

The Chair's Ruling on the Ministry of Defence Application to Restrict Publication of the Alan Pughsley QPM Material and other Materials

The Inquiry has today published a Ruling made by the Chair of the Inquiry, Lord Justice Haddon-Cave, in relation to the Ministry of Defence Corporate Team ("MODCT")'s application to restrict publication of the Alan Pughsley Report; an Executive Summary, Addendum Report, and various supporting documents ("the Pughsley Material").

The MODCT's primary claim was that the Inquiry should pause the publication of any documents until the conclusion of DDO Phase 3B (the Inquiry's investigation into the conduct of Deliberate Detention Operations). The MODCT's alternative proposal was that any further documents to be published by the Inquiry should all be redacted and/or gisted in accordance with the CLOSED evidence. The Inquiry also received submissions in support of the MOD's claim from those who represent the military witnesses in the Inquiry (the "MODWLT").

The MODCT's application was supported by evidence in CLOSED, which the Inquiry has restricted from publication to protect National Security interests. This evidence set out and explained concerns that the existing Restriction Order and redaction processes, may not be sufficient to provide the level of protection intended by the Chair. In summary, within the CLOSED evidence, a senior UKSF officer (a) summarised work completed to understand the nature and extent of the National Security risk in connection with the online publication of information; and (b) provided an explanation, based on his own skills and experience, of the potential consequences of further online publication at this time. Further and more detailed analysis was subsequently done to better understand the nature and scale of the relevant National Security risks, as well as the steps that could be taken to mitigate those risks.

Submissions in response were received from the Afghan Families Core Participant group and the BBC. Legal representatives on behalf of the Afghan Families strongly opposed the MODCT's application on the grounds that there is *"no possible justification for abruptly terminating the publication of all evidence – including security-cleared gists and documents with sensitive material redacted – which have been provided to the Inquiry. Such a sweeping order would unjustifiably frustrate the ability of the public to follow the Inquiry's work, would inhibit public accessibility to the Inquiry's proceedings, and would inevitably severely diminish public confidence in the Inquiry and its processes and eventual outcome"*.

The BBC also opposed the MODCT's application on four grounds, namely:

"First, because it is far too broadly framed and unjustifiably seeks to withhold and restrict publication of substantial evidence which is already in the public domain."

"Second, because it proposes to postpone the publication of important material considered by the Inquiry for a very substantial period without adequate justification..."

"Third, because it both seeks to reverse the default principles of transparency which apply to the Inquiry and goes beyond restricting information which relates to identification of UKSF troops on the ground in Afghanistan..."

Fourth, since the only reason advanced in OPEN concerns identifiability of UKSF troops, this issue is properly addressed by focusing on the adequacy of the MODCT's own redactions to identificatory information rather than postponement of material more broadly."

In his 50-page Ruling, Lord Justice Haddon-Cave:

- Emphasised the importance he places on the anonymity and security of witnesses.
- Was particularly mindful of the strain of witnesses who give evidence to the Inquiry; and

- Noted the difficult and painstaking work that had been carried out by the MODCT, the MODWLT and the Inquiry in preparing sensitive documents for publication.

The Chair rejected the application to pause publication of all material until the conclusion of the DDO evidence, finding that it was “untenable” to do so.

He also rejected a ‘blanket’ approach to redactions, as contended for by the MOD, but decided that these would continue to be considered on a case-by-case basis according to the circumstances of the individual and the evidence. In his Ruling, the Chair noted that “*Rather than demonstrating that the redaction and gisting process was deficient or flawed, the CLOSED evidence and materials have helpfully confirmed the essential principles which I am satisfied have hitherto guided the work of the Inquiry and the MOD redaction and gisting teams.*”.

Informed by the submissions and evidence, the Chair attached to his Ruling a CLOSED Annex for the ‘*assistance to the Inquiry and MOD redaction and gisting teams going forwards*’.

In addition to its submissions opposing the MOD applications, the BBC filed a Cross-Application to vary the Inquiry’s Reporting Restriction Order in relation to the ciphers ‘UKSF1’, ‘UKSF3’, and ‘SU’. The BBC made two main submissions in support of their application that they said should be lifted:

- (1) *First, that information is in the public domain such that the restriction orders in place over ‘UKSF1’, ‘UKSF3’ and ‘SU’ cannot sensibly be sustained.*
- (2) *Second, that that the ongoing restriction over these terms inhibits clear public reporting.*

The Chair has decided to adjourn the BBC’s Cross-Application to a slightly later stage in the Inquiry and intends to revisit this important application when it can be viewed against the backdrop of, and with the benefit of, a wider evidential picture.

Background:

Mr Pughsley's oral evidence was heard in OPEN over two days, on 27 and 28 January 2025, in the Royal Courts of Justice. Mr Pughsley gave detailed evidence about the contents of the redacted version of his expert Report and addendum. In the course of his oral evidence, he answered numerous questions by Counsel to the Inquiry ("CTI") about his Report. Extracts from the Pughsley material was shown on large television screens in the courtroom during the hearing which could be viewed by everyone present, including journalists and members of the public.

In accordance with the Inquiry's well-established previous practice, and as the Core Participants were aware, following the conclusion of his evidence, the Inquiry intended to publish the Pughsley Material the next day, namely on 29 January 2025.

During the course of the second hearing day, the Government Legal Department ("GLD") wrote to the Inquiry on behalf of both the MODCT and the MODWLT requesting that the publication of Mr Pughsley's Report and accompanying documentation be delayed. The letter stated that the MOD had "significant concerns... regarding the ability of the existing restriction orders, as currently interpreted and applied, to meaningfully guarantee the anonymity of witnesses" and submitted that the evidence of Mr Pughsley and the accompanying documents "centrally engage[d]" those matters. It was not explained why such concerns about Mr Pughsley's evidence had not been raised previously. The MODCT's application was supported by extensive CLOSED evidence and submissions in relation to National Security, including written and oral evidence from Mr Barry Corradine, a former official in the MOD Department of Judicial Engagement Policy.