`

OPEN RULING

ON THE BBC'S CROSS-APPLICATION DATED 7 APRIL 2025
TO VARY THE INQUIRY'S RESTRICTION ORDERS
REGARDING THE CIPHERS 'UKSF1', 'UKSF3' AND 'SU'

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INDEPENDENT INQUIRY RELATING TO AFGHANISTAN

<u>OPEN RULING</u>

ON THE BBC'S CROSS-APPLICATION DATED 7 APRIL 2025 TO VARY THE INQUIRY'S RESTRICTION ORDERS REGARDING THE CIPHERS 'UKSF1', 'UKSF3' AND 'SU'

<u>INTRODUCTION</u>

1. This is my OPEN Ruling on the British Broadcasting Corporation ("BBC")'s application dated 7 April 2025 to vary the Inquiry's Restriction Order ("RO") to permit reference to the "*Special Air Service*" ("SAS") and the "*Special Boat Service*" ("SBS") instead of the present ciphers, 'UKSF1' and 'UKSF3', and to permit use of the term "*squadrons*" instead of the present cipher, 'SU' ("BBC Cross-Application"). This Ruling, therefore, relates solely to the nomenclature of units, and is not concerned with individuals.

2. This OPEN Ruling should be read with my CLOSED Ruling on this matter of even date, which cannot be gisted into OPEN for reasons of National Security.

3. The BBC's Cross-Application is supported by the Afghan Families, but resisted by the Ministry of Defence Corporate Team, now known as the Ministry of Defence Legal Team ("MODLT"), and what was previously known as the Ministry of Defence Witness Legal Team ("MODWLT"), now known as the Military Witness Legal Team ("MWLT"). The Royal Military Police ("RMP") remain neutral.

<u>BACKGROUND</u>

Avowal of UK Special Forces on 5 July 2023

4. On 5 July 2023, the Rt Hon. Sir Ben Wallace, the then Secretary of State for Defence, made the following statement in the House of Commons confirming the involvement of UKSF (*i.e.* UK Special Forces) in the matters being investigated under the Inquiry's Terms of Reference ("the Avowal"):

   > "*This confirmation is made in the exceptional circumstances of this Inquiry, where the activities of this organisation [i.e. UK Special Forces] are the central focus of the inquiry's investigation, as set out in its Terms of Reference.*"

5. The Terms of Reference were amended accordingly to replace references to *"UK <u>Armed</u> Forces"* with the term "*UK <u>Special</u> Forces"* to read:

   "*Purpose and Scope*

1. *To investigate into and report on alleged unlawful activity by United Kingdom Special Forces ('UK Special Forces') in their conduct of deliberate detention operations ('DDO') in Afghanistan during the period mid-2010 to mid-2013.*

2. *To identify and review concerns expressed within and to the UK Special Forces and Ministry of Defence ('MOD') during the period mid-2010 to mid-2013 regarding the conduct of DDO in Afghanistan and the fatalities reported during such operations.*

3. *To consider and determine the adequacy and appropriateness of the MOD's response to those concerns, both at the time that they were expressed or recorded and subsequently, including making any findings of fact as may be necessary for that purpose.*

4. *To determine whether the investigations carried out by the Royal Military Police ('RMP') into alleged unlawful conduct by UK Special Forces in Afghanistan in the course of DDO during the period mid-2010 to mid-2013 were timely, rigorous, comprehensive, properly conducted and effective…To determine, in particular: …whether those deaths formed part of a wider pattern of extra-judicial killings ('EJK') by UK Special Forces in Afghanistan at the time. …"*

(emphasis added)

My August 2023 Ruling

6. On 21 August 2023, I made a detailed Ruling on applications by the MOD for ROs, prior to the start of the evidential hearings, which included granting the following ROs:

(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[1] Restriction Order** prohibiting reference in OPEN to any particular UKSF 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).

[1] 'NCND' is a commonly used acronym for 'neither confirming nor denying' a fact, usually relied upon – as here – where to confirm or deny the fact is said to result in harm to National Security. This is considered from paragraph 62 onwards.

(4) A **Hearing Restriction Order** – requiring oral evidence of military witnesses concerning DDOs be heard in CLOSED.

7. The effect of my Ruling was, in summary, as follows:

   (1) I was satisfied at the time that these ROs were both conducive to the Inquiry fulfilling its Terms of Reference and necessary in the public interest and National Security grounds.

   (2) I prohibited any reference in OPEN to the alleged involvement of particular UKSF regiments, units or sub-units, force elements in the operations which were to be the subject of investigation by the Inquiry, or the sources, activities, methods, personnel, natures, features, capabilities or techniques of UKSF in those operations.

   (3) I ordered that the Provisional ROs would remain in place pending: (a) assessments by the Inquiry Legal Team as to whether such material was relevant to matters within the Terms of Reference, or was necessary for me to consider in order to fulfil the Terms of Reference; (b) an indication by the Inquiry to MOD that the Inquiry intended to adduce that particular information or material in evidence; (c) an application by the MOD to restrict from publication parts or all of the said information or material; and (d) determination of that application.

8. In making these Provisional ROs, pursuant to section 19(4)(b) of the 2005 Act, I took account, in particular, of:

   (1) The MOD's CLOSED evidence, including the MOD's *Noorzai* National Security damages assessment and the witness statement of Mr Barry Corradine dated 23 May 2023;

   (2) The MOD's OPEN evidence, including a witness statement given to the Undercover Policing Inquiry by Mr Paddy McGuinness, the Deputy National Security Adviser of the National Security Secretariat at the Cabinet Office, who explained the importance of consistency in the application of NCND; and

   (3) The Secretary of State's avowal on 5 July 2023.

9. In respect of the Provisional Anonymity Order, in my August 2023 Ruling I held on the evidence before me that there was compelling evidence that the identity of personnel who were or are members of UKSF was capable of giving rise to a real risk of serious harm to the individuals, and also that to do so would, on the evidence, undermine the ability of UKSF to operate effectively as those identified would have to leave the service and because it would have a potentially long-term and detrimental effect on recruitment and morale (paragraph 115).

10. I concluded on the evidence before me at that stage that there was:

> "*…a compelling case, in general, for the MOD maintaining the policy of NCND on National Security grounds in relation to "sources, activities, methods or personnel" and "the nature, features, capabilities and techniques" of UK Special Forces to preserve their efficacy and strategic value and not to do so is capable of giving rise to a real risk of serious harm*" (paragraph 139).

Reservations

11. However, in respect of the Provisional NCND Restriction Order I made the following express reservations as to its scope:

> "*Different consideration may, however, apply e.g. to identifying specific well-known regiments within Special Forces or to identifying specific units or sub-units against whom adverse findings may be made. In relation to any such units or sub-units, 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. I will consider these issues further in due course as the Inquiry progresses.*" (paragraph 140)

12. And in respect of the Provisional Anonymity Order, I made the following express reservation as to its scope:

> *"[T]he 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(4))

My September 2025 Pughsley Materials Ruling

13. On 21 February 2025, MODLT applied to restrict publication by the Inquiry of *any* further material or evidence until completion of DDO Phase 3B on the grounds of National Security ("the MODLT's Pughsley Materials Application").

14. The MODLT served further extensive CLOSED National Security and Anonymity evidence and statements in support of their MODLT's Pughsley Materials Application (listed in paragraph 24 of my Pughsley Materials Ruling).[2]

15. On 7 April 2025, the BBC served a Cross-Application in response to the MODLT's Pughsley Materials Application seeking the lifting of the RO requiring the use of the ciphers 'UKSF1', 'UKSF3', and 'SU' and prohibiting the reference in OPEN to two regiments of UKSF (the SAS and SBS) and to the term 'squadron'. This application is subject to a separate Ruling of even date.

[2] Which I was satisfied could not be gisted into OPEN beyond what appears in my Pughsley Ruling without damaging National Security and undermining existing Restriction Orders made in relation to the identify of witnesses.

16. On 22 September 2025, following consideration of voluminous submissions and evidence, I ruled refusing the MODLT's Pughsley Materials Application. I concluded (at paragraph 109) that I was satisfied that the further CLOSED evidence did not contain anything 'revelatory' which did not feature in the 2023 or 2025 National Security evidence of Mr Corradine such as to justify the MODLT's case that that there should be a halt in the publication of Inquiry evidence and 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"* (paragraph 110).

17. I also explained in my Pughsley Materials Ruling that I had 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.*" (paragraph 125).

Post-Pughsley exchanges

18. On 1 December 2025, the MODLT wrote to the Inquiry Legal Team complaining that the BBC and other media outlets had potentially breached ROs prohibiting reference to specific UKSF regiments in connection to the Inquiry and the identities of those referred to by cipher within the Inquiry. The BBC responded that their reporting did not fall foul of the ROs (and continue to maintain that position).

19. On 12 January 2026, following protracted correspondence about the issue of breach of the ROs between the Inquiry Legal Team, the BBC, MODLT, and MWLT, the Inquiry Legal Team informed the BBC that any further application to vary the ROs brought by the BBC would be considered alongside their Cross-Application.

The BBC's Further Application

20. On 2 February 2026, the BBC made a further application to lift the Inquiry's Anonymity RO in relation to two Individuals ("the BBC's Further Application"), which is the subject of a separate Ruling by me of even date.

SUBMISSIONS

BBC submissions

21. The BBC served the following submissions and materials in support of their Cross-Application:

    (1) An OPEN application relating to Reporting Restriction Orders served on 7 April 2025.

    (2) A witness statement from Andrew Head, BBC Panorama Executive Producer, dated 7 April 2025 (exhibiting 121 pages of media reporting).

(3) An OPEN undated draft order.

22. The BBC make two main submissions:

(1) First, that information is in the public domain such that the ROs in place over 'UKSF1' and 'UKSF3' cannot sensibly be sustained. The information about the deployment of the SAS and SBS to Afghanistan is so conclusively established in the public domain that it is an 'artifice' to prevent the identification of these two regiments and insist on using ciphers.

(2) Second, that that the ongoing restriction over these terms inhibits clear public reporting. This approach harms accurate reporting of the Inquiry and risks undermining, rather than promoting, public understanding and confidence in the Inquiry.

23. The BBC rely on the public interest in support of their submissions that the RO should be lifted. Andrew Head states there are two limbs to the public interest in the BBC's application: "*The first limb concerns the importance of reporting on (i) the issues of essential public concern which the Inquiry is considering and relatedly (ii) the important work of the Inquiry in considering those issues. The second limb concerns ensuring that this reporting is undertaken accurately and with sufficient clarity for audiences and without perpetuating artifices which unnecessarily undermine the clarity of that reporting.*" [3]

24. The BBC submit that *"...the artifice which existing [ROs] maintain of not identifying the SAS and SBS respectively when ciphered by the Inquiry is hampering accurate reporting of the Inquiry proceedings and potentially misleading its audiences and the public as to the nature and quality of the evidence being considered by the Inquiry".*[4]

25. The BBC submit that "*…it could not be clearer that the Inquiry is investigating the actions of the SAS in Afghanistan between 2010 to 2013 and that there is no merit or risk in trying to maintain the fiction that it does not"*.[5] For example:

(1) The Inquiry itself has directly linked this Inquiry to media reporting and judicial review proceedings which solely and specifically concerned the actions of the SAS in Afghanistan.

(2) The Inquiry has published (and continues to publish), without objection from the MOD, repeated assertions by Richard Hermer KC (now the Attorney General) that the events in question concern the SAS.

(3) A Google search for "*SAS Inquiry*" leads to the Inquiry's website as the first returned search result.[6]

[3] Paragraph 34 of Andrew Head's witness statement.
[4] Paragraph 6 of the BBC's submissions dated 7 April 2025.
[5] Paragraph 40 of the BBC submissions dated 7 April 2025.
[6] *Ibid*.

26. The BBC submit that, in view of the fact that there is no prohibition on the media generally referring to this Inquiry as investigating the actions of the SAS, *"...it is fanciful to suggest that identifying UKSF1 as the cipher for the SAS could give rise to any greater risk to National Security or to the anonymity of individuals. This is apparent from the most cursory research, far less the actions of a hostile and motivated party*."[7]

27. The BBC submit that "…*a similar analysis applies to the SBS which has been publicly identified as leading Special Forces operations from 2006 in Afghanistan but that by 2010, the SAS had taken over the lead on these operations*."[8] In the context of the inter-regimental disputes and tensions which subsequently took place and which the Inquiry has published, "…*again only cursory investigations demonstrate that this must necessarily be the SBS. This applies a fortiori since it is widely known that the SAS and the SBS are the UK's two 'Tier 1' Special Forces regiments*."[9]

28. In these circumstances, the BBC submit *"...there is no merit in preserving the artifice in relation to the ciphers given by the Inquiry to the SAS and the SBS in its released material, and that such a restriction cannot be justified as strictly necessary."*[10]

29. The BBC also refer to '*confusion and concerns*'[11] which have arisen, in part within the military community as to the fairness and accuracy of the reporting because reporting to date has not been able to bring proper clarity to audiences over the roles of these respective regiments and the evidence being given by individuals within them. It is submitted that such lack of clarity undermines public confidence in and understanding of the matters being considered by the Inquiry.

30. The BBC also seek confirmation from the Inquiry that it can report the "*SU*" cipher used by the Inquiry as "*squadron*" rather than *"SU"* (*i.e.* sub-unit). The BBC submit that the fact that the SAS and SBS are divided into squadrons is clearly established in the public domain and requiring the use of the term "*sub-unit*" rather than "*squadron*" in these circumstances cannot be said to be strictly necessary and compliant with Article 10 ECHR. Ensuring that media reporting can use the correct and appropriate terminology "*...ensures clarity and accuracy of reporting which enhances public understanding of the issues being considered*."[12]

31. On 2 February 2026, the BBC made further submissions relating to their Cross-Application within Hannah O'Grady's witness statement (served together with the BBC's Further Application which is dealt with in a separate Ruling). Ms O'Grady states in her witness statement that the need to clarify the position regarding the use of ciphers 'UKSF1', 'UKSF3' and 'SU' had become more pressing due to the BBC's reporting in the article 'Ex-UK Special Forces break silence on 'war crimes' by colleagues' dated 12 May 2025 which "…*sets out significant detail about SAS and SBS operations and the war crimes alleged to have taken place by those who served on such UKSF operations"*[13] ,

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[7] Paragraph 41 of the BBC submissions dated 7 April 2025.
[8] Paragraph 42 of the BBC submissions dated 7 April 2025.
[9] *Ibid.*
[10] Paragraph 43 of the BBC Submissions dated 7 April 2025.
[11] *Ibid.*
[12] Paragraph 45 of the BBC submissions dated 7 April 2025.
[13] Paragraph 38 of the witness statement of Hannah O'Grady dated 2 February 2026.

and the continuing release of evidence from the Inquiry whilst a decision on the BBC Cross-Application was still pending .

Afghan Families submissions

32. On 9 May 2025, Leigh Day served submissions on behalf of the Afghan Families in supporting the BBC Cross-Application, and make four points:

    (1) First, the BBC Cross-Application is made in respect of very limited information, publication of which poses no conceivable risk to a recognised public interest.

    (2) Second, as set out in the BBC Cross-Application, those matters have already been widely reported upon and are in the public domain (including in the Afghan Families' Opening Statement to the Inquiry). The Afghan Families note that there was no complaint made at the time the Opening Statement was made by any Core Participant *"...nor could it sensibly have been, considering those are matters of public record"*[14].

    (3) Third, there is a particularly compelling public interest in the free reporting of the names of the two regiments given an important feature of the evidence the Inquiry has heard thus far is that there were significant cultural differences and tensions between 'UKSF1' and 'UKSF3' during the time-period the Inquiry is concerned with. The Afghan Families also submit that the impact such institutional dynamics had on 'UKSF1' conduct, and the willingness of others to soldiers to raise concerns or report extrajudicial killings, means that it is important that 'UKSF1' and 'UKSF3' are distinguishable[15].

    (4) Fourth, previous public court judgments demonstrate that the involvement of the SAS in particular operations can safely be made public without this compromising any National Security interest (for example, in *In The Matter of An application for Leave to Apply for Judicial Review by Sally Gribben* [2017] NICA 16).

33. The Afghan Families also submit that, due to the widespread public knowledge of what the ciphers in fact refer to, the use of ciphers is *"...artificial, unnecessarily impedes public understanding of important aspects of the Inquiry's work, and risks damaging the credibility of the Inquiry in the eyes of the [Afghan Families] and the wider public"*[16].

MODLT submissions

34. The MODLT, served the following submissions in response to the BBC Cross-Application dated 7 April 2025:

[14] Paragraph 2.2 of the Afghan Families submissions dated 9 May 2025.
[15] Paragraph 2.3 of the Afghan Families submissions dated 9 May 2025.
[16] Paragraph 3 of the Afghan Families submissions dated 9 May 2025.

(1) OPEN submissions served on 9 May 2025.

(2) CLOSED submissions served on 9 May 2025.

35. MODLT oppose the BBC Cross-Application and confirm that it maintains its position of neither confirming nor denying "*…the alleged involvement of particular [UKSF] units, sub units or force elements in the events under investigation by the Inquiry*".[17] The MODLT rely upon the voluminous evidence previously provided by them to the Inquiry relating to National Security, most recently in relation to their Pughsley Materials Application (see further below).

36. The MODLT submit that the BBC Cross-Application fails to establish that a departure from the current restriction on disclosing or publishing the names of UKSF units, sub-units, or force elements as they relate to the Inquiry is necessary, or articulate a 'compelling case' to review and amend the RO.

37. The MODLT have not sought to adduce fresh evidence in support of their opposition to the BBC's Cross-Application but rely instead upon (a) the damage assessments produced prior to the avowal of 5 July 2023, (b) the damage assessments produced in relation to the Inquiry's intention to adduce documentation relating to DDOs, and (c) the witness statements and other material served in support of their application in relation to the Pughsley Materials.

38. The CLOSED evidence and statements and the CLOSED submissions filed by the MODLT cannot be gisted beyond what appears in this OPEN Ruling without:

(1) Causing significant damage to National Security; and

(2) Undermining existing Restriction Orders.

39. The MODLT make two main submissions in response to the BBC Cross Application:

(1) First, that the ROs granted in August 2023 in respect the MOD's position on NCND in relation to specific elements of the UKSF 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 in supporting its submissions derives from the media itself, and that therefore the BBC argument is 'self-supporting and corrosive of the well-established principle of NCND'[18].

40. The MODLT place significant reliance upon the Avowal made on 5 July 2023, by the then Secretary of State for Defence of the involvement of UKSF in the matters being investigated under the Inquiry's Terms of Reference.

[17] Paragraph 3 of the MODLT OPEN submissions dated 9 May 2025.
[18] See paragraph 124(2) of the Pughsley Materials Ruling.

41. The MODLT advance two ‘core’ submissions regarding what they referred to as this ‘limited and specific avowal’:

    (1) “*First, the assessment by the Secretary of State of the National Security considerations should be accorded respect, for reasons both of institutional capacity and democratic accountability and the Inquiry should not go beyond the tightly circumscribed avowal now made.*”[19]

    (2) “*Secondly, this avowal, albeit limited, strengthens considerably the National Security damage arguments already advanced. This is because, as it has been confirmed that UKSF are involved in the matters being investigated under the Inquiry’s Terms of Reference, the cogent and clearly evidenced risks to National Security (developed in the CLOSED materials) are obviously engaged so as to justify the imposition of appropriate restrictive measures pursuant to section 19 of the 2005 Act. In short, it can be anticipated that hostile actors who are interested in UKSF capabilities and personnel will be following this Inquiry more closely as a result of the avowal.*”[20]

42. The MODLT submit that I considered this issue in my August 2023 Ruling, and there is "*no good reason why a departure from that position is now necessary*”.[21]

43. MODLT further submit that the BBC cannot rely on what it and other media organisations have put into the public domain to justify abandoning NCND in this Inquiry since, to do so, would be to *“...pass control of the NCND policy to the media because its maintenance or otherwise would be dictated by what is published in the media”*[22].

44. MODLT submit that the MOD’s position remains 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*” .[23]

45. MODLT submit that that the risk of harm to National Security by granting the BBC’s Cross-Application includes “…*if the particular force elements were avowed in this Inquiry, given the multiple similar operations over the relevant period of time, an inexorable link is then made between these operations and the named force elements’ activities, capabilities and employed TTPs”.* They also submit that “*identification of the particular force elements with which particular individuals served, or continue to serve, could potentially cause the anonymity to which they are entitled […] to be undermined, thereby exposing those individuals, and indeed UKSF, to very significant risk indeed.*”[24]

46. MODLT re-iterate that the Avowal was subject to the highest levels of Government scrutiny at the time it was made. They further submit that the policy of NCND is being applied appropriately and in the public interest as *“...each instance of departing from the*

[19] Paragraph 8 of the MODLT OPEN submissions dated 9 May 2025.
[20] *Ibid.*
[21] Paragraph 24 of the MODLT submissions dated 9 May 2025.
[22] Paragraph 27 of the MODLT submissions dated 9 May 2025.
[23] *Ibid.*
[24] Paragraph 31 of the MODLT submissions dated 9 May 2025.

policy of NCND diminishes the future utility of the policy and inevitably weakens it next time it is invoked"[25]

47. MODLT also submit that the approach of using these ciphers does not undermine public understanding or confidence in the Inquiry since my August 2023 Ruling judged this limitation to be necessary and proportionate, and my reasoning can be found within the August 2023 Ruling which is publicly available on the Inquiry website.

48. The MODLT made no distinct OPEN or CLOSED submissions regarding the use of the cipher 'SU'.

MWLT submissions

49. MWLT support the submissions of the MODLT on the basis of the National Security considerations the MODLT set out.

Royal Military Police submissions

50. On 1 May 2025, the RMP served a position statement adopting a neutral stance on the BBC Cross-Application made by the MOD and the BBC.

<u>THE LAW</u>

Statutory Framework

51. The legislative framework is also set out in full in my August 2023 Ruling, but it is convenient to refer to the five main relevant provisions of the Inquiries Act 2005:

    (1) First, the Chair determines the conduct and procedure of an inquiry, and must act with fairness and avoiding unnecessary cost (section 17).

    (2) Second, there is a presumption that a statutory inquiry will be held in public and that the public will be able to consider documents produced by or provided to the inquiry (section 18). In this regard, section 18 provides:

    "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"

    (3) Third, the Chair has power to restrict public access to hearings or evidence but only where (a) required by any statutory provision or rule of law, or (b) conducive to the Inquiry fulfilling its terms of reference, or (c) necessary in the public interest (section 19(3)(b)).

[25] Paragraph 30 of the MODLT submissions dated 9 May 2025.

(4) Fourth, in determining whether a Restriction Order should be made, the Chair is required to consider a number of factors: (a) any risk of harm or damage (including death or injury and damage to National Security or international relations); (b) conditions of confidentiality; (c) the extent to which any restriction might inhibit the allaying of public concern; (d) the extent to which the absence of a restriction would be likely to (i) cause delay or to impair the efficiency or effectiveness of the inquiry; or (ii) result in additional cost (sections 19(4) and 19(5)).

(5) Fifth, thus, the Chair is 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 the Chair considers 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 (section 17(4)). Ultimately, the task is to balance the various competing considerations in the public interest.

Four questions

52. In the light of the legislative framework, I direct myself as follows in respect of the four main questions mandated by section 19(4) when considering each of the applications and balancing the various factors:

(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 maintaining the restriction sought?[26]

(2) To what extent would maintaining this restriction inhibit the allaying of public concern?[27]

(3) To what extent would *not* maintaining any restriction cause delay or impair the efficiency or effectiveness of the Inquiry, or otherwise result in additional cost?[11]

(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?[28]

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[26] See section 19(4)(b) and 19(5)(a) or 19(5)(b) of the 2005 Act.
[27] (See section 19(4)(a) of the 2005 Act) [11] See section 19(4)(d) of the 2005 Act.
[28] (See section 19(3)(b) of the 2005 Act).

Authorities

Open Justice

53. The starting point is that open justice is at the heart of our system of justice and vital to the rule of law (*per* Toulson LJ in R (Guardian news and Media) v City of Westminster Magistrates' Court [2012] EWCA Civ 420, at [1]).

54. The principle of open justice applies equally to those conducting quasi-judicial inquiries (*per* Lord Mance in Kennedy v Charity Commission [2014] UKSC 20 at [124]). Only in the circumstances provided for at section 19 of the Act can the Inquiry derogate from the presumption that the evidence will be heard and published in public.

55. The principle of open justice is fundamental to a public inquiry's duty to allay public concern. As Sir Christopher Pitchford explained in his Ruling in the *Undercover Policing Inquiry* dated 3 May 2016 ("the May 2016 Ruling"):

> *"[82] The policy of the Act towards the openness of an inquiry's proceedings is further revealed by the terms of section 19(4)(a) [see paragraph 39 above]. The premise behind the words "the extent to which any restriction... might inhibit the allaying of public concern" is that public proceedings will tend to contribute towards the allaying of public concern, while private proceedings will tend to inhibit that process. The whole point of an inquiry under the Inquiries Act 2005 is to allay the public concern that caused the Secretary of State to institute the inquiry [...]"*

56. The principal ways in which public access to an Inquiry's proceedings tend to allay public concern were identified by Sir Christopher Pitchford in the same ruling at paragraph 6A.3:
    - facilitating the investigative process;
    - respect the different interests of witnesses and encourage effective participation;
    - informing the public and media about its proceedings;
    - permitting public debate about matters of national interest;
    - achieving public accountability for [the body under investigation]; and
    - providing transparency for the conclusions and recommendations of the Inquiry.

National Security

57. The principle of open justice is not, however, immutable and may need to yield to considerations of National Security. In a well-known passage in *Rehman* (*supra*) at paragraph [62] (see also *Begum* (*supra*) at [62]), Lord Hoffmann explained the reasons for the Court to respect the assessment of the Secretary of State on matters of National Security:

> *"[62] It is not only that the executive has access to special information and expertise in these matters. It is also that such decisions, with serious potential results for the community, require a legitimacy which can be conferred only by entrusting them to*

persons responsible to the community through the democratic process. If the people are to accept the consequences of such decisions, they must be made by persons whom the people have elected and whom they can remove."

58. In Al-Rawi (*supra*) at paragraph [184], Lord Clarke emphasised two further propositions:

> *"[184] First, the rule of law and the democratic requirement that governments be held to account mean that the case for disclosure will always be very strong in cases involving alleged misconduct on the part of the state and, secondly, that the more serious the alleged misconduct on the part of the state, the more compelling the National Security reasons must be to tip the balance against disclosure.*"

Article 10 and the role of the Press

59. The role of the Press in a democratic society has been regularly emphasised, see *e.g.* the Supreme Court in *Re Guardian News and Media Ltd & Others* [2010] 2 AC 697 (citing the ECHR in *Von Hannover v Germany* 40 EHRR 1):

> "*[49]* [*T*]*he press play an essential role in a democratic society. Although it must not overstep certain bounds, in particular in respect of the reputation and rights of others, its duty is nonetheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest."*

60. The BBC refer within their Cross-Application to the obligations of the Inquiry under Article 10 of the European Convention on Human Rights ("ECHR"). In particular, the BBC contend that the RO requiring the use of ciphers 'UKSF1', 'UKSF3' and 'SU' in its reporting contrary to Article 10 ECHR.

61. Those charged with conducting inquiries such as the present are required to balance Article 10 rights on the one hand, with National Security considerations on the other. Derogations from Article 10 rights can be made if prescribed by law, pursue a legitimate aim, as set out in Article 10(2), and if necessary, in a democratic society.

62. As Mrs Justice Steyn explained in *R v. Craighead* [2023] EWHC 2413 (Admin)[29], the jurisprudence in respect of this Convention right is substantially at one with the long-established common law right to freedom of expression (see *R v. Shayler* [2003] 1 AC 247 [21] (Lord Bingham); *R (Lord Carlile) v. Secretary of State for the Home Department* [2015] AC 945 [13] (Lord Sumption JSC)).

The policy of NCND

63. NCND refers to a government policy which, when asserted on behalf of a Minister or the Crown in legal proceedings, seeks to secure a departure from the presumption of open justice. NCND has been described as a subset of public interest immunity ("PII") and it

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[29] Craighead, at paragraph 2.

acts, and should be assessed, in a similar manner. In Mohammed v Secretary of State for the Home Department [2014] EWCA Civ 559 the Court observed:

> *"[20] [NCND] is not a legal principle. Indeed, it is a departure from legal norms relating to pleading and disclosure. It requires justification similar to the position in relation to public interest immunity (of which it is a form of subset). It is not simply a matter of a governmental party hoisting the NCND flag and the court automatically saluting it. Where statute does not delineate the boundaries of open justice, it is for the court to do so."*

64. The policy of NCND derives its strength from consistent application. As Carswell LCJ explained in In the Matter of an Application by Freddie Scappaticci for Judicial Review [2003] NIQB 56), cases which concern the application of a public body's NCND policy are concerned both with assessing the harm that may arise if information was disclosed in that individual case, but also the risk of harm caused by diverging from an NCND policy:

> *"[15] To state that a person is an agent would be likely to place him in immediate danger from terrorist organisations. To deny that he is an agent may in some cases endanger another person, who may be under suspicion from terrorists. Most significant, once the Government confirms in the case of one person that he is not an agent, a refusal to comment in the case of another person would then give rise to an immediate suspicion that the latter was in fact an agent, so possibly placing his life in grave danger .... If the Government were to deny in all cases that persons named were agents, the denials would become meaningless and would carry no weight. Moreover, if agents became uneasy about the risk to themselves being increased through the effect of Government statements, their willingness to give information and the supply of intelligence vital to the war against terrorism could be gravely reduced."*

65. In HTF and ZMS v Ministry of Defence [2018] EWHC 1623 (QB) Males J upheld the application of NCND in relation to whether UKSF had been involved in operations in Iraq, at [29–30], on the basis that it was necessary to maintain the effectiveness of the policy in respect of the involvement of special forces in any particular operation:

> *"[29]…[I]n some circumstances an NCND policy will be a necessary building brick in the maintenance of National Security and that, to be effective, such a policy needs to be consistently applied. I am satisfied that this is so in the case of the policy neither to confirm nor deny the involvement of special forces in any particular operation. Such forces play a vital role in the security of the United Kingdom and their effectiveness would be compromised by public disclosure of their activities. This is an issue on which the considered judgment of the executive, consistently applied by successive governments, is entitled to weight, but it also accords in my judgment with common sense, not least in circumstances where the National Security threats which this country faces are multi-faceted and can hardly be said to be reducing."*

66. Whilst a NCND policy derives strength from its consistent application, it is a policy, not a rule, and holds space for exceptions. As Sir Christopher Pitchford explained in his May 2016 Ruling:

"[145] It might be thought that there is a paradox inherent in the justification for the 'Neither Confirm Nor Deny' policy on the one hand and its use on the other. It is frequently advanced and justified on the ground that any exception will undermine its effectiveness (e.g. in Re Scappaticci) while it is frequently the subject of exceptions. In fact there is no paradox because it does not depend on blanket applications for its effectiveness. I respectfully concur with the view of Lord Justice Burnett [in Al-Fawwaz v Secretary of State for the Home Department [2015] EWHC 166 (Admin)] that the application of the policy is considered in its particular circumstances and within the legal context of the case. It is applied if it serves a public interest that outweighs the countervailing public interest in disclosure.

67. Sir Christopher Pitchford continued:

"[149] While an exception made to the policy may have the effect of weakening its effect, it does not follow that making an exception will cause significant damage to the public interest".

68. There is further helpful judicial authority of the consideration and application of NCND.

69. The NCND principle or policy does not confer some kind of special immunity or exception to the ordinary obligations which apply in legal proceedings. As Maurice Kay LJ made clear in Secretary of State for the Home Department v Mohamed [2014] EWCA Civ 559, [2014] 1 WLR 4240:

"*[20] Lurking just below the surface of a case such as this is the governmental policy of 'neither confirm nor deny' ('NCND'), to which reference is made. I do not doubt that there are circumstances in which the courts should respect it. However, it is not a legal principle. Indeed, it is a departure from legal norms relating to pleading and disclosure. It requires justification similar to the position in relation to public interest immunity (of which it is a form of subset). It is not simply a matter of a governmental party hoisting the NCND flag and the court automatically saluting it. Where statute does not delineate the boundaries of open justice, it is for the court to do so.*"

70. In *DIL v Commissioner of Police for the Metropolis* [2014] EWHC 2184 (QB) Bean J summarised the propositions to be derived from the authorities as follows:

"[39] (1) There is a very strong public interest in protecting the anonymity of informers, and similarly of undercover officers (UCOs), and thus of permitting them and their superiors neither to confirm nor deny their status; but it is for the court to balance the public interest in the NCND policy against other competing public interests which may be applicable… …

(2) There is a well-established exception in a criminal trial where revealing the identity of the informer or the UCO [undercover officers] is necessary to avoid a miscarriage of justice…: this does not arise in the present case.

(3) Even where an individual informant or UCO has self-disclosed, the police (or the Secretary of State) may nevertheless be permitted to rely on NCND in

respect of allegations in the case where to admit or deny them might endanger other people, hamper police investigations, assist criminals, or reveal police operational methods. ..."

71. As Ouseley J observed in *K, A & B v Secretary of State for Defence* [2017] EWHC 830 (Admin):

> "[27] *The NCND policy is one of the building bricks in the protection of those who are or who are said to be CHIS, as the Claimants must have understood and on which they in effect acknowledge they depend; and it derives its cohesive strength from its consistent application."*

72. The Supreme Court has recently reviewed the circumstances in which the justice system may derogate from the principle of open justice on the ground of risk to National Security. *In the matter of an application by the Secretary of State for Northern Ireland for Judicial Review (Thompson)* [2025] UKSC 47 concerned an application by the Secretary of State to a coroner to withhold relevant information (regarding the killing of Liam Thompson in Northern Ireland in 1994) on public interest immunity ("PII") grounds, on the basis that the public interest in non-disclosure of certain documents, in order to prevent a real risk of serious harm from being caused to National Security, outweighed the public interest in open justice. The central issue was whether the court was restricted to reviewing the Coroners's decision on ordinary public law grounds (*i.e. Wednesbury* irrationality or procedural unfairness), or whether the court was required to carry out a higher standard of review consistent with that undertaken by the original decision maker (*i.e.* including open administration of justice and National Security) as explained in *R v. Chief Constable of West Midlands Police, ex parte Wiley* [1995] 1 AC 274. The Supreme Court[30] decided the court was required to carry out the latter higher standard of review and conduct its own balancing exercise.

73. The Supreme Court summarised the application of PII as follows:

> *"[29] PII comes into play if there is a relevant aspect of the public interest which indicates that relevant information should not be disclosed or placed in the public domain, for example in order to protect National Security. In identifying whether there is such a dimension of the public interest in issue, the courts will expect to be provided with evidence about it from an appropriate public authority and, for constitutional reasons and reasons to do with relative institutional competence, will afford a significant degree of respect to the assessment of that authority. If there is such a dimension of the public interest in issue which points against disclosure of the information, the court has to balance that against the aspect of the public interest concerned with the due administration of justice in order to decide whether the evidence should be ordered to be admitted or should be excluded, and whether there is any partial disclosure which could be given [...] The responsibility for making that judgement lies with the court, not the public authority which asserts PII".*

[30] Lord Sales and Lord Stephens gave the judgment.

74. The Supreme Court re-iterated that *"…basic PII principles themselves underpin the NCND policy"* (paragraph 37), and emphasised, however, that ultimate responsibility for making the judgement as to the correct balance lies with the court, not the public authority that asserts public interest immunity, as per *Conway v Rimmer* [1968] AC 910 (paragraph 126).

75. The Supreme Court further also emphasised that due consideration that must be given to the relevant public authorities' assessment of damage to National Security:

> "*[35] However, in assessing whether there is a public interest which is potentially of sufficient importance to justify or require the non-admission of relevant material, a court will generally rely on evidence adduced by the public authority which is best placed to identify that aspect of the public interest which is at stake, and (where appropriate) the court will expect that authority to have consulted with other relevant stakeholders who are in a position to provide information bearing on an assessment of that aspect of the public interest. If the overall conclusion arrived at by the public authority (after due consultation) is that there is no sufficient public interest to justify non-admission of the material, the court will (save in exceptional circumstances) act on "the evidence of those best able to assess the importance of the public interest involved in making disclosure" (R v Chief Constable of West Midlands Police, Ex p Wiley [1995] 1 AC 274, p 297) and will accept that conclusion, meaning that the court will not have to conduct any balancing exercise, since in those circumstances the aspect of the public interest in the due administration of justice will necessarily prevail: Wiley, pp 297-298 (Lord Woolf). On the other hand, if the relevant public authority contends that the public interest requires that the material should not be disclosed or admitted in evidence, the court will accept the authority's assessment as to the existence and extent of the risk posed to the aspect of the public interest which is relied upon, such as National Security as in this case (unless that assessment is irrational, is unsupported by any evidence or the authority has failed to take relevant matters into account); but it is for the court to determine whether that aspect of the public interest outweighs the competing aspect of the public interest involved with the due administration of justice."* (emphasis added)

76. The Supreme Court considered the principles in a PII balancing exercise as set out by Goldring LJ in *Secretary of State for Foreign and Commonwealth Affairs v Assistant Deputy Coroner for Inner North London* [2013] EWHC 3274 (Admin) (*"Litvinenko"*) including the fifth *Litvinenko* principle as formulated by Goldring LJ (paragraph [91]):

> *a) "When carrying out the balancing exercise between these aspects of the public interest, the Secretary of State's view regarding the nature and extent of damage to National Security which will flow from disclosure should be accepted unless there are cogent or solid reasons to reject it;*
> *b) If there are cogent or solid reasons to reject the Secretary of State's view then those reasons must be set out by the coroner; and*
> *c) If there are no reasons, let alone cogent or solid reasons, then the balancing exercise must be carried out on the basis that the Secretary of*

State's view of the nature and extent of damage to National Security is correct."

77. The Supreme Court, clarified the fifth *Litvinenko* principle as follows:

> *"[130] In our view, the formulation of the test [...].the court's role in relation to such an assessment is to apply normal public law principles, including in particular checking that the assessment is not Wednesbury irrational and, as part of that, checking that there is some evidence capable of supporting it".*

78. The Supreme Court agreed with Goldring J's statement in the fifth *Litvinenko* principle, and stated, that if a court is going to depart from the assessment of the National Security interest by a public body (in this case the Secretary of State), "*it is incumbent on that court to explain the reasons*" (paragraph 131).

79. The Supreme Court, finally, emphasised that "*[e]very court applying the Wiley balancing test has profound responsibility to identify the overall public interest*" (paragraph 133), and "*a court and a coroner have to take great care that they have informed themselves fully and accurately about the competing aspects of the public interest before reaching the ultimate conclusion in conducting the Wiley balancing exercise whether information should be disclosed or not*" (paragraph 134).

Approach to the balancing exercise

80. The general principles relating to the assessment of harm or damage required by the Inquiries Act 2005 can be summarised as follows:

    (1) 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.

    (2) It is for the Chair of a Public Inquiry, not the Government, to decide whether or not National Security concerns should prohibit disclosure of material.

    (3) The Secretary of State's view regarding the existence and extent of damage to National Security as a result of disclosure should be adopted, unless it is irrational, there is no evidence capable of supporting it, or it otherwise does not withstand review on public law principles.

    (4) If there is 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) If a Chair rejects the Secretary of State's assessment as to the risk posed to National Security, the Chair must give reasons.

    (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 (Admin), 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.; In re Thompson [2025] UKSC 47*).

MOD AVOWALS

81. The MOD has, in the recent past, made avowals in OPEN forums in relation to UKSF and its structure, in addition to the Avowal made by Ben Wallace on 5 July 2023.

R v. Craighead [2023] EWHC 2413 (Admin)

82. The terms 'SAS' and 'SBS' are not in themselves secret. In *R v. Craighead (supra)* a case regarding the publication of a memoir by a former member of UKSF, Steyn J helpfully summarised the detailed OPEN evidence put forward by the Disclosure Officer in the Headquarters Directorate of UKSF (Soldier B) about UK Special Forces:

> **"*UK Special Forces***
> *[18] Soldier B (with whose evidence the DSF has expressed his "complete agreement") has described the role of UKSF in his statement:*
>
> > *"The government assesses that an operationally effective special forces capability is essential to National Security and has charged UKSF with its delivery. We are a tri-service group of armed forces units under the operational command of DSF and a national asset akin to a fourth and armed security and intelligence service. The exemption for National Security bodies in section 23 of the Freedom of Information Act 2000 expressly groups UKSF together with MI5, MI6 and GCHQ at the top of the list. We fulfil National Security functions and undertake tasks set by government as part of its foreign, security and defence policy and on behalf of other nations and international bodies such as the UN and NATO." (BWS1 §4.1)*
>
> *[19] There are three types of unit within UKSF (BWS1 §4.2):*
>
> *i) The regular core units, namely: 22 Special Air Service ('SAS') Regiment, the Special Boat Service ('SBS'), the Special Reconnaissance Regiment ('SRR') and the Headquarters Directorate of Special Forces ('HQDSF');*
>
> *ii) The reserve core units, namely: 21 and 23 SAS (R) Regiments and the SBS (R); and*
>
> *iii) The regular and reserve enabling/supporting units, namely: 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.*
>
> *[20] UKSF operate independently and in conjunction with others, including domestic and allied armed forces, law enforcement and security and*

intelligence services. UKSF have four primary, overlapping roles, namely: (i) surveillance and reconnaissance; (ii) offensive action; (iii) the provision of support and influence; and (iv) countering terrorism (BWS1 §§4.3, 4.5-4.9).”

83. As Steyn J explained the deployment and operational detail of UKSF is a matter that the Government would normally neither confirm nor deny:

> *“[21] In order to fulfil their functions, UKSF must be able to operate covertly, often in extremely dangerous environments. As Eady J observed in Ministry of Defence v Griffin [2008] EWHC 1542 (QB) at [4]: “It is clear that much of the work is sensitive and requires that they operate secretly.” Successive UK governments have adopted a policy of not commenting on UKSF matters, otherwise known as an NCND (neither confirm nor deny) policy (BWS1 §5.5).”*

84. As Steyn J further set out in *R v. Craighead* at [22], Soldier B also explained that there have been exceptions to the policy of NCND and acknowledgement of involvement of UKSF in various theatres:

> *“[22] There have been exceptions to this policy, including Parliamentary statements confirming the deployment of UKSF to specific conflicts, events or places, usually when UK military involvement is a matter of public record and it would have made little sense to maintain special forces and not use this capability in the circumstances (BWS1 §5.6). In addition, a number of published papers, to which Soldier B has referred in his first statement, provide some limited information regarding the role of UKSF, namely: Strategic Defence Review (Cm 3999, 1998); the government’s Observations on the Second Report from the Defence Committee, Session 2001-02 (published as an Appendix to the House of Commons Select Committee on Defence Fourth Special Report 2001-2: The Threat from Terrorism, HC 667, 2002); Adaptability and Partnership: Issues for the Strategic Defence Review (Cm 7794, 2010); Securing Britain in an Age of Uncertainty: The Strategic Defence and Security Review (Cm 7948, 2010); National Security Strategy and Strategic Defence and Security Review 2015: A Secure and Prosperous United Kingdom (Cm 9161, 2015); Defence and Security Media Advisory Committee, Standing Notice No.3, Military Counter-Terrorist Forces, Special Forces and Intelligence Agency Operations, Judgment Activities and Communications Methods and Techniques (2021); and Defence in a Competitive Age (CP 411, 2021) (BWS1 §§4.5-4.7).”*

In re Sally Gribben [2017] NICA 16

85. However, the application of the policy of NCND to UKSF is not immutable: exceptions apply to the policy as regards the disclosure of certain regiments on particular operations. In the case of *In the Matter of an application for Leave to Apply for Judicial Review by Sally Gribben* [2017] NICA 16, the involvement of SAS in Northern Ireland during the Troubles and details of force elements, numbers of operatives involved in operations, capabilities, methods and tactics were described within the judgment:

"[3] On the night of 8 October 1990, as part of an ongoing operation by the RUC, soldiers from a specialist SAS unit of the British army were conducting a surveillance operation on a mushroom shed containing a stolen car at a farm complex at 91 Lislasley Road, Moy […]

[4] There were a total of nine soldiers directly involved in the operation. Soldiers A, B, C and D were located in the field observing the mushroom shed and all four fired shots at the two deceased. Soldiers E and F were positioned observing a laneway leading to the mushroom shed and did not fire any shots. Soldiers G and I were providing mobile support. They did not arrive at the scene until after the shooting and did not fire any shots. Soldier H was the officer in charge of the surveillance operation. He was located in the headquarters of the RUC Tasking and Coordination Group ("TCG") and was in radio contact with Soldier A."

[27] "[The coroner] concluded that he was satisfied that there were a number of similarities between that incident and the incident with which the inquest was concerned in that both occurred at night and both occurred in rural locations where the SAS was concealed and lying in wait."

ANALYSIS

Timing of this Ruling

86. The MODLT submit that the BBC have failed to articulate why it is now necessary to review or amend the Provisional NCND RO. However, a party does not need to establish that it is 'necessary' for ROs to be re-visited. The appropriate procedures and conduct of an inquiry are my responsibility.

87. I made it clear in paragraph 7 of my August 2023 Ruling, that I would keep all ROs under review during the course of the Inquiry to ensure that they remained fit for purpose as the Inquiry progressed. The MOD sought a variation of my original RO on the basis that it no longer served a purpose. In my OPEN Ruling refusing the MOD's Pughsley Materials Application, and adjourning the BBC's Cross-Application, I observed, at paragraph 4, that it is right that inquiries should review their procedures and processes to ensure that they are still serving the purposes for which they were designed and I welcomed *"the opportunity to take stock and review the manner in which my ROs operate in practice"*. Further, as stated above, I presaged at paragraph 140 of my August 2023 Ruling (which required the use of the ciphers 'UKSF1', 'UKSF3' and 'SU') that different considerations may apply in relation to identifying specific well-known regiments (or units) as the Inquiry progresses.

88. I am satisfied that now is an appropriate time in all the circumstances, and having regard to the need to act with fairness and the avoidance of unnecessary cost, to reconsider the ROs I made in August 2023 which the BBC seeks to vary, to ensure they still serve the purposes for which they were designed.

89. In particular, I am satisfied that this is an appropriate time to revisit the issue distinctly raised by the BBC's Cross-Application, namely whether the RO requiring the use of the

ciphers 'UKSF1' and 'UKSF3' and 'SU' should remain in place. As I explain below, a significant amount of evidential water has flown under the bridge since I made my Ruling of 21 August 2023, and the substantial evidence which the Inquiry has heard over the past 2 ½ years has helped clarify important issues with which this Inquiry is seized, in particular, where the gravamen of the Inquiry's investigation lies.

Evidence received by the Inquiry since 2023

90. The MODLT's primary submission is that there is 'no good reason' why there should be a departure from the position adumbrated in my August 2023 Ruling. I disagree. There are three significant matters which are now clear from the evidence received by the Inquiry (including from the MOD itself), much of which the Inquiry has now been able to publish and put into OPEN and make available to the Press and the Public:

    (A) First, it is evident that the primary focus of the Inquiry is into the activities of only one of the five units within UKSF, namely 'UKSF1', regarding allegations that 'UKSF1' sub-units carried out unlawful killings on target during DDOs in the period mid-2010 to mid-2013.

    (B) Second, a major source of the contemporaneous concerns and complaints evidence expressed and recorded at the time about the activities of 'UKSF1' on target during DDOs is from personnel from another unit within UKSF, namely 'UKSF3'.

    (C) Third, there is evidence of a long-standing rivalry between 'UKSF1' and 'UKSF3'core units within UK Special Forces, and evidence of ill-feeling because 'UKSF3' were supplanted by 'UKSF1' in the DDO role.

As regards (A):

91. In June 2009, 'UKSF1' took over from 'UKSF3' as the unit primarily responsible in theatre for carrying out DDOs, whereupon 'UKSF3' moved to an Afghan mentoring role. This is recorded in evidence published on the Inquiry's website, for example within the OPEN gist of N2349's evidence:

    "*Q: […] [W]as there any suggestion or criticism being made of [UKSF3] that they were not able to fulfil their function when they were in charge of [SU3]?*

    A: The same. There was, so I was, I was present when the headquarters changed in June 2009 […] and a very different operational approach was taken by [UKSF1][31]

92. It is now clear that the overwhelming majority of the DDOs which the Inquiry is charged with investigating under its Terms of Reference, namely DDOs carried out between mid-

[31] See page 3 of N2349 Summary of Evidence – Complaints and Concerns Part 1.

2010 to mid-2013, were operations that involved 'UKSF1'.[32] The allegations of extra-judicial killings during DDOs, therefore, relate primarily to 'UKSF1'.

As regards (B):

93. The Inquiry is also charged with identifying and reviewing concerns expressed within and to UKSF and the MOD regarding the conduct of DDOs during the period under investigation and the fatalities reported.[33]

94. Numerous 'UKSF3' witnesses gave evidence regarding the views and disquiet they expressed at the time – see in particular the evidence of N2107, N2349, N5460, N1791, N5461, N1466 and N1785. By way of illustration:

    (1) The email from N2107 to N2349 dated on 9 February 2011 stating *"…whilst murder and [UKSF1] have oft been regular bed-fellows, this is beginning to look bone"*[34].

    (2) The gist of N2349's evidence where they recall flagging concerns to N2107 around the *"massive failure of leadership"* in UKSF1.[35]

    (3) The email from N1791 to N2265 stating the disbelief N1791 felt when reading the numbers of EKIA in post operation reporting following UKSF1 operations.[36]

    (4) A conversation N1785 had with DSF to discuss concerns around whatever was going wrong when 'UKSF1' was deployed on operations and ensuring this was stopped.[37]

    (5) The email from N5459 to N5460 following Objective TYBURN OPSUM and story board titled *"UKSF1's latest massacre"*.[38]

95. It is now clear that a major (but not the only) source of the contemporaneous concerns and complaints regarding the conduct of DDOs by 'UKSF1' during the period in question were 'UKSF3' personnel.

As regards (C):

96. The fractious relationship between 'UKSF1' and 'UKSF3' was exacerbated by resentment and ill-feeling on the part of 'UKSF3' that the role of conducting DDOs had been

[32] Paragraph 1 of the Terms of Reference.
[33] Paragraph 2 of the Terms of Reference.
[34] Page 17 Gist of N2107 Evidence Complaints and Concerns 1.
[35] Page 11 Gist of N2349 Evidence Complaints and Concerns 1.
[36] Page 17 Gist of N1791 Evidence Complaints and Concerns 1.
[37] Page 3 Gist of N1785 Evidence Complaints and Concerns 1.
[38] Page 7 Gist of N5460 Evidence Complaints and Concerns 1.

transferred to 'UKSF1', and suspicion on the part of 'UKSF1' personnel that the allegation levelled by 'UKSF3' were motivated by *"sour grapes"*[39], see for example:

(1) N2444 spoke of a *"massive rivalry"* between 'UKSF1' and 'UKSF3'[40].

(2) N1791 spoke of 'UKSF3' feeling *"bruised"* as if they had been *"moved onto a sort of B team"* when 'UKSF1' took over their DDO role[41].

(3) N1785 described the relationship between 'UKSF1' and 'UKSF3' as "*fractious*" and explained that raising concerns about 'UKSF1' conduct with his direct counterpart at 'UKSF1' might be perceived as "*mud-slinging*" and not be dealt with seriously[42].

97. For the avoidance of doubt, I have not formed any conclusions about the *truth* of the allegations or the *weight* to be attached to the evidence referred to above. However, it is the nature of the allegations and the evidence rather than my acceptance of them which militates in favour of allaying public concern by identifying the specific units.

Damage Assessments

98. MODLT submit that in making a 'limited and specific avowal' in 2023 of UKSF involvement in the matters subject to the Inquiry's investigations, the then-Secretary of State confirmed the existence and, generally, the extent of harm that may follow from disclosing information beyond the limitation of that avowal, and 'drew the boundary of acceptable risk' in making a limited avowal.

99. MODLT states, within its OPEN submissions, that *"detailed evidence of the risk of National Security harm is contained in the CLOSED evidence provided to the Inquiry"*[43] and addressed this in more detail in the CLOSED submissions (paragraph 14(e) of the MOD's 9 May 2025 Submissions). In support of their opposition to the BBC Cross-Application, MODLT have re-deployed and relied upon the *Noorzai* Damage Assessment and Harm Statements and previous evidence of Mr Corradine regarding the National Security damage, Mr Corradine's 2024 witness statement regarding DDO evidence and the supplemental statement of damage served alongside it to support MODLT's Hearing RO application, and the further Harm Statements and UKSF Intelligence Assessment served by them in support of their 2025 application in relation to the Pughsley Materials. As noted above, however, in my Pughsley Materials Ruling, I concluded that the further CLOSED evidence did not contain anything *"revelatory"* which did not feature in Mr Corradine's original evidence.[44]

100. The details of the Damage Assessments are set out and analysed in my CLOSED Ruling (which, as I have explained, cannot be gisted into OPEN for reasons of National Security). However, in summary my key conclusions are as follows:

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[39] See paragraph 21 of N1785's first witness statement dated 6 November 2023.
[40] Page 5 Gist of N2444 Evidence Complaints and Concerns 1.
[41] Page 2 Gist of N1791 Evidence Complaints and Concerns 1.
[42] Page 2 Gist of N1785 Evidence Complaints and Concerns 1.
[43] Paragraph 14(e) MODLT OPEN submissions dated 9 May 2025.
[44] Paragraph 109 of my Pughsley Materials Ruling.

(1) Upon analysis, it is clear that the essential rationale given in the Damage Assessments relied upon by MODLT as to why unit or sub-unit names or titles should not be disclosed was that this risked confirming UKSF 'involvement' in the particular activities in question and/or that it was UKSF who are being 'described', *i.e.* this would risk linking UKSF to the Afghanistan operations in question.

(2) However, since UKSF's involvement in the Afghanistan DDOs which are the subject of the Terms of Reference of this Inquiry has been formally and specifically avowed by the Secretary of State (see above), this rationale falls away.

(3) The gisting process which the Inquiry has established and operated since 2023 (which is explained in detail in my Pughsley Materials Ruling)[45] means that, in fact, very little information regarding the activities, capabilities and TTPs of UKSF operations is put into OPEN.

Cipher 'SU' (*i.e.* Sub-Unit)

101. I turn specifically to deal with the question of the current restriction on the use of the term '*squadron'*.

102. The English word "*squadron*" has mid-16th century origins, denoting a group of soldiers in square formation (and derives from the Italian '*squadrone'* which in turn derives from '*squadra'* meaning 'square'). It is a widely known and used term which is applied flexibly in a variety of ways in all three military domains conventional or otherwise (as illustrated in the Oxford English Dictionary)[46]. It is also clear from *e.g.* the National Army Museum's website that the terms *"sub-unit"* and *"squadron"* are inter-changeable.

103. The term *"squadron"* is a generic term. If the Press wish to use it when reporting matters relating to the Inquiry, I cannot see any National Security harm resulting in this.

104. The BBC have not applied to identify or name particular sub-units.

CONCLUSIONS

105. In these circumstances, I am satisfied that it is appropriate to reconsider and revoke my August 2023 RO giving effect to NCND in relation to the ciphers 'UKSF1' and 'UKSF3' in the light of the evidentiary position as it is now in 2026, *i.e.* what is *now* clearly in the public domain. My reasons are in summary as follows:-

106. **First**, the avowal made by Rt Hon. Sir Ben Wallace on 5 July 2023, that *"…the activities of this organisation [i.e. UK Special Forces] are the central focus of the inquiry's*

[45] Paragraph 111 – 113 of my Pughsley Materials Ruling.

[46] OED: "***Squadron n. 1*** *an operational unit in an air force consisting of two or more flights of aircraft.* ***2*** *a principal division of an armoured or cavalry regiment, consisting of two or more troops.* ***3*** *a group of warships detached on a particular duty or under the command of a flag officer."*

investigation" can no longer be considered accurate or tenable. This is because, as explained above, it is clear from the evidence much of which is now in OPEN and available to the Press and Public that:

(1) First, the central focus of the Inquiry's investigation into EJK is not into the activities of UKSF *per se*, but into the activities of *one* particular unit within UKSF, namely 'UKSF1', (see (A) above);

(2) Second, a major source of the allegations at the time was *another* particular unit within UKSF, namely 'UKSF3' (see (B) above);

(3) Third, there was a long-standing rivalry between these two units, 'UKSF1' and 'UKSF3', which was exacerbated at the time by resentment and suspicion (see (C) above).

(4) Fourth, it is quite apparent from press reporting and material in the public domain, that references to 'UKSF1' and 'UKSF3' are already widely understood to be references to the two core Special Forces units, the SAS and SBS.

107. **Second**, for the reasons given in my CLOSED Ruling, I am satisfied that the Damage Assessments and supporting material evidence relied upon by the MOD do not evidence risk of *material* harm to National Security as a result of confirmation that the ciphers 'UKSF1' and 'UKSF3' refer to the SAS and SBS respectively.[47]

108. **Third,** the MODLT accuse the BBC of a 'bootstraps' argument, but fail themselves to explain or address why, in the exceptional circumstances of this Inquiry, a departure from the policy of NCND, in this instance, would materially diminish the future utility of the policy.[48]

109. **Fourth**, whilst I accept that disclosure of the terms SAS and SBS would represent a further limited departure from NCND which might be capable of causing some harm (although the nature of this harm has not been specifically articulated by MODLT, and is not apparent), the current circumstances are exceptional: this is a public inquiry tasked with investigating allegations of exceptional gravity and public concern.

110. **Fifth**, it would undermine the ability of the Inquiry to fulfil its Terms of Reference and assuage public concern if it was unable to name the *very organisation* which is the *central* focus of the Inquiry's investigation, namely the SAS. Moreover, continued adherence to NCND in these circumstances is likely to fuel public concern about 'cover-up', and bring the NCND policy itself into disrepute.

111. **Sixth**, it would undermine the ability of the Inquiry to explain, and the public to understand, the nature and sources of concerns and complaints, and the response to them, if the Inquiry was not able to name the *rival unit* which was the major source of the

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[47] As described by the Disclosure Officer in *R v. Craighead* [2023] EWHC 2413 (Admin) (see above).

[48] Paragraph 30 of the MODLT OPEN submissions dated 9 May 2025.

concerns expressed at the time, namely the SBS, and to explain the background to the rivalry between SAS and the SBS and the reasons for resentment, ill-feeling and suspicion.

112. **Seventh**, there are no compelling National Security reasons militating against disclosure in this case, where the allegations of misconduct by the State are grave and the case for disclosure to the public is *ex hypothesi* is very strong (*c.f.* Lord Clarke in *Al-Rawi* (*supra*) at [184]).

113. **Eighth**, continued use of the ciphers 'UKSF1' and 'UKSF3', is materially inhibiting the Press from being able to report, accurately and sensibly, Inquiry proceedings and evidence, and the Public from being able to understand the record of the Inquiry proceedings and evidence (*c.f.* my duties under s.18(1)(b) of the Inquiries Act 2005).

114. **Ninth**, the time and resources devoted to the gisting process should be focussed on matters which, if published, pose a real risk of undermining National Security; to maintain the current RO would unnecessarily impair the efficiency of the Inquiry (*c.f.* my duties under s.19(4)(d) of the Inquiries Act 2005).

115. **Tenth**, in my judgment, the maintenance of the RO is, plainly, no longer in the public interest.

Section 19(4) questions

116. In coming to a decision to lift the RO relating to the ciphers 'UKSF1', 'UKSF3' and 'SU', I have throughout had regard to the four general questions under section 19(4) of the Act, which, for the reasons given above, I answer as follows:

(1) I am satisfied that the evidence does not establish that removing the RO over the terms 'SAS' and 'SBS' would materially increase the risk of harm or damage to National Security.

(2) I am satisfied that maintaining the ciphers 'UKSF1' and 'UKSF3' would significantly inhibit the ability of the Inquiry to allay public concern.

(3) I am satisfied that no longer imposing these restrictions would not delay or impair the efficiency or effectiveness of the Inquiry or result in additional cost.

(4) I am satisfied, that imposing the said restrictions is no longer conducive to the Inquiry fulfilling its Terms of Reference, or necessary in the public interest.

DECISION

117. For the reasons given above, with effect from 10am 16 June 2026, I hereby vary my August 2023 Restriction Order:

(1) to permit reference to the units "*Special Air Service*" ("SAS") and the "*Special Boat Service*" ("SBS") instead of the ciphers, 'UKSF1' and 'UKSF3';

(2) to permit use of the term "*squadron*".

118. As stated above, this Ruling relates solely to the nomenclature of units, and is not concerned with individuals.

ADMINISTRATIVE MATTERS

119. Having regard to section 17 of the Inquiries Act 2005, I direct that this Ruling and (where appropriate) its CLOSED counterpart is circulated as follows:

(1) To MODLT and MWLT on Friday 29 May 2026. This circulation will be subject to a RO limiting dissemination of the Ruling or its contents outside of those within those teams who have signed an Inquiry confidentiality undertaking, and who have appropriate level of clearance.

(2) To the BBC and all Core Participants on Friday 12 June 2026 (by which time I expect MOD to have conducted necessary security checking). This circulation will also be subject to a RO in those terms set out at paragraph (1) above.

(3) The OPEN Rulings will be published on the Inquiry website on Tuesday 16 June 2026 at 10am, at which point the RO in (1) and (2) above, and over ciphers described in paragraph 117 will be discharged.

The Rt Hon. Lord Justice Haddon-Cave
Chair
29 May 2026