INDEPENDENT INQUIRY RELATING TO AFGHANISTAN

OPEN RULING

ON THE BBC's FURTHER APPLICATION DATED 2 FEBRUARY 2026 TO VARY THE INQUIRY'S RESTRICTION ORDERS

Table of Contents

Introduction	**2**
BACKGROUND	**2**
Avowal of UK Special Forces on 5 July 2023	**2**
My August 2023 Ruling	**3**
My September 2025 Pughsley Materials Ruling	**5**
Post Pughsley exchanges	**6**
The BBC Further Application	**6**
SUBMISSIONS	**6**
The British Broadcasting Corporation ("BBC")	**6**
The Afghan Families	**8**
The Military Witness Legal Team ("MWLT")	**11**
The Ministry of Defence Legal Team ("MODLT")	**13**
BBC response to MWLT's submissions	**14**
The Royal Military Police ("RMP")	**17**
THE LAW	**18**
Statutory Framework	**18**
Four questions	**19**
Authorities	**19**
Approach to the balancing exercise	**26**
ANALYSIS AND CONCLUSIONS	**26**
Section 19(4) questions	**28**
DECISION	**29**
ADMINISTRATIVE MATTERS	**29**

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INTRODUCTION

1. This is my OPEN Ruling on the British Broadcasting Corporation ("BBC")'s application dated 2 February 2026 to lift the Inquiry's Restriction Order ("RO") over the identities of two individuals, named in the BBC's application and described as '*senior officers'* (the "individuals"). The application has been referred to as the BBC's Further Application.

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 Further 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, now known as the Military Witness Legal Team ("MWLT"). The Royal Military Police ("RMP") remain neutral.

4. To confirm, the BBC's Further Application is refused and the RO over the identities of the individuals remains in place. I will regard any speculation as to the identity of the individuals who have been the subject of this application as a breach of the RO. To ensure that this Ruling does not undermine the continued existence of the relevant ROs, I have taken measures to remove any information that may suggest the identity of the individuals that were the subject of this application, although I have of course taken account of all the evidence and submissions made.

BACKGROUND

Avowal of UK Special Forces on 5 July 2023

5. 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.*"

6. The Terms of Reference were amended accordingly to replace references to *"UK Armed Forces"* with the term "*UK Special 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

7. 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).

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

8. 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.

9. In making these Provisional ROs, pursuant to section 19(4)(b) of the Inquiries Act 2005, 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.

10. 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

[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 81 onwards.

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).

11. 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

12. 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)

13. 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

14. 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").

15. 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]

16. 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

[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.

ciphers ‘UKSF1’, ‘UKSF3’, and ‘SU’ and prohibiting the reference in OPEN to two regiments of UKSF and to the term ‘squadron’. This application is subject to a separate Ruling of even date.

17. 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).

18. 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

19. 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).

20. On 12 January 2026, following protracted correspondence about the issue of breach 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 would be considered alongside their Cross-Application.

The BBC’s Further Application

21. On 2 February 2026, the BBC made a further application to lift the Inquiry’s Anonymity RO in relation to the individuals.

SUBMISSIONS

BBC’s submissions

22. The BBC’s Further Application, dated 2 February 2026, is supported by a witness statement of Ms Hannah O’Grady.

23. The BBC summarise the four grounds upon which their Further Application is based as follows:

(1) The fact that the individuals (who they name in their submissions) held very senior roles in the military, including during the period relevant to the Inquiry's Terms of Reference, is information that is already extensively in the public domain. This is because it has very widely been publicised that the individuals held these roles, including, in the case of one of the individuals, as a result of information the government has published and that he has himself made public.

(2) The continuation of the existing RO in relation to the individuals materially impedes the media's ability to explain the Inquiry's work and the background to the Inquiry to the public in a meaningful and understandable manner.

(3) There is a powerful public interest in being able to name the individuals in relation to the Inquiry's evidence and proceedings and more broadly for the Media to be able to accurately report on the underlying events, in light of the pivotal role they played in the alleged events that made up the BBC's initial investigation and which have become the subject of the Inquiry and in light of the seniority and responsibilities of the very senior role they held.

(4) When previously approached by the BBC in advance of broadcast/publication and informed that allegations about their conduct whilst in their senior roles were due to be reported, neither individual raised any objection to their being identified as having held this role, whether on the basis that their safety would be put at risk or on any other ground. In the case of one of the individuals, who was still serving at the time of the initial approaches, neither did the Ministry of Defence ("MOD") raise any such points to the BBC. If and in so far as the Inquiry has heard evidence in CLOSED concerning specific risks to their safety, that evidence should be assessed against this background.

24. *As regards Ground (1):* The BBC refer to Hannah O'Grady's witness statement as evidencing the *"very wide extent to which [...] both [held a very senior role] is in the public domain."*[3] As well as having been extensively identified in national UK media, they also refer to (a) the fact that in respect of one of the individuals, the UK Government itself disclosed their very senior role on its online profile of them, (b) that the same individual described themselves as holding that same very senior role online, and (c) the opening submissions of the Afghan Families reference both individuals.

25. On this basis, the BBC contend that the "*ship had sailed*"[4] and maintaining the RO would have no effect in preventing the public from knowing the identities of these individuals and the senior role they occupied during the period within the Inquiry's Terms of Reference.

26. *As regards Ground (2):* The BBC submit that they have previously published the names of the individuals, including in reporting on the investigation that *"contributed to the*

[3] See Paragraph 13 of the BBC Further Application submissions.
[4] See Paragraph 15 of the BBC Further Application submissions.

decision to set up the Inquiry"[5] and which was legitimate, lawful and clearly in the public interest. They submit that maintaining the prohibition on identifying these individuals impedes the media's ability to explain the Inquiry's work and the background to the Inquiry in a meaningful manner. They refer to the Post-Pughsley exchanges as demonstrating that the RO complicates the media's ability to link reports on the Inquiry's work with information that has already lawfully been published. The BBC submit that this is a clear indication of the difficulties they - and other media outlets - face in being able to accurately report the work of the Inquiry if anonymity of these individuals is to be maintained.

27. *As regards Ground (3)*: The BBC submit that, due to the importance of the individuals to the matters the Inquiry is investigating, in particular the potential cover up of killings which occurred in the case of DDOs, they should be named publicly to ensure that *"…reports concerning their alleged roles are not 'disembodied' and therefore less likely to engage the interest of the public"*[6]. Hannah O'Grady describes the continued anonymisation of these individuals in these circumstances as "*antithetical to the Inquiry's purpose to investigate whether* [*the matters being investigated by the Inquiry*] *were covered up"*[7]. Hannah O'Grady also gives evidence as to the prominent role one of the individuals has continued to play in public life.

28. *As regards Ground (4)*: The BBC refer to previous approaches they have made to the individuals, offering the right to reply in respect of proposed publications about their alleged conduct. The BBC submit that they carefully consider personal risk to those they report on, and that this is particularly the case where individuals themselves raise personal safety concerns that could potentially arise from reporting. However, neither individual (nor the MOD) raised any such concerns that such reporting would risk their personal safety, nor curtailment of their careers, when these approaches were made. Hannah O'Grady in her witness statement states that one of the individuals has, nonetheless, provided comment to the BBC on the allegations regarding his conduct.

Afghan Families' submissions

29. On 16 March 2026, the Afghan Families served submissions in support of the BBC's Further Application.

30. The Afghan Families noted that the Inquiry was established to investigate and address the *"invidious effects of secrecy"* and emphasised that it was this culture that *"created conditions in which lethal conduct of UKSF in Afghanistan was perpetrated and tolerated"*[8]. The Afghan Families urged the Inquiry to balance the need for information to be withheld from the public on National Security grounds with the public interest in open justice whilst remaining cognisant of the fact that that an *"institutional and cultural failure to subject UKSF and its commanders to appropriate public scrutiny form an important part of the context in which the subject matter of the Inquiry arose"*[9].

[5] See Paragraph 16 of the BBC Further Application submissions.
[6] See Paragraph 19 of the BBC Further Application submissions.
[7] See Paragraph 25 of Hannah O'Grady's witness statement dated 2 February 2026.
[8] See Paragraph 3 of the Afghan Families submissions in response to the BBC Further Application.
[9] See Paragraph 4 of the Afghan Families submissions in response to the BBC Further Application.

31. In advancing their submissions in support of the BBC Further Application, the Afghan Families raise three main grounds regarding:

    (1) What is already in the public domain;

    (2) The media's ability to explain the Inquiry's work; and

    (3) The public interest.

(1) Public Domain

32. The Afghan Families cite various examples of the extensive publication of the identities of the individuals within publicly available news articles. These examples are in addition to those identified by the BBC in their application, and the Afghan Families submit these examples *"show how widespread public reporting of the individuals identities has been, over a period of more than a decade".*[10]

33. The Afghan Families contend that, contrary to the MWLT submissions, the BBC were not the first organisation to report the individuals identities in connection with the subject matter of the Inquiry and that was not the first time the individuals were identified in their senior role during the time period of the Inquiry allegations.

34. Further, the Afghan Families highlight other non-news media publications that identify the individuals as holding senior roles and, further, note that one of the individuals has themselves confirmed that they held this position online. The Afghan Families also point to evidence published on the Inquiry's own website that identifies the individuals as holding senior roles during the relevant period to support the contention that this information is readily within the public domain.

35. The Afghan Families submit that in these circumstances, there is no practical purpose in maintaining the RO over the identities of the individuals and maintaining the RO runs contrary to principle.

36. Further, the Afghan Families contend that the individuals would inevitably struggle to demonstrate that continued publication could give rise to a real and immediate risk of serious harm or death when *"those essential facts including the dates of their tenure are already widely in the public domain"*[11] and, as such, the continued restriction cannot be justified in the public interest as required by s19 Inquires Act 2005.

(2) Media's ability to explain Inquiry's work

37. The Afghan Families submit that the restrictions over the names of the individuals substantially inhibits the ability of the Inquiry to allay public concern as it impedes the ability of the media to explain the Inquiry's important work. This is particularly so given that "*one of the very things the Inquiry is investigating is whether senior UKSF personnel*

[10] See Paragraph 5 of the Afghan Families submissions in response to the BBC Further Application.
[11] See Paragraph 13 of the Afghan Families submissions in response to the BBC Further Application.

were involved in covering-up misconduct, and the culture of secrecy which contributed to the adequacy of the MOD's response to allegations of UKSF misconduct".[12]

(3) Public interest

38. The Afghan Families submit that there is a strong public interest in naming the individuals due to the *"pivotal role they each played in matters under investigation by the Inquiry"*[13]. They rely on paragraphs 114 and 115(4) of my August 2023 Ruling in submitting that the individuals' identity should not continue to be the subject of ROs because:

    (1) They were extremely senior military officers before, during and after the events being investigated;

    (2) The evidence before the Inquiry is that they were each made aware of allegations that UKSF were routinely murdering unarmed civilians in Afghanistan but failed to report these allegations despite their command responsibility over the units and statutory duty to do so and *"may well be individuals in respect of whom the Inquiry makes adverse findings"*[14] and there is public interest in such senior personnel being identified;

    (3) Neither individual appears to have made a detailed application for a RO supported by evidence of risk and/or potential harm themselves and it would be difficult to see how either application would be possible given that neither appears to consider their identification as a cause for concern and as a matter of public record it is hard to see how any risk or harm would eventuate from their further identification in the circumstances of the Inquiry's investigation;

    (4) The BBC Application is not premature on the basis that adverse findings have not yet been made against the individuals, as the Chair used the word "may" in relation to adverse findings. The Afghan Families argue that there is "c*ompelling public interest in publication of the evidence the Inquiry hears, particularly given the nature of the allegations, not simply the Chair's ultimate findings"*[15];

    (5) The risk referred to at 115(2) of the August 2023 Ruling that individuals may have to leave the service if identified does not apply to the individuals who are both retired.

39. Finally, the Afghan Families address the MWLT's submissions in response to the BBC Further Application and submit that they contain *"an extraordinary list of vitriolic criticisms of the BBC's reporting of Inquiry allegations"*[16], none of which engage the substance of, nor assist the Inquiry's proper resolution of, the BBC's Application.

[12] See Paragraph 15 of the Afghan Families submissions in response to the BBC Further Application.
[13] See Paragraph 16 of the Afghan Families submissions in response to the BBC Further Application.
[14] See Paragraph 19(b) of the Afghan Families submissions in response to the BBC Further Application.
[15] See Paragraph 19(d) of the Afghan Families submissions in response to the BBC Further Application.
[16] See Paragraph 20 of the Afghan Families submissions in response to the BBC Further Application.

MWLT's submissions

40. The MWLT oppose the BBC Further Application and served the following submissions and materials:

    (1) OPEN submissions in response to the BBC Further Application dated 6 March 2026

    (2) CLOSED submissions in response to the BBC Further Application dated 6 March 2026, together with accompanying documentation.

41. The MWLT raise two initial grounds of opposition:

    (1) First, that the BBC Further Application is "premature"[17] and cite paragraph 115(4) of the August 2023 Ruling in suggesting that the position of individuals that have risen to senior levels against whom adverse findings may be made in the Inquiry's Report should be revisited at a later date. This is supported by MODLT at paragraph 17 of their submissions in response to the BBC Further Application.

    (2) Second, that the BBC has already named individuals in its reporting and BBC Panorama programmes which, consequently, advances a narrative that pre-empts the conclusions the Inquiry may reach in due course in circumstances where the BBC are not privy to the full facts as they are not apprised of CLOSED evidence the Inquiry has heard. The MWLT contends that to grant the BBC's application *"would be inimical to the interests of justice, and the public interest"*[18].

42. The MWLT invite me to "*interrogate carefully*"[19] the assertion that the BBC reporting is in the public interest, and contend that the BBC has only ever presented a "*one-sided narrative*"[20] and failed to explore alternative explanations for the allegations being made. The MWLT further submit that the BBC's *Panorama* programmes suffer from *"serious flaws of judgment*"[21], including reliance on footage that is not from UKSF tours of Afghanistan, and they question their impartiality (they submit that certain interviews conducted by *Panorama* must have been under Taliban escort), objectivity and the forensic integrity of *Panorama*'s analysis.

43. The MWLT submit that confidence in the integrity of *Panorama*'s reporting is further undermined by the following:

[17] Paragraph 2.1 of the MODWLT submissions in response to the BBC Further Application.
[18] Paragraph 2.2 of the MODWLT submissions in response to the BBC Further Application.
[19] Paragraph 3 of the MODWLT submissions in response to the BBC Further Application.
[20] Paragraph 4 of the MODWLT submissions in response to the BBC Further Application.
[21] Paragraph 5 of the MODWLT submissions in response to the BBC Further Application.

(1) The BBC have failed to provide the Inquiry with names of individuals they interviewed in the *Panorama* programme, or evidence which is said to underpin their allegations;

(2) Allegations relating to the ARAP scheme that were contained within the *Panorama* being proven to be false following investigation as per *R (TPL1) v Secretary of State for Defence* [2025] EWHC 1729; and

(3) The editing of the *Panorama* programme "*Trump: A Second Chance?"* which *Panorama* acknowledged created *"mistaken impressions"* and which have ultimately led to president Trump bringing a legal case against the BBC and led to the resignations of the BBC Director General and CEO of News.

44. The MWLT submit that the above examples are evidence of the BBC's failure to meet its public purpose to provide duly accurate and impartial factual programming and, according to MWLT, demonstrate that *"the claim that the BBC's reporting is in the public interest is no more than a matter of bare assertion"*[22].

45. The MWLT submit that the impact of the BBC's reporting linking individuals to misinformed allegations *"cannot be overstated"*[23] and that *"the BBC's conduct also has consequences in respect of the public understanding of the Inquiry's work*" and has *"distorted the public's understanding"* of the Inquiry as, despite not being in possession of the full evidential picture, it has *"put piecemeal and misinformed reporting into the public domain"*[24] which, in turn, risks shaping public perception of the Inquiry's work before the publication of the Report.

46. Further, the MWLT submit that, on the basis of the CLOSED documentation, the weight of individuals' fundamental rights under Articles 2, 3 and 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR") is sufficient to displace the public interest the BBC relies on in the Further Application. The MWLT further rely on s17(3) and s19 Inquiries Act 2005 in making their submissions.

47. The MWLT respond to each of the grounds that make up the BBC's Further Application as follows:

(1) *Public domain*: the MWLT submit that it is misleading for the BBC to highlight other media outlets reporting of the names of individuals in order to aver that their identities are in fact in the public domain. They submit that all the media reporting exhibited to Hannah O'Grady's witness statement came after the BBC's own reporting of the names of individuals.

[22] Paragraph 10 of MWLT submissions in response to the BBC Further Application.
[23] Paragraph 12 of MWLT submissions in response to the BBC Further Application.
[24] Paragraph 13 of the MWLT submissions in response to the BBC Further Application.

(2) *Impeding media's ability to explain the Inquiry's work in a meaningful manner:* the MWLT submits that this argument is "*meritless*"[25] and that the Inquiry itself has not considered that its own ability to explain its work to the public has been hindered by its inability to explicitly state names of senior individuals.

(3) *Public Interest in naming the individuals:* the MWLT contend (1) that the BBC submissions that the individuals played a pivotal role in the events under consideration by the Inquiry is contested, as set out in CLOSED evidence, and (2) that there is simply no public interest in naming the individuals and that the BBC Further Application fails to particularise what would be achieved by this identification. The MWLT then repeat that the weight of the individuals' rights under Article 2, 3 and 8 ECHR and s.17(3) and s.19 Inquiries Act 2005 far outweighs that of any public interest.

(4) *Previous approaches by the BBC:* the MWLT describe the BBC's argument that, as neither individual approached by the BBC raised concerns about their personal safety therefore there is no evidence of a risk to personal safety, as "fallacious"[26]. MWLT contend that the tone and content of Hannah O'Grady's emails (as set out in the CLOSED evidence) *"…did not present a serious opportunity to raise such concerns with an interlocutor in whom there would be confidence that concerns would properly be considered. And even if it had been, a missed opportunity cannot deprive the individuals from seeking to maintain the protections the Inquiry has afforded to them."*[27]

MODLT submissions

48. The MODLT served OPEN submissions on 6 March 2026 opposing the BBC Further Application and supporting the submissions of the MWLT.

49. The MODLT oppose the BBC Further Application on the grounds that it *"fails to establish a departure from the current restriction order position is necessary at this stage"*[28].

50. The MODLT emphasise the Avowal made on 5 July 2023 confirming publicly that UKSF were involved in the matters being investigated by the Inquiry under the Terms of Reference and submit that, due to the Avowal, there are cogent and clearly evidenced risks to justify the imposition of appropriate restrictive measures pursuant to s.19 Inquiries Act 2005. The MODLT further re-iterated that, due to the Avowal, hostile state actors ("HSA") who are interested in UKSF personnel and capabilities will be closely following the Inquiry website and anything that the Inquiry publishes.

[25] Paragraph 22 of MWLT submissions in response to the BBC Further Application.
[26] Paragraph 27 of MODWLT submissions in response to the BBC Further Application.
[27] Paragraph 27 of MODWLT submissions in response to the BBC Further Application.
[28] Paragraph 4 of MODLT's submissions in response to the BBC Further Application.

51. The MODLT's reasons for opposing the BBC Further Application include:

(1) The Provisional Anonymity Restriction Order was granted on the basis of s.19 Inquiries Act 2005 and, as such, I gave little regard to Articles 2, 3 and 8 ECHR within the reasoning for granting the RO in my August 2023 Ruling. As such, MODLT stress the importance that I consider each of the individual's personal position relating to Articles 2, 3 and 8 ECHR on its own facts and, as evidenced by passages in the August 2023 Ruling as to the gravity of potential consequences of public disclosure, any assessment of risk in this context "*must err on the side of safety of those individuals*[29].

(2) The BBC's submissions regarding information that is already in the public domain should be approached with "*considerable circumspection*"[30] as the BBC cannot rely on what they and other media organisations place in the public domain to justify a departure from NCND.

(3) The use of nominals does not impede the media's ability to explain the background of the Inquiry's work in a public and meaningful manner. The MODLT argue that I have carefully considered this limitation within my August 2023 Ruling which the public can be directed to by the BBC provide a clearer understanding of the Inquiry's work.

BBC response to MWLT's submissions

52. On 19 March 2026, the BBC provided further submissions in response to the OPEN submissions of the MWLT and MODLT respectively.

53. The BBC note that they are unable to respond to the MWLT CLOSED submissions but query how the CLOSED submissions can answer the evidence adduced by the BBC and Afghan Families confirming the individuals held senior roles during the relevant period that is within the public domain.

54. The BBC dispute the MWLT's description of the BBC application as 'premature'. Further, the BBC contend that the MWLT's submission that they have failed to engage the ECHR arguments is incorrect. The BBC submit that, as they are *"not aware of any evidence that the identification of two [senior officers] will interfere with their rights under Articles 2, 3 or 10 the BBC cannot go further than to say, as it has done in paragraph 21 of its submission of 2 February 2026, that "in the light of what is already in the public*

[29] Paragraph 15 MODLT's submissions in response to the BBC Further Application.
[30] Paragraph 18 MODLT's submissions in response to the BBC Further Application.

domain, continuing the order anonymising the two [senior officers] will not avoid or reduce any risk of harm to those two individuals"[31].

55. The BBC's short submissions in response to MWLT are supported by extensive witness statements by Karen Wightman and Hannah O'Grady, both of which deal substantively with the MWLT's submissions.

56. Karen Wightman's witness statement addresses the MWLT's *"cheap rhetoric"* within their submissions, that she claims has been used to *"unfairly disparage Panorama"*[32]. She emphasises *Panorama's* rigorous and open-minded approach to ensuring fair and accurate journalism through extensive due diligence and fact checking. Ms Wightman also highlights *Panorama's* previous track record in conducting investigations that have led to criminal convictions and public inquiries being commissioned.

57. Ms Wightman argues that, due to the evidence about the individuals that the BBC has already placed in the public domain, information that she submits led to the establishment of the Inquiry, members of the public should be entitled "*to transparent information which adds to, supports or contradicts what is already lawfully in the public domain."*[33]. She claims that *"[m]embers of the public should not be required to assemble for themselves an artificial jigsaw from pieces which are already on the table. Open justice requires that, save in very unusual circumstances, information including names are reportable so that the public has a full understanding of proceeding as they unfold. It is not satisfied by there being a "reveal" at the end, dependent on the outcome."*[34]

58. Ms Wightman also disputes the MWLT's claim that the BBC have done nothing to assist the Inquiry in determining the truth of allegations raised by the individuals that have spoken to *Panorama*. She states that the MWLT misunderstand the idea of protection of journalistic sources and the importance of this protection to accurate and effective investigative reporting.

59. In her witness statement Hannah O'Grady responds to the *"serious and unfounded allegations about the BBC and its reporting"*[35] by the MWLT. She rejects the assertion that the BBC has distorted the public's understanding of Inquiry's proceedings and argues that, on the contrary, the Further Application is submitted in an attempt to *"report more clearly and accurately on the Inquiry's work*"[36].

60. Hannah O'Grady observes that she is unable to deal with the MWLT's CLOSED submissions relating to the individuals' rights under Articles 2, 3 and 8 ECHR and the risk of serious harm or death that could be caused by identification. She states the MWLT's submissions "*do not engage with the core arguments put forward by the BBC"*[37]. By way of example, Hannah O'Grady states that the MWLT's submissions do

[31] Paragraph 6 of the BBC submissions dated 19 March 2026.
[32] Paragraph 6 of Karen Wightman's witness statement dated 19 March 2026.
[33] Paragraph 12 of Karen Wightman's witness statement dated 19 March 2026.
[34] Paragraph 12 of Karen Wightman's witness statement dated 19 March 2026.
[35] Paragraph 4 of Hannah O'Grady's witness statement dated 19 March 2026.
[36] Paragraph 9 of Hannah O'Grady's witness statement dated 19 March 2026.
[37] Paragraph 14 of Hannah O'Grady's witness statement dated 19 March 2026.

not explain why the individuals themselves can publicly disseminate information about the senior role they held, but cannot then be named in that role as part of a public inquiry.

61. In response to submissions made on behalf of the MWLT, Hannah O'Grady questions the ability of CLOSED evidence to demonstrate a risk posed by the naming of the two individuals when, *"a basic internet search will confirm the identities of the [the two individuals] in question"*[38]. Accordingly, the risk of harm to the individuals by HSAs cannot be not affected by lifting the ROs over the individuals' identity.

62. Hannah O'Grady then addresses a number of inaccuracies, as she describes them, within the MWLT submissions, including:

    (1) The false claim that *Panorama* used footage from Australian Special Forces.

    (2) The claim that the Taliban escorted *Panorama* teams in Afghanistan and controlled the people spoken to, places visited and evidence gathered. Hannah O'Grady argues that the Taliban had no prior knowledge of the incidents *Panorama* were investigating, individuals they were speaking to nor any journalistic undertakings on any of the *Panorama* visits to Afghanistan, both before and after the Taliban took control in 2021.

    (3) The lack of evidence relied upon by MWLT when claiming that UKSF individuals that served in Afghanistan who provided testimonies to *Panorama* lack credibility.

    (4) The description of *Panorama's* review of bullet holes as *"evidentially worthless"* was disputed, noting the careful, expert informed examination of the scene that took place.

    (5) The claim that the individuals were not able to raise safety concerns when contacted previously for the BBC for comment. Ms O'Grady notes that the individuals could have done so directly, or through another route, noting that the BBC was in touch with the MOD and DSMA committee.

    (6) Hannah O'Grady questions the evidential basis for MWLT submissions that the BBC's reporting is *"sensationalist and one sided"* and has *"never sought to explore whether there exists alternative explanations for the allegations that have been made"* and states that neither individual has made a complaint to the BBC or OFCOM about the reporting.

63. Hannah O'Grady also addresses and explains the fundamental principle of the protection of journalistic sources which is *"recognised in case law and democratic institutions of the UK"*[39]. She describes the MWLT's characterisation of journalistic source protection as a lack of co-operation with the Inquiry as irresponsible. She says that, as part of Panorama's investigations, she has spoken to more than 300 sources, a majority of whom are

[38] Paragraph 17 of Hannah O'Grady's witness statement dated 19 March 2026.
[39] Paragraph 44 of Hannah O'Grady's witness statement dated 19 March 2026.

individuals who currently or formerly served in the British Armed Forces. Without such protections, sources would be prevented from being able to come forward without fear and this is *"something that a free press relies upon in order to function successfully"*[40]. She notes that when she spoke to many of these military sources there was no trusted, internal mechanism for them to share their concerns and evidence.

64. Hannah O'Grady describes the enduring protection of confidential sources as a most "*vital requirement for the continuation of a free and well-functioning British media"*[41] and explains that for this reason that there was deliberate anonymisation of the relevant operations described in the *Panorama* programme. She argues that the MWLT are therefore not in a position to determine whether testimonies of eyewitnesses contained within the *Panorama* programme are incorrect, as claimed by MWLT.

65. With respect to the public interest in "*full and transparent reporting of these matters,"*[42] Hannah O'Grady argues that the matters the Inquiry are investigating could not be more serious. In particular, she notes the particular public interest in reporting of concerns that those in very senior roles within UKSF suppressed or ignored evidence of suspected war crimes and whether those were involved in a cover up. She argues that the roles the individuals held is *"afforded significant resources and almost unparallelled operational independence"* and, as such, this must *"be matched with the level of accountability for those who serve in [those roles]"*[43] to ensure the integrity of UKSF and the British Armed Forces as a whole.

66. Hannah O'Grady emphasises the BBC's submission that the reservations I articulated at paragraph 115(4) of my August 2023 Ruling does not require an adverse finding to be made in respect of an individual before consideration will be given to naming certain senior officers and, as such, the BBC's Further Application is not premature.

67. Hannah O'Grady avers it is plainly incorrect to say that the individuals did not play a direct and pivotal role in the events under examination by the Inquiry due to a lack of action in the face of serious concerns being raised about UKSF conduct to the two individuals.

68. In summary, Hannah O'Grady argues that to continue to grant anonymity to these individuals, means *"proper accountability cannot be brought to bear"* as revealing *"personal failures in leadership and oversight have particular and significant bearing on preventing such mistakes from being repeated"*[44].

Royal Military Police's submissions

69. On 10 February 2026, the RMP informed the ILT that they adopted a neutral stance in relation to the BBC Further Application. However, the RMP emphasised that the *"safety*

[40] Paragraph 47 of Hannah O'Grady's witness statement dated 19 March 2026.
[41] Paragraph 49 of Hannah O'Grady's witness statement dated 19 March 2026.
[42] Paragraph 54 of Hannah O'Grady's witness statement dated 19 March 2026.
[43] Paragraph 57 of Hannah O'Grady's witness statement dated 19 March 2026.
[44] Paragraph 63 of Hannah O'Grady's witness statement dated 19 March 2026.

and security of Service personnel, including those who have retired from service, is of paramount importance" and considered that the *"Ministry of Defence Corporate Team is in the best position, through their possession of the necessary information and resources, to be able to identify any such risks"*

THE LAW

Statutory Framework

70. 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)).

(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

71. 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?[45]

    (2) To what extent would maintaining this restriction inhibit the allaying of public concern?[46]

    (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?[47]

Authorities

Open Justice

72. 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]).

73. The principle of open justice applies equally to those conducting quasi-judicial inquiries *(p*er 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.

74. 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). 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*

[45] See section 19(4)(b) and 19(5)(a) or 19(5)(b) of the 2005 Act.
[46] (See section 19(4)(a) of the 2005 Act) [11] See section 19(4)(d) of the 2005 Act.
[47] (See section 19(3)(b) of the 2005 Act).

inquiry under the Inquiries Act 2005 is to allay the public concern that caused the Secretary of State to institute the inquiry [...]"

75. 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

76. 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*."

77. 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

78. 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."

79. 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 to use the ciphers 'UKSF1, 'UKSF3' and 'SU' in its reporting is contrary to Article 10 ECHR.

80. 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.

81. As Mrs Justice Steyn explained in *R v. Craighead* [2023] EWHC 2413 (Admin)[48], 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

82. As set out at paragraph 51(2) above, the MODLT consider that the BBC cannot justify the abandonment of NCND on the basis of what they, and other media organisations, place into the public domain. As such, it is convenient at this juncture to consider the policy of NCND.

83. 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 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".

84. 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

[48] Craighead, at paragraph 2.

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".

85. 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."*

86. 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.*

87. 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".*

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

89. 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.*"

90. 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. ...*"

91. 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."*

92. 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[49] decided the court was required to carry out the latter higher standard of review and conduct its own balancing exercise.

93. 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".*

94. 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).

95. 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*

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

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)

96. 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."*

97. 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"*.

98. The Supreme Court agreed with Goldring J's statement in the fifth *Litvinenko* principle, 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).

99. 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

100. 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, or other risk of harm or damage, 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*).

ANALYSIS AND CONCLUSIONS

101. I have considered all the submissions and evidence served in respect of the BBC's Further Application with care.

102. In my judgment, the BBC Further Application to lift the nominals in relation the individuals is premature, and should not at present be determined in favour of the BBC for the following reasons:-

103. **First**, the thrust of my reservations in paragraphs 114 and 115(4) of my August 2023 Ruling was clear: that it may be necessary, in due course, to revisit the restricted status of some senior officers in UKSF.

104. **Second**, I have made it clear on repeated occasions, that I would only reach conclusions on the issues which are the subject of my Terms of Reference once I had heard and considered *all* the evidence. On 17 December 2025, the Inquiry wrote to the BBC explaining that the Chair would consider the position of senior individuals "…*on the basis of all the evidence, at the relevant time*".

105. **Third**, as I made clear at the opening hearing in January 2026, the evidence-hearing phases of the Inquiry are not yet completed.

106. **Fourth**, until I have heard and considered all the evidence, and had the benefit of closing statements by Core Participants, I will not be in a position, properly and fairly, to determine (and therefore balance):

(1) whether any individual may be the subject of potential criticism regarding events falling within the Terms of Reference;

(2) the overall and up-to-date risk picture as regards individuals, and the likely harm that would be caused to them and to National Security in the event that their identity was revealed;

(3) whether, balancing the relevant factors, it is in the public interest that the anonymity of individuals, to whom anonymity had previously been granted by the Inquiry, should be lifted.

107. **Fifth**, I am satisfied that the system of allocating nominals to protect the identity of individuals, and their consistent use, currently works well. I do not consider that the Inquiry's ability to produce a reasonably coherent, comprehensive and comprehensible record of the evidence for the Press and Public is materially impaired by the use of nominals. Nor do I consider that the Press and Public's ability to follow the record of evidence and the workings of the Inquiry is materially impaired by the said use of nominals.

108. **Sixth**, I am satisfied that it would be wrong in principle, and unfair at this stage, to attempt to discriminate between different witnesses to the Inquiry, let alone on the basis of what the media characterise and/or speculate variously as the 'pivotal' or 'peripheral' roles which particular individuals are or are not said to have played in the events in question, prior to my final determination of the relevant issues as above.

109. **Seventh**, I am satisfied that there are no special, exceptional or public interest reasons relating to the individuals who are the subject of the BBC Further Application (namely the individuals) which would justify revealing either of their identities prior to final determination of the relevant issues as above.

110. **Eighth**, I am satisfied that in the light of the material before me, including CLOSED material, that the disclosure of the identity of those who held senior roles within UKSF may cause a risk of harm or damage, including damage to National Security. This is of weight, given that I have yet to reach my evidential conclusions as explained above.

111. I have also considered the BBC's contention that lifting the Restriction Orders would enable the BBC to report accurately, and that this is in the public interest.

112. The MWLT accuse the BBC of presenting a "*a sensationalist and one-sided narrative*", "*no serious attempt to test the substance of the allegations*", "*a blithe disregard for the context"* and submit that the 2022 and 2025 *BBC Panorama* programmes relating to UKSF[50] suffer from *"serious flaws of judgment*" [51]. The MWLT further submit that examples, such as the editing of the *BBC Panorama* programme "*Trump: A Second Chance?*" (which is currently the subject of legal proceedings brought by President Trump in Florida USA), demonstrate that "…*the claim that the BBC's reporting is in the public interest is no more than a matter of bare assertion"*[52]

113. These accusations are strenuously rejected on behalf of the BBC by Karen Wightman, Executive Producer of Panorama and Hannah O'Grady, a senior producer/director at Panorama.

114. In my judgment, I do not need to determine the extent of the public interest in reporting at this stage. If and in so far as it will in due course be necessary to resolve them at all, these issues should be determined and the position considered at the same time as I make a final determination of the substantive issues which are the subject-matter of the Terms of Reference and can therefore properly and fairly balance the fourth 'public interest' question under section 19(4) of the 2005 Act, namely whether the maintenance of particular Anonymity Restriction Orders remains "…*conducive to the Inquiry fulfilling its Terms of Reference, or necessary in the public interest*".

115. I am therefore satisfied that, currently, the answers to the four extant questions in section 19(4) of the Inquiries Act 2005 remain in favour of maintaining the RO as it applies to these the individuals at the present time, until final determination of the relevant issues as above.

Section 19(4) questions

116. In coming to a decision to maintain the current Anonymity ROs in relation to the individuals, 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 remain satisfied that there is a material risk of harm or damage (including damage to National Security) if the restriction which requires the use of nominals when referring to the individuals is lifted.

[50] SAS Death Squads Exposed: A British War Crime?" (2022) ("2022 Panorama") or "Special Forces: I Saw War Crimes" (2025) ("2025 Panorama").
[51] Paragraphs 3-10 of the MODWLT Submissions.
[52] Paragraph 10 of MODWLT submissions in response to the BBC Further Application.

(2) I remain satisfied that maintaining the use of the nominals in relation to the individuals would not significantly inhibit the ability of the Inquiry to allay public concern at this stage (i.e. prior to my reaching any evidential conclusions).

(3) I remain satisfied that continuing to impose these said restrictions would not delay or impair the efficiency or effectiveness of the Inquiry or result in additional cost.

(4) I remain satisfied that continuing to impose these said restrictions remains conducive to the Inquiry fulfilling its Terms of Reference, and necessary in the public interest.

DECISION

117. For the above reasons, the BBC's Further Application is refused.

ADMINISTRATIVE MATTERS

118. 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.

The Rt Hon. Lord Justice Haddon-Cave

Chair

Date 29 May 2026