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Case No: KB-2023-003361

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Handed down in private: 23/11/2023
Handed down in public: 15/07/2025

Before :

MR JUSTICE CHAMBERLAIN

- -

Between :

SECRETARY OF STATE FOR DEFENCE	**Claimant**
- and -	
PERSONS UNKNOWN	**Defendant**

- -

Cathryn McGahey KC and John Bethell (instructed by the **Government Legal Department**) for the **Secretary of State for Defence**

Tom Forster KC (instructed by the **Attorney General**) as **Advocate to the Court**

Hearing dates: 1st November 2023

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Approved Judgment

Mr Justice Chamberlain:

Introduction

1 A super-injunction is a court order which prohibits disclosure not only of underlying information but also of the existence of the order itself. When it makes such an order, the court is using its coercive powers to curtail the right of would-be publishers to freedom of expression and the correlative right of the public to receive information – and doing so in circumstances which are entirely insulated from public scrutiny.

2 The appellate courts have made clear that an application for a super-injunction must be justified by the most compelling evidence; and that the application will be granted only in truly exceptional circumstances. When it does grant a super-injunction, the court is obliged to keep the order under constant review and to discharge it, and inform the public about it, as soon as possible.

3 In this judgment I explain the circumstances in which, on 1 September 2023, a super-injunction was granted *contra mundum* (against the world) after an application by the Ministry of Defence ("MOD") and why, after a hearing on 31 October and 1 November 2023, I decided on 3 November 2023 to continue that injunction for a further period of four weeks, subject to strict case management directions. A *contra mundum* injunction binds everyone who has notice of it.

4 My decision to extend the super-injunction means that these reasons cannot be made public at this stage. It is nonetheless important that they be communicated to the MOD and set out in a form which can be published later, when the injunction is discharged.

Background

5 In August 2023, the MOD made an application to the King's Bench Division duty judge (Robin Knowles J) for an injunction *contra mundum* preventing the disclosure of information about the compromise of a highly sensitive dataset.

6 It is not necessary to set out here the circumstances in which the compromise occurred, save that it appears to have involved an error by an individual who works for the UK Government. The dataset included the identities of many thousands of individuals who applied to come to the UK under the Afghanistan Relocations and Assistance Policy ("ARAP"), generally because of their past work for, or connection to, the UK. If these data were to fall into the hands of the Taliban, who now control the whole of Afghanistan, the individuals in question and their families would be at risk of being killed or subject to serious harm. The MOD fears that, if the existence of the data breach becomes known to the Taliban, they will take steps to acquire the dataset and may be able to do so.

7 Two media organisations, Associated Newspapers Ltd ("Associated") and Global Media and Entertainment Ltd ("Global"), found out about the compromise of the dataset. The Government explained to them the damage that might be done if news of the compromise of the dataset were to become widely known. They agreed not to publish. Representatives of Global attended the various hearings in this case, but neither Associated nor Global is a party to the proceedings and neither has opposed the relief sought.

8 Despite the co-operative stance of Associated and Global, the Government took the view that injunctive relief was necessary because other media outlets might obtain the material. If they did, the Government wanted to be able to serve an injunction on them without delay, so as to give itself the best chance of preventing disclosure.

9 In their original application, the Government did not seek relief in the form of a "super-injunction" (i.e. one which prevented publication of the existence of the order and proceedings). However, on 1 September 2023, Robin Knowles J nonetheless granted a super-injunction *contra mundum*. He set a return date of 1 December 2023.

10 In an order made of his own motion on 18 September 2023, Nicklin J, the Judge in Charge of the Media and Communication List ("MAC List"), directed that there should be a hearing before a MAC List nominated judge to consider whether the injunction should be continued in its present form or discharged. He also set a procedural timetable for that hearing.

11 I gave directions varying Nicklin J's order on 26 September 2023. I held a first hearing on 13 October 2023. The hearing took place in private pursuant to CPR 39.2(3), but in the presence of representatives of Global. I explained why that was necessary. During the hearing, I asked various questions and Cathryn McGahey KC for the Government told me that there were certain sensitive matters of which she needed to inform the court, but she could only do so in CLOSED conditions. There was a discussion about how this could be achieved, bearing in mind that no declaration under s. 6 of the Justice and Security Act 2013 ("JSA 2013") had been made and that courts have very limited powers to hold closed material procedures other than as authorised by statute: see e.g. *Al Rawi v Security Service* [2011] UKSC 34, [2012] AC 1 AC 531; *Haralambous v Crown Court at St Albans* [2018] UKSC 1, [2018] AC 236.

12 Ms McGahey submitted, and I accepted, that:

(a) Section 6(1) of the JSA 2013 empowers the court to make a declaration that the proceedings are ones in which a closed material application may be made. But that can be done only where a party would be required to disclose sensitive material to another person (s.6(4)(a)) or would be so required but for the matters in s.6(4)(b).Once a s.6 declaration is made, the court can then permit the party not to disclose sensitive material other than to the court, a special advocate or the Secretary of State: s.8(1). Section 9(1) then permits the appointment of a special advocate "to represent the interests of a party in any section 6 proceedings from which the party (and his legal representative) are excluded".

(b) CPR 82.13(1)(b) prevents a party from relying on sensitive material at a hearing unless a special advocate has been appointed to represent the interests of the specially represented (i.e. excluded) party.

(c) The regime of the JSA 2013 and CPR Part 82 therefore presupposes the existence of a party to whom disclosure obligations would otherwise be owed.

(d) On an application of this kind for an injunction *contra mundum*, there are no parties other than the applicant. In this case, that is not a mere technicality. The media organisations have decided that they do not wish to publish, so have no interest in opposing the grant of the relief sought. In those circumstances, the Government has no disclosure obligations towards them and there is no other "person" to whom the

Government is obliged to disclose sensitive (or indeed any) material (for the purposes of s. 6(1) JSA 2013) and no "excluded party" whose interests a special advocate can be appointed to represent (for the purposes of s. 9(1) JSA 2013).

(e) That being so, there is no power to make a declaration under s. 6 JSA 2013 and no need for one. The court may, however, sit in private pursuant to CPR 39.2(3) and can exclude the media organisations from that part of the hearing at which CLOSED material is considered. Proceeding in that way does not involve any derogation from the principles of natural justice enunciated by the Supreme Court in *Al Rawi*. The court can use its inherent jurisdiction to replicate the safeguards of CLOSED proceedings.

13 I indicated that I would be inviting the Attorney General, pursuant to CPR 3F PD, to appoint an Advocate to the Court to make such submissions as could properly be made that had not already been made by the MOD.

14 In my request to the Attorney General, I explained that, as far as the Court was aware, this was the first *contra mundum* super-injunction ever granted. It imposed very wide-ranging restrictions on the disclosure of information. Those restrictions had the potential, *inter alia*, (i) to prevent some individuals from taking security measures to protect themselves from serious risks; (ii) to prevent the press from reporting matters which may be highly relevant to government policy; and (iii) thereby indirectly to interfere with the democratic mechanisms (including Parliamentary mechanisms) by which affected individuals and others on their behalf may lobby government to change these policies.

15 I accordingly invited the Advocate to the Court to make submissions on (i) matters arising in this application of general importance regarding the correct approach to applications for super-injunctions; (ii) any harm to the interests of individuals and to the public interest by the continuation of the super-injunction; (iii) the evidence (including sensitive evidence) deployed by the applicant in support of the continuation of the super-injunction.

16 I should explain that the injunction did not constrain what could be said in Parliament. Under Article IX of the Bill of Rights, no such constraint would be constitutional or lawful. I varied the injunction to make this point clear for the avoidance of doubt: see paragraph 15 of my order of 13 October 2023. Nonetheless, MPs and peers cannot ask questions about something they do not know about; and the Parliamentary authorities may regard the existence of an injunction a relevant to their decisions about what can and cannot be raised.

17 Tom Forster KC was in due course instructed as Advocate to the Court. He was present at the hearing on 31 October and 1 November 2023.

Procedure

18 Mr Forster submitted that I had been wrong to conclude that s. 6 JSA 2013 was inapplicable, but accepted that this point had no practical consequences, since the procedure I was adopting was, to all intents and purposes, the same as that which would be followed under the JSA 2013.

19 Mr Forster drew attention to s. 6(4) JSA 2013, which contains the first condition for the making of a s. 6 declaration, namely that "a party to the proceedings would be required to disclose sensitive material in the course of the proceedings to another person (whether or not another party to the proceedings)" (emphasis added). This had to be read with s. 8(1),

which mentions disclosure to the court and special advocate. This was a case where the Government would be required to disclose sensitive material at least to the court, and potentially to the Advocate to the Court also, so s. 6(1) applied. It is true that the power to appoint a special advocate would not arise because there is no excluded party, but this could be addressed by the appointment of an Advocate to the Court with the necessary clearance.

20 In my Judgment, Mr Forster may well be right that the first condition for the making of a s. 6 declaration is satisfied here, because the Government would be required to disclose sensitive material to the court. If so, the court is empowered (not obliged) to make a s. 6 order. But a special advocate could not be appointed because – as both Mr Forster and McGahey agree – there is no "excluded party". That being so, CPR 82.13(1)(b) presents a real difficulty, because it precludes reliance on sensitive material unless a special advocate has been appointed. Other procedural provisions of CPR Part 82 also depend upon or at least envisage the involvement of a special advocate.

21 There would be very little point in making a s. 6 declaration in circumstances where no special advocate could be appointed. The procedural regime of Part 82 would be impossible or difficult to operate without one. In the circumstances, the better course is to do what has been done here – invite the Attorney General to appoint an Advocate to the court with the necessary security clearance and replicate the safeguards found in CPR Part 82 (or those of them that are necessary) by orders made under the court's inherent jurisdiction.

22 I have borne carefully in mind that it is in general undesirable, and in most circumstances impermissible, for the court to create under the inherent jurisdiction bespoke regimes for considering CLOSED evidence. In general, the JSA 2013 occupies the ground and the court should be slow to supplement it. Even in *Al Rawi* itself, however, the Supreme Court recognised certain limited circumstances in which the courts had countenanced departures from the open justice and natural justice principles under their inherent jurisdiction – for example in wardship proceedings involving children: see at [63] (Lord Dyson). Like wardship proceedings, proceedings for a *contra mundum* injunction are often ones in which the court is required to balance important public and private interests in non-adversarial proceedings. That is certainly the case here. Moreover, in this case the use of a bespoke closed material procedure (replicating insofar as necessary and relevant the safeguards in CPR Part 82) does not undermine, but rather promotes, the objects of the JSA 2013.

23 For these reasons, I decided that the hearing should proceed as envisaged on 13 October 2023, in two parts:

(a) a private hearing (pursuant to CPR 39.2(3)) with the Government's representatives, the Advocate to the Court and the representatives of the media organisations present ("the private hearing"); and

(b) a private hearing (again pursuant to CPR 39.2(3)) but only with the Government's representatives and the Advocate to the Court present, in secure conditions equivalent to those applicable to CLOSED proceedings under the JSA 2013 and other similar statutory regimes ("the CLOSED hearing").

Legal principles

Interim non-disclosure orders: general principles

24 The main principles governing interim non-disclosure order are set out in Practice Guidance issued by the Master of the Rolls in 2011 ("MR's Guidance"). The law has not changed significantly since then. In particular:

(a) This is a case where the relief sought affects the exercise of the right of the press and others to freedom of expression and the correlative right of the public to receive information, both protected by Article 10 ECHR. By s.6 of the Human Rights Act 1998 ("HRA"), the court as a public authority must act compatibly with those rights.

(b) Relief here is sought against the world, but in proceedings of which only two media organisations are aware. That means that relief is sought against persons who are "neither present nor represented" for the purposes of s. 12(2) HRA. Accordingly, the relief may not be granted unless there are "compelling reasons" why others should not be notified.

(c) Moreover, by s. 12(3) HRA, the Court should not grant interim relief unless satisfied that the applicant is likely to establish at trial that publication should not be allowed. In this situation, that means the Government must convince me that it is more likely than not that publication will not be allowed at trial: *Cream Holdings Ltd v Banerjee* [2004] UKHL 44, [2005] 1 AC 253, [22]; see also my decision in *Attorney General v BBC* [2002] EHWC 826 (QB), [2022] 4 WLR 74, [14]-[16].

(d) Although the information the subject of this claim is not journalistic material, so the provisions of s. 12(4) HRA do not apply, the question whether it is in the public interest for that information to be disclosed lies at the heart of this case.

(e) Open justice is a cardinal constitutional principle, from which derogations can be justified only in exceptional circumstances, where strictly necessary as measures to secure the proper administration of justice. The grant of derogations is a matter of obligation, not discretion: MR's guidance, paras 9-11.

(f) There is no general exception to open justice where privacy or confidentiality is in issue. Applications will be heard in private only if and to the extent that the court is satisfied that by nothing short of exclusion of the public can justice be done. Exclusions must be no more than the minimum strictly necessary to ensure that justice is done. The burden of establishing a derogation from the general principle lies on the person seeking it. It must be established by clear and cogent evidence. When considering any derogation from the principle of open justice, the court will have regard to the respective and sometimes competing Convention rights of the parties as well as the general public interest in open justice and in the public reporting of court proceedings: MR's Guidance, paras 12-14.

(g) It will only be in the rarest of cases that an interim non-disclosure order containing a prohibition on reporting the fact of proceedings (a super-injunction) will be justified on grounds of strict necessity, i.e., anti-tipping-off situations, where short-term secrecy is required to ensure the applicant can notify the respondent that the

> order is made. It is then only in truly exceptional circumstances that such an order should be granted for a longer period: MR's Guidance para.14.

25 The MR's Guidance was issued following detailed consideration of the law by the Committee on Super-Injunctions, which had been established following public concern over the grant of super-injunctions in the *Trafigura* and *John Terry* cases in 2010. In its report (published in May 2011), the Committee had said this at para. 2.31:

> "it is apparent that a real change has occurred in respect of super-injunctions since the Terry case. Parties are not generally applying for them, and where they have been being applied for, they have either been set aside on appeal or granted in the form of a short-term anti-tipping-off order. There has been a further specific development which has ensured, both in respect of anonymised injunctions and super-injunctions, that they cannot become a form of permanent injunction."

26 The Committee's report gave only one example of a case in 2010 "when a super-injunction was said to have been granted in order to ensure a news blackout regarding the details of efforts being made to secure Paul and Rachel Chandler's release from Somali pirates" (fn 96). There appears to be no report of the decision in that case. The source given by the Committee is an online BBC News article, which reported that the super-injunction had been necessary to ensure that the lives of those hostages were not put at risk as a consequence of news reporting.

27 It is not entirely satisfactory that the details of this case are, apparently, known only from a BBC News report. This is one of the reasons why I have considered it important to set out my reasons fully in this judgment.

Attorney General v BBC

28 In *Attorney General v BBC*, I granted injunctive relief (though not a super-injunction) to prevent the disclosure of the identity of an individual alleged to have been a covert human intelligence source, where the disclosure would have given rise to a risk to his life and damage to national security.

29 I drew attention at [22] to the judgment of the European Court of Human Rights in *Axel Springer AG v Germany* (2012) 55 E.HRR 6, where at [79] the court identified "the essential role played by the press in a democratic society" and its "vital role as 'public watchdog'". I noted that this had been recently cited with approval by the Supreme Court in *ZXC v Bloomberg LP* [2022] UKSC 5; [202] 2 WLR 424 at [59]-[60]. This is of significance here, because – although there are two media organisations who are currently known to have the information the subject of the injunction – the relief granted prevents other media organisations from performing their essential role in holding the Government to account.

30 I then considered to what extent the court should defer to the executive in deciding where the balance of public and private interest falls, and noted as follows:

> "30… It is for the court, not the executive, to decide whether the public interests which would be served by granting relief outweigh those which would be served by publication. As with the question whether a court should sit in private, there are powerful constitutional reasons why this should be so.

> Parliament has given the executive a range of powers to protect national security. These include the power to impose more or less severe restrictions on liberty, to freeze assets and in certain circumstances to deprive persons of their citizenship. It has not, however, conferred any general power to impose prior restraints on speech, even on the ground that the speech will damage national security.
>
> 31. Where, as in this case, the executive wishes to prevent someone from speaking freely, it must rely on the same general law as anyone else. When it seeks to restrain speech under the law of confidentiality, the executive has the same task as any other litigant: to convince an independent court that the elements of the cause of action are present and that the balance of public interests favours the grant of relief. If the invocation of national security were sufficient to predetermine the outcome of the application, or even to predetermine it in all cases where the assessment surmounted the low hurdle of rationality, the effect would be to create a power of censorship quite alien to our tradition."

31 At [32], I went on to note that respect was due to the judgment of the executive about the existence and extent of particular risks to national security or to life and then added this at [33]:

> "In many cases, it may be difficult to find interests weighty enough to outweigh the public interest in national security. But that will not be so in every case, particularly where the grant of relief carries its own risks to the safety of the public. The right of a broadcaster to freedom of expression, and the correlative rights of the public to receive information on matters of legitimate public concern, may also in some circumstances tip the scales against the grant of relief. It is the court, not the executive, that holds the scales and determines on which side the balance of competing interests falls" (emphasis added).

32 At [35]-[45], I summarised the case law on injunctive relief to protect interests safeguarded by Articles 2, 3 and 8 ECHR, including the decision of the Divisional Court in *RXG v Ministry of Justice* [2019] EWHC 2026 (QB), [2020] QB 703, [35]. I drew attention to a conflict in the authorities about whether, once a real and immediate risk of death or serious injury is shown, it is necessary to balance these risks against the interference with freedom of expression. At [43]. I said this:

> "the facts of this case provide a good illustration of the difficulties that may flow from an approach which refuses to countenance any consideration of countervailing interests in a case where the rights of an individual under articles 2 and/or 3 ECHR are engaged. An approach which precludes any balancing of the very concrete need to protect life and safety against the apparently more abstract right to freedom of expression has superficial attraction. But the exercise of freedom of expression can itself save lives, even if the lives in question are not presently identifiable and so do not engage the state's operational duty under articles 2 and/or 3. As a matter of principle, I find it difficult to see why, in a case such as the present, the court should be precluded from taking into account the interests of those who might be harmed by the grant of relief…" (emphasis added).

33 On the facts, it was not necessary for me to decide which of the two conflicting lines of authority to follow: see [45].

The principles to be applied in this case

34 In this case, Mr Forster submitted that Articles 2 and 3 ECHR are engaged. Ms McGahey submitted that they are not, because the individuals who would be put at risk by disclosure of the underlying information are outside the UK's jurisdiction for the purposes of Article 1 ECHR. Based on domestic authority, there are good arguments to suggest that Ms McGahey is correct: see e.g. *R3 v Secretary of State for the Home Department* [2023] EWCA Civ 169, [56]-[81] and [103]-[106]. However, after the hearing, Mr Bethell drew my attention to the recent judgment of the Fourth Section of the European Court of Human Rights in *Weider & Guarnieri v United Kingdom* (App Nos 64371/16 and 64407/16), in which the Court found that an alleged interference with data taking place in the UK engaged the UK's obligations under Article 1 ECHR even though the victims of that breach were themselves located outside the UK: see at [87]-[95].

35 I do not need to reach a concluded view about whether the Convention applies in these circumstances or not, because in my judgment the applicable principles are the same either way. Insofar as it is necessary for me to resolve the conflict of authorities I identified in *Attorney General v BBC*, I conclude for the reasons I gave at [43]-[44] of my decision in that case that the engagement of rights under Article 2 and 3 ECHR are not conclusive, at least in a case where the grant of relief could endanger others. If the principles to be applied in deciding whether to grant injunctive relief are supplied not by the ECHR but by the common law and/or equity, the same is true. the considerations to which I drew attention in the excerpts at paras 30-32 above remain highly pertinent. Thus, whether or not the Convention applies, the approach I apply is as follows:

(a) The predictive judgment of the executive about the extent of any risk is entitled to respect.

(b) However, it is for the court, not the executive, to decide where the balance of public and private interests falls.

(c) It is not enough for the Government to show that the disclosure of information will give rise to a risk of life. As in *Attorney General v BBC*, the Court also must also consider whether the grant of relief might endanger life. If so, it is for the Court to consider and balance these consequences.

(d) The court's decision on any interim order must take into account both this balance of private interests and the public interest in open justice and in the transparency of public decision-making.

36 This is a case in which these latter public interests have a special significance and weight for three reasons.

37 First, by their nature, super-injunctions are interferences with freedom of expression which take place under the radar. The public knows nothing about them. The general concerns to which such interferences give rise (as described by the Committee on Super-Injunctions) are magnified when the applicant is the Government. The grant of a super-injunction to the Government is likely to give rise to understandable suspicion that the

court's processes are being used for the purposes of censorship. This is corrosive of the public's trust in Government.

38 Second, in this case the information the subject of the injunction is highly relevant to a series of policy decisions currently being taken by the Government. Most obviously, the Government will have to consider whether the compromise of the dataset requires it to revisit negative decisions about whom to admit to the UK. In particular, it will have to consider whether it remains sustainable to maintain rejections under ARAP of applicants who (with their families) have been placed at direct risk of serious harm or death by the negligence of the UK Government; and what if any further steps should be taken with a view to safeguarding those whose identities have been compromised and their families (whatever the decisions taken so far). In the ordinary course, the press would be entitled to comment on those policy decisions; MPs, peers and Parliamentary committees would be entitled to ask questions about them; and the Government would thus be subject to the ordinary mechanisms of accountability which operate in a democracy. The grant of a super-injunction has the effect of completely shutting down these mechanisms of accountability, at least while the injunction is in force.

39 Third, in this case, the policy decisions in question could themselves have implications for the lives and safety of many individuals. If the super-injunction is continued, they will be taken in a scrutiny vacuum. I work on the basis that Ministers will do their honest best to take the decisions they consider in the national interest, but it is axiomatic in our system that decisions subject to public and Parliamentary scrutiny are not only more legitimate, but are also likely to be better than ones taken in secret.

Summary of submissions on the substance of the injunction

40 Ms McGahey submitted that the considerations in favour of maintaining an interim injunction to prevent disclosure of the underlying information were overwhelming. Disclosure of the underlying information would endanger the lives of many thousands of individuals. She accepted that in her original application she had not sought a super-injunction, but submitted that, since one had been granted, it should now be continued. If it were not, there was a risk that informed observers would be able to draw inferences about the underlying information from other material in the public domain. Particular reference was made to a series of judicial review claims brought by ARAP applicants in which had been necessary to give duty of candour disclosure, in CLOSED, of the underlying information. (On 13 October 2023, I varied the order to make clear that such disclosure could be given.) Moreover, if the "super" element were discharged, but the injunction otherwise continued, the ability of the press, public and Parliament to comment on the underlying decisions would not be meaningfully enhanced.

41 Mr Forster accepted that there was a strong case for the maintenance of an injunction preventing disclosure of the underlying information, though he properly drew attention to certain countervailing considerations. If any form of interim order were maintained, the court should ensure that stringent case management directions were in place so that the order remained in force for the minimum possible time. In any event, the court should discharge the "super" element. This would at least enable other representatives of the press, who may take a view about publication that differs from that of the two media organisations who know of these proceedings, to make their case to the court. It would also alert the press and Parliament to the fact that an injunction is in place and enable at least some pressure to be brought to bear on the Government in the meantime.

Decision

42 The considerations set out in paras 37-39 above made my decision to continue the super-injunction a difficult one. Ultimately, however, I decided to continue the super-injunction for a period of four weeks for three principal reasons.

43 First, the risk assessments I have seen are appropriately caveated. There are a number of imponderables. However, they nonetheless contain assessments which indicate a real risk that: (i) the Taliban do not already know about the compromise of the dataset; (ii) disclosure of the fact of its compromise would cause them to take steps which lead to their obtaining it; and (iii) in that case, many thousands whose details are included in the dataset could be killed or injured and the UK Government would have no realistic way of safeguarding them. The lives and safety of these individuals are of paramount importance.

44 Second, I have given careful consideration to the possibility of discharging the "super" element of the injunction. That would allow it to be disclosed publicly either (i) that HM Government had obtained injunctive relief (originally in the form a super-injunction) to prevent disclosure of information on the basis of a risk to life; or (ii) that HM Government had obtained injunctive relief (originally in the form of a super-injunction) to prevent disclosure of information about a data breach on the basis of a risk to life. Disclosure in either terms would permit at least the fact of the order to be the subject of some discussion. But it would not permit public scrutiny of the policy decisions referred to in paras 38-39 above, because, in order to provide protection against the risks set out in para . 43 above, the injunction would still have to preclude disclosure of any linkage between the data breach and the ARAP scheme. So, discharging the "super" element of the injunction would not inform public debate, or enable press or Parliamentary scrutiny of the relevant decisions to any significant extent.

45 Third, on the other hand, discharging the "super" element of the injunction would give rise to a risk of unravelling the protection granted to the underlying information. Counsel for the Secretary of State for the Home Department stated in open court (before me), in a judicial review claim challenging decisions taken in relation to the relocation of individuals accepted under ARAP, that there was a matter which she required to disclose under the duty of candour but which she was prevented from disclosing by an order in another case. There have been CLOSED hearings in a variety of other ARAP-related judicial review claims (many of which were before me). It is quite possible that disclosure of the fact that a super-injunction has been granted would enable observers (which could include hostile states) to put two and two together. Accordingly, although the "super" element of the injunction was not originally sought, there is a real risk that discharging it at this stage would compromise the protection afforded to the underlying information.

46 However, the authorities make clear that interim injunctions must not be allowed to continue indefinitely. That is especially true for super-injunctions – and *a fortiori* when sought by the Government. The circumstances relevant to the continuation of the super-injunction are changing from day to day. I therefore directed a further return date on 1 December 2023 and set a timetable for further evidence and a further skeleton argument from the MOD containing a detailed update on all matters relevant to the continuation of the injunction, including in particular: (i) what decisions have been taken to address the safety of ineligible individuals whose details are in the dataset and their family members; (ii) what decisions have been taken to address the safety of eligible persons currently in Afghanistan and their family members; (iii) an update on the extent to which the

existence of the date breach has become public, whether through information relayed to individuals in Pakistan or elsewhere, court proceedings in the UK, or otherwise; (iv) any efforts made to draw this issue to the attention of Members of Parliament and/or peers, whether through communication on Privy Council terms to the opposition, communication to the Intelligence and Security Committee or otherwise.

47 As I made clear at the hearing on 3 November 2023, information on these matters is necessary to enable me to form a view about where the balance of public and private interest lie. The balance may well change as the facts change. The question whether to continue the injunction in its current form, or to discharge or modify it, must and will be kept under review.