

IN THE MATTER OF THE CORONERS ACT 1988

-and-

IN THE MATTER OF THE DEATH OF DR DAVID KELLY

To Her Majesty's Attorney General

**ADDENDUM TO THE HUMBLE MEMORIAL OF DR STEPHEN FROST
DATED 15 SEPTEMBER 2010**

SHEWETH:

1. This is an Addendum to the Humble Memorial of Dr Stephen Frost, acting as lead memorialist for a group of four other eminent doctors: Mr David Halpin; Dr Christopher Burns-Cox; Dr Martin Birnstingl (deceased); and Dr Andrew Rouse, dated 15 September 2010.
2. This Addendum is provided at the request of the Attorney General to assemble material provided to him since 15 September 2010 which further supports the memorialist's humble prayer that you be pleased to use your discretion under s13 Coroners Act 1988 and thereby consent to an application to the High Court of Justice to require that a full and proper inquest be held.
3. This Addendum focuses on submissions supporting the immediate medical position set out in the Memorial.

4. The arguments below are set out as an Addendum to section 4 of the Memorial, Arguments and evidence as to the need for a new inquest:

Summary

5. It is the view of the memorialist that were there to be an inquest into Dr Kelly's death there is a possibility that the Verdict would not be suicide. As you will be aware there are two elements to a suicide Verdict, both:

- (i) the indisputable fact that the deceased physically took his own life; and
- (ii) that he had the intention to do so.

6. It is generally very difficult for a Coroner to arrive at a view on "intention" to kill unless the circumstances are very straight-forward (ie a note followed by a jump from a height), and as a result there are very few suicide Verdicts and many more open Verdicts. The reasons for this are not only straight-forwardly factual, but also to do with the stigma that a family may suffer as a result of a suicide Verdict as distinct from an open Verdict.
7. As you will be aware, to grant your fiat, there is no requirement for you to be certain that the Verdict *would* be any different to that arrived at by Lord Hutton, but if you are of a view that the Verdict *might* be different, then the fiat should be granted.

Addendum to section 4: Insufficiency of the Hutton Inquiry

Conflicting facts

8. It is the understanding of the memorialist that the Hutton Inquiry did not raise any questions in relation to the clothing Dr Kelly was found to be wearing, despite conflicting statements in contemporaneous media reports. The Inquiry heard that Dr Kelly's body was found wearing a green 'Barbour type' jacket. In conflict to this, newspaper reports published at the

time of Dr Kelly's death repeatedly stated that Dr Kelly was wearing only a "cotton shirt and jeans". In light of the time of year and availability of meteorological data to confirm the weather conditions at this point of the Summer, coupled with the contradicting media reports, it is submitted that further enquiries should have been made and would be in line with the duties of a Coroner presiding over an inquest into the death of Dr Kelly in order to determine *when* the deceased died. Further information on this matter, together with the relevant media sources are set out in the letter from Mr David Halpin dated 16 February 2011 at Tab 1 of the supporting documents.

9. There is a question as to whether the body was moved between its finding and its consideration by Dr Hunt. The trained searchers, Ms Holmes and Mr Paul Chapman, stated that they found the body sitting against the tree. Dr Hunt stated that the body was lying several feet in front of the tree. Who moved the body, and for what purpose and what effect did that have on any test results or consideration of the incident? The failure of the Inquiry to address these questions, which would rightly be posed in the course of an inquest, highlights the insufficiency of the Hutton Inquiry.
10. The death certificate neither gives the time nor the place of death. These would normally be fundamental to the end of a Coroner's inquest and if it has been decided that Dr Kelly did actually commit suicide he surely cannot have done so anywhere but where he was found.
11. In Dr Hunt's report, he sets out that there was a pool of blood extending for 2 to 3 feet from Dr Kelly's left arm at the time that he was examining the body. This "pool of blood" is not noted, nor commented upon by any of the other attendees at the Inquiry – including those who spent time in the area for example, applying electrodes to the chest, which would no doubt have required considerable movement in the same area. We are informed that this blood would have been very noticeable. Did it exist or not?

12. Further, there was no discussion of the measurement of the amount of blood that existed outside the body. This is a standard measurement taken when investigating a suspicious death. Its absence therefore needs consideration by other means. This has not yet occurred. If neither the blood loss from the body, nor the blood remaining in the body could be ascertained, it is submitted that it cannot be conclusively said that death was caused by loss of blood.

13. D C Coe reported that when he first attended the scene he witnessed Dr Kelly's watch as being "on top" of the knife it was assumed Dr Kelly had used to create wounds on his wrist. In Dr Hunt's report, Dr Hunt sets out that the knife was actually "adjacent" to Dr Kelly's watch. Why is there such a discrepancy and who was accurate? If a Coroner were to establish who was accurate through taking of witness evidence, this may have implications on the consideration of how the death occurred.

Toxicology report & Post mortem report

14. On 22 October 2010, the toxicology report and the post mortem report were disclosed publicly by the Ministry of Justice. These reports raise numerous questions and inconsistencies in relation to, for example, the blood samples taken from Dr Kelly and the position of the body – matters not fully explored at the Hutton Inquiry report. Mr David Halpin wrote to the Attorney General on 28 November 2010 raising questions in relation to these issues and a copy of this letter is at Tab 2 of the supporting documents.

15. Dr Hunt later provided an interview with the Sunday Times, published on 22 August 2010 that highlighted significant contradictions in the evidence provided to the Hutton Inquiry and in the post mortem report. In particular, there appears to be discrepancies in relation to the amount of blood found at the scene (please also see above). Details of these contradictions are found in the paper by Mr David Halpin at Tab 3 of the supporting documents.

16. Mr David Halpin wrote a further letter to the Attorney General on 6 December 2010 highlighting further questions and inconsistencies between the reports and Dr Hunt's disclosures, including the variation in evidence regarding the extent to which Dr Kelly may have suffered coronary artery disease and the impact on his cause of death. A copy of this letter is enclosed at Tab 4 of the supporting documents.

17. Also following the disclosure of the reports the memorialist is aware that Dr Andrew Watt, a clinical pharmacologist, wrote to HM Coroner for Oxfordshire and Thames Valley Police having studied the contents of the reports. He reached the conclusion that it was questionable whether Dr Kelly had taken sufficient co-proxamol to contribute to his death. The Daily Mail reports are enclosed at Tabs 5 and 6 of the supporting documents.

18. The memorialist has also raised concerns regarding vascular surgeon, Michael Gaunt, who gave an interview to BBC Radio 4 on 16 August 2010, prior to the publication of the reports. It is clear from the transcript of this interview that Mr Gaunt had access to the reports but no explanation has been provided as to how he (or the newspaper he states contacted him) obtained the documents. Submissions in this regard are contained in the email from Dr Frost to the Attorney General dated 22 February 2011 which is at Tab 7 of the supporting documents.

19. Finally, it is noteworthy that the memorialist wishes it noted that he, along with the doctors named in the Memorial did not support the public disclosure of the reports in the manner that it took place. Submissions in this regard are contained in the email from Dr Frost to the Attorney General dated 7 December 2010 which is at Tab 8 of the supporting documents.

Additional witnesses

20. The media reports referred to above, along with The Scotsman, reported that Mr Paul Weaving (in fact the name was incorrectly recorded as Paul Weaver) may have been the last person to see Dr Kelly alive, and that he had visited a neighbour, Susan Melling whose husband assisted the search party. Despite these reports, Mr Paul Weaving was not called to give evidence to the Inquiry (nor was Ms Susan Melling). Ms Ruth Absalom, who saw Dr Kelly around 3pm, was on the other hand called to provide evidence on 2 September 2003 and it seems highly unusual that a potentially key witness, named in the public domain, was excluded.

21. The only reference the memorialist is able to find in relation to Mr Paul Weaving is in the list of evidence submitted to the Inquiry, referred to as:

“Minute to Paul Wearing 19/07/03 - not for release - Police operational information”

22. It is unknown what the above is; however it is submitted that the questioning of the potential last witness of a deceased is a matter properly included by a Coroner presiding over any inquest. Further information on this matter, together with the relevant media sources are set out in the letter from Mr David Halpin dated 16 February 2011 at Tab 1 of the supporting documents.

23. There were further witnesses that either could have been invited to come and give evidence who would have assisted a Coroner, or whom he could have compelled to give evidence had he been hearing witnesses under oath from within his own jurisdiction. These include:-

- (i) Detective Constable Shields who was one of two detectives who attended Dr Kelly's body.

- (ii) Dr Eileen Hickey, forensic biologist who was at the scene for most of the day on the day of the discovery of the body.
- (iii) Ms Mai Pedersen, a colleague of Dr Kelly's from New York, who wrote to Lord Hutton and offered to come and give evidence but was not called. Ms Pedersen's lawyers have since contacted Leigh Day and Co (uninvited) to confirm she would be happy to attend any inquest. Amongst other things, Ms Pedersen was fully conversant with Dr Kelly's very recent conversion to the Baha'i faith – a religion with a strong view against suicide. In addition, Ms Pedersen has proffered a view on the strength of Dr Kelly's right hand, and her need to cut up food for him when they took meals together due to the weakness in his wrist. If this were found by a Coroner to be truthful, this could have implications for what strength would have been needed to make so many cuts in his wrist.
- (iv) The memorialist understands that Mr Robert Jackson, former MP, has relevant evidence regarding Dr Malcom Warner, Dr Kelly's GP and we refer you to Dr Frost's emails to the Attorney General dated 22 February 2011 and 7 December 2010 which are at Tabs 7 and 8 of the supporting documents.
- (v) Local friends or neighbours of Dr Kelly who may have had knowledge of his thoughts and views on the day of his death.
- (vi) Nigel Cox who received an answer phone message from Dr Kelly in relation to plans for 23 July 2003 (and despite reporting it to Thames Valley police, no one retrieved the voicemail or followed this up).
- (vii) Experts in any clinical discipline relating to the cause of death – supposedly severing of the ulnar artery – no vascular surgeon or other clinician was called to give evidence as they would most

likely have been at an inquest establishing whether the cause of death was bleeding from this artery.

24. Regarding Nigel Cox, the memorialist brought this to the Attorney General's attention in an email dated 19 January 2011, which included the text of the Daily Mail report regarding Nigel Cox (as well as further submissions) which is at Tab 9 of the supporting documents.

25. Further submissions were made by Dr Frost in a subsequent email dated 22 February 2011 (referred to also above) which is at Tab 7 of the supporting documents.

Fingerprint evidence

26. Requests under the Freedom of Information Act 2000 have been made to the Thames Valley Police who attended and investigated the scene of Dr Kelly's death. These requests concerned inter alia whether or not fingerprints were found on some of the items allegedly found at the scene and copies are enclosed at Tabs 10, 11 and 12 of the supporting documents. These establish that:

- (i) No fingerprints were recovered from the blister packs of medication that Dr Kelly allegedly swallowed and contributed to his cause of death;
- (ii) No fingerprints were found on the watch allegedly found near Dr Kelly's body;
- (iii) No fingerprints were found on the mobile phone found in the pocket of Dr Kelly's jacket;
- (iv) No material was found attached to the knife found in the vicinity of Dr Kelly's body and allegedly used by him to cut his wrist;

- (v) No fingerprints were found/recovered from the knife found in the vicinity of Dr Kelly's body and allegedly used by him to cut his wrist; and
- (vi) No fingerprints were found/recovered from the water bottle allegedly found near Dr Kelly's body.

27. The lack of fingerprints on these items was not subjected to any scrutiny during the Hutton Inquiry. In fact, it is the memorialist's understanding that this information was not presented by the Thames Valley Police in the course of the Inquiry. It is submitted that to properly investigate the circumstances of Dr Kelly's death, any Coroner would be obliged to make enquiries as to why there were no fingerprints found, including for example, seeking evidence on whether any tests were carried out to establish if anything had been used to attempt to erase fingerprint evidence. This is particularly relevant as it was noted no gloves were found on the body or in its vicinity.

28. Submissions in relation to the lack of fingerprints and DNA results have been provided in an email from Dr Frost to the Attorney General on 22 February 2011 which is at Tab 7 of the supporting documents.

Correspondence between HM Coroner for Oxfordshire & Lord Chancellor regarding section 17A Coroners Act 1988

29. Having received copies of correspondence between Nicolas Gardiner, HM Coroner, and Ms Albon of the Department for Constitutional Affairs it can be seen that the Coroner expressed some reservations in relation to the exercise of section 17A Coroners Act 1988 in this case. Further, the Coroner states that:

"The preliminary cause of death given at the opening of the inquest no longer represents the view of the Pathologist and evidence from him

would need to be given to correct and update the evidence already received.”

30. Accordingly, the cause of death provided by Dr Hunt, the Pathologist, changed at some point between the opening of the inquest and the completion of both the post mortem report (dated 25 July 2003) and the death certificate, the conclusions of which were adopted by the Hutton Inquiry. Despite this there is no reference in the Inquiry transcripts to a change of view and indeed what the former may have been. Coupled with the lack of public documents available from the inquest, this raises serious concerns over the conduct of Dr Hunt and the conclusions he later reached.

31. Further details, along with the relevant documents and supporting submissions are found in the enclosed submission drafted by Mr David Halpin and in the email sent to the Attorney General by the memorialist on 6 December 2010 at Tabs 13 and 14 of the supporting documents.

Video evidence from Foreign Affairs Committee & the Security & Intelligence Committee

32. The Foreign Affairs Committee and the Security and Intelligence Committee heard from Dr David Kelly respectively on 15 and 16 July 2003. A video recording is available from the former, along with a transcript of the later. It is understood that neither were examined in the Hutton Inquiry and having been reviewed by the memorialist, his conclusion is that these show Dr Kelly to be in good spirits. It is submitted that these should have been considered by the Inquiry and would rightly be considered in an inquest into the death of Dr Kelly when determining his state of mind before the time of death. Dr Frost set out his findings, along with an invitation to the Attorney General to watch and review the video recording and transcripts in an email dated 7 December 2010 which is at Tab 8 of the supporting documents.

*Lord Hutton's evidence to the Select Committee on Public Administration on
13 May 2004*

33. The memorialist brought to the attention of the Attorney General the evidence Lord Hutton gave to the above Select Committee by email dated 5 February 2011. The email enclosing relevant extracts from the evidence are at Tab 15 of the supporting documents.

Deportation from Kuwait

34. The Hutton Inquiry heard evidence from Rachel Kelly, the daughter of Dr Kelly in relation to Dr Kelly's attempted visit to Iraq on 19 May 2003. Ms Kelly stated that her father had discovered he had an incorrect visa. She further stated that he had told her he had been detained (including physical restraint) and had his mobile telephone confiscated upon arrival in Kuwait. Dr Kelly had visited this region on numerous occasions and his treatment in May 2003 was extraordinary. His daughter considered her father to have been greatly upset and embarrassed by the events. Despite this evidence being received, the Inquiry failed to explore whether there was any significance in this extraordinary event and rule out the possibility that this was an event relevant to the circumstances surrounding the death of Dr Kelly only a couple of months later.

35. Further details, along with the relevant extracts from the Inquiry transcript and supporting submissions are found in the enclosed submission drafted by Mr David Halpin dated 16 February 2011 at Tab 16 of the supporting documents.

Kelly family

36. The memorialist understands that Dr Kelly's widow, Janice Kelly, has requested that Nicola Blackwood MP state to the Government her wishes regarding any inquest. This was drawn to the attention of the Attorney General, together with submissions that the family's views should not be

determinative, in an email from Dr Frost to the Attorney General dated 7 December 2010 at Tab 8 of the supporting documents.

Support from Third Parties

37. The memorialist has brought to the attention of the Attorney General (via email on 25 January 2011) the comments of Lord Thomas of Gresford, Lord Stoddart of Swindon and Lord Berkeley in the House of Lords on 8 January 2008, regarding the 'new' evidence that has come to light since the Hutton Inquiry into Dr Kelly's death. These three eminent Lords all appear to support the views of the memorialist that an inquest takes place (or at the very least further inquiries) and a copy of the email containing the extract from Hansards is at Tab 17 of the supporting documents.

Leigh Day & Co.

LEIGH DAY & CO

On behalf of Dr Stephen Frost

28 February 2011

IN THE MATTER OF THE CORONERS ACT 1988

-and-

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To Her Majesty's Attorney General

**SUPPORTING DOCUMENTS TO THE ADDENDUM TO THE HUMBLE
MEMORIAL OF DR STEPHEN FROST DATED 15 SEPTEMBER 2010**

| <u>Tab</u> | <u>Document</u> |
|-------------------|---|
| 1. | Letter from Mr David Halpin to the Attorney General dated 16 February 2011 (Insufficiency of Inquiry) |
| 2. | Letter from Mr David Halpin to the Attorney General dated 28 November 2010 |
| 3. | Note by Mr David Halpin comparing post mortem report |
| 4. | Letter from Mr David Halpin to the Attorney General dated 6 December 2010 |
| 5. | Daily Mail article dated 31st October 2010 |
| 6. | Daily Mail article dated 13 November 2010 |
| 7. | Email from Dr Frost to the Attorney General dated 22 February 2011 |
| 8. | Email from Dr Frost to the Attorney General dated 7 December 2010 |
| 9. | Email from Dr Frost to the Attorney General dated 19 January 2011 |
| 10. | Freedom of Information Act 2000 request and response from Thames Valley Police dated 6 January 2011 regarding <i>inter alia</i> the knife & the watch |
| 11. | Freedom of Information Act 2000 request and response from Thames Valley Police dated 6 January 2011 regarding the three blister packs of co-proxamol |

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| 12. | Freedom of Information Act 2000 request and response from Thames Valley Police dated 6 January 2011 regarding the mobile phone |
| 13. | Mr David Halpin – Observations on correspondence between HM Coroner and DCA enclosing (a) copy correspondence between HM Coroner, Nicholas Gardiner and DCA (b) GMC findings regarding Dr Shorrocks |
| 14. | Emails from Dr Frost to the Attorney General dated 6 December 2010 |
| 15. | Email from Dr Frost to the Attorney General dated 5 February 2011 (including extract from Select Committee on Public Administration dated 13 May 2004) |
| 16. | Letter from Mr David Halpin to the Attorney General dated 16 February 2011 (Deportation from Kuwait) |
| 17. | Email from Dr Frost to the Attorney General dated 25 January 2011 including extract from Hansards 8 January 2008 |

[NB: Documents have been formatted for ease of reference – originals available upon request]