

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Handed down in private: 02/09/2023

With note added: 06/09/23

Handed down in public: 15 July 2025

Before :

THE HON MR JUSTICE ROBIN KNOWLES CBE

**RE: AN APPLICATION FOR AN INJUNCTION *CONTRA MUNDUM* BROUGHT BY
THE SECRETARY OF STATE FOR DEFENCE**

Cathryn McGahey KC (instructed by **Government Legal Department**)
for **His Majesty's Secretary of State for Defence**

Also present representatives of **Associated Newspapers Limited** and **Global Media and
Entertainment Limited**

Hearing dates: 1st September 2023

RULING

(with note added)

Robin Knowles J, CBE:

1. Yesterday I heard an urgent application by the Secretary of State for Defence for an exceptional form of injunction. The injunction sought would operate as against everyone (*contra mundum*). The application was made in private but with representatives from two press and media organisations present (“the media representatives”).
2. I granted an injunction at the hearing yesterday afternoon, with a number of revisions to the proposed terms which I provided in final written form yesterday evening. I indicated that a short written ruling would follow, which it does this morning.
3. As with the hearing, this ruling is in private (at least until any further order of the Court allowing it be treated as in public). In the ruling itself, I do not propose to use language that will identify the subject matter too specifically. The same course was, at my request and as a precaution, used throughout the hearing although all concerned were able to follow clearly with the benefit of reading the documents (with some necessary exclusions in the documents provided to the media representatives).
4. The circumstances are a data compromise at the Ministry of Defence, recently discovered, and involving confidential personal information of a “very significant” number of people, in various parts of the world. [REDACTED] If the existence of that data compromise becomes widely known it is the assessment of the Ministry of Defence, as recorded in written submissions of Leading Counsel, Ms Cathryn McGahey KC, that a named organisation is highly likely to succeed in obtaining the relevant dataset and if it does then the safety and lives of many individuals and their families will be at risk or increased risk. Reference is also made to the presence of a risk of torture. On the evidence available to me I accepted the assessment of the Ministry.
5. Ms McGahey KC records in her written submissions that the Secretary of State for Defence took, personally, the decision to apply for this injunction. I am informed he did so on Friday 25 August 2023. The papers were not provided to me until the day of the hearing, Friday 1 September 2023, but I understand this to be because of a decision to restrict knowledge within the Ministry to as small a number of officials as possible meaning that a large amount of work has fallen to a small number of individuals.
6. Specifically, I am informed by Ms McGahey KC in her written submissions that the Secretary of State’s purpose in seeking the injunction is to preserve the confidentiality of the personal information for as long as possible in order that His Majesty’s Government may do everything it reasonably can to help those who might have been put at further risk by the data compromise. Consistently the Secretary of State does not propose to serve the Order widely but instead to serve it where there is a specific threat of publication that cannot be immediately resolved by cooperation with a responsible agency.
7. The data compromise has only recently come to the attention of the Ministry of Defence, although it dates back to an earlier point. The compromise was identified in several ways, but including from contact by two journalists. The two journalists have

acted with professionalism and agreed not to publish anything until His Majesty's Government has done all that it reasonably can. The Ministry of Defence also properly arranged for the hearing before me to be attended, as mentioned, by representatives from two press and media organisations, Associated Newspapers Limited and Global Media and Entertainment Limited. This was to assist the Court in its consideration of the wider public interest. Valuable, responsible and professional contributions were made by the media representatives at the hearing and I am particularly grateful to them.

8. I have had regard to the following authorities in particular: RXG v Ministry of Justice [2019] EWHC 2026 (QB); [2020] QB 703 at [35], especially (v), (vii) and (x); Re Persons formerly known as Winch (application for a contra mundum injunction) [2021] EWHC 1328 (QB) especially at [18]-[20], [23], [26]; Re Persons formerly known as Winch (application for a contra mundum injunction) [2021] EWHC 3284 (QB).
9. I have also had regard to the principles found in (in particular) Articles 2, 3, 8 and 10 in Schedule 1 to the Human Rights Act 1998 and to the Act itself. Even recognising the global context of this particular matter, those principles and that Act, as the authorities show, materially assist the Secretary of State for Defence in seeking the injunction he does.
10. For the following reasons I granted what is an exceptional injunction, and in the particular terms I did.
 - (1) The risk in question is to the lives of many individuals and their families, and of torture.
 - (2) On the evidence available, the confidentiality of the data has not yet been lost although it has been breached.
 - (3) The injunction may maintain a period, albeit of uncertain length, within which the data compromise is not known or not widely known.
 - (4) For that period the named organisation may be less likely to succeed in obtaining the relevant dataset.
 - (5) Any such period will give the Secretary of State the opportunity to carry out the purpose, stated to the Court, of His Majesty's Government doing everything it reasonably can to help those who might have been put at further risk by the data compromise.
 - (6) Although a consequence of the injunction is its material impact on freedom of expression, especially through press reporting and at least for a period, and although freedom of expression and of the press are matters of public interest, the impact is justified in the particular and exceptional circumstances of this case including the risk to life and of torture.
 - (7) The period may well come to an end for one of a number of reasons, and it is possible the injunction may at a later point be lifted, with the result that the impact on freedom of expression may ultimately be limited to delay.

- (8) The Order containing the injunction will be (and is) framed in ways that keep the position with the injunction and its operation and duration under close review, with further access to the Court at any point.
11. In setting out these reasons I keep well in mind the argument raised by one of the media representatives to the effect that responsible publication can itself sometimes protect those at risk by holding His Majesty's Government to account in the way in which it handles a current position. But at this stage and in the present case I conclude that it is an environment of no publication that best protects lives, although again the matter must and will be kept under constant review.
 12. To the same end, in the Order I made (and which contains the injunction) I in fact went further than Ms McGahey KC asked on behalf of the Ministry of Defence in two respects.
 13. First, although it was proposed that the Order (not the hearing) should be in public and published on the Court website, I have decided it should be in private and not published on the website, at least at this stage.
 14. Second, although it was proposed that, where the Order was served, the person served should have access to supporting materials and a confidential annex describing the data compromise in terms that would involve some reference in general terms to those at risk, I have decided that the permission of the Court should be obtained before access to more than the Order is allowed, accepting that the consequence is that those served with the Order would find its terms appearing to apply generally to any data compromise and would need the Court's permission to ascertain a narrower compass. Where, as here, the Ministry of Defence informs the Court through Leading Counsel's written submissions that if a particular organisation "learn of the existence of the dataset, it is highly likely that they will be able to obtain a copy of it" it seems to me the Court must take precaution where it can in the interests of those who are at risk or increased risk. (A Confidential Note to be prepared by Ms McGahey KC and approved by me, concisely describing the data compromise relating referred to in this Order, will be available at the Court at any hearing in order to assist.)
 15. Recognising that I am making an injunction with significant departures from a standard course, I have sought to provide a series of further safeguards in the Order. These are directed to the following: (a) that the Order would only be notified to or served by the Secretary of State on a person where the concern is in relation to the particular data compromise with which this hearing is concerned and not some other data compromise; (b) the facility for access to the Court at any point; (c) that the length of the term of the Order to be kept under constant review (d) that if the Secretary of State becomes aware of any material change in circumstances, he or she will restore the matter before the Court at the first reasonable opportunity and on notice to the media representatives. I have added requirements for notice or service of the Order to take place only with advice at senior level within the Ministry of Defence, and for a short written report to be sent to me if the Secretary of State does give notice of or serve a copy of the Order in these circumstances (and I may then require a hearing).
 16. Reference was made in Ms McGahey KC's written submissions to it remaining "an option" for the Secretary of State himself to notify "large numbers of people of the data

compromise ... so that they can take whatever measures they can to protect themselves”, but this would now need the Court’s permission.

17. As would be expected the Order gives to the media representatives, and any persons with notice of or served with this Order or otherwise affected by this Order, permission to apply at any time to set aside or vary the Order. The Order will for a term that will in any event be reviewed no later than 1 December 2023, and a hearing before me will be fixed for that date, in private, with the media representatives entitled to attend. A shorter period to an earlier return date might well be too soon to allow an updated assessment. However as indicated there will be a hearing and review at any earlier stage if that is appropriate or required.

Note added 06/09/23:

I add this note with the benefit of further submissions from Ms McGahey KC on behalf of the Secretary of State, and for which I am grateful:

- a. With the benefit of further valued suggestions from Ms McGahey KC after the hearing I revised the Order in several respects before it was finally sealed. The revisions included (with reference to paragraph 14 of the Ruling) allowing extended, but still carefully controlled, arrangements (other than simply the permission of the Court, and at a hearing) for access to more than the Order (and in particular for access to the Confidential Note. describing the data compromise relating referred to in this Order).
- b. I take the opportunity to correct my reference to the media representatives attending the hearing. These were, I understand, all from Global Media and Entertainment Limited and not Associated Newspapers Limited. Associated Newspapers Limited elected not to attend, but did not oppose the making of an order.
- c. I understand that in the period between 25 August and 1 September efforts were made to secure an earlier, and the earliest, hearing. Some administrative difficulties were encountered of which I was not aware when I wrote the Ruling above. I am pleased that they were ultimately overcome. At a suitable point this is an area that may warrant a short practical liaison review between those involved from the Ministry of Defence, the GLD and HMCTS so that the administrative difficulties can be addressed for other matters in the future.

