INDEPENDENT INQUIRY RELATING TO AFGHANISTAN

OPEN RULING

ON THE MINISTRY OF DEFENCE APPLICATION

TO RESTRICT PUBLICATION OF

THE ALAN PUGHSLEY QPM MATERIAL AND OTHER MATERIALS

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INTRODUCTION

1. This is my Ruling on the following applications:

   (1) The Ministry of Defence Corporate Team ("MODCT")'s application dated 10 February 2025 to restrict publication of Alan Pughsley QPM's report (including an Executive Summary and Addendum report, collectively referred to herein as the Pughsley Report) and various supporting documents ("the Pughsley materials").

   (2) The MODCT's wider application, advanced on 21 February 2025, that there should be no publication by the Inquiry of *any* further materials or evidence by the Inquiry until the completion of DDO Phase 3B because of risks to National Security.

   (3) In OPEN submissions dated 7 March 2025, the Ministry of Defence Witness Legal Team ("MODWLT") supported the MODCT applications, and made a separate application, first to the effect that the publication of the Pughsley materials would be incompatible with Articles 2, 3 and 8, and second a separate Article 8 application in respect of material relating to two individuals (although this second application was withdrawn on 2 May 2025).

   (4) The BBC's application dated 7 April 2025, that the Restriction Orders currently in place over the ciphers 'UKSF1', 'UKSF3', and 'SU' should be lifted.

2. I make the following preliminary observations:

   (1) It is right and proper that, as matters develop, inquiries should review their procedures and processes from time-to-time to ensure that they are still serving the purposes for which they were designed, and decide whether they need modification in the light of experience.

   (2) Both the Inquiry, the MODCT, and the MODWLT ("MOD Legal Teams") have gained a great deal of experience in the past 18 months as regards the handling and protection of sensitive material and as regards the sort of nuanced issues and finely-balanced decisions which regularly arise in relation to what, on the one hand, needs to be restricted to protect National Security interests and/or identities and what, on the other hand, may be safely be put into OPEN.

(3) Practical experience has demonstrated that the task of redacting and gisting is complex, difficult, skilful and painstaking. I pay tribute to all those involved for the careful and responsible way in which they have gone about the task of seeking to implement the intent of my restriction rulings to date. I also recognise the heavy burden of responsibility that falls on all those involved in this work on all sides, particularly where such work needs to be conducted at speed, to meet the timetabling imperatives of the Inquiry.

(4) I am mindful of the strain which is placed on those with whom the Inquiry needs to engage, particularly witnesses. This is all the more so where identities need to be restricted, a step which is not taken lightly and only where there is good reason to do so. Where identity is restricted, individuals will naturally be concerned that nothing is published that could undermine the Restriction Order over their identity, so as to give rise to the very risks which the restriction is intended to prevent. They may not have full visibility of the careful processes outlined above. I wish to draw their attention to these processes (which are described in further detail below) and to reassure them as to the importance which the Inquiry places on this work.

3. What initially began as one specific application in early February 2025 by the MODCT in relation to a relatively small number of documents, subsequently involved the MODCT serving multiple OPEN and CLOSED submissions and sets of evidence, spread over several months. Marshalling the material and the responses, and preparing this Ruling, has inevitably taken considerable Inquiry time and resources. Meanwhile, the Inquiry has not been able to publish any redacted and gisted material.

4. I welcome the opportunity to take stock and review the manner in which my Restriction Orders operate in practice. If, indeed, the risks to National Security have not been sufficiently protected by the previous redacting and gisting process and principles adopted by the Inquiry and the MOD Legal Teams, this has serious implications and must be addressed. Accordingly, I have given this matter anxious scrutiny.

5. I have repeatedly stressed the importance I place on protecting the anonymity and security of witnesses. I do so again.

The evidence of Alan Pughsley QPM

6. In September 2023, the Inquiry announced that it had engaged the former Chief Constable, Alan Pughsley QPM, to provide an independent expert report in respect of various issues concerning Operations Northmoor and Operation Cestro. Mr Pughsley finalised his Report in August 2024 (“the Pughsley Report”).

7. It was necessary to first provide the Pughsley Report and associated materials to the Royal Military Police (“RMP”), since their work was the direct subject of the Pughsley Report. The RMP needed to consider whether there was any material within it that needed to be

restricted prior to its provision to other Core Participants, consequent on the Restriction Order which I made at paragraph 212 within my Ruling on Applications for Restriction Orders and Special Advocates in August 2023 ("the August 2023 Ruling"). The RMP restriction exercise effectively concluded by November 2024. Since then, the RMP have raised no further issue in respect of the restriction of or redactions applied to the Pughsley Report or associated materials in respect of their interests.

8. A copy of the Pughsley Report, together with associated materials, was then provided to the MODCT in November 2024. This was to enable the MODCT to consider suitable redactions and gists and also, (as the effective gatekeepers of National Security sensitivities, for those witnesses represented by the MODWLT) to enable appropriately redacted and gisted versions of those documents to be prepared prior to provision to the Afghan Families and other Core Participants, including the MODWLT, in the first instance.

9. It was intended that the Pughsley Report and associated documents (to the extent they were referred to during the course of Mr Pughsley's evidence) would be published on the Inquiry website once he had given his evidence at an OPEN hearing, in accordance with the well-established practice of the Inquiry following OPEN hearings.

10. The Inquiry and the MOD Legal Teams duly undertook the redaction and gisting process. This was an extensive and protracted piece of work which took a considerable number of weeks.

11. On 2 December 2024, the Inquiry provided the Afghan Families' representatives with a redacted version of Mr Pughsley's report. On 11 December 2024, the Inquiry provided the Afghan Families' representatives with the Addendum to that Report together with Mr Pughsley's "Executive Summary". The Inquiry also subsequently provided the Afghan Families' representatives with copies of 292 documents referred to in Mr Pughsley's reports (some of which were observed by Leigh Day to "*contain extensive redactions*"). Having considered these, Leigh Day on behalf of the Afghan Families submitted detailed Rule 10 questions to the Inquiry on 15 January 2025.

Restriction Orders relating to Mr Pughsley's evidence

12. On 13 January 2025, I issued my Determination of Restriction Orders relating to Mr Pughsley's evidence in which I held that:

    (1) I was satisfied that the redactions and gisting sought by the RMP and the MODCT in relation to the Pughsley Report and associated documentation fell within paragraphs 100-101 and 201-213 of the August 2023 Ruling and were necessary and appropriate to protect National Security.

(2) I was satisfied that appropriate redactions would need to be made to any document that was proposed to be published or disclosed to Core Participants of any matter that would, or might, tend to identify any individual or any other personnel that fell within paragraph 112 of the August 2023 Ruling.

(3) I was satisfied that, subject to appropriate redactions and gisting, Mr Pughsley's evidence could and should be heard in OPEN, but there would be a ten-minute delay on the livestream.

Correspondence subsequent to my Ruling

13. On 21 January 2025, the Inquiry received a letter from the Government Legal Department ("GLD") on behalf of both the MODCT and the MODWLT. Though not expressly put in these terms, the letter amounted in effect to an application to me to reconsider my decision of 13 January 2025, and/or a further application for a Restriction Order. The MOD Legal Teams sought the Inquiry's agreement to the following:

(1) "*In the course of evidence, information identifying [two individuals] should not be put up on screen.*"

(2) "*A delay in the publication of documents on the Inquiry website, pending engagement with the Inquiry on the scope of anonymity*."

14. The MODCT contended:

> *"In the context of AP's* [Alan Pughsley's] *evidence, an important and urgent matter has arisen. In conjunction, following the publication of the* [Complaints and Concerns Part 1] *gists on the night of 7/8 January 2025, the MOD CP has developed grave concerns that the current operation of the existing restriction order in relation to anonymity is insufficient to protect individuals' identities from disclosure within the wider military community and to the press at large. The continuing discussions between the Inquiry Legal Team and the MOD CP concerning the gisting process are welcome and extremely valuable. However, MOD CP cannot avoid the fact that the principle that underpins anonymity which witnesses are afforded via the Chairs Restriction Order of 13 January 2025, may need to be reviewed in light of the changing landscape borne out of real witness concerns. Namely, is and if so why, is there a distinction between a witness (i) not being identifiable to the public, (ii) not being identifiable within the military community or and at its purest (iii) not being identifiable at all? The MOD CP is preparing a broader, in principle submission to this effect for consideration by the Chair."* (emphasis added)

15. On 22 January 2025, the Solicitor to the Inquiry ("STI") responded to the Ministry of Defence as follows:

"As we read it, your letter seeks, in effect, an interim or provisional Restriction Order, pending consideration and determination of further restrictions to Alan Pughsley's report and associated documents prior to OPEN publication.

The request for an interim or provisional Restriction Order is a significant matter, which in our view needs to be made by way of a formal application supported by evidence, not merely in correspondence. You will also appreciate that the other Core Participants, i.e. Leigh Day and the Royal Military Police, as well as the media, should be given the opportunity to be heard on any such application."

16. On the following day, 23 January 2025, the MOD Legal Teams replied, however, as follows:

"…upon careful reflection, we can confirm that the MOD CP will not be making a formal application for a restriction Order requesting further anonymization of documents that the Inquiry intends to publish at the conclusion of hearing Mr. Pughsley's evidence on 27-28 January 2025."

Mr Pughsley's oral evidence

17. 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 from Counsel to the Inquiry ("CTI") about his Report. Extracts from the Pughsley material were 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.

18. The entirety of Mr Pughsley's evidence was streamed on the Inquiry's YouTube Channel, subject to a ten-minute delay. The purpose of the ten-minute delay was to enable any objection to the inadvertent disclosure of sensitive evidence or material to be made before that evidence or material was streamed and any appropriate measures taken. When Mr Pughsley was asked about a particular document, that document was put up on the television screens in Court and also displayed on the livestream. His evidence finished at approximately 3:30 pm on 28 January 2025.

19. Throughout the hearing of Mr Pughsley's evidence, both the MODCT and the MODWLT had full legal representation in attendance. Save for the correspondence referred to below, at no point during the hearing did either MOD team at the hearing apply for any Restriction Order in respect of any of the Pughsley material.

20. 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 Mr Pughsley's material the next day, namely on 29 January 2025.

21. However, at 1:58 pm on 28 January 2025, during the course of the second hearing day, the 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 by seven working days, to permit the MOD "*to make an application for a restriction order in respect of sections of these documents*". 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 engaged" those matters. It was not explained why such concerns about Mr Pughsley's evidence had not been raised previously. This email was drawn to my attention after the hearing.

22. The next day, on 29 January 2025, I issued directions requiring the MOD to provide a reasoned application for a Restriction Order by 6 February 2025, and meanwhile I paused the publication of Mr Pughsley's evidence and documentation. On 6 February 2025, the MODCT made a request for an extension of time to make their application. This was granted until 10 February 2025, on which date the MODCT served their application, together with some CLOSED evidence.

SUBMISSIONS

23. I now turn to summarise the submissions by each of the parties.

The Ministry of Defence Corporate Team ("MODCT")

24. The MODCT served the following submissions and materials, all of which and I have considered carefully:

    (1) An OPEN application for a Restriction Order, served on 10 February 2025.

    (2) A CLOSED witness statement, served on 10 February 2025.

    (3) CLOSED preliminary evidence.

    (4) OPEN submissions, served on 21 February 2025.

    (5) CLOSED submissions, served on 21 February 2025.

    (6) An OPEN summary of the CLOSED submissions, served on 28 February 2025.

    (7) A CLOSED amended version of Tab 7 setting out the justification for each restriction sought, served on 26 February 2025.

    (8) A CLOSED amended version of Tabs 142, 199 and 276 setting out the justification for each restriction sought, served on 4 March 2025.

(9) Further OPEN submissions, served on 28 March 2025.

(10) Further CLOSED submissions, served on 28 March 2025.

(11) A CLOSED witness statement, served on 28 March 2025

(12) CLOSED evidence, served on 8 April 2025.

(13) CLOSED addendum evidence, served on 2 May 2025.

(14) A CLOSED witness statement, served on 13 May 2025.

(15) A further CLOSED note, served on 9 June 2025.

25. I am satisfied that the CLOSED evidence and statements filed, and the CLOSED submissions filed (by both the MODCT and the MODWLT) cannot be gisted beyond as appears in this OPEN Ruling without:

a) Causing significant damage to National Security, and

b) Undermining existing Restriction Orders made by the Inquiry in relation to the identity of its witnesses.

Summary of the MODCT applications / submissions

26. In their initial submissions dated 10 February 2025, the MODCT applied for an interim Restriction Order in relation to the Pughsley material intended for publication. The application extended over:

(1) The redacted version of the Pughsley Report that had been prepared for the hearing;

(2) The redacted version of the Executive Summary of the Pughsley Report that had been prepared for the hearing;

(3) The redacted version of the Addendum report that had been prepared for the hearing;

(4) The redacted version of associated documents referred to by Mr Pughsley in his evidence and that had been prepared for the hearing. By this stage the Inquiry had confirmed that there were 53 such documents, and had identified these to the MOD Legal Teams.

27. The MODCT's application set out the existing Restriction Order framework for anonymity, but made the additional observations:

> "*14. The proposed online publication of Mr Pughsley's reports and the large number of documents referenced during the course of Mr Pughsley's oral evidence has caused the MOD to review the current position. The work carried out in this regard in recent days, the results of that work and the proposed next steps are set out in the CLOSED evidence served with this application.*
>
> *15. In light of that CLOSED evidence, the MOD remains concerned, as set out in the MOD letter of 28 January 2025, regarding the ability of existing restriction orders, as currently interpreted and applied, meaningfully to guarantee the anonymity of witnesses. It is essential, it is respectfully submitted, that if the existing restriction order and redaction processes regarding anonymity are not, or may not be, satisfactorily providing the level of protection intended by the Chair in the OPEN Ruling. That the MOD can investigate this properly, thoroughly and swiftly. …*"

28. The MODCT's submissions urged the Inquiry to take a "*precautionary*" approach to the publication of material. They indicated that they would be content for the executive summary of the Pughsley Report to be published, as well as 47 of the 53 associated documents, but asked that publication of the Pughsley Report, the Addendum and six of the documents be paused. They made that request in the following terms:

> "*17(e). <u>It is respectfully suggested that these two reports by Mr Pughsley</u> <u>should not be published before the Inquiry has received (and considered for publication) all written and oral evidence relating to Phase 3B of its DDO investigations</u>. By that stage the Inquiry will have had the opportunity to consider any representations or applications made on behalf of those individual witnesses regarding anonymity, including any specific impact of any specific publication in relation to any particular individual(s). …*" (emphasis added)

29. As already indicated, the MODCT's OPEN submissions were accompanied by CLOSED evidence.

30. I granted further time for the MODCT to carry out further investigations and, on 12 February 2025, issued directions seeking further information about the application, including whether the Inquiry might anticipate further requests to delay publication of material, and providing for the OPEN submissions to be served on the other Core Participants and representatives of the media. I directed that the Inquiry should not meanwhile publish documents over which the MODCT did not pursue restriction, as I did not consider it to be helpful for the material to be published in a piecemeal fashion.

31. On 21 February 2025, the MODCT filed further submissions in both OPEN and CLOSED. In a Note dated 28 February 2025, the MODCT provided the following OPEN summary of the material that they had filed in CLOSED on 10 and 21 February 2025:

> "*The CLOSED evidence submitted in support of the MOD's application, dated 10 February 2025, explains the basis for the MOD's concern that the existing restriction order and redaction processes, as currently applied, may not be sufficient to provide the level of protection intended by the Chair in his "OPEN Ruling on Applications for Restriction Orders and Special Advocates" published on 21 August 2023. The CLOSED submissions summarise that CLOSED evidence, in which a senior UKSF officer (a) summarises the initial analysis that has been completed to date to understand the nature and extent of the national security risk in connection with the online publication of information; and (b) provides an explanation, based on his own skills and experience, of the potential consequences of further online publication at this time. The CLOSED evidence concludes that further and more detailed analysis is required in order 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.*"

32. The Note explained that the CLOSED submissions provided further detail of the further work that the MOD considered necessary, and details of the practicalities associated to this. It further indicated that the product of that work "*should be available in 9-10 weeks from the date on which it is commenced.*"

33. The MODCT OPEN submissions of 21 February 2025 (insofar as material to the particular issues I have to decide):

    (1) Confirmed that its position remained as set out in the submissions dated 10 February 2025 (paragraph 8);

    (2) Indicated that work had commenced to provide reasoned applications for each of the documents that the MOD now contended should not be published (paragraph 12);

    (3) Proposed that those documents should be subject to an interim Restriction Order pending resolution of the application (paragraph 15);

    (4) Indicated that MODCT did not object to ongoing disclosure of other evidence (for example in relation to the 'Complaints and Concerns' hearings) to the Afghan Families' Core Participants pending the Inquiry receiving and then hearing Phase 3B DDO evidence, whilst not accepting that any pause in disclosure would be a breach of Article 2 of ECHR (paragraphs 24-34);

    (5) Indicated that there may be further applications to restrict material from publication to the media and general public, but avowed that any such application would be "*evidence based and in accordance with the relevant statutory and procedural schemes, in particular section 19 of the 2005 Act.*" (paragraphs 35-37);

(6) Submitted that the conclusion of DDO Phase 3B will be an appropriate time for further disclosure to be assessed because at present:

"*…much of the factual evidence is yet to be received or heard by the Inquiry and the specific anonymity position of as large number of individuals is yet to be considered. Care should be taken to ensure that information relating to a specific individual is not published prematurely. … It is only once that the witness-focussed process is complete that the MOD and the Inquiry will be properly placed to assess what information should and can safely be published regarding the large cohort of individuals referenced in detail in some of the Pughsley material* …". (emphasis added)

34. The MODCT further submitted that this period of time would allow them further time to investigate "*broader risks*", and they would, by virtue of evidence then heard and intended for publication, "*be better placed to... make more properly directed submissions regarding the potential 'mosaic effect' of any such publication.*" (paragraph 38).

35. Further to the evidence filed in CLOSED, I granted the further time for the MODCT to carry out their further investigations. It is not possible to provide further OPEN detail about that evidence beyond that provided in the MODCT's gist of it (see paragraph 31 above), but I can and should confirm that I was satisfied that this further work would be likely to assist both the MOD and the Inquiry, and that proposals for taking that work forward were reasonable and proportionate both in terms of scope and timescale.

36. On 26 February 2025 and 4 March 2025 the MODCT submitted amended versions of some of the associated documents, reflecting the restrictions over these that they now sought. Given that the restrictions were being applied on a 'precautionary basis' it is perhaps not surprising that they were extensive.

37. On 28 March 2025, the MODCT made further submissions in OPEN in support of their application for a Restriction Order. These were supported by CLOSED submissions and evidence bearing the same date but only received by the Inquiry on 8 April 2025.

38. In the OPEN submissions of 28 March 2025, the MODCT maintained their previously advanced position:

"*16. In all the circumstances, and in particular in light of the CLOSED evidence served by the MOD on 28 March 2025, the MOD's updated position is that there should be no further publication of evidence (including for the avoidance of doubt, gists of evidence given in CLOSED session) to the media and general public until the conclusion of DDO Phase 3B (when the position should be re-assessed).* A*s set out above, the body of CLOSED evidence served on 28 March 2025 provides powerful support for the MODCT submissions that (i) any assessment of risk in this context (namely online, global publication via the Inquiry website) must err on the side of the*

safety of those individuals, and that (ii) a precautionary approach to publication is clearly both justified and appropriate in circumstances where there is a risk or potential risk of unintended public identification (directly or indirectly). By the conclusion of the DDO Phase 3B hearings, the MOD will be better placed to have an overall view of the likely scale and detail of the material which the Inquiry wishes to publish, and to make more properly directed submissions regarding the potential 'mosaic effect' of any such publication, including by reference to the CLOSED material served on 28 March 2025 and any further developments in that regard before that time.

17. In the event that the Chair is not minded to accede to the request to publish all evidence until the conclusion of DDO Phase 3B, it will be necessary for the Inquiry to ensure that any evidence which is to be published is redacted and/or gisted in accordance with the CLOSED evidence served by the MOD on 28 March 2025and any further developments in that regard before the time of publication. The MODCT respectfully submits, however, that it would be contrary to the public interest to carry out such an exercise before DDO Phase 3B and at a stage when the totality of the material which the Inquiry intends to publish is so far from known, given the contents of the CLOSED evidence served on 28 March 2025."

39. On 9 June 2025, the MODCT submitted a further CLOSED 'Note on additional redactions required' which summarised their position as follows:

(1) The MODCT's primary submission remains that publication of all documents should be paused until the conclusion of DDO Phase 3B, as particularised at paragraph 3(b) of the MODCT's CLOSED submissions dated 28 March 2025 and the OPEN counterpart; and

(2) As noted at paragraph 3(c) of the MODCT's CLOSED submissions dated 28 March 2025 the MODCT submit that at the very least any further documents to be published by the Inquiry should be redacted and/or gisted in accordance with the CLOSED evidence.

40. The CLOSED note went on to summarise considerations that MODCT contended ought to be applied to redactions and/or gists.

The Ministry of Defence Witness Team ("MODWLT")

41. The MODWLT served the following submissions, which I have considered carefully:

(1) OPEN submissions lodged in support of a Restriction Order (together with a CLOSED Annex), served on 7 March 2025.

(2) Further OPEN submissions, served on 2 May 2025.

(3) Following the evidential hearing (see below), a CLOSED note regarding additional redactions, served on 10 June 2025.

Summary of the MODWLT application / submissions

42. The MODWLT made submissions on the Restriction Order application made by the MODCT on 7 March 2025 in OPEN, but with a CLOSED Annex. Their primary submission was to:

> "*…supports the application for publication of the Pughsley documents to be paused until the product of the further work referenced in the application by the MOD Corporate Team (MODCT) is complete, and risk has been properly assessed*".

43. In the event that the above application was rejected, the MODWLT stated that they sought "*wider redactions*" over the Pughsley materials. This was on the following basis:

> "27. *The WLT submits that publication of the Pughsley documents as proposed is incompatible with Articles 2 and 3 as well as with Article 8. The perpetuation of the relevant risk of identification and its eventuation would plainly interfere with the private and family life of the individuals granted anonymity, and, it is submitted, without justification.*"

44. The MODWLT expanded on their argument as follows at paragraph 29:

> "*…the WLT respectfully submits that the effect of the relevant statutory provisions and jurisprudence is that the Inquiry must not act in a way that increases risk and moreover must take steps to avoid the risk arising… it follows that the Inquiry should therefore restrict publication from now and going forwards of information of the kind set out in the CLOSED appendix to these submissions."*

45. Notwithstanding the above, the MODWLT make clear in their submission of 7 March 2025 that, in common with the MODCT, they did not oppose the continued provision of redacted evidence to the representatives of the Afghan Families' pending determination of these applications, or pending any stay on wider publication permitted by the Inquiry.

46. I note that the material contained within the MODWLT CLOSED Annex bore close resemblance to elements of the material submitted in CLOSED by the MODCT.

47. The MODWLT put in further short written submissions on 2 May 2025. In large part these responded to observations made by the BBC and the representatives of the Afghan Families in opposition to the applications made to restrict by the MODCT and the MODWLT. I will address those disputes, where necessary, in my analysis of the applications below. However, it is worth recording that in these submissions the MODWLT developed their Article 8 general argument as follows:

> "*The WLT submits that Article 8 harm can arise where an individual is identified, even to those who know their names, in connection with information or evidence which might "blight their career". This may be the case where information possibly linked to a ciphered individual alleges or suggests that they are suspected of being involved in the commission of serious wrongdoing.*"

48. Finally, I record that the MODWLT, having seen the MODCT CLOSED Note of 9 June 2025, wrote (in CLOSED) in support of the same.

The MOD Evidence

49. The supporting CLOSED evidence relied upon by the MODCT and the MODWLT in summary comprised evidence as to how identification risks may arise, and to risks of and consequent to identification. It is not possible to provide a more detailed gist.

The Afghan Families

50. On 7 April 2025, Leigh Day served submissions on behalf of the Afghan Families in response to the MODCT application, which I have carefully considered. They opposed the MOD Application on the following grounds, *inter alia*:

> "*[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*" (paragraph 9).

51. The Afghan Families submissions also pointed out that, whilst not being privy to the CLOSED evidence that the MOD rely upon in their applications, the risks the MOD were now raising were risks that would, or should, have been identified or addressed prior to this date; and at least during the time that the documentary evidence for Mr Pughsley's oral hearing was undergoing the (well-established) redactions process.

52. In response to the MODWLT submissions, the Afghan Families submitted:

    (1) "*[The Afghan Families] strongly oppose any suggestion that the Inquiry should restrict publication of information / material which repeats information / material which is already publicly available on the (inquiry) Website*" on the basis that it would be "*incoherent and futile*" to do so.

    (2) *"[Any restriction order] made on the basis of an individual's Article 8 right, interfere(s) with the Article 10 rights of the press to freely report proceedings … there is therefore a balancing act between these rights which must be undertaken*

to establish whether that interference is necessary and proportionate, as the MODWLT submissions recognise."

The British Broadcasting Corporation ("BBC")

53. On 7 April 2025, the BBC also served submissions, which I have carefully considered. They oppose the MOD Application on the following grounds *inter alia*:

    (1) "*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."*

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

    (3) "*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…*"

    (4) "*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.*" (paragraphs 4(a)-(d)).

54. The BBC further submitted that the MODWLT Article 8 argument was "*unspecified*" and should be served on them to enable further comment. They did, however, advance the following propositions:

    (1) "*Article 8 ECHR is not engaged ordinarily by the performance of public roles, in particular where it involves an inquiry into suspected wrongdoing. This is well established – see for example (a) Axon v Ministry of Defence* [where the MOD itself successfully argued that serious unethical conduct in a public workplace (such as commanding a warship) did not attract the protection of Article 8 ECHR – see [64(e)]]*; (b) Yeo v Times Newspapers Limited* [where Mr Justice Warby (as he then was) held at [147] that newspaper articles concerning an MP's public roles did not "in any way" concern his "private or personal life….to engage Article 8."] *and (c) R (Newsquest Media Group Limited) v Legally Qualified Chair of the Police Misconduct Tribunal* [where the High Court held that a policeman had no reasonable expectation of privacy in respect of serious misconduct committed in the context of his professional activities.]" (paragraph 35).

    (2) "*For present purposes, the BBC can only observe that the approach set out by the MODWLT … is wrong in principle. The question is not whether the proposed application 'strikes a fair balance between the rights of the individuals and the public interest' or whether 'the objective of the Inquiry could be achieved by publishing the information but unlinked to any specific individual' … (rather) any derogation from transparency is exceptional and must meet a requirement of strict*

necessity. Moreover there is a presumption in favour of publication because of the fundamental importance of the principle of transparency or open justice which will apply, unless in given circumstances, the Art. 8 ECHR rights can be shown on cogent evidence to outweigh those rights." (paragraph 36).

55. 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' and 'UKSF3' and 'SU'. This application was made on the basis that:

    (1) The identity of the ciphered (or restricted) information was "*so conclusively established in the public domain that it is an artifice … [to] … insist on using ciphers*"; and

    (2) The continued use of ciphers or restrictions in those contexts "*harms accurate reporting of the Inquiry and risks undermining rather than promoting public understanding and confidence in the Inquiry*".

56. In support of the first proposition above, the BBC submitted a witness statement from Andrew Head, Executive Producer of Panorama, exhibiting media reporting which it submitted supported its proposition.

57. The Afghan Families also filed submissions in support of the BBC Cross-Application, noting in particular that the application was in respect of "*very limited information*" (paragraph 2.1).

58. The MODCT and the MODWLT both submitted replies to the BBC Cross-Application, opposing the application to vary the Restriction Orders. The MODCT confirmed that it maintained its position of neither confirming nor denying ("NCND") "the alleged involvement of particular [UKSF] units, sub units or force elements in the events under investigation by the Inquiry" (paragraph 3).

59. The MODCT further noted that the Chair had considered this issue in his first Ruling in August 2023, and submitted there was no "good reason why a departure from that position is now necessary" (paragraph 24). The MODCT further noted, in connection with the BBC's first proposition (that the facts were now "conclusively established") that this was based on material placed into the public domain via media articles; their position remained that "where it is appropriate for [the MOD]... to apply the NCND policy, it will do so irrespective of any material being reported in the media whether by reason of speculation, leaks, indiscretion, or inadvertent disclosure" (paragraph 27).

60. The MODWLT supported the MODCT's submissions.

The Royal Military Police ("RMP")

61. On 1 May 2025, the RMP served a position statement adopting a neutral stance on the applications made by the MOD and the BBC.

PROCEDURAL BACKGROUND

62. In order to view the MOD's Applications in their proper context, and to understand the Afghan Families' and the BBC's strong objections to what is proposed, it is necessary to set out some detail of the procedural background, including the MOD evidence which was the basis of my original 21 August 2023 Ruling on Restriction Orders. I set out a brief summary of this below, but this is not intended as a substitute for careful consideration of that full Ruling and all of the evidence and submissions filed and made in connection with that, of which I have purposefully reminded myself whilst drafting this Ruling.

The MOD's original application for Restriction Orders – May 2023

63. On 23 May 2023, the MOD (then acting as a single team) served OPEN submissions applying for restriction orders under five heads of National Security:

    a) "*Damage to capabilities and operations";*
    b) *"Damage to relationships with foreign partners";*
    c) *"Risk to safety of personnel";*
    d) *"Risk to information";*
    e) "*Information likely to be of interest to hostile [state] actors".*

64. The MOD defined "c) Risk to safety of personnel" as disclosure of information relating to the identity of current and former members [of UKSF] which would endanger or risk endangering them or other individuals, and sought a provisional 'Anonymity Restriction Order', namely "an order granting anonymity on respect of UKSF personnel, or personnel deployed with UKSF personnel during the period, or in a context relevant to, the Inquiry's Terms of Reference." [OPEN submission of the MOD paragraph 2(i)(b)].

65. The MOD submitted in OPEN that to decline to accede to the application would:

    (1) "Place the lives of the relevant individuals and/or their families at serious risk as well as exposing them to a serious risk of harm."

    (2) "Damage and undermine the important work conducted by UKSF."

    (3) "Effectively end the individuals' current careers and limit their future career opportunities, and render recruitment more difficult." [11]

Mr Barry Corradine's National Security evidence – May 2023

66. The MOD Application was supported by extensive CLOSED evidence and submissions in relation to National Security, including written and oral evidence from Mr Barry Corradine, then an official in MOD Department of Judicial Engagement Policy.

67. Mr Corradine's evidence comprised each of the five categories of National Security damage in respect of which the MOD sought Restriction Orders, and in particular Category C) Risk to safety of personnel.

68. I also heard evidence from Mr Corradine at a CLOSED hearing on 23 February 2023 at which he provided further detail in support of his evidence.

69. The evidence provided by Mr Corradine is consistent with, and echoed by, the evidence advanced by the MOD on this application.

My original Ruling on Restriction Orders – 21 August 2023

70. In my August 2023 Ruling, I accepted the MOD evidence as to risk in full. On 21 August 2023, I handed down my detailed OPEN Ruling on Restriction Orders in which I set out my general approach to applications for Anonymity Restriction Orders and explained that I was satisfied that:

> *"(1) There is compelling evidence that the identification of personnel who were or are members of, or who were deployed with UKSF, UKSF1 or UKSF3, is capable of giving rise to a real risk of serious harm, including a risk to the lives of those individuals and/or their families.*
>
> *(2) The evidence also demonstrates that their identification would undermine the ability of UKSF to operate effectively, since UKSF require anonymity to operate and identification would cause those members of UKSF whose identities became publicly known to have to leave the service. It would also have a potentially long term detrimental effect on recruitment and morale.*
>
> *(3) These are all factors which point in favour of the grant of anonymity to such individuals, and the Inquiry will take them into account when considering the question of anonymity for any individual or group of individuals.*
>
> *(4) However, the position of any individual who was (or is) a member of UKSF, but who has risen to a senior level in the military, and/or against whom adverse findings may be made, and/or against whom allegations of 'cover up' of alleged unlawful activity may be made, is likely to require more careful consideration in this regard."* (paragraph 115).

71. I held that it was appropriate to make a Restriction Order on a provisional basis to preserve the position on anonymity pending the making of applications for specific Restriction Orders, and observed that:

> "*It is important to have a clear, simple and efficient process to determine which witnesses are (and are not) granted anonymity, in order to avoid delay and to comply with my duties under section 17(3) of the 2005 Act to act fairly and to avoid unnecessary cost. As mentioned above, the attached Restriction Order and Hearings Protocol has been specifically drawn up with this in mind. In view of the conclusions I have reached in principle on the question of anonymity, I do not foresee the need for detailed submissions or supporting evidence to be required where, e.g., someone falling within the broad group identified by the MOD seeks anonymity*." (paragraph 122).

72. I observed as follows regarding senior personnel:

> *"Different considerations may, however, apply to individuals who were members of UKSF and have risen to very senior levels in the military, and/or against whom adverse findings may be made. This will have to be decided in due course on a case by case basis. In particular, careful consideration may need to be given to witnesses, who are senior officers and against whom allegations are made of being involved in any 'cover up' of alleged unlawful activity. In relation to those witnesses, there may be a compelling case that OPEN evidence is required – even if it can only be called to a limited degree- in order to ensure public concern is allayed*." (paragraph 114).

73. I was also satisfied that the totality of my decisions would not contravene Articles 2, 3 or 8 of the ECHR (paragraph 220).

Original Restriction Orders – 21 August 2023

74. In that original Ruling published on 21 August 2023, I made the following Provisional Restriction Orders:

    (1) A **Provisional General Restriction Order** in respect of National Security damage categories, namely: Damage to capabilities and operations; Damage to relationships with foreign partners; Risk to the safety of personnel; Risk to information; Information likely to be of interest to hostile actors (see paragraphs 99-101).

    (2) A **Provisional Anonymity Restriction Order** ensuring anonymity for UK Special Forces personnel, or personnel deployed with UK Special Forces, during the period mid-2010 to mid-2013 (see paragraphs 123-125).

    (3) A **Provisional NCND Restriction Order** prohibiting any reference in OPEN to particular UKSF particular regiments, units or sub-units, force elements, participants,

sources, activities, methods, personnel, nature, features, capabilities or techniques of UK Special Forces (see paragraphs 148-150).

75. My Ruling of 21 August 2023 was published on the Inquiry website together with a Publication Protocol and a Restriction Order and Hearings Protocol, which set out the process for disclosure of documents by the Inquiry and the procedure for the determination of future specific applications for Restriction Orders.

76. My Provisional Anonymity Restriction Order was in the following terms:

> ***"ORDER**: A Provisional Anonymity Restriction Order (a) withholding from disclosure or publication the names and any other identifying details of personnel whether (direct or indirect) who were or are members of UKSF, UKSF1 and UKSF3 or were deployed with UKSF, UKSF1 and UKSF3; and (b) enabling the use of a cipher or pseudonym in respect of those individuals, whether in documentation, written evidence or in hearings"*

77. I further directed as follows:

> "*125. This provisional order, subject to further direction or order by the Chair, will cover all such personnel and will remain in place pending (in accordance with the procedures laid down by the Restriction Order and Hearings Protocol): (1) Assessments by the Inquiry legal team, under my direction, as to whether particular witnesses (together with statements and material relating to them) are relevant to the matters within the Terms of Reference, and whose evidence it is necessary for me to consider in order to fulfil my Terms of Reference (and therefore should be called to give evidence); and (2) An indication by the Inquiry to the MOD that the Inquiry intends to call that particular witness to give evidence (and/or adduce their witness statement in evidence); and (3) An application by the MOD (if so advised) to restrict from disclosure or publication the names and any other identifying details of personnel; and (4) Determination of the above application."*

Further evidence from Mr Corradine – February 2024

78. The MOD subsequently served further evidence from Mr Corradine in support the MOD's application for a Restriction Orders covering the forthcoming DDO Phase 1 hearings. This evidence was in the form of a further witness statement from Mr Corradine dated 1 February 2024, which repeated and reaffirmed much of the National Security evidence previously given by Mr Corradine.

My Ruling on Restriction Orders for DDO Phases 1 and 2 – April 2024

79. I accepted the further evidence from Mr Corradine in full. On 22 and 29 April 2024, I handed down my OPEN Rulings on Restriction Orders in relation to the DDO Phase I and Phase 2 hearings. The effect of these Rulings was that the hearings would be held entirely

in CLOSED, in the presence of state Core Participants only, with limited gists only being provided, given the National Security sensitivities of the information being considered.

Subsequent Restriction Order Applications

80. Since August 2023, numerous Restriction Order applications have been made by the MODCT and the MODWLT, as well as by CTI, relating to anonymity of personnel and witnesses and the need for CLOSED hearings. Each application has been the subject of individual consideration and a separate Restriction Order.

81. I have granted the vast majority of these applications in the terms sought, and directed *inter alia* that prior to publication on the Inquiry website, in accordance with the guidance and precepts in my OPEN Ruling on Restriction Orders:

    (1) appropriate redactions would be made to witness statements and documents of any matter(s) that would, or might, tend to identify that individual or any other UKSF connected personnel; and

    (2) appropriate gisting would be carried out of any passages in the transcripts of witnesses who gave evidence in CLOSED hearings of any matter(s) that would, or might, tend to identify that individual or any other UKSF connected personnel, the precise terms of which would need careful consideration in the light of my ruling on National Security considerations to preserve anonymity.

Redacting and Gisting process

82. The redacting and gisting process that the Inquiry has adopted to date has been carefully structured and comprised the following six stages:

    (1) **First**, the Inquiry received submissions from all of the Core Participants with regard to the principles to be adopted on applications for 'Hearing Specific' Restriction Orders, which led to my Ruling on 21 August 2023. In accordance with that Ruling, and the Restriction Order Protocol, the process laid down has been followed for each set of hearings.

    (2) **Second**, in advance of the hearings, the MOD applied in writing for Restriction Orders in respect of the material contained in the statements and exhibits. With the assistance of the Inquiry Legal Team, redacted and gisted copies were produced and shared with the solicitors acting for the Afghan Families (subject to a confidentiality undertaking) to enable them to suggest Rule 10 questions in advance of the hearing.

    (3) **Third**, upon the conclusion of each hearing, the Inquiry legal team began the process of preparing gists of this evidence, carefully balancing the need to put such information in the public domain as could safely be done, whilst being mindful of the restrictions of National Security and anonymity.

    (4) **Fourth**, thereafter, draft gists were provided by the Inquiry Legal Team to the MOD Legal teams to allow them to make any representations as to the approach taken in

the gists, as well as to raise any points of National Security, including anonymity of the witnesses. It also allowed an opportunity for them to check the gists against the transcripts and to raise any points of accuracy or fairness for the Inquiry Legal Team team to consider.

(5) **Fifth**, updated draft gists, reflecting any changes made during the MOD's representations, were returned by the Inquiry to the MOD, with the express purpose of giving each witness the opportunity to read the gists themselves and make further representations regarding the gists. This they have each done.

(6) **Sixth**, the Inquiry Legal Team then made further final amendments to the gists in the light of each witness's comments, prior to final publication.

83. The process has been designed to protect other sensitive National Security equities.

84. Over the course of nine months, the Inquiry and the MOD Legal Teams worked on redacting and gisting the CLOSED written and oral evidence of the seven Complaints and Concerns Part 1 witnesses.

85. By the time of the hearings relating to Mr Pughsley, the process was well-established and resulted in the publication of the evidence for the Complaints and Concerns Part 1 witnesses in early January 2025. The final content of all redactions and gists and the timing of publication was agreed with both the MODCT and the MODWLT.

86. The publication of this material gave rise to significant attention and headlines in the national media.

87. Further witnesses came forward as a result of the publication.

THE LEGAL PRINCIPLES

88. This is a public inquiry set up under the Inquiries Act 2005, and therefore the starting point for publication of evidence is as set out under section 18(1):

> "*Public access to Inquiry proceedings and information*
>
> *(1) Subject to any restrictions imposed by a notice or order under section 19, the chairman must take such steps as he considers reasonable to secure that members of the public (including reporters) are able-*
>
> …
>
> *(b) to obtain or view a record of evidence and documents given, produced or provided to the inquiry or inquiry panel*"

89. In the August 2023 Ruling, I set out the full legal framework *in extenso* (see especially paragraphs 21-57) which it is not necessary to repeat again here.

90. I summarised the general legal principles governing the assessment of National Security concerns derived from the authorities as follows (see paragraph 34):

    (1) It is for the Chair, not the Government, to decide whether or not National Security concerns should prevent disclosure of material.

    (2) The Secretary of State's view regarding the nature and extent of damage to National Security as a result of disclosure should be afforded appropriate respect, unless there are cogent or solid reasons to reject it.

    (3) A claim by the Secretary of State that disclosure would have the real risk of damaging National Security must be supported by evidence.

    (4) If there is clear evidence of a real and significant risk of damage to National Security it is likely, though not inevitable, that the balance of the public interest will necessitate restriction, notwithstanding this will encroach on the principle of open justice.

    (5) An NCND policy is not a legal principle, but a departure from procedural norms which requires evidentiary justification similar to the position in relation to Public Interest Immunity. (see *e.g.* *Secretary of State for the Home Department v Rehman* [2001] UKHL 47; [2003] 1 AC 153; *R (Begum) v Special Immigration Appeals Commission and anor* [2011] UKSC 7 at [10]; *Al-Rawi v The Security Service and ors* [2011] UKSC 34 at [184]: *Secretary of State for Foreign and Commonwealth Affairs v Deputy Coroner for Inner North London* [2013] EWHC 3724, at [53] to [59]; *CF v Ministry of Defence and ors* [2014] EWCA Civ 559 at [20]); *R (Cabinet Office) v. The Chair of the UK Covid-19 Inquiry* [2023] EWHC 702 (Admin) at [61] ff.).

91. I repeat, once again, Sir Christopher Pitchford's invaluable guidance in his Ruling in the Undercover Policing Inquiry dated 3 May 2016:

> "*The principal means available to the Inquiry to allay public concern in its subject matter, process, impartiality and fairness is public accessibility to its proceedings that will in one or more of the following respects: (1) facilitate the investigative process; (2) respect the different interests of witnesses and encourage effective participation; (3) inform the public and media about its proceedings; (4) permit public debate about natters of national interest; (5) achieve public accountability for police services; and (6) provide transparency for the conclusions and recommendations of the Inquiry*" (Part 6, §A.6).

92. As outlined above, both prior and subsequent to the August 2023 Ruling, the MOD has filed extensive evidence, all of which I accept, as to the risk of harm to National Security in the event of disclosure of identities of certain categories of individuals. I set out in paragraphs 111-115 of the August 2023 Ruling, the harms to National Security that revealing identities could cause, including exposing individuals to risk of serious harm by hostile actors.

Jigsaw' or 'mosaic' identification

93. The question of 'jigsaw' or 'mosaic' identification, which arises in the context of the applications, in the context of a grant of anonymity has been the subject of judicial consideration in the context of Article 2 and Article 3 of ECHR. In *AG v BBC* [2022] EWHC 1189 (QB), Mr Justice Chamberlain explained:

> *"[…] The Court must be alert to the possibility of 'jigsaw' identification. One piece of information may on its own seem innocuous, but when taken together with other information known to a particular malign actor, it may lead to the identification of an individual with greater or lesser confidence. The threat of jigsaw identification is a familiar feature of arguments against disclosure in CLOSED material proceedings in the national security context. It is regularly deployed as a basis for refusing to disclose information known only from covert sources. But although the Court must be alive to the threat of jigsaw identification, it must also be astute not to allow the threat to justify a blanket prohibition on any piece of the jigsaw."*

94. Chamberlain J held that "*identifying information*" meant information which is "*likely to lead to"* the identification of an individual, which in turn meant *"…the real risk, the real danger the real chance, that the individual will be identified.* The Court made clear, however, that *"…the state's positive duty under those Articles is not engaged by every risk to a person's life or safety, only a 'real and immediate risk."* (paragraph 19).

95. The question of 'jigsaw' or 'mosaic' identification has also been the subject of judicial consideration in the context of Article 8 and Article 10 rights. In *A Local Authority v A Mother* [2020] EWHC 1162 (Fam), Mr Justice Hayden memorably observed (at paragraph 18):

> *"18.The potential for jigsaw identification, by which is meant diverse pieces of information in the public domain, which when pieced together reveal the identity of an individual, can sometimes be too loosely asserted and the risk overstated. Jigsaws come with varying complexities. A 500 piece puzzle of Schloss Neuschwanstein is a very different proposition to a 12 piece puzzle of Peppa Pig. By this I mean that while some information in the public domain may be pieced together by those determined to do so, the risk may be relatively remote."* (emphasis added).

96. The above description chimes with the view of the Supreme Court in ***Re: Officer L*** [2007] UKHL 36 (cited within the decision of ***Surrey County Council v Al-Hilli and others*** [2013] EWHC 2190 (Fam) as referenced within the BBC submissions to me on this issue at paragraph 21) that a helpful guide is whether a piece of evidence (published) would "*create or materially increase a risk*". That is of course consistent with the first question I am required to address when considering whether to make a Restriction Order, namely 'What is the risk of harm or damage, in terms of death or injury or damage to National Security that would be avoided or reduced by making the restriction order sought?'. Built into that is also an assessment of the gravity of the risk.

97. It should be noted that details as to UKSF do feature in case reports. Most recently, in ***R v. Craighead [2023***] EWHC 2413 (Admin), a case regarding the publication of a memoir by a former member of UKSF, Mrs Justice Steyn quoted some of the OPEN evidence put forward by UK Special Forces:

> *"19. There are three types of unit within UKSF…:*
>
> *The regular core units, namely: 22 Special Air Service ("SAS") Regiment, the Special Boat Service ("SBS"), the Special Reconnaissance Service ("SRR") and the Headquarters Directorate of Special Forces ("HQDSF");*
>
> *i) The reserve core units, namely: 21 and 23 SAS (R) Regiments and SBS (R);*
> ii) *The regular and reserve enabling/ supporting units: 18 (UKSF) Signal Regiment, a Joint Special Forces Air Wing, Special Forces Support Group and additional squadrons of the Royal Air Force, Royal Logistic Corps and Royal Army Medical Corps.*"

Obligations under the ECHR

98. As set out within the Ruling, references have been made to obligations under the ECHR. These are contended for by the MODWLT (under Articles 2, 3 and 8, which they assert, correctly, may provide a basis for the restriction of evidence), and by Leigh Day (Article 10, which requires consideration of the freedom to freely report proceedings). These competing positions illustrate the balancing act the Inquiry and those working with it are required to undertake where qualified rights are engaged, noting that absolute rights are not apt for a balancing act.

99. I respectfully adopt the views of Sir Christopher Pitchford in his May 2016 Ruling (paragraphs 172 to 193) as a clear statement of the position, both as to the likely communality of any consideration or balance required to made by an Inquiry Chair, and the recognition of the fact that separate consideration must be given when requested, as in the hypothetical example advanced by the MODWLT of the effect of 'career blight' under Article 8.

ANALYSIS AND CONCLUSIONS

100. The applications which are the subject of this Ruling have necessarily involved detailed consideration of a wide range of often overlapping submissions and evidence and the rehearsal of a considerable amount of procedural background, but I can set out my analysis and conclusions within a reasonable compass.

The relevant test

101. I summarised and repeat the relevant test under section 19(4) of the Inquiries Act 2005, in the August 2023 Ruling, as follows:

> *"60. In determining whether, and if so what, restrictive order should be imposed, I am required to consider and balance the various factors in section 19(4) of the 2005 Act (including risk of harm or damage as defined in section 19(5)) and only impose restrictions which I consider either conducive to the Inquiry fulfilling its terms of reference or necessary in the public interest whilst acting with fairness and with regard to the need to avoid any unnecessary cost (s17(4)). Ultimately the task is to balance the various competing considerations in the public interest."*

102. It is a core function of a public inquiry to "*allay public concern*". This Inquiry is investigating grave allegations against a vital part of His Majesty's armed forces, namely UKSF. There is a powerful public interest in ensuring a comprehensive investigation, conducted as transparently as National Security sensitivities allow.

103. By virtue of section 17 of the Inquiries Act 2005 I must act with "*fairness*" (and "*with regard to the need to avoid any unnecessary cost*"). Fairness requires me to consider the interests of all Core Participants, and to take account of the views of the media and interests of the wider public.

104. The general questions to which I must have regard when considering any application for a Restriction Order are as follows:

(1) What is the risk of harm or damage, in terms of death or injury or damage to National Security that would be avoided or reduced by making the restriction sought?

(2) To what extent would imposing this restriction inhibit the allaying of public concern?

(3) To what extent would not imposing any restriction cause delay or impair the efficiency or effectiveness of the Inquiry, or otherwise result in additional cost?

(4) Having regard to these particular matters, is the restriction conducive to the Inquiry fulfilling its Terms of Reference, or necessary in the public interest?

Summary of the MOD Application

105. The MOD summarise their Application as follows[1]:

(1) The MOD's primary submission is that the Inquiry should pause the publication of all documents until the conclusion of DDO Phase 3B.

(2) The MOD's alternative case is that any further documents to be published by the Inquiry should all be redacted and/or gisted in accordance with the CLOSED evidence.

106. The essential issue which I have to determine can be put as follows: whether, in the light of the other (CLOSED) evidence now relied upon, the MOD have demonstrated that there are material risks of identification such that, in carrying out my duty under section 18 of the Act to take such steps as I reasonably can *"to secure that members of the public (including reporters) are able… to obtain or view a recorder of evidence and documents given, produced or provided to the inquiry…"* and balancing the various factors in section 19(4) of the Act (including "*risk of harm or damage*"), I should either completely pause the publication of any further materials until the conclusion of all witness evidence, or rule that any and all future gists or redactions references should be automatically prepared in accordance with the CLOSED evidence.

Mr Corradine's evidence

107. The MOD served extensive evidence in 2023 and 2024 from Mr Corradine regarding each of the five categories of National Security damage (including "*Category C) Risk to safety of personnel*"). This was presented by the MOD as a full, comprehensive and up-to-date picture of the relevant National Security risks to which the MOD and the Inquiry must have proper regard, and I was satisfied that this was the case.

108. I accepted Mr Corradine's evidence on National Security risks in full when making my original Ruling on Restriction Orders dated 21 August 2023 and all subsequent rulings granting anonymity to UKSF personnel including my Rulings dated 8 and 28 March 2024.

The MOD evidence

109. I am satisfied that, having carefully examined and considered the CLOSED evidence now relied upon by the MOD in support of the Application, that it does not contain anything 'revelatory' which did not feature in the 2023 and 2024 National Security evidence of Mr Corradine such as to justify either the MOD's primary or alternative case.

110. Rather than demonstrating that the redaction and gisting process was deficient or flawed, the CLOSED evidence and materials have helpfully confirmed the essential principles

[1] (as summarised from their CLOSED Note of 9 June 2025)

which I am satisfied have hitherto guided the work of the Inquiry and the MOD redaction and gisting teams.

The gisting and redaction process

111. As mentioned above, the Inquiry and the MOD redaction and gisting teams worked together over a period of nine months in 2024 on the evidence of the Complaints and Concerns Part 1 witnesses, leading to the publication of the material in early January 2025.

112. I am satisfied as to the following:

(1) At all material times, the Inquiry and the MOD Legal teams have carried out each redaction and gisting exercise rigorously and meticulously and with due regard to (a) the National Security risks outlined by Mr Corradine and (b) the precepts and guidance set out in the August 2023 Ruling.

(2) At all material times, throughout the redaction and gisting process, the Inquiry and MOD Legal Teams have had in mind exactly the sort of matters raised within the CLOSED evidence filed in support of this application.

(3) At all material times, the Inquiry and MOD Legal Teams had well in mind the need to exercise the 'precautionary principle'.

(4) That nothing within the CLOSED evidence suggests that the current redaction/ gisting process is, or has been, systemically flawed.

(5) The continuance of careful and appropriate redacting/ gisting of material as the Inquiry progresses is necessary to enable the Inquiry to fulfil its function of allaying public concern.

113. It is noteworthy that there is no evidence the gisting and redaction teams did not pay due regard to matters set out within the CLOSED evidence when carrying out the exercise.

The MOD's 'absolutist' position

114. In my view, the 'absolutist' position taken by the MOD (*i.e.* there should be no further publication of any material at the present time, or at least without further redactions and/or gisting) is untenable for similar reasons to those explained by Chamberlain J at paragraph 29 in *AG v BBC*:

> "*29. Thus, taken at face value, the Attorney General's case is that disclosure of any further information in the categories set out at para. 7 of the Supplementary Statement would give rise to the real risk that X would be identified. This seems to me to be an unrealistic approach. It may be true that publication of further information will increase the risk that X will be identified. It may even increase that risk "materially". But it seems very unlikely that publication of any information falling into any of the categories set out would give rise to a real risk of identification. Once the absolutist*

position that there can be no further disclosure at all is rejected, Witness A's evidence provides no firm basis for deciding which parts of the evidence the BBC wishes to publish would be identifying if taken together.'

115. Further, unlike rulings on restriction orders generally, decisions on redactions and gisting necessarily have to be made on a case-by-case basis according to the particular circumstances of the individual and the evidence. As Chamberlain J further explained at paragraph 31 in *AG v BBC*:

> *"31. In cases where there is a crystallised dispute, it is for me to decide, on the basis of all the evidence (OPEN and CLOSED), whether the disclosure of particular pieces of information would give rise to a real risk that X would be identifiable to the groups who may wish to harm him. In reaching a view about that I have considered the categories of information individually and then asked myself whether a real risk of identification would flow from the cumulative disclosure of all the information which I consider can safely be disclosed."*

Publication materially affecting anonymity

116. I accept and defer to the analysis and summary of the risks as set out in the CLOSED evidence. However, as that evidence demonstrated, in most cases, the risk of harm is not likely to be materially increased by anything published by the Inquiry.

The MODWLT's assertions

117. For the avoidance of doubt, for the reasons given above, I reject the assertions by the MODWLT in their OPEN submissions dated 7 March 2025, namely:

(1) "*[The MODCT's CLOSED evidence demonstrated that] there is now known to be an increased risk of identification of current or former UKSF members or those who deployed with them.*" (paragraph 20)

(2) "*Evidence of this kind appears not to have been available at the stage when the MODCT were required to security check and make redaction applications over earlier material sought to be published by the Inquiry."* (paragraph 21)

(3) *"As a result, redactions were not made with these features of mosaic identification in mind."* (paragraph 21)

Summary

118. In answering the four general questions to which I must have regard under section 19(4) of the Act in considering the MOD's application for a Restriction Order, in my judgment:

(1) The risk of harm or damage, in terms of death or injury or damage to National Security would not be avoided or materially reduced by making either restriction sought.

(2) The imposing of either restriction sought would seriously inhibit the allaying of public concern.

(3) Not imposing the restrictions sought would not cause delay or impair the efficiency or effectiveness of the Inquiry, or otherwise result in additional cost.

(4) The restrictions sought by the MOD would be inimical to the Inquiry fulfilling its Terms of Reference, and imposing them would not be in the public interest.

119. Accordingly, in balancing the factors required by section 19(4) of the 2005 Act, I am clear that neither of the restrictions contended for by the MOD are justified or appropriate.

120. For the reasons given above, I reject both the MODCT's primary and alternative cases and refuse the MODCT's application.

121. For the avoidance of doubt (and if and in so far as is necessary), I also reject any separate claim by the MODWLT under the ECHR for the same reasons as those given above.

THE BBC CROSS-APPLICATION

122. I turn to deal briefly at this stage with the BBC Cross-Application.

123. The BBC make two main submissions in support of their application that the ciphers UKSF1, UKSF3, and 'SU' 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.

124. The MOD make two main submissions in response:

(1) First, that the Restriction Orders which I granted in August 2023 in respect the MOD's position on NCND in relation to specific elements of UKSF 2023 were based on clear evidence, and there has been no change in the position;

(2) Second, that much of the material in the public domain relied upon by the BBC derives from the media itself, and that therefore the BBC argument is self-supporting and corrosive of the well-established principles of NCND.

125. I have decided to adjourn the BBC's Cross-Application to a slightly later stage in the Inquiry and intend to revisit this important application when it can be viewed against the

backdrop of, and with the benefit of, a wider evidential picture. I am satisfied that, in the meantime, the maintenance of the NCND position in accordance with Restriction Order continues to be is appropriate in the interests of National Security. The BBC have liberty to apply.

DECISION

126. For the above reasons:

(1) the MODCT and the MODWLT's Applications are refused; and

(2) the BBC's Cross-Application is adjourned.

127. I attach an order for Directions.

Postscript

128. I make a number of observations in a CLOSED Annex A which may be of assistance to the Inquiry and MOD redaction and gisting teams going forwards. Again, this is not capable of being gisted without:

(1) Causing significant damage to National Security, and

(2) Undermining existing Restriction Orders made by the Inquiry in relation to the identity of its witnesses.

The Rt Hon. Lord Justice Haddon-Cave

Chair

22 September 2025

INDEPENDENT INQUIRY RELATING TO AFGHANISTAN

DIRECTIONS

The MOD's Applications of 10 and 21 February 2025 having been refused, the Chair HEREBY makes the following Directions:

1. The temporary stay on publication of Inquiry material, first imposed on 29 January 2025 is hereby lifted.

2. The publication of redacted and gisted evidence and materials shall resume as soon as possible.

3. As regards the Pughsley Materials:

    3.1. The Inquiry redaction and gisting team shall by no later than 4PM on Friday 26 September 2025 serve on the MOD a final set of proposed redactions to the outstanding Pughsley materials (having considered the MODCT's CLOSED Schedule in support of their submissions dated 21 February 2025 ("the CLOSED amended version of Tabs 142, 199 and 276 and global schedule of justification")).

    3.2. The MOD redaction and gisting Team shall respond with any comments by no later than 14 days thereafter.

    3.3. The Inquiry and the MOD redaction and gisting teams shall use best endeavours to complete agreement as to the redactions to be applied to the Pughsley Materials by no later than 7 days thereafter.

    3.4. In the unlikely event of any remaining dispute, this should be referred to the Chair for a decision by no later than 7 days thereafter.

The Rt Hon. Lord Justice Haddon-Cave

Chair

22 September 2025