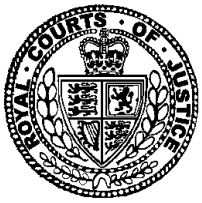

Neutral Citation Number: [2024] EWCR 8

Ind. No. 20200397

IN THE CROWN COURT AT SOUTHWARK

Rolls Building
London, EC4A 1NL

Date: 17 December 2024

Before:

MR JUSTICE PICKEN

- -

BETWEEN:

THE KING (SERIOUS FRAUD OFFICE)

- and -

(1) JEFFREY COOK
(2) JOHN MASON

- -
- -

Jude Bunting KC instructed by **Spotlight on Corruption**.
Mark Heywood KC instructed by **The Serious Fraud Office**.

Hearing dates: 10 December 2024.
Judgment provided in draft: 12 December 2024.

- -

APPROVED JUDGMENT

Mr Justice Picken:

Introduction

1. Spotlight on Corruption is a charity, whose work includes tracking the implementation and enforcement of anti-corruption laws to ensure that they are working effectively. This includes monitoring corruption cases within England and Wales and subjecting them to public scrutiny.

2. The present application, made by Spotlight on Corruption, is concerned with its desire to publish online the transcripts relating to a trial which took place before me between November 2023 to March 2024. Spotlight on Corruption's stated purpose in wishing to do this is to enable the public better to understand these proceedings by reference to the material that was before the Court at trial.

3. The background to the application is the criminal prosecution of Mr Jeffrey Cook and Mr John Mason which culminated in the trial to which I have referred. That prosecution was high-profile and, on any view, attracted relatively widespread public interest; it also raised considerable points of complexity - both legal and factual.

4. The case concerned certain, allegedly corrupt, payments that were made over a lengthy period of time, between 2007 and 2012, in respect of certain UK Government defence contracts in Saudi Arabia. It was the position of counsel instructed for the defendants, Mr Tom Allen KC on behalf of Mr Cook and Mr Graham Brodie KC on behalf of Mr Mason, that the UK Government had knowledge of, and were (at least potentially) complicit in, the making of the allegedly corrupt payments.

5. In the event, on 6 March 2024, both Mr Cook and Mr Mason were acquitted of the corruption offence. Mr Cook was, however, convicted of an offence of misconduct in public office. He was subsequently, on 12 April 2024, sentenced to 30 months' imprisonment.

6. That lesser offence entailed Mr Cook receiving a 10% commission on a contract let by his employer, the Ministry of Defence, to a company run by Mr Mason and a Mr Peter Austin, namely ME Consultants Ltd. Under that contract, another defendant who in the event did not stand trial on the grounds of ill-health, Mr Terence Dorothy, also a former senior Ministry of Defence employee, produced a series of reports on what was known as the SANGCOM project, which recommended the sale of a company to which Mr Cook had been seconded, GPT Special Project Management Ltd ('GPT'), to EADS. Mr Cook subsequently became GPT's Managing Director.

7. The commission which Mr Cook received took the form of cash payments and two cars over a period of some 18 months between November 2005 and 2007. The jury, by their verdict, decided that Mr Cook acted improperly in accepting the commission and, as I put it when sentencing Mr Cook, thereby making *"a personal gain at the expense of the public purse"* in *"receiving money which could otherwise have been used for the benefit of the public, whether in relation to the SANGCOM project or otherwise"*.

8. During the trial, specifically on 28 November 2023, Spotlight on Corruption and a journalist from The Guardian, Mr David Pegg, applied for access to the daily trial transcripts and to the bundle of documents that was provided to the jury during the proceedings. That application was put on the basis that Spotlight on Corruption and The Guardian intended to publish some of those documents. Specifically, in an email from Mr Pegg, copying in Mr George Havenhand from Spotlight on Corruption, the following was explained:

> *"Both The Guardian and Spotlight on Corruption have a longstanding interest in this case and have been closely following the proceedings thus far, and we will both be monitoring and/or reporting the trial. The legitimate interests of both The Guardian and Spotlight on Corruption in this material include:*
>
> *(i) to better understand the matters referred to in the case;*

(ii) to ensure any reporting or discussion of this matter by us fairly and accurately reflects all the relevant matters in the case;

(iii) for the public participation purpose of stimulating informed debate about matters of public interest;

(iv) to obtain further information about the matters referred to in the case that may assist in further enquiries and researches."

The email went on to say this:

"As responsible journalists and researchers working in the public interest, we are aware of the strict liability rule and the requirement not to publish any information not put before the jury prior to the disposal of the case. We are also aware of the reporting restrictions active in the case and are committed to abiding by them in all circumstances."

Then, under the heading *"Transcripts"*, this was stated:

"In considering this request, we asked the court to consider §2.6.18-§2.6.22 of the Criminal Practice Directions 2023…".

This was followed, under the heading *"Trial bundle"*, by the following:

"Part 2.6 of the Criminal Practice Directions 2023 provide for the procedure by which journalists and others can seek access to materials held by the court. Page 8 of the document itemises material that might be the subject of an application, including "An up to date, unmarked copy of the jury bundle and exhibits… It suggested that a court will: "Consider: i) whether access to the document is necessary to understand or report the case; ii) privacy of third parties; iii) reporting restrictions, and iv) risks of prejudice to a fair trial in this or any other case."

Reference was also made to the Supreme Court decision in ***Dring v Cape Intermediate Holdings Ltd*** [2019] UKSC 38 concerning the open justice principle, as well as to paragraph 2.6.12 of the Criminal Practice Directions 2023.

This was, then, stated:

"We consider that the documents are necessary both for a full and proper understanding and reporting of the case. The case is highly complex, spans several decades, involves arcane terminology, and is heavily reliant upon contemporaneous documentation. The documents will help to ensure we have properly understood the case in its totality. Where we can publish certain key exhibits (e.g. "the Manley note"), this will be much more comprehensible to the reader than an extended verbal description of what the note may (or may not) be said to communicate."

The email continued:

"We are aware of the extant reporting restrictions (and the strict liability rule) and are committed to abiding by them in all circumstances."

9. This correspondence followed my making of an order the year before, on 5 October 2022, directing, amongst other things, at paragraph 7, that:

"The parties do have the leave of the Court to obtain a transcript of today's hearing and any further inter parties hearing of these proceedings not covered by real time

transcription, such leave to be effective until further order without the need for further application. For the avoidance of doubt, any access to transcripts or copies sought from the Court by third parties shall continue to require the leave of the Court and shall be considered on application provided for by the provisions of the Criminal Procedure Rules and the Criminal Practice Direction."

10. Subsequent to the email on 28 November 2023, Mr Pegg emailed the Court on 23 February 2024, referring to the fact that it had been agreed between The Guardian, Spotlight on Corruption and the Serious Fraud Office, after a hearing which took place on 8 December 2023 when the earlier email had been discussed, that the Serious Fraud Office would provide The Guardian and Spotlight on Corruption with a copy of what was described as *"the exhibits bundle (including the index) given to the jury to take into the retiring room for their deliberations"*, and that this would be provided after the verdicts had been returned.

11. The email continued by saying this:

"The SFO have now informed us that they require a specific further direction from the Court before they will provide the materials. The Guardian does not believe there is any legal basis for such a requirement. However in the interests of practicality and time, we asked that the Court issue, by email to the parties, a written direction in the following terms:

"In respect of the case of R v Cook and Mason (retrial), the court directs that the Serious Fraud Office provides to The Guardian and Spotlight on Corruption a complete copy of the final jury bundle and index, as given to the jury when they retired to consider their verdicts on Thursday 22 February 2024. The SFO will provide such by no later than GMT 1700 on the same day that the jury returns a verdict.""

12. As will be apparent, Mr Pegg's email came the day after the jury retired to consider their verdicts. It will also have been noted that the jury did not return with their verdicts until 6 March 2024. In the meantime, there had been further correspondence between Spotlight on Corruption and the Serious Fraud Office. Thus, on 28 February 2024, Ms Helen Taylor from Spotlight on Corruption emailed the Serious Fraud Office explaining that she was *"currently preparing some public-facing materials ahead of the verdict in GPT and wanted to get in touch about various court documents we hope to make accessible to the public on our website once reporting restrictions are lifted"*.

Ms Taylor then went on to describe five *"preliminary decisions and other judgments"*, which included the abuse of process ruling given by Bryan J on 14 April 2022 and a further abuse of process ruling which I handed down on 24 January 2024. She added as follows:

"There are also additional core documents which we consider very important for promoting public understanding of the case." These include:

- The full transcripts of the second trial - or at least, the key transcripts which capture the following:

- the prosecution and defence opening statements

- the prosecution and defence closing statements

- Picken J's directions to the jury on the route to verdict and his summing up".

13. On 1 March 2024, the Serious Fraud Office responded by email saying, amongst other things, the following:

"… if there is a hung jury, we don't expect any of these documents except the indictment could be published without potentially prejudicing a jury on a future (third) trial."

14. A point was also raised concerning the fact that the transcripts were provided by a third party, Epiq Europe Ltd ('Epiq'), and *"they may have licensing conditions about publication of transcripts"*.

15. The email ended by attaching a draft order which it was explained was being put before me in readiness for when the jury returned with their verdicts. That draft order ultimately became the order which I made on 6 March 2024, after the jury had, indeed, returned their verdicts. The order contained a number of recitals, including the following:

"And upon the Serious Fraud Office having indicated to the Court that:

(1) The Serious Fraud Office will enable such access to Court transcripts by accredited members of media organisations as may be directed by the Court; and

(2) The Serious Fraud Office will facilitate the provision of such copies of indices, evidential and other trial materials to accredited members of media organisations as may be approved and directed by the Court, as soon as is practicable following the making of this order;"

The operative parts of the order, then, addressed certain reporting restrictions which I regarded as appropriate should continue, with paragraph 5 going on to state as follows:

"The Court having directed on 5 October 2022 that access to transcripts of any part of the proceedings by third parties shall continue to require the leave of the Court and shall be considered on application as provided for by the provisions of the Criminal Procedure Rules and the Criminal Practice Direction, the application of Thomson Reuters, The Financial Times and Law 360 for access to the transcripts of the proceedings is allowed;".

Paragraph 6 followed in these terms:

"The applications of David Pegg on behalf Guardian News and Media, Spotlight on Corruption and Richard Brookes on behalf of Private Eye for access to the documents contained in the jury bundle and the indices to the same are allowed;"

16. At the hearing on 6 March 2024 Mr Heywood (then, as now, counsel for the Serious Fraud Office) quite properly drew to my attention the fact that Spotlight on Corruption was seeking to make the transcripts of the trial *"available to the world at large"*. He expressed concern that this would be contrary to the Practice Directions 2023 and explained that what the Serious Fraud Office were, therefore, proposing was that an order should be made in the terms set out above.

17. I asked whether there was a representative of Spotlight on Corruption in attendance, to be told that Mr Havenhand was attending remotely. I explained to Mr Havenhand,

and he agreed in the circumstances, that the transcripts should not be published without permission being sought from the Court.

18. The Serious Fraud Office subsequently provided the jury bundle to Spotlight on Corruption. That bundle contains approximately 800 documents.

19. The verdicts attracted a certain amount of media attention, including an article written by Mr Pegg and a colleague at The Guardian, Mr Rob Evans, on 7 March 2024 which referred to an email written by a Ministry of Defence official, Mr Alan Richardson, and set out a redacted version of that *in extenso*.

20. An article was also published by Spotlight on Corruption on 19 March 2024 in which a screenshot appeared of a handwritten note of a meeting between Ministry of Defence officials dating from February 2011: the so-called 'Manley Diagram'.

21. Two days later, on 21 March 2024 Mr Havenhand wrote to the Court requesting the Court's permission to publish the transcripts and the jury bundle *"in order to advance the principle of open justice and to inform public understanding about a case with an exceptionally high level of public interest"*. He went on, under the heading *"Publication of transcripts"*, to say this:

"This is a long-running and complex case involving serious allegations of UK government involvement in corruption. Important evidence was heard in open court as to these allegations and the responses of various individuals and government institutions to them. Publication of the transcripts would enable the public to fully understand what happened in the trial and to form a more complete view of the evidence and legal arguments."

On this basis, he asked that the Court give permission to publish *"all of the transcripts from the second trial on our website"*.

He continued by saying this:

"In the event that the Court is not inclined to grant such permission, in the alternative we respectfully request the Court's permission to publish:

"In the event that the court is not inclined to grant such permission, in the alternative we respectfully request the court's permission to publish:

a) each of the rulings in these proceedings…; and

b) the opening and closing speeches of both the SFO and defence counsel, and your summing up".

He then addressed the *"Publication of jury bundle"*, before saying this, under the heading *"Open justice considerations"*:

"The Court's approval of our application to access the transcripts and exhibits will help ensure that we have properly understood and can accurately report on the case. Given the exceptional circumstances of this case, however, we consider that publication of the transcripts and jury bundle is crucial to enable the public to have a more complete understanding of the proceedings and underlying facts.

Publication of the transcripts and jury bundle would increase public scrutiny of decision-making processes in the criminal justice system and enable the public to understand how the justice system works… Wider scrutiny of those processes, and the

underlying evidence, would serve the broader public interest by providing a more complete picture of what the SFO's investigation has revealed.

In particular, public access to the transcripts and jury bundle is of fundamental importance to inform public understanding and scrutiny of the Ministry of Defence and government's role, both in the historic corruption and the more recent allegations of corrupt activity. In this case, where reporting restriction had been imposed for good reason while the proceedings were live, it is all the more important that the transcripts are now published to allow for public understanding to give effect to the public interest that open justice be protected."

22. At the sentencing hearing which followed, on 12 April 2024, I raised the matter and suggested that, in the circumstances, Spotlight on Corruption might wish to consider instructing counsel to provide assistance on the issues raised.

23. This was evidently what Spotlight on Corruption did since, on 1 August 2024, Mr Havenhand wrote to the Court, copying in the Serious Fraud Office and the representatives of Mr Cook and Mr Mason, attaching an Advice received from Mr Bunting and inviting any response to be made by 30 August 2024.

24. On 23 August 2024, Mr Paul Brinkworth from the Serious Fraud Office wrote to the Court, noting that no substantive application had been made and explaining that the Serious Fraud Office disagreed with Mr Bunting's analysis as contained in his Advice.

25. Subsequently, on 28 August 2024, Baker McKenzie, the solicitors who act for Mr Cook, wrote to explain that they needed time to consider the matter with their client. In the event, as explained in a further letter from Baker McKenzie dated 7 September 2024, Mr Cook's position was stated to be that he supports Spotlight on Corruption's position.

26. As for Mr Mason, his solicitors, Charles Russell Speechlys, in due course, explained that he takes no position on the matter.

27. It was in these circumstances that I considered it appropriate that there be a hearing, hence the hearing which took place before me on 10 December 2024.

The parties' respective positions

28. Mr Bunting makes two essential submissions. First, he says in relation to the jury bundle that there is no requirement for the Court's permission to be obtained by Spotlight on Corruption since there is nothing contained either in the Criminal Procedure Rules 2020 or the Practice Directions 2023 which imposes such a requirement. Nor, he points out, has any order to date been made which necessitates the obtaining of the Court's permission.

29. Secondly, as regards the transcripts, he submits, again, that there is nothing in the Criminal Procedure Rules 2020 or Practice Directions 2023 which requires the Court's permission to be obtained before they can be published as Spotlight on Corruption wishes to do. He recognises, nonetheless, that at the hearing on 6 March 2024 the Court made it clear that there should be no publication without the Court's approval. He acknowledges that, in the circumstances, this made sense but submits that, in fact, no such approval to be necessary. He suggests that Mr Heywood was mistaken when he told the Court on that occasion that the Criminal Procedure Rules 2020 or the Practice Directions 2023 prohibited publication.

30. In any event, both in relation to the jury bundle and the transcripts, Mr Bunting submits that the open justice principle operates in this case, so as to mean that there should be no bar on publication and, if approval from the Court is required, then, such approval should be given. Mr Bunting's submission is that the transcripts are a record of evidence and argument in open court. As such, he suggests, they should be made available online in accordance with the principle of open justice since the purpose of doing so is to enable the public better to understand these proceedings by reference to the material that was actually before the Court.

31. Where the transcripts contain information, Mr Bunting makes clear, the publication of which will be in breach of a Court order, they will not be published. However, in his submission, Spotlight on Corruption ought otherwise to be regarded as free to publish the contents of what was said in open court. Mr Bunting submits that, given that Spotlight on Corruption could have typed up its notes of what was said in open court and published this to the world at large without objection, the position should not be any different in relation to the transcripts – the more so, if anything, since the transcripts are likely to be a more accurate record of what was said in open court.

32. In these respects, Mr Bunting draws attention to a report prepared in July 2018 by the predecessor organisation to Spotlight on Corruption, Corruption Watch UK, entitled "*Veil of Secrecy: Is the fight against corruption being undermined by a lack of open justice?"* The report identified the following issues:

(1) Reporting restriction orders are commonplace in prosecutions relating to economic crime. The proportion of complex economic crime proceedings affected by orders under s.4(2) Contempt of Court Act 1981 seems to be significantly higher than the average for other types of criminal cases (pages 8-9).

(2) Some media organisations have begun avoiding complex economic crime trials owing to their long duration, often running into a number of months, coupled with the high chance that they will be affected by heavy reporting restrictions (page 8).

(3) By reason of the systems and procedures in place at both the Royal Courts of Justice and Southwark Crown Court (as with other crown courts), documents relating to economic crime prosecutions are not readily available, and often only accessible by individuals with considerable knowledge of court procedure (page 14).

(4) The lack of readily available court documents prompted examiners from the Organisation for Economic Co-operation and Development's Working Group on Bribery to conclude in 2012 that it was not possible for them to assess whether sanctions imposed in the UK as part of a number of overseas corruption cases were effective, proportionate and dissuasive.

(5) A lack of available court documents available, coupled with the fact that journalists are increasingly unable to attend court hearings, can lead to an unbalanced online record of UK court cases. The report quotes an example, from 2018, of a prosecution for bribery, which was not covered contemporaneously by journalists but which attracted critical comment from defence lawyers. No article or document was publicly available setting out the rationale for bringing or proceeding with the case. If court documents were more readily available, the public record of that case was likely to have been more balanced (page 14).

Mr Bunting submits that these considerations make it all the more important that Spotlight on Corruption should be permitted to do what it seeks to do.

33. Mr Heywood recognises that in relation to the jury bundle there is no formal requirement for approval from the Court.

34. As to the trial transcripts, Mr Heywood does not now suggest that the Criminal Procedure Rules 2020 or the Practice Directions 2023 require that Court approval be given. He explains that what he told the Court on 6 March 2024 was what at that stage he understood the position to be, and he reminds me that throughout the proceedings, care has been taken to ensure that, whilst the open justice principle has been abided by, nonetheless appropriate protections have also been put in place. I make it clear that I make no criticism of Mr Heywood in this respect at all, and nor does Mr Bunting.

35. Mr Heywood submits, however, that, having made the order on 6 March 2024 requiring that the Court's approval be obtained, the Court should not now permit unfettered publication of the transcripts on the internet since to do so would, as he put it, be to abdicate entirely the Court's responsibility to control who has access to the transcripts. He goes on to submit that such an order would not be necessary for the purpose proposed, would not be warranted by the circumstances and would have no regard to, or any sufficient safeguard for, the interests of other third parties.

36. Mr Heywood submits, furthermore, that for the same reasons (and notwithstanding that the 6 March 2024 order does not contain any bar on its publication) Spotlight on Corruption should not be permitted to publish the jury bundle.

Discussion

37. I start by considering whether the Criminal Procedure Rules 2020 or the Practice Directions 2023 contain any requirement that the court should give approval to publication of the trial transcripts, there being no issue that there is no such requirement in relation to the jury bundle. I will then go on to consider the open justice principle and whether this requires, in the present case, that Spotlight on Corruption should be regarded as free or permitted by the Court to publish the jury bundle and the transcripts.

38. As Toulson LJ (as he then was) put it in ***R (Guardian News and Media Ltd) v City of Westminster Magistrates' Court*** [2013] QB 618, the power to provide Court documents comes from common law. Procedural rules regulate the process by which such applications can be made but do not decide the scope of the power. In crime, the procedural rules are set out in the Criminal Procedure Rules 2020 and Criminal Practice Directions 2023.

39. As to the former, Rule 5.8(1) (a) *"applies where anyone, including a member of the public or a reporter, requests information about a case including information contained in materials kept by the court officer for the purposes of the case"*. For these purposes, as made clear in Rule 5.7(1) (under the heading *"The open justice principle"*):

> *"the court officer and the court must have regard to the importance of –*
>
> *(a) dealing with criminal cases in public;*
>
> *(b) allowing a public hearing to be reported to the public; and*
>
> iii)*the rights of a person affected by direction or order made, or warrant issued, by the court to understand why that decision was made."*

Rule 5.7 (2), then, states as follows:

"In rules 5.10 and 5.11 this requirement is called "the open justice principle"."

Rule 5.8(7) goes on to provide as follows:

"Where this rule does not require the court officer to supply the information requested then unless that information can be supplied under rule 5.9 –

(a) the court officer must refer the request of the court; and
(b) rule 5.10 applies."

40. As for Rule 5.10, this provides, amongst other things, at (9), as follows:

"In deciding whether to order a supply the information requested or to prohibit a supply of information by the court officer without the court's permission the court must have regard to -

(a) the open justice principle;
(b) any reporting restriction;
(c) rights and obligations under other legislation;
(d) the importance of any public interest in the withholding of that information, or in its supply only in part or subject to conditions (which public interest might be, for example, in preventing injustice, protecting others' rights, protecting the confidentiality of a criminal investigation or protecting national security); and
(e) the extent to which that information is otherwise available to the party or person making the request."

41. I agree with Mr Bunting when he submits that there is no suggestion in this rule that a member of the public requires additional permission to publish information from a Court document after obtaining the Court document. As he points out, this is all in contradistinction to the rules relating to the use of a recording device in court. A criminal court may give permission to use a recording device in court (Rule 6.9(1)), but the Court may direct arrangements to minimise the subsequent use of any such recording (Rule 6.9(4)).

42. As to the Criminal Practice Directions 2023:

(1) Paragraph 2.1.1 states the *"Overarching Principle"* in this way:

"The general principle is that the administration of justice must be done in public, the public and the media have a right to attend all court hearings, and the media is able to report this proceedings fully and contemporaneously."

(2) Paragraph 2.3, under the heading *"Taking notes in court"*, provides at 2.3.1 that *"the permission of the court is not required to take notes in court"*.

(3) Consistent with Rule 6.9 of the Criminal Procedure Rules 2020, paragraph 2.5.2, then, stipulates that the Court may impose conditions as to the use of any recording following the grant of permission to use a recording device.

(4) Paragraph 2.6.1 provides that the general principle of open justice applies to "*access to material held by the court"*, whilst paragraph 2.6.5 states as follows:

"*Where any material is supplied by the court it remains the responsibility of the recipient to ensure that they comply with any and all restrictions relating to it such as reporting restrictions.*"

(5) Paragraph 2.6.7, then, goes on to provide as follows:

"Under CrimPR Part 5, the same procedure applies to applications for access to information by reporters as to other members of the public. However, if the application is made by legal representatives instructed by the media, or by an accredited member of the media, he was able to produce the support of the application a valid Press Card, then there is a greater presumption in favour of providing the requested material. This approach respects the role of the press as a 'public watchdog' in a democratic society."

(6) As for paragraph 2.6.8, this is in these terms:

"Where an application is made by a reporter, the general principle is that the court should supply documents and information unless (a) there is a good reason not to, in order to protect the rights or legitimate interests of others, and/or (b) the request will not place an undue burden on the court."

(7) Paragraph 2.6.10 goes on to state that *"The supply of information is at the discretion of the court"*, the table under this paragraph explaining that where documents have been "*placed before the court"* or "*read aloud in entirety"* or "*deployed at trial"*, they should usually be provided on request. It also explains that the Court should consider, prior to providing a copy of the jury bundle and exhibits: "*i) whether access to the document is necessary to understand or report the case; ii) privacy of third parties; iii) reporting restrictions, and iv) risks of prejudice to a fair trial in this or any other case."* The same table suggests that "*Transcripts of hearings in open court can be obtained for a fee from the transcription service provider."*

(8) Paragraph 2.6.12, then, provides:

"*Judges must not exercise an editorial judgment about 'the adequacy of the material already available to the paper for its journalistic purpose.' The responsibility for complying with … any and all restrictions on the use of the material rests with the recipient."*

(9) Paragraph 2.6.18 states as follows:

"Statutory restrictions prohibit publication 'to the public at large or any section of the public,' or some comparable formulation. They do not ordinarily prohibit a publication constituted only of the supply of a transcript to an individual applicant. However, any reporting restrictions will continue to apply to a recipient of the transcript…".

43. As to the last of these provisions and as Mr Bunting submits, what paragraph 2.6.18 and paragraphs 2.6.19 to 2.6.22 are concerned with are statutory reporting restrictions such as the strict liability rule in sections 1 and 2 of the Contempt of Court Act 1981 or anonymity orders made under other statutory provisions, and so prohibitions on publication of information covered by the restriction. In essence, what paragraph 2.16.8 is doing is ensuring that the supply of a transcript to an individual applicant is not to be treated as a publication for such purposes and, furthermore, that whatever

prohibitions are in place or apply continue to be in place and apply to the recipient of the transcript. That is why paragraph 2.6.19 states as follows:

"It is good practice for the court to remind the recipient that reporting restrictions may apply, and that it is their responsibility to comply. Exceptionally, the judge may order that the transcript must be redacted before it is supplied to a recipient, or that the transcript must not be supplied to an applicant pending the supply of further information or assurances by that applicant, or at all …".

44. I agree with Mr Bunting, therefore, when he submits that paragraph 2.16.8 is not a restriction on the provision of any transcript to anyone. It follows more generally, again in agreement with Mr Bunting, that there is nothing in the Criminal Procedure Rules 2020 or the Practice Directions 2023 which prevents publication of the transcripts.

45. At the hearing on 6 March 2024 Mr Heywood was inclined to think that there was a prohibition, but, on further reflection and at the hearing of this application by Spotlight on Corruption, Mr Heywood has, entirely properly and with characteristic fairness, not sought to maintain that stance. Mr Heywood's position is, rather, that the authorities concerned with the open justice principle to which Mr Bunting took me were concerned with somewhat different circumstances and do not, in his submission, address wholesale publication of the jury bundle and the transcripts which Spotlight on Corruption wishes to engage in.

46. Before looking at those authorities, I should mention that Mr Heywood places some reliance on a document which in its most recent form is dated 17 October 2024 and is entitled *"Jurisdictional guidance to support media access to courts and tribunal's: Criminal courts guide (accessible version)"*.

47. In a section of this document concerned with the practice of the Magistrates Courts rather than the Crown Courts, section 17 entitled *"Protocol on sharing court lists, registers and documents with the media"*, states as follows:

"There is a longstanding policy and practice of magistrates' courts providing copies of the court register and court lists to the media free of charge, as well as providing access to documents used in particular cases and hearings.

HMCTS believes that assisting the media to report what is happening in local courts is important in order to maintain and increase confidence in the criminal justice system, and to uphold a clear commitment to open justice.

As the information provided is not routinely available to the general public, media organisations and journalists receiving it must conform to appropriate, common-sense safeguards and recognise their wider legal obligations relating to publication.

This protocol has been agreed by HMCTS, the Society of Editors and the News Media Association, and approved by the Lord Chancellor for the purposes of conforming to the Criminal Procedure Rule 5.8 … ."

Section 17.1 then sets out HMCTS's obligations. These include a commitment to:

"ensure that the information is being provided to an accredited journalist or media organisation. This is normally done by requesting to see an individual's UK Press Card or a letter/email from the news/title editor from a publication covered by IPSO…".

In the next section, section 17.2, it is then stated that:

"The media will:

…

- *safeguard the information that is passed to them, so far as is appropriate and reasonable*

- *destroy the electronic data supplied, and any printed copies of lists and registers within six months or other appropriate longer period, if recommended by their legal advisers or insurers (although details of individual cases for journalistic purposes can be retained)*

- *not pass the information contained in court lists, registers and documents to third parties outside the media and its legal advisers for reasons unconnected with journalism*

- *comply with reporting restrictions and any other legal restrictions on the use of information".*

Mr Heywood submits that this protocol demonstrates that publication of material, certainly in its entirety as envisaged by Spotlight on Corruption in the present case, is not contemplated by either the courts or the media. For my part, however, I cannot accept that this is right. On the contrary, it seems to me that all what these passages demonstrate is that information derived from the Court can be transmitted to others provided that there is a legitimate journalistic purpose in doing so. The protocol has nothing to say about publication of the sort contemplated in the present case by Spotlight on Corruption.

48. I come on, then, to consider the authorities. In doing so, it is right to record the fact that the Serious Fraud Office has not sought to suggest that Spotlight on Corruption should not be regarded for relevant purposes as a journalistic organisation. It is worth noting in this connection that in ***Társaság Szabadságjogokért v Hungary*** (2011) 53 EHRR 3 the European Court of Human Rights held, at [27], that Article 10 of the European Convention requires that special "*journalistic"* protections are accorded also to "*social watchdog"* organisations:

"The function of the press includes the creation of forums for public debate. However, the realisation of this function is not limited to the media or professional journalists. In the present case, the preparation of the forum of public debate was conducted by a non-governmental organisation. The purpose of the applicant's activities can therefore be said to have been an essential element of informed public debate. The Court has repeatedly recognised civil society's important contribution to the discussion of public affairs. The applicant is an association involved in human rights litigation with various objectives, including the protection of freedom of information. It may therefore be characterised, like the press, as a social 'watchdog'. In these circumstances, the Court is satisfied that its activities warrant similar Convention protection to that afforded to the press."

49. As Lord Reed explained in ***Re BBC*** [2015] AC 588 at page 600C-G, open justice is a constitutional principle that stretches back to the fall of the Stuart dynasty. Its significance, however, as Lord Sumption observed in ***Khuja v Times Newspapers Ltd*** [2019] AC 161, [2017] UKSC 4 at [13], *"has if anything increased in an age that attaches growing importance to the public accountability of public officers …"*.

50. As Mr Bunting puts it, open justice is not only symbolically important; it also has an important practical benefit in facilitating the investigative process in Court proceedings. This is for a number of reasons, including the fact that open justice protects public confidence in such proceedings: see ***R (Rai) v Winchester Crown Court*** [2021] EWHC 339 (Admin), per Nicklin J (sitting with Stuart-Smith LJ in the Divisional Court) at [38(iii)]. As Lord Atkinson put it in ***Scott v Scott*** [1913] AC 417, at page 463 (in a passage cited by Lord Sumption in ***Khuja*** at [12]:

"*in public trial is to [be] found, on the whole, the best security for the pure, impartial, and efficient administration of justice, the best means for winning for it public confidence and respect*".

As Lord Scarman put it in ***Home Office v Harman*** [1983] 1 AC 280 at page 316 (in a passage approved by Toulson LJ in ***R (Guardian News and Media Ltd) v City of Westminster Magistrates' Court*** at [33]):

"*evidence and argument should be publicly known, so that society may judge for itself the quality of justice administered in its name, and whether the law requires modification."*

51. The same point was made by the then Lord Chief Justice, Lord Burnett, in ***Re BBC*** [2018] 1 WLR 6023, [2018] EWCA Crim 1341, at [29] (as cited by Nicklin J in ***Rai*** at [38](iv)]), along with certain other matters as follows:

"On a practical level, the public nature of court hearings (and media reports of them) fulfils several objectives: (1) it enables the public to know that justice is being administered impartially; (2) it can lead to evidence becoming available which would not have been forthcoming if reports are not published until after the trial has completed or not at all; (3) it reduces the likelihood of uninformed or inaccurate comment about the proceedings, and (4) it deters inappropriate behaviour on the part of the court (and, we would add, others participating in the proceedings): ***R v Legal Aid Board ex p Kaim Todner*** *[1999] QB 966, 977E-G per Lord Woolf MR."*

52. As Lord Diplock pointed out in ***Attorney General v Leveller Magazine Ltd*** [1979] AC 440 at pages 449-450, again as cited by Lord Sumption in ***Khuja***, at [16], the principle of open justice has two aspects:

"As respects proceedings in the court itself it requires that they should be held in open court to which the press and public are admitted and that, in criminal cases at any rate, all evidence communicated to the court is communicated publicly. As respects the publication to a wider public of fair and accurate reports of proceedings that have taken place in court the principle requires that nothing should be done to discourage this."

Lord Sumption in ***Khuja*** went on in the same paragraph to say this:

"It has been recognised for many years that press reporting of legal proceedings is an extension of the concept of open justice, and is inseparable from it. In reporting what has been said and done at a public trial, the media serve as the eyes and ears of a wider public which would be absolutely entitled to attend but for purely practical reasons cannot do so."

53. It is clear, therefore, that the practical purposes of open justice are predicated upon the public becoming aware of what happens in a court hearing, in circumstances where, in truth, only a small minority of citizens can attend every day of a court hearing. This,

no doubt, is what Lord Bingham had in mind in ***McCartan Turkington Breen v Times Newspapers Ltd*** [2001] 2 AC 277, at page 290, when he described the proper functioning of a modern participatory democracy as requiring that the media be free, active, professional and inquiring, and the same point was made by Sir John Donaldson MR in ***Attorney General v Guardian Newspapers Ltd (No 2)*** [1990] 1 AC 109, at page 183F-G, when he stated that:

"… the *media are the eyes and ears of the general public. They act on behalf of the general public. Their right to know and their right to publish is neither more nor less than that of the general public. Indeed it is that of the general public for whom they are trustees*".

54. Nicklin J in ***Rai*** (a case which went to the Court of Appeal where it was decided that the Divisional Court *"was right for the reasons it gave"*: [2021] EWCA Civ 604 at [19] per Warby LJ) explained the position at [47] in this way:

"…the common law authorities on open justice state, consistently, that any restriction on reporting of open court proceedings is exceptional, requires clear justification, established by clear and cogent evidence, and should be imposed only when strictly necessary. Looked at through the prism of Convention rights, the ability of the media to impart, and the public to receive, the fullest information about what takes place in court proceedings is recognised as engaging weighty Article 10 considerations. The starting point is that any restriction on publication of information from open court proceedings is a significant interference with the Article 10 right that requires justification. That is not to apply any presumptive priority; it is simply a recognition that – without any assessment of the value of individual pieces of information that are disclosed in open court proceedings (and therefore liable to be reported) – there is an inherent and significant value in uninhibited reporting of everything that takes place in court proceedings held in public."

He continued at [48] by saying this:

"Neither Convention jurisprudence, nor any domestic authority, requires the Court to weigh the value of a particular piece of information that is disclosed in open court proceedings and assess the contribution it makes to a debate of public interest. By definition, everything that is disclosed in open court proceedings (and the subsequent reporting of it) is a matter of public interest. Mr Bunting made a telling submission when he asked how the value of information disclosed in court proceedings was to be judged: was it the value put on it by lawyers; the parties, editors of newspapers, or the public generally? The answer is that, with accurate reporting of court proceedings, no justification is required as to what is selected for publication (subject to a requirement of fairness if what is published is defamatory); the value is for the individual publisher to assess. This principle is more important now than ever. Today, citizens have access to platforms of mass communication that thirty years ago were available only to a limited number of media organisations."

55. These observations on the part of Nicklin J reflect what Lord Steyn in ***In re S*** [2005] 1 AC 593, at [18], described as the *"ordinary rule"*, namely that:

"the press, as the watchdog of the public, may report everything that takes place in a criminal court ... in European jurisprudence and in domestic practice this is a strong rule. It can only be displaced by unusual or exceptional circumstances".

Indeed, as the Court of Appeal put it in ***In re Trinity Mirror Plc*** [2008] QB 770, at [32]:

"… it is impossible to over emphasise the importance to be attached to the ability of the media to report criminal trials. In simple terms this represents the embodiment of the principle of open justice in a free country."

56. There is nothing in any of these authorities to suggest that there is any additional permission required to be sought from the Court to publish documents to which a party has been given access by the Court. On the contrary, it is implicit in the cases that have been decided on the issue of third party access to court documents that, once documents are provided, it will be up to the recipient of the documents to decide what use to make of them.

57. For example, in ***Chan U Seek v Alvis Vehicles Ltd*** [2005] 1 WLR 2965, [2004] EWHC 3092 (Ch) a journalist was granted access to individual documents from a trial which took place in the Chancery Division after that trial had settled. As Park J explained at [37], it was argued that access to the materials was not necessary to enable the public to scrutinise the proceedings and that the real reason was that the journalist wished to publish a newsworthy story relating to the documents. Park J rejected this as a reason for withholding access (and so, by implication, preventing publication), explaining at [42] as follows:

"In this case why should it not be said that 'The Guardian' has an entirely legitimate interest in inspecting the pleadings and witness statements in Chan U Seek v. Alvis Vehicles Ltd? The nature of its interest is not related to other legal proceedings in which it is involved, but it is very much related to the core of its business and, as I am sure its editor and reporters would say, the purpose of its existence. 'The Guardian' is a newspaper and a serious newspaper. It publishes stories which it believes to be of interest to its readers and which, in some cases, it believes could raise serious issues of public concern. Its reporters consider that, through Mr. Chan's skeleton, they have discovered such a story, and they wish to see whether there is more relevant material in documents which passed into the public domain through proceedings in open court. It is not for me to second-guess the reporters on whether the story really is interesting or whether it really does raise serious issues. If a litigant in current proceedings can see identified documents from an earlier court file because they may bear on his current litigation, then it appears to me that a serious newspaper should be able to see identified documents from an earlier court file because they may bear on a current story or article which it is interested in publishing."

58. Similarly, in ***R (Guardian News and Media Ltd) v City of Westminster Magistrates' Court***, a journalist was granted access to skeleton arguments of counsel, affidavits and witness statements submitted by the United States prosecutors in extradition proceedings, along with correspondence between the United States Department of Justice and the Serious Fraud Office. Toulson LJ noted at [76] that the journalist had a "*serious journalistic purpose"* in seeking to refer to the documents "*for the purpose of stimulating informed debate about the way in which the justice system deals with suspected international corruption*", before going on at [77] to say that, absent "*some strong contrary argument"*, the courts should "*assist rather than impede such an exercise"*.

He continued at [78] by saying this:

"Are there strong countervailing arguments? The four main counter-arguments are that the open justice principle is satisfied if the proceedings are held in public and reporting of the proceedings is permitted; that to allow the Guardian's application would be to go further than the courts have considered necessary in the past; that in the present case the issues raised in the extradition proceedings were ventilated very

fully in open court, and there is no need for the press to have access to the documents which they seek for the purpose of reporting the proceedings; and that to allow the application would create a precedent which would give rise to serious practical problems."

At [79], he said the following:

"The first objection is based on too narrow a view of the purpose of the open justice principle. The purpose is not simply to deter impropriety or sloppiness by the judge hearing the case. It is wider. It is to enable the public to understand and scrutinise the justice system of which the courts are the administrators."

He added at [82]:

"I do not regard the third objection as a strong objection on the facts of this case. The Guardian put forward credible evidence that it was hampered in its ability to report as fully as it would have wished by not having access to the documents which it was seeking. That being so, the court should be cautious about making what would really be an editorial judgment about the adequacy of the material already available to the paper for its journalistic purpose."

59. In each of these cases and others to which I was also referred (specifically ***NAB v Serco Limited and Another*** [2014] EWHC 1225 (QB) and ***Goodley v The Hut Group Ltd*** [2021] EWHC 1193 (Comm)), the Court accepted that the journalists seeking access to documents had a proper journalistic purpose in doing so, and there was no suggestion that the contents of the documents could not be published or that there was any restriction on the use of the documents provided to the journalist. Rather, it was implicit that the journalists concerned *would* publish the contents of the documents provided to them.

60. I agree with Mr Bunting, therefore, that the time for imposing conditions on the subsequent use of those documents (insofar as that power arises at all) is when the Court is deciding whether to grant access to the materials.

61. That is why, for example, the Practice Directions 2023 emphasise that the provision of court transcripts is subject to any reporting restriction orders that apply. Such a warning would be unnecessary if the recipients of court documents were not permitted to publish them (or their contents) or if there were a requirement to seek permission to publish material obtained after it has been obtained from the Court. The whole purpose of permitting third party access to Court documents is to enable those documents to be reported.

62. It is also probably why there appears to have been no previously decided case concerning how the Court should approach an application to publish material in respect of which it has already granted access.

63. Accordingly, I reject any suggestion that Spotlight on Corruption requires the Court's permission to publish either the jury bundle or the transcripts. There is no such requirement, whether as a matter of procedure (under the Practice Directions 2023 or under the Criminal Procedure Rules 2020) or in accordance with the decided cases. It follows that I also do not accept that it needs to be shown by Spotlight on Corruption that publication is, as Mr Heywood submits, necessary and desirable.

64. Clearly, if the Court's permission is not required, then, Spotlight on Corruption is under no obligation to show any such thing. However, there is, in any event, no

reason in principle why Spotlight on Corruption should have to do as Mr Heywood suggests. I say this for two main reasons.

65. First and focusing on the transcripts, these are a record of the evidence heard and the argument advanced in open court. Where they contain information, the publication of which will be in breach of a Court order, they will not be published. That has been expressly recognised by Spotlight on Corruption throughout. However, Spotlight on Corruption must surely otherwise be free to publish the contents of what was said in open court. Indeed, I agree with Mr Bunting that, had a representative from Spotlight on Corruption attended court and taken notes of everything that was said at the trial, there could obviously have been no objection (subject to any reporting restrictions being abided by) to Spotlight on Corruption typing up those notes and publishing them on its website to the world at large. It is difficult to see why the position should be any different where what is in issue is a probably more accurate record of what was said in open court. Put differently, there is no reason in principle why Spotlight on Corruption should be obliged to persuade the Court that publication is necessary and desirable in respect of a transcript, but not in relation to some other publication of the content of what is said in open court.

66. Secondly, I agree with Mr Bunting that there is a further problem with the Serious Fraud Office's proposed test. This is that it is well recognised that a decision as to what is necessary to obtain (and what is necessary then to publish) in respect of a criminal trial is a question of editorial judgement. That is why, as has been seen already, the Criminal Practice Directions 2023 explain, at paragraph 2.6.12, that *"Judges must not exercise an editorial judgment about 'the adequacy of the material already available to the paper for its journalistic purpose'"* and that the *"responsibility for complying with … any and all restrictions on the use of the material rests with the recipient"*.

67. This is the point which Toulson LJ made in ***R (Guardian News and Media Ltd) v City of Westminster Magistrates' Court*** at [82]. It is, however, consistent also with what Lord Rodger had to say in ***In re Guardian News and Media Ltd*** [2010] 2 AC 697, [2010] UKSC 1 at [63] (in a passage cited in ***Rai*** at [28]), namely:

> *"Writing stories which capture the attention of readers is a matter of reporting technique, and the European court holds that article 10 protects not only the substance of ideas and information but also the form in which they are conveyed ... This is not just a matter of deference to editorial independence. The judges are recognising that editors know best how to present material in a way that will interest the readers of their particular publication and so help them to absorb the information."*

It is not for the Court to assess the necessity of publication of the transcripts or, for that matter, the jury bundle any more than it would be the case if Spotlight on Corruption chose to publish any notes it took of the evidence heard in court. On the contrary, since it is a question of editorial discretion as to what material a journalist should choose to publish in order to present information to the public, the necessity of publication of individual parts of the transcript is not a question for the Court. It follows that doing as the Serious Fraud Office would suggest the Court should do would entail doing the very thing that it should not do. That - the exercise of an editorial judgment which it is not for the Court to make - would run entirely counter to the open justice principle.

68. I should address two particular points which were made by Mr Heywood in this context, before coming on to consider certain witness-related considerations that he

suggests ought to cause the Court to prevent Spotlight on Corruption from publishing in this case.

69. The first of these matters is Mr Heywood's submission that none of the authorities to which I was taken was concerned with the issue raised by the present application since those cases did not involve a proposal to publish the entirety of a trial bundle or the full set of trial transcripts. Rather, Mr Heywood submits, those cases were concerned with discrete and limited aspects. On that basis, he suggests, the previous authorities are not entirely helpful. Mr Heywood observes that the position might be different if, as was at one stage suggested by Spotlight on Corruption as an alternative, the application concerned only transcripts of opening and closing speeches as well as the summing-up, not the promulgation (as Mr Heywood puts it) of *"every single word"* uttered during the course of the trial. He suggests, indeed, that, had Spotlight on Corruption or any other media organisation made it clear at an earlier stage that publication of the entirety of the jury bundle and transcripts was intended, then, the Court might well have reached a different conclusion as to whether access to that material should be granted. Mr Heywood submits, in essence, that the present application entails Spotlight on Corruption overreaching itself; it is, he suggests, a matter of degree, and what Spotlight on Corruption is presently seeking to do is too much and, as such, inappropriate.

70. This is not a submission which I can accept, however, since I am clear that the open justice principle (as considered in the authorities and reflected in the Criminal Procedure Rules 2020 and the Practice Directions 2023) does not hinge on the extent to which a journalistic organisation wishes to deploy material obtained from the Court. Put differently, either the open justice principle applies, in which case it applies universally (subject to reporting restriction-type issues), or it does not; there is no scope for its partial application. For this reason, I see no merit in the objection which Mr Heywood makes.

71. The second issue concerns the fact that, in the usual way, the transcripts in this case were provided by the transcribing service, Epiq, with express permission of the Court being given through the completion of Form EX107. Mr Heywood observes that it is through the use of this form that the Court regulates transcription. He draws attention in this respect to the fact that the form contains wording, directed to the transcriber, as follows:

> *"Part 2, section D of this form must read by the transcription supplier and the declaration signed at section E. This should also be retained by the Judge's Clerk.*
>
> *<u>Part 2: For completion by approved transcription supplier</u>*
>
> *D. TERMS AND CONDITIONS APPLYING TO THE TRANSCRIPTION PROVIDER FOR PERMITTED TRANSCRIPTS AND REPORTS*
>
> *In consideration for the Crown granting permission to the transcription provider to take a transcript or prepare a report in respect of the above hearing, you, the transcription provider, agree that the following provisions shall apply in respect of such transcript or report:*
>
> *1. Court judgments and tribunal reports are protected by Crown copyright. Therefore, if and to the extent that any intellectual property rights are created (Created IPR) in the transcript or report you hereby assign to the Authority, with full title guarantee, title to and all present and future rights and interest in such*

rights or shall procure that the owner of such Created IPR assigns them to the Authority on the same basis.

2. If requested by the Authority, you shall, without charge to the Authority, execute all documents and do all such acts as the Authority may require to perfect the assignment of Created IPR under paragraph 1, or shall procure that the owner of such rights does so on the same basis.

3. The Authority grants to you and to any third party specified in Part A above a limited, nonexclusive, non-assignable licence (with no right to sub-license) to use the transcript you prepare strictly for the intended use indicated above. In particular (and notwithstanding any description of the intended use provided), you may not:

3.1 make publicly available (either by itself or as part of any other material);

3.2 provide to a third party not specified above;

3.3 otherwise publish (whether or not for payment of a fee) the whole or any part of the transcript.

…".

72. Mr Heywood submits that this serves as a further demonstration, or confirmation, that it is the Court which regulates the obtaining and release of transcription material, with the Court making an informed decision whether to permit release. As Mr Bunting observes, however, Form EX107 is the form that the Serious Fraud Office will have completed when ordering the transcripts in this case. As such, it regulates the Serious Fraud Office's agreement with Epiq. What it does not do is regulate the terms on which Spotlight on Corruption obtains the transcript that has already been ordered by the Serious Fraud Office and prepared by Epiq.

73. Nor, for completeness, does Mr Heywood's reliance on ***JR&B Farming Limited v. Hewitt and Baldwins (Portobello) Limited*** [2021] EWHC 1704 (Comm) take the analysis any further forward since the judge in that case, HHJ Davis-White KC, in giving guidance on how applications are made for the preparation of transcripts and explaining that the Court will regulate to whom such transcripts are circulated, said nothing about the issue which falls to be decided in the present case, namely whether the Court's permission is required to use transcripts that have already been disseminated to a third party (here, Spotlight on Corruption).

74. My overall conclusion, therefore, is that the Court's permission to publish is not required. However and in any event, even if the Court's permission were required and the Serious Fraud Office's proposed (necessary and desirable) test were applicable, I am satisfied that in the present case the test would be met and so that publication should be permitted. This is because, given the unique public interest of this prosecution, the complexity and length of the material, the presentation of all of the transcripts to the public - and the jury bundle - will enable the public better to understand and assess these proceedings. Accordingly, if Spotlight on Corruption makes the editorial judgment to publish, then, that is a decision which it should be entitled to make.

75. I have reached this conclusion bearing in mind all the factors to which I have so far referred. I have also considered what has been submitted on the Serious Fraud Office's behalf by Mr Heywood, specifically his submission that Spotlight on

Corruption's objectives and purposes have been fully enabled by the existing orders of the Court, which were informed by the assistance given by the Serious Fraud Office, so as to mean that there is no true purpose to be served by the Court permitting publication. However, the fact that Spotlight on Corruption has already (and quickly) marshalled (and promulgated) its view of the essential features of these proceedings, as shown by the article which it published in March 2024 is not a reason why publication should be prohibited. The open justice principle, for reasons explained, is important and of universal application; there is no justification for limiting its application on the basis suggested.

76. Nor, I would add, is it relevant, and anyway significant, that other media organisations and individuals which have sought and received permission for access to the transcripts and to the jury bundle indices and content have not made a similar application to the application made by Spotlight on Corruption. It may well be that his demonstrates that such access as there has been to date has been sufficient to enable such organisations to comprehend or fully report the proceedings and form an editorial judgment. It does not follow, however, that this means that Spotlight on Corruption should find itself inhibited in making its own editorial judgment to publish. In short, the fact that others have chosen not to do the same is a matter for their own editorial judgment; it cannot affect Spotlight on Corruption's own approach.

77. I have additionally borne in mind what has been submitted by Mr Heywood concerning the position of various third parties, specifically in relation to certain of the witnesses who were called by, or relied upon by, the Serious Fraud Office at trial. The first thing to note here is that, having been provided at the hearing with certain exchanges between the witnesses and the Serious Fraud Office, it is apparent that not all the witnesses object to what Spotlight on Corruption seek to do. Several, indeed, acknowledge, in terms, that, since they gave evidence in open court, it is to be expected that what they had to say in evidence can appropriately be made known to the wider public.

78. Others do, however, object. Thus, Mr Paul Hancock and Ashley Gordon raise concerns over security and are also troubled that publication will increase and extend the detrimental impact that the trial process has had on them. Mr Andrew Manley has a concern about his private information being posted, the evidence including his own diaries and notebooks, from which several pages were copied into the jury bundle.

79. The Ministry of Defence supports these concerns, whilst the Foreign, Commonwealth and Development Office's position is that judicial superintendence of the onward release of materials is a key safeguard. As for the position of the Serious Fraud Office, it is pointed out that some witnesses have been engaged in the process since 2010 and many since 2011 and 2012, meaning that the imposition of the investigation and subsequent trials has been vastly more than might usually be the case, even in long and complex proceedings. In addition, Mr Heywood reminds the Court that many have been the subject of serious allegations of misconduct on behalf of defendants who did not give evidence and did not raise those allegations during the investigation.

80. The difficulty with all of this, however, is that the witnesses who gave evidence did so in open court. As such, Spotlight on Corruption can publish anything (without publishing the transcripts) about the content of these witnesses' evidence without the Court's permission. It is not for the Court, in such circumstances, in effect, to censor what can and cannot be published from a transcript of their evidence – subject, that is, to what Lord Sumption described in ***Khuja*** at [17] as the *"limits on permissible reporting of public legal proceedings"* as *"set by the law of contempt, the law of*

defamation and the law protecting the Convention rights" – since otherwise, as ***Khuja*** demonstrates, the open justice principle operates without reservation.

81. As for that case, Mr Khuja had been arrested on suspicion of serious offences of child abuse, simply because one of the complainants had said she had been abused by a man with the same common first name. A number of other men were tried of similar sexual offences against children. These trials were high-profile and evoked high emotion in the local area. During the trial, one of the complainants alleged that Mr Khuja was also a perpetrator of child sexual abuse. As Mr Khuja was named in open court, he was refused anonymity, Lord Sumption making it clear that Mr Khuja had no reasonable expectation of privacy in respect of matters that were discussed at a public trial. As he put it at [34(1)]:

"PNM's [Mr Khuja's] application is not that the trial should be conducted so as to withhold his identity. If it had been, the considerations urged by Lord Kerr and Lord Wilson in their judgments in this case, might have had considerable force. But it is now too late for that. PNM's application is to prohibit the reporting, however fair or accurate, of certain matters which were discussed at a public trial. These are not matters in respect of which PNM can have had any reasonable expectation of privacy. The contrast between this situation and the case where a newspaper responds to a tip-off about intensely personal information such as a claimant's participation in private drug rehabilitation sessions could hardly be more stark."

Lord Sumption went on at [34(2)] to add this:

"That is not the end of PNM's article 8 right, because he is entitled to rely on the impact which publication would have on his relations with his family and their relations with the community in which he lives. I do not underestimate that impact. There is force in the judge's observation that the public nature of the trial, combined with the notoriety of the case, especially in the Oxford area, means that some people will know of the allegations about PNM in any event. But whether that be so or not, the impact on PNM's family life of what was said about him at the trial is no different in kind from the impact of many disagreeable statements which may be made about individuals at a high profile criminal trial. A defendant at such a trial may be acquitted, possibly on an issue of admissibility, after bruising disclosures have been made about him at the trial. Within the limits of professional propriety, a witness may have his integrity attacked in cross-examination. He may be accused by other witnesses of lying or even of having committed the offence himself. All of these matters may be exposed in public under the cloak of the absolute immunity of counsel and witnesses from civil liability, and reported under the protection of the absolute privilege from liability for defamation for fair, accurate and contemporaneous publication. The immunity and the privilege reflect the law's conviction that the collateral impact that this process has on those affected is part of the price to be paid for open justice and the freedom of the press to report fairly and accurately on judicial proceedings held in public."

If Mr Khuja was unable to achieve what he sought to achieve in his case, it is difficult to see on what basis it would be appropriate to arrive at a different result in the present case. As Lord Sumption put it, the collateral impact that court proceedings have on those affected "*is part of the price to be paid for open justice and the freedom of the press to report fairly and accurately on judicial proceedings held in public"*. The same applies here also. No reporting restrictions were made to protect the three witnesses identified by the Serious Fraud Office, and it is not suggested that there is anything in the transcripts that could give rise to any issue under the law of defamation.

82. As for Mr Hancock and Mr Gordon specifically, it has not been explained what there is in the transcripts that would give rise to a security risk. Nor does the Serious Fraud Office suggest that any restriction on reporting their evidence is needed by reference to Articles 2 and 3 of Schedule 1 of the Human Rights Act 1998. The arguments about detrimental impact and damage to personal reputation are, essentially, Article 8 points which do not come close to "*clear and cogent"* evidence to justify any restriction on reporting the transcript of their evidence. As for Mr Manley, the concern raised relates to evidence from his diaries and notebooks, not to the evidence in the transcripts, and there has already been publication, for example, of the Manley Diagram – without apparent objection.

83. These witness-related objections do not, therefore, cause me to change the conclusion that I have reached.

Conclusion

84. In conclusion, therefore, Spotlight on Corruption's application, both as regards the trial transcripts and the jury bundle, succeeds.