced disclosure will be provided and insofar as my understanding of this issue is correct, I rule that it will fall within the scope Ms Sturgess' inquest.

General

86. I have been asked by Mr Mansfield QC not to make a final decision on scope and to allow him to make oral submissions. I again make the point that this ruling on scope is not set in stone and will be kept under review until the conclusion of the process. I have indicated in recent correspondence (25 November 2019) sent to those representing the Family (including Mr Rowley) and the Home Secretary, that the detailed original submissions have helpfully and clearly highlighted the issues that I need to determine in relation to scope. I indicated that because of the complexity of the matter that if I were to accept any oral submissions then they would need to be followed by written submissions so as to ensure that I did not miss anything of importance and relevance. Mr Mansfield QC's latest submissions dated 4 December 2019 have elaborated and expanded the original points made in the first submission. To delay matters is of concern to me in circumstances whereby Mr Mansfield QC highlights that it is about 17 months since Ms Sturgess' death. It is clear to me that my view as regards scope is fundamentally at odds with Mr Mansfield QC's submissions and that the future conduct of this case would benefit from guidance from higher courts if my ruling is not accepted. The sooner that happens then the better it will be for the family and the investigation as a whole.

87. One of the matters raised by Mr Mansfield QC in his submissions is that if I or the United Kingdom state does not investigate the alleged Russian state involvement in this case then who will? Mr Mansfield QC is of the view that it should be the United Kingdom so as to ensure there is no vacuum in relation to human rights protection; to avoid impunity for those responsible for Ms Sturgess' death and the belief that the main body of

evidence is located in the United Kingdom (para 43 of the submission dated 4 December 2019). In terms of alleged Russian state involvement including who within the state was involved and the source of the Novichok, it seems to me that the obvious location for this evidence is not within the United Kingdom but the Russian Federation. I also make the point that the two suspects alleged to have been involved in the March 2018 attack and who are believed to be Russian GRU officers are also understood to currently reside within the Russian Federation.

88. I have previously indicated that the Convention in terms of the territoriality principle is a living instrument and the European Court of Human Rights ("the Court") has over the years defined exceptions to that territorial principle. If in terms of an Article 41 claim, the Court found as in *Issa and others v Turkey no. 31821/96 (2004) at para 71,* that Article 1 of the Convention (see para 50 above) cannot be interpreted so as to allow a state party to perpetrate violations of the Convention on the territory of another state, which it could not perpetrate on its own territory. It flows as a matter of logic, that given also that the Court usually considers imputability and responsibility under the Convention together in relation to an alleged violation by that state, that the Court (responsible and charged with supervising the enforcement of the Convention) could, not dissimilar to *Guzelyurltu,* find that both the United Kingdom and the Russian Federation have a duty to carry out an effective investigation under Article 2, although what might be required to satisfy an effective investigation may differ between the two states. It appears to me to be open to the Court, along the lines of the *Issa* case, to consider the creation of an extraterritorial exception to Article 1 in these circumstances. If the Russian Federation were required by the Court to carry out an effective investigation, then the Russian Federation would have to ensure that such an investigation complies with Convention law relating to the procedural/investigative duty under Article 2. Such an investigation would have to be independent; be effective; be reasonably prompt; be sufficiently open to public scrutiny and involve the next of kin. These are essentially the same requirements (although abbreviated) that I set out at para 54 above which I quoted from the *Tunc* case which were repeated in *Guzelyurtlu*.

89. It is open to the Court and it is possible that upon such a referral that it might determine that the Russian Federation examine the alleged involvement of the Russian state including the source of the Novichok, given that the main body of evidence relating to these issues would sit within that territory to the extent that it exists as well as the death of Ms Sturgess. The United Kingdom then, as highlighted in my ruling, having responsibility for the investigation into the events within its territory in respect of which the *Menson* duty and the criminal investigations has virtually discharged the obligation to investigate Ms Sturgess' death under Article 2 of the Convention. *Guzelyurtlu* is a case that covers the co-operation between contracting states charged with carrying out an effective investigation under Article 2 relating to the same incident which occurred in the territory of one of the Contracting States. To assist with the Russian Federation's investigation of Ms Sturgess' death, I do not believe that it would cause an issue to the United Kingdom, if the Russian Federation were to be supplied with a copy of the coronial investigation file which focuses on Ms Sturgess' death. I would not object to this as it is the same disclosure material that will be provided to all Interested Person's including Messrs Petrov and Boshirov, much of which has already been disclosed.

90. If the family were unhappy with the standard of the investigation, then that could be challenged in the Court having regard to an alleged violation of the procedural duty

under Article 2. That is what the Court is there to do, to supervise the enforcement of Convention rights and freedoms.

91. Separately, Mr Mansfield QC has in his second submission highlighted the approach taken by Sir Robert Owen in relation to the Litvinenko inquest where, in the exercise of judicial discretion and recognising the public interest, he ruled that the alleged Russian involvement in Mr Litvinenko's death did fall within scope. I, in the exercise of my judicial discretion have ruled the issues concerned as falling outside scope and I have stated my reasons for reaching that decision. I wish to make the point that I do acknowledge the public interest factor in this case. If, as I expect, this ruling is challenged by way of Judicial Review and it is found that the scope should be as envisaged along the lines advanced by Mr Mansfield QC, I am mindful of Lord Phillips observations in *R (Smith) -v Secretary of State for Defence [2010] UKSC 29* when he said at para 81:

> *"How appropriate is an inquest for the discharge of article 2 procedural obligations?*
>
> 81. As I have pointed out, inquests were designed to perform a fact finding function as a stage in an overall scheme of investigation that would commence before the inquest and might continue after it. An inquest will not be the appropriate vehicle for all inquiries into State responsibility for loss of life. An inquest would not have been the appropriate means of determining whether the death of a victim of new variant CJD, contracted from eating BSE infected beef, involved government responsibility, nor for determining the issues of State responsibility for the "Bloody Sunday" killings. An inquest can properly conclude that a soldier died because a flack jacket was pierced by a sniper's bullet. It does not seem to me, however, that it would be a satisfactory tribunal for investigating whether more effective flack jackets could and should have been supplied by the Ministry of Defence. If the article 2 obligation extends to considering the competence with which military manoeuvres have been executed, a coroner's inquest cannot be the appropriate medium for the inquiry.

I have highlighted in this ruling that the conduct of an inquest is subject to statute namely, The Coroners and Justice Act 2009 and of course case law. The Coroners and Justice Act 2009 places significant restrictions as regards what we are allowed to ascertain and what we are not allowed to ascertain, and I have ruled in this decision that principally to make a determination as regards State responsibility or to identify individuals within a state who are involved in the death, including the source of the agent would be unlawful. If an enhanced Article 2 procedural duty is required in this case I have significant concerns as regards the appropriateness for an inquest to discharge that obligation. It is noteworthy that Sir Robert Owen himself raised concerns relative to accessing and the use of sensitive material within the coronial arena and was concerned that the inquest process was not the appropriate mechanism in order to investigate the issues he had identified relative to the scope of the inquest. In the end he chaired a Public Inquiry in relation to Mr Litvinenko's death

92. As part of my preparatory work I have looked at Sir Robert Owen's Report published in January 2016 relating to the Public Inquiry into the death of Alexander Litvinenko. I noted that the theme of the issues that I have ruled as falling outside the scope of this inquest are the wider issues such as another state's responsibility for what happened, which were covered in the Litvinenko Inquiry and in respect of which findings and the apportionment of responsibility for Mr Litvinenko's death were able to be fully recorded in the Inquiry's conclusions at section 10 of that report.

David Ridley (Senior Coroner) 20 December 2019