

BEFORE THE HON MR JUSTICE ROBIN KNOWLES CBE

SITTING IN PRIVATE

DATED: 1 SEPTEMBER 2023

IN THE MATTER OF AN APPLICATION FOR AN INJUNCTION ~~ON 30 Sep 2023~~
MUNDUM BROUGHT BY THE SECRETARY OF STATE FOR DEFENCE



INTERIM ORDER

KB-2023-003361

PENAL NOTICE

IF YOU DISOBEY THIS ORDER YOU MAY BE HELD TO BE
IN CONTEMPT OF COURT AND MAY BE IMPRISONED (IN
THE CASE OF NATURAL PERSONS) OR FINED OR HAVE
YOUR ASSETS SEIZED.

ANY PERSON WHO KNOWS OF THIS ORDER AND
DISOBEYS THIS ORDER OR DOES ANYTHING WHICH
HELPS OR PERMITS ANY PERSON TO WHOM THIS ORDER
APPLIES TO BREACH THE TERMS OF THIS ORDER OR
WHO OTHERWISE UNDERMINES OR FRUSTRATES THE
EFFECTIVENESS OF THOSE TERMS MAY BE HELD TO BE
IN CONTEMPT OF COURT AND MAY BE IMPRISONED,
FINED OR HAVE THEIR ASSETS SEIZED.

UPON an application to the Judge being made on Friday 1 September 2023 ("the Application")

AND UPON the Claimant's Solicitor having given notice to Associated Newspapers Limited and to Global Media and Entertainment Limited ("the Media Representatives")

AND UPON the Judge hearing Leading Counsel for the Claimant and representatives from Global Media and Entertainment Limited

AND UPON the Judge directing that the Claimant's Solicitor takes a full note of the Hearing ("the Solicitor's Notes") and that the recording of the Hearing by the Court be stored securely and not be transcribed, copied or disclosed without the permission of the Judge

AND UPON the Judge reading the materials relied upon by the Claimant in support of

the application referred to in Schedule A to this Order ("the Supporting Materials").

AND UPON the Judge accepting the Claimant's undertakings set out in Schedule B to this Order

AND where a Confidential Note ("the Confidential Note") is to be prepared by Leading Counsel for the Claimant and approved by the Judge, concisely describing the data incident referred to in this Order.

IT IS ORDERED THAT:

Return date

- (1) Subject to (2) below, this matter will return to the Court on Friday 1 December 2023 (at 0900 before Mr Justice Robin Knowles CBE unless he is unavailable). The hearing will be in person, in private, and 1.5 hours will be allowed.
- (2) However at any point between now and the return date at (1) above, if the Claimant becomes aware of any material change in circumstances relevant to the Order and the suitability of its continuation, the Claimant is to (and undertakes to in Schedule B) restore the matter before the Court at the first reasonable opportunity and on notice to the Media Representatives. Any such earlier hearing may be before Mr Justice Robin Knowles CBE or another Judge, depending on availability, and if before another Judge then the Confidential Note is to be available at the hearing.

Notice or Service

- (3) The Claimant may, on advice at senior level within the Ministry of Defence, give notice of or serve a copy of this Order on any person that the Claimant is concerned may otherwise do any of the matters at (4) (a), (b) and/or (c) below in relation to the data incident described in the Confidential Note. If the Claimant does give notice of or serve a copy of the Order in these circumstances a short written report is to be submitted to Mr Justice Robin Knowles CBE through his clerk (and he may require a hearing).

Injunction

- (4) Any person with notice of this Order or served with this Order shall be restrained until the return date set at paragraph (1) above, or further order in the meantime, from doing (or instructing or encouraging or causing or permitting any other person to do) the following acts or any of them, namely:
- (a) publishing or disclosing, or causing or permitting to be published or disclosed, or permitting to remain on any internet site over which the person has control, any information pertaining to the data incident relating to the Ministry of Defence and described in the Confidential Note;
 - (b) publishing or disclosing, or causing or permitting to be published or disclosed, or permitting to remain on any internet site over which the person has control, any information indicating that the Claimant (or any other government entity) has applied for this Order and/or that this Order has been made;
 - (c) making or causing or permitting to be made any statement which is or purports to be a disclosure of such information as is referred to in (a) or (b) above or which is intended to be taken, or might reasonably be taken, by those to whom it is addressed, as being such a disclosure.

Handling of documents and information

- (5) Notwithstanding paragraph (4) above, any person with notice of this Order or served with a copy of this Order has permission to disclose any document or information to or make any statement to their Solicitors or Counsel, and to prepare and put any document or information before the Court at a hearing in private, provided always that suitable arrangements are made by that person and their Solicitors and Counsel to achieve security and preserve confidentiality.

- (6) Only with the permission of the Court may the Claimant make the Supporting Materials and/or the Solicitor's Notes and/or the Confidential Note available to a person with notice of this Order or served with a copy of this Order (other than the Media Representatives). Permission may be sought by any such person in writing on notice to the Claimant.
- (7) Notwithstanding the provisions of paragraph (6) above, the Claimant may, on advice at a senior level within the Ministry of Defence, make the Confidential Note available to any person with notice of this Order or served with a copy of this Order, for the purpose of assisting any such person to understand and comply with the obligations set out in this Order. The Claimant may do so if, and only if, in his reasonable opinion the time taken to obtain the permission of the Court for disclosure of the Confidential Note in accordance with paragraph (6) will lead to harm that this Order is intended to prevent. The Claimant will inform the Court forthwith if he makes the Confidential Note available to any person without first obtaining the permission of the Court. For the avoidance of doubt, this Order binds any person with notice of it or served with a copy of it, whether or not the Claimant has made the Confidential Note available to that person.
- (8) Nothing in this Order shall prohibit the Claimant from informing any person, when serving this Order or bringing it to that person's attention, that the information that the person has disclosed or published, or is threatening to disclose or publish, is covered by this Order.
- (9) Nothing in this Order shall prohibit the Claimant, on advice at a senior level within the Ministry of Defence, from sharing any information and/or documents relating to this data incident with, or from disclosing this Order and/or the Confidential Note, in confidence (and with a record to be kept of each occasion) to:
- (a) Ministers or officials within the Ministry of Defence and/or any other government department or agency;
 - (b) any law enforcement agency; and/or
 - (c) any foreign liaison partner;

for any legitimate purpose in connection with the data incident and the response to it, including the provision of information to Ministers and the prevention of harm.

Similarly, any person provided with information under this paragraph (9) relating to the data incident for any such legitimate purpose is not prevented by the terms of this Order from communicating that information in confidence to others who are in a position of responsibility, for similar purposes including the prevention of harm (and with a record to be kept of each occasion).

Nothing in this Order shall prohibit the taking of steps by persons referred to in this paragraph (9) to prevent harm (and with a record to be kept of any such steps taken).

- (10) Nothing in this Order shall prevent the Information Commissioner's Office ["ICO"] from taking any steps in private that the ICO considers appropriate, but for the avoidance of doubt the ICO is prohibited (without the leave of the Court, which may be sought in writing) from publishing or disclosing externally any information pertaining to the data incident.
- (11) The provisions in Part 5.4C of the CPR dealing with access to and the supply of documents from the Court records shall not apply in respect of the records of the Court in these proceedings including the Claim Form and any statements of case, written evidence or submissions or other documents filed by the parties ("the Court file"); and the Court file shall be kept securely at all times in the custody of the Court Service at the Royal Courts of Justice and shall not be searched or inspected by anyone (other than an official of the Court acting in the exercise of his or her duties as such) without the permission of the Court. This Order is not to be placed on the Court website at this point, but this is subject to any further order at a later date.
- (12) The Media Representatives, and any persons with notice of or served with

this Order or otherwise affected by this Order, and the ICO, have permission to apply at any time to set aside or vary this Order or so much of it as affects them. If any evidence is to be relied upon in support of the application, the substance of it must be communicated in writing to the Claimant's Solicitor in advance.

- (13) Costs reserved.

SCHEDULE A: THE SUPPORTING MATERIALS

The Supporting Materials comprised: the Claim Form, the Application Notice, First Witness Statement of Nina Cope and a redacted copy of Exhibit NC1, and the Supplementary Witness Statement of Nina Cope and Exhibit NC2.

SCHEDULE B: THE CLAIMANT'S UNDERTAKINGS

The Claimant gave the following undertakings to the Court:

- (1) The Claimant will forthwith issue an Application Notice for the return date and pay all connected Court fees.
- (2) In the event that the Claimant gives notice of this Order or serves a copy of the Order on any person other than those at this hearing or the ICI or those referred to at paragraph (9) then the Claimant will forthwith inform the Court (by email to the Judge's Clerk for the attention of the Judge) of that fact and of the identity of the person and the circumstance of the notification or service.
- (3) If this Order is set aside or varied, the Claimant will immediately take all steps as the Court may require to inform any person of that fact.
- (4) If the Court later finds that this Order has caused loss to any person given notice of or served with a copy of this Order and decides that the person should be compensated for that loss, the Claimant will comply with any order the Court may make.
- (5) If the Claimant becomes aware of any material change in circumstances, the Claimant will restore the matter before the Court at the first reasonable opportunity and on notice to the Media Representatives.

NAME AND ADDRESS OF THE CLAIMANT'S SOLICITOR

The Claimant's Solicitor is THE TREASURY SOLICITOR, Government Legal Department, 102 Petty France, London, SW1H 9GL, DX: 123243 Westminster 12, Ref. [REDACTED]

T: 020 7210 3000 (out of office hours)

T: [REDACTED] (direct dial)

F: 020 7210 3152

E: [REDACTED]

and all references in this Order to "the Claimant's Solicitor" shall be construed accordingly.

INTERPRETATION OF THIS ORDER

- A. In this Order the words "he", "him" or "his" include "she", "her" or "hers" and "it" or "its".
- B. A person who is an individual who is ordered by or undertakes to the Court not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.
- C. A person which is not an individual which is ordered by or undertakes to the Court not to do something must not do it itself or by its directors, officers, partners, employees or agents or in any other way.

THE EFFECT OF THIS ORDER

- I. A person with notice of this Order who is an individual who is ordered by or undertakes to the Court not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.
- II. A person with notice of this Order which is a corporation and which is ordered by or undertakes to the Court not to do something must not do it itself or by its directors, officers, employees, or agents or in any other way.
- III. It is a contempt of Court for any person notified of this Order knowingly to assist in or permit a breach of this Order and/or any undertakings to the Court set out in this Order. Any person doing so may be sent to prison or fined or his assets may be seized.

COMMUNICATIONS WITH THE COURT

All communications with the Court about this Order should be sent to Room WG08, the Royal Courts of Justice, Strand, London, WC2A 2LL quoting the Claim Number. The telephone number is 020 7947 6010. The offices are open between 10am and 4.30pm on Monday to Friday. In addition, communication with the Clerk to Mr Justice Robin Knowles CBE is required where set out in this Order.