



INQUESTS INTO THE DEATHS OF
DIANA, PRINCESS OF WALES
AND
MR DODI AL FAYED

At the Royal Courts of Justice, Strand
London, WC2A 2LL

Pre-Hearing

21st March 2007

Before

THE RT HON BARONESS BUTLER-SLOSS, GBE
Assistant Deputy Coroner for Inner West London

In the matter of the Inquest into the death of Diana, Princess of Wales

Interested Persons:

Mr Mohamed Al Fayed
Represented by Mr Michael Mansfield QC and Ms Henrietta Hill (Instructed by Lewis
Silkin LLP)

The Parents of M. Henri Paul
Represented by Mr Richard Keen QC (Instructed by Stuart Benson Solicitors)

President, The Ritz Hotel Paris
Represented by Mr Ian Croxford QC and Mr Thomas de la Mare (Instructed by
Barlow Lyde and Gilbert Solicitors)

The Commissioner of Police of the Metropolis
Represented by Mr Edmund Lawson QC (Instructed by Ms Naz Saleh, Metropolitan
Police Directorate of Legal Services)

Mr Ian Burnett QC appeared as Amicus
(Instructed by the Assistant Deputy Coroner for Inner West London)

In attendance:

The Treasury Solicitor
Represented by Mr Jeremy Johnson (Instructed by the Treasury Solicitor (Mr Roland
Phillips))

In the matter of the death of Mr Dodi Al Fayed

Interested Persons:

Mr Mohamed Al Fayed
(As above)

The Parents of M. Henri Paul
(As above)

President, The Ritz Hotel Paris
(As above)

The Commissioner of Police of the Metropolis
(As above)

Mr Ian Burnett QC appeared as Amicus
(Instructed by the Assistant Deputy Coroner for Inner West London)

In attendance:
The Treasury Solicitor (as above)

Lady Butler-Sloss :

1. At the preliminary hearing on the 21st March on disclosure of documents, Counsel representing Mohamed Al Fayed, the Ritz Hotel, Paris and the parents of Henri Paul, came to a large measure of agreement with Counsel for the Metropolis and the Amicus on the principles and the application of those principles to the documents and other material to be disclosed at this preliminary stage. There do not appear to me to be any real outstanding issues in the immediate future. It will however be helpful, in my view, if I set out briefly the principles to be applied and the procedures to be adopted in the initial steps leading up to the hearing of the inquests in October.
2. I am most grateful to all Counsel for providing me with helpful written and oral submissions on the issues of disclosure.
3. The starting point is the purpose of disclosure in the context of the duties of a coroner to conduct an inquest.
4. An inquest is an inquisitorial process and a coroner should only adduce evidence which is relevant to the remit of the particular inquest. The inquiry must be directed to answering the statutory questions set out in Section 11(5) of the Coroners Act 1988 and Rule 36(2) of the Coroners Rules 1984. The interpretation of these provisions is helpfully set out in the judgment of Sir Thomas Bingham MR in *R v Humberside Coroner, ex parte Jamieson* [1995] QB 1. An inquest may also serve the purpose of allaying rumour and suspicion and, as in the present inquests, may require a coroner to inquire more widely than would otherwise seem necessary. If there are possible systemic problems, the coroner may need to inquire into the questions raised, see Section 8(3) of the Coroners Act and Rule 43. In the present inquests, from the indications in the judgment of the Administrative Court, it will be necessary to look at the activities of the paparazzi prior to the crash. In order to establish the remit of these inquests, it will be important to see how the evidence emerges and the extent to which it may, or may not, be necessary to explore further avenues of inquiry. The inquiry into the evidence requires to be approached with an open mind and I have already set out in my letter of the 22nd February, 2007, the approach I intend to adopt. It is also important to have in mind that the primary purpose of the inquests must not be obscured by straying too far into matters not shown to be directly relevant.
5. There is no statutory requirement for disclosure of documents prior to the hearing of the inquest but it is obvious that, in the interests of fairness and openness, properly interested persons should have access to relevant evidence before an inquest begins. A number of decisions of the Court of Appeal and the Administrative Court have underlined the importance in complex and difficult inquests of prior disclosure of the relevant evidence, see for instance Sullivan J in *R (Bentley) v HM Coroner for Avon* [2001] EWHC 170 Admin. As Mr Burnett QC expressed it in his written submissions, ‘the litmus test for all questions of advance disclosure is whether the disclosure sought is reasonably necessary for an interested person to exercise properly the rights he enjoys under the (Coroners) Rules’.

6. The coroner may choose to disclose material beyond that strictly required by judicial decisions. It does not, of course, include all documentation or exhibits received or seen by the coroner. Relevance remains the main criterion. The coroner also has to take into account sensitive material and the extent to which some documents should be excluded from disclosure. Issues as to public interest immunity may well arise to a limited extent in these inquests. Additionally, the evidence collected by Operation Paget contains personal and private information which all those who appeared recognised called for sensitive handling. It would be quite wrong to allow material of a private nature to be disclosed into the public domain unless it was necessary for the purpose of the inquests. Disclosure of documents at this stage to the interested persons under the umbrella of confidentiality supported by written undertakings does not have the necessary consequence that the documents disclosed will be adduced at the inquests. Similarly, the disclosure of a witness statement does not necessarily mean that the witness will be called to give evidence or the statement read. It is also clear to me from what I have seen of the statements that many contain information which will be irrelevant for the purposes of the inquest, even when the witness concerned is likely to have material evidence to give. A clear example is the statement of Trevor Rees.
7. The disclosure of the relevant documents to interested persons will assist in the decisions yet to be made as to the oral and written evidence to be called before the jury. The main criteria will be relevance and expediency. The documentation is held by Operation Paget and is enormous. It was produced for a different purpose, that is to say, a criminal investigation and will require to be rationalised for the purposes of the inquests and reduced to manageable proportions. There is a need to distinguish between evidence collected by Operation Paget about the deaths and other paperwork generated by the investigation itself or otherwise not concerned with the cause or causes of the deaths and crash. In some areas of the inquiry it is already clear that there is a considerable degree of repetition in the existing statements both in the French Dossier and in the Operation Paget statements. I very much hope that much of the written evidence should be capable of agreement between the interested persons and therefore be provided to the jury in written form. It cannot be in the interests of any of the interested persons and would be seriously to the detriment of the families to call unnecessary or repetitive oral or, indeed, written, evidence.
8. The suggested way forward is preliminary and intended to be a guide and not by way of final decision. It is clear that various areas of inquiry will require further consideration at future hearings.
9. The lawyers representing Mohamed Al Fayed, The Ritz Paris and the parents of Henri Paul are those seeking disclosure. The representatives of the two Princes, Lady Sarah McCorquodale and Trevor Rees are not pressing for disclosure. Nonetheless, they shall of course be given the same access to material and on the same terms, if they wish.
10. Mr Johnson, instructed by the Treasury Solicitor, represented the Government to assist in respect of certain of the documentation. It is well known that Operation Paget investigated, as one of the various conspiracy theories, those which appeared to originate in early suggestions from Mr Tomlinson, a former SIS

officer. It is in connection with that aspect of the investigation that issues of PII may well arise.

11. In the course of his oral submissions Mr Mansfield QC, on behalf of Mohamed Al Fayed, cleared up a misunderstanding that had arisen about the extent of disclosure being sought. He was not seeking access to every piece of paper in the Operation Paget investigation. That would plainly be unnecessary for the proper exercise of the role of an interested person. I should add that the inquests will not be an investigation into the Operation Paget investigation. Rather he was seeking, on behalf of his client, access to the statements and other evidential material referred to in the Steven's Report and which were relied upon to support the conclusions that none of the various conspiracy theories has any foundation.
12. Operation Paget, acting as the Coroner's Officers, have already provided the statements in Appendices to the Coroner's Report. There are some omissions and further information has been requested by the lawyers for Mohamed Al Fayed, the Ritz Paris and the parents of Henri Paul. The schedules and letters from the solicitors are being studied and access to the information requested, subject to approval by me will form part of the material to be made available by Operation Paget. The documents underlying the Coroner's Report are very substantial and amount to 13 lever arch files and about 12 CDs. It is hoped that this material can be provided to the interested persons partly electronically and partly for inspection in the week beginning the 23rd April. I should like to make it clear that the substantial requests for information directed both to Operation Paget and to me over the last few weeks will not be answered individually. I have therefore instructed Operation Paget not to reply individually to each letter. Any omissions can be the subject of request an, if necessary, application at a later hearing. I am anxious that the Operation Paget team should not be swamped by further individual and lengthy requests until after the documents and other material has been disclosed and considered.
13. At the hearing on the 21st March agreement was reached by counsel seeking disclosure with Mr Lawson QC for the Metropolis, which I support, that the underlying material expressly referred to and relied upon by Operation Paget in compiling the Stevens Report would be disclosed, subject to my consideration of the questions of sensitivity and public interest immunity. To enable relatively quick disclosure to take place I may well need to deal with sensitivity and PII provisionally and on a precautionary basis, but review the issues later. I was urged, by Mr Mansfield QC and Mr Keen QC to arrange for access to the documents to be arranged directly between Operation Paget and the lawyers for the interested persons on the basis that they were all relevant and did not require any consideration by me. I demurred at this step. It is clear that under the Coroners Rules 1984 the coroner retains control of the inquest; exercises his discretion and makes the decisions as to the written evidence under rule 37 to be adduced and the oral evidence to be called. I do need to satisfy myself that the documents held by Operation Paget and to be made available are potentially relevant; do not raise any unduly sensitive issues and are not subject to any claims in PII. Therefore I am in discussion with Operation Paget with a view to the documents being made available as soon as it is practically possible to do so after preparing the material for the Coroner's Report, referred to above in paragraph 12.

They fill 18 lever arch files. There are also lengthy documents such as manuals, reports, photographs, CCTV and media material and other exhibits which will be made available for inspection both in respect of the material underlying the Coroner's Report and the Stevens Report. It is hoped to have available for the interested persons the major part of the documentation referred to and relied upon in the Steven's Report during the week of the 7th May. The directions which I am making indicate that the interested persons will be given access to the documents and other material, which may be by providing it partly in electronic form and partly by an opportunity for inspection by arrangement with Operation Paget.

14. Some of the documents to be disclosed to the interested persons are clearly sensitive. For example the photographs of the scene after the crash showing the Princess, Dodi Al Fayed, Henri Paul and Trevor Rees are particularly sensitive as are the pictures of the Princess in hospital and the post mortem photographs. They should be inspected by those who wish to do so and who have signed the undertakings as to confidentiality and only copied where absolutely necessary. It is of the greatest importance that the undertakings should be strictly observed. Any person publishing any of the documents disclosed in confidence for the purposes of these inquests would be in contempt of court. The undertakings cover the interested person, his lawyers and experts. I expect the confidentiality of any material disclosed on these terms to be maintained until the material itself goes into evidence at the inquest. In particular I do not think it appropriate to mirror the default position in civil proceedings where, unless an order is made to the contrary, any reference to a document in the course of an open hearing would release those who have received it in the course of the proceedings from their duty of confidence. That is primarily because documents are likely to be referred to in preliminary hearings at a time when the decision whether they will be used at the inquest has not been made, and also because unless documents and statements are redacted for relevance (a very time consuming exercise) even if referred to for their relevant content at the inquests, there may be much that is irrelevant. There may, of course, be examples of statements or documents which contain irrelevant material that nobody is concerned about. But information especially of a private nature concerning either deceased or their families which is irrelevant and not adduced in evidence should continue to be respected. I am particularly concerned that all counsel are careful not to read into preliminary hearings sensitive statements which may, or may not, become part of the inquest material. They should first be read to the jury and not be the subject of retailing and comment by the Press. I should however be prepared to hear any submissions on the form and extent of the undertakings at a preliminary hearing.
15. I should also remind all the interested persons that the documents and other material to be disclosed to the interested persons, their lawyers and experts are disclosed for the purposes of the inquests and for no other purpose. Specifically they cannot not be used for any other proceedings within or outside the jurisdiction of England and Wales.
16. Operation Paget are already in discussion with some of the experts from the three teams and arrangements are being made to meet and to give access to the documents and other material, subject to confidentiality, in the three areas of medical/scientific evidence relating to the death and blood samples of Henri Paul,

computer technology and the vehicle and road traffic investigations, subject to copyright. In order for the experts in these three areas to be able to utilise their meetings to the best advantage, it would be helpful if the experts instructed by the interested persons provided a list of areas for discussion 7 days before each meeting of experts.

17. I have been asked by letter to hold a further hearing prior to the May hearing which is now fixed to take place on the 15th and, if necessary, the 16th May in Court 73. It seems clear from what I have already said that we shall not be sufficiently far advanced in reading and digesting the large volume of documents which will now be made available by Operation Paget for a hearing in April to be helpful. If however, any of the interested persons would like to provide me in writing with any points which might be capable of resolution prior to the 15th May, I should be delighted to receive them. I do also raise the possibility that we may not be able to make much progress at the hearing on the 15th May. I have only just had the opportunity to review the extent of the documentation which will be offered to the interested persons and the time needed to give it proper consideration. I should welcome views from the interested persons as to whether we should now hold a hearing on the 15th May and if we should, how we might best employ the time, bearing in mind the considerable cost of even a preliminary hearing. As a general proposition, I am content to try to resolve on paper any issues as they arise.
18. I very much hope that, as a result of the disclosure of Operation Paget documents that we can make substantial progress at the next hearing to identify areas where, either it will not be necessary to trouble the jury at all or where a written statement will cover the matter.
19. My letter of the 22nd February, to which I have already referred, sets out various areas of inquiry which appear to need to be considered by the jury. I should be grateful to be informed on or before the next hearing of other areas of inquiry which any of the interested persons wish me to pursue. I should be particularly grateful to receive from Mohamed Al Fayed, a list of the allegations upon which he intends to support at the hearing of the inquests and the evidence which is said to support each of those allegations. It would be of the greatest help to me to have that information in order to make at least a preliminary attempt to identify the scope of the inquests. It will obviously only be a preliminary identification, since I entirely agree with Mr Burnett that I should retain an open mind as to the areas of inquiry I should explore and the further evidence I may have to place before the jury. Mr Mansfield indicated at the hearing of the 21st March that the list was contingent on a scrutiny of the Operation Paget material. I took from that the implication that there was at least a possibility that after scrutiny of the material Mr Al Fayed might accept that an allegation was without foundation. It is for that reason that I do not now seek to obtain the list of allegations and indications of supporting evidence until those Operation Paget documents have been studied. I have included a direction, of course addressed to all interested persons, seeking to clarify the allegations they wish to support. Yet the reality is, as I understand it, that it is Mr Al Fayed rather than the other interested persons who are most interested in what have loosely be called the 'conspiracy theories' which are discussed in the Steven's Report. I assume, however, in line with the discussions

with Mr Mansfield on the 21st March, that I should be able to have this information prior to the next hearing at which we deal with the consequences of disclosure and would be grateful to receive it a week before that hearing.

20. I am hoping therefore that at the next hearing on disclosure we may be able to identify the major areas of inquiry which would require oral evidence, although not necessarily in detail and those areas of inquiry which might be dealt with by written statements. I agree in principle that by the 1st July I should have from the interested persons a reasonably detailed list of the oral evidence they wish to be called. This list would not, of course, preclude the adding of further witnesses to the list. It would also be helpful to indicate the 1st August for my list of oral and written evidence to be nearly complete, subject to the possibility of later review to add witnesses and the possibility of some of those on the list not being necessary or expedient to call.
21. Between April and June/July I do hope that the experts in the three areas will be able to identify their points of agreement and disagreement and the importance of limiting their discussions and reports to relevant issues. I very much hope that by the 1st August, at the latest, all the experts will have reported and that their reports will have been received by the interested persons and by myself.
22. I agree with Counsel that we should aim for pre-inquest hearings in June and in July. It is premature however to make any firm indications at this stage since the scope and the extent of the inquests is not yet at all clear.