Neutral Citation Number: [2026] EWHC 2802 (Admin)

**IN THE HIGH COURT OF JUSTICE**
**KING'S BENCH DIVISION**
**DIVISIONAL COURT**

Royal Courts of Justice
Strand, London, WC2A 2LL
Date: 03/11/2026

**Before**:

**THE LADY CHIEF JUSTICE OF ENGLAND AND WALES**
**DAME VICTORIA SHARP**
**MR JUSTICE CHAMBERLAIN**

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Case No: QB-2022-000174

**Between:**

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| **HM ATTORNEY GENERAL FOR ENGLAND AND WALES** | **Claimant** |
| **- and -** | |
| **BRITISH BROADCASTING CORPORATION** | **Defendant** |
| **- and -** | |
| **(1) OFFICER 2** | **Interested Parties** |
| **(2) OFFICER 3** | |

Case No: AC-2024-LON-02952

**And between:**

| | |
|---|---|
| **THE KING** | |
| **on the application of** | |
| **'BETH'** | **Claimant** |
| **- and -** | |
| **THE INVESTIGATORY POWERS TRIBUNAL** | **Defendant** |

**- and -**

**(1) THE SECURITY SERVICE**

**(2) OFFICER 2**

**(3) OFFICER 3**

**Interested Parties**

- - - - - - - - - - - - - - - - - - - - -

**Timothy Otty KC, Francesca Whitelaw KC, James Stansfeld, Ros Earis and Karl Laird** (instructed by the **Government Legal Department**) for **HM Attorney General for England and Wales** and the **Security Service**

**Jude Bunting KC** (instructed by the **BBC Litigation Department**) for the **British Broadcasting Corporation**

**Charlotte Kilroy KC, Jesse Nicholls and Rachel Jones** (instructed by the **Centre for Women's Justice**) for **Beth**

**Sarah Hannett KC and Paul Skinner** (instructed by the **Government Legal Department**) for the **Investigatory Powers Tribunal**

**Matthew Butt KC and Émilie Pottle** (instructed by **Kingsley Napley**) for **Officer 2**

**Aaron Watkins** (instructed by **Kingsley Napley**) for **Officer 3**

**Zubair Ahmad KC and Dominic Lewis** (instructed by the **Special Advocates' Support Office**) as **Special Advocates**

Hearing date: 18 September 2026

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# Approved Judgment

This judgment was handed down in Court 4 at 10am on Tuesday 3 November 2026.

**Baroness Carr of Walton-on-the-Hill (Lady Chief Justice of England and Wales), Dame Victoria Sharp and Mr Justice Chamberlain:**

## Introduction

1 The background to the issues which remain for decision in this case can be found in our judgment of 2 July 2025 ("the July 2025 Judgment"): [2025] EWHC 1669 (KB). For present purposes, the following brief summary suffices.

2 MI5 have a practice of neither confirming nor denying ("NCND") whether any individual was or is a covert human intelligence source ("CHIS"). The practice is well-established and rarely departed from. "X" was a MI5 CHIS. He was the subject of an investigation by the BBC, which proposed to broadcast a programme including allegations that he was a MI5 CHIS and also a dangerous extremist and misogynist who physically and psychologically abused two former female partners. The proposed report included the allegation that he had told one of them, "Beth", that he worked for MI5 in order to terrorise and control her.

3 In High Court proceedings brought by the Attorney General to prevent the BBC from identifying X, a MI5 officer ("Witness A") gave evidence in a witness statement that MI5 had consistently applied their NCND practice in relation to X. The same evidence was given to the Investigatory Powers Commissioner's Office ("IPCO") and to the Investigatory Powers Tribunal ("IPT") in proceedings brought by Beth against MI5 and in further judicial review proceedings challenging the decision of the IPT that those proceedings should be conducted in accordance with the NCND principle.

4 In fact, MI5 had not applied its NCND policy consistently. MI5's Head of Communications (referred to here as "Officer 2") had confirmed that X was a MI5 CHIS in a series of telephone calls with a BBC journalist, Daniel De Simone, in June 2020. Officer 2 had also departed from the NCND policy in relation to other individuals. This came to light some time later, when Mr De Simone produced notes and recordings of the relevant calls. These recordings were placed before the judge dealing with the injunction proceedings, Chamberlain J, in December 2024.

5 Rule 32.14 of the Civil Procedure Rules ("CPR") provides that proceedings for contempt of court may be brought against a person who makes or causes to be made a false statement in a document, prepared in anticipation of or during proceedings and verified by a statement of truth, without an honest belief in its truth. If a court considers that a contempt of court may have been committed, it is required by CPR 81.6 to consider on its own initiative whether to bring contempt proceedings. Chamberlain J referred that question to a Divisional Court and we heard argument about it on 3 June 2025.

6 The Government argued that contempt proceedings were not necessary for various reasons. They relied on internal investigations by MI5 and a review by Sir Jonathan Jones KC (hon.) to explore the circumstances in which the false evidence had been given. The outcome of these would ensure that there would be no repetition. In Sir Jonathan's view, the core problem was that no record was kept of MI5's contact with the BBC in June 2020. Sir Jonathan was satisfied that there was no deliberate attempt on the part of MI5 to mislead or lie to the court. In his view, it was impossible to see what advantage anyone in MI5 would have gained from lying.

7 In our July 2025 Judgment, we concluded that MI5's internal investigations and Sir Jonathan's review suffered from serious procedural deficiencies, which meant that their conclusions were not reliable. That being so, we considered that it would be premature to reach any conclusions about whether to bring contempt proceedings. We adjourned consideration of that question pending the outcome of a further investigation and said that the most appropriate person to carry it out would be a judicial commissioner nominated by the Investigatory Powers Commissioner ("the Commissioner").

8 On 15 September 2025, the Prime Minister exercised his power under s. 230 of the Investigatory Powers Act 2016 to direct the Commissioner to investigate the circumstances resulting in the provision of false evidence to the High Court and the IPT in relation to X. The Commissioner appointed the Rt Hon. Sir John Goldring, Deputy Investigatory Powers Commissioner, to undertake the investigation. He had had no previous involvement with the issues.

9 Sir John conducted a thorough investigation. He requested documents and interviewed 36 witnesses. He produced a preliminary draft report, which he shared with MI5 and the individuals who faced potential criticism. He considered representations from these individuals. He then produced final OPEN and CLOSED versions of his report, which were made available to the court in early July 2026. The OPEN version was published on 16 July 2026.

10 The "core conclusions" were summarised at paragraph 41 of Sir John's report as follows:

> "(1) Proper authorisation to depart from NCND was never obtained.
>
> (2) Officer 2 throughout knew he had departed from NCND. His lies formed the foundation of MI5's false account.
>
> (3) Officer 3 played a pivotal role in the injunction proceedings and, through his role in the IPCO response, the IPT proceedings. Officer 3 did not accurately report what Officer 2 had said. Instead of relaying the uncertainty expressed by Officer 2, he reported that NCND had not been breached. He did not disclose Officer 4's understanding that NCND had been departed from. On 7 December 2023, he 'shut down' Officer 4 when, in respect of NCND, he said that horse had bolted. He misrepresented what Officer 2 told him. He continued to say nothing about Officer 2's initial uncertainty. He did not subsequently disclose what he had been told. Officer 3's conduct significantly contributed to MI5's initial false account. He bears considerable responsibility for MI5's continued reliance on the false account.
>
> (4) Witness A should have made it clear at the meeting on 17 February 2022 that his high degree of confidence that NCND had been maintained in June 2020 was in part based upon an assumption. He overstated the position. He contributed to MI5's continued reliance on the false account.
>
> (5) Officer 4 did not at any time inform MI5's legal advisors of his understanding that Officer 2 had departed from NCND. The handling team failed to make an unequivocal note on Agent X's case file making clear their

> understanding that NCND had been departed from. Officer 4 and the handling team bear some responsibility for MI5's initial and continued reliance on the false account.
>
> (6) MI5's response of 24 February 2022 to the special advocates was seriously flawed.
>
> (7) Although there was no unequivocal note on Agent X's case file that NCND had been departed from, the file contained cogent evidence which suggested that it had been. No-one at MI5 sufficiently considered its implications. They were insufficiently inquisitive. Opportunities to correct the position were missed.
>
> (8) Additional due diligence should have been undertaken before responding to IPCO that NCND had been maintained. The substance of that response was subsequently relied on by MI5 in the IPT proceedings.
>
> (9) The duty of candour was never in terms explained to Witness A. Neither was it explained to any MI5 officer whose evidence fed into the witness statement of Witness A. The obligations on Witness A under s. 68(6) of the Regulation of Investigatory Powers Act 2000 (RIPA) were not explained to him. While there was good reason to believe Witness A and the officers understood the need to tell the complete truth and to disclose everything whether or not favourable to MI5, their duties should specifically have been explained to them."

11 Following publication of his report, in a statement made to Parliament on 16 July 2026, the Home Secretary indicated her intention to take "decisive action to ensure that MI5 is held accountable for the failings identified in Sir John's report and to strengthen the assurance mechanisms by which I hold the Director General to account for the actions of the Security Service".

12 Officer 2 resigned from MI5 during the course of 2025. Officer 3 is currently subject to disciplinary proceedings. MI5 accepts Sir John's findings without reservation, though Officers 2 and 3 do not. MI5 has put in place what it describes as a "comprehensive programme of changes", overseen by a board which includes a senior Home Office official and on which a senior official from IPCO has speaking rights.

13 In our July 2025 Judgment, we explained why the provision of false information in this context was particularly serious. At [19], we drew attention to the special respect accorded by the courts to national security assessments originating from the security and intelligence agencies. We noted that this respect was warranted "only if, and to the extent that, the courts can have confidence without reservation in the processes by which such assessments are prepared and presented".

14 As the Home Secretary said in Parliament when the report was published, Sir John's conclusions make for stark reading. On their face, they suggest that false evidence was given to the High Court and IPT as a result of the dishonest conduct of one MI5 officer (Officer 2), that serious questions remain about the conduct of at least one other (Officer

3) and that the systems within MI5 for preparing and presenting corporate evidence were at the relevant time seriously deficient.

## The issue and the test to be applied

15 The issue before us today is not whether the findings in Sir John's report are serious. It is obvious that they are. They will inevitably affect the confidence that we and other courts and tribunals can have in corporate evidence from MI5. They may justify a more searching approach to such evidence, including where it contains national security assessments, and especially where it does not comply with the guidance at [97]-[100] of the July 2025 Judgment.

16 The issue that we have to decide is a more specific one: whether we should on our own initiative bring proceedings for contempt of court against any individual identified in Sir John's report or against the Director General of MI5 or MI5 as an entity. In general, a court considering whether to bring contempt proceedings on its own initiative must answer two questions: first, whether the evidence meets the relevant threshold for contempt proceedings; and secondly, whether in all the circumstances contempt proceedings should be initiated.

17 So far as the first question is concerned, we accept the submissions of the BBC, Beth and MI5 that CPR 81.6 itself defines the relevant threshold. The court needs to be satisfied that "a contempt… may have been committed", no more and no less. We do not see any good reason to import any other formal evidential threshold, such as a requirement for a "strong prima facie case", as contended for by Officers 2 and 3. The principal authority relied upon to support such a threshold (*KJM Superbikes Ltd v Hinton (Practice Note)* [2008] EWCA Civ 1280, [2009] 1 WLR 2406) was decided in the very different context of an application by a private party for permission to bring contempt proceedings, in which there was "an obvious need to guard carefully against the risk of allowing vindictive litigants to use such proceedings to harass persons against whom they have a grievance": see at [17]. These considerations do not apply where the court is considering whether to bring contempt proceedings on its own initiative.

18 At the second stage, the court is required to undertake an "evaluative judgment": see *R (Ayinde) v Haringey London Borough Council* [2025] EWHC 1383 (Admin), [28] (Dame Victoria Sharp PKBD and Johnson J), citing *R (Clearsprings Ready Home Ltd) v Swindon Magistrates' Court* [2024] EWHC 3245 (Admin) (Warby LJ and Dove J), [15]. The judgment is about whether it would be in the public interest for the court to bring contempt proceedings on its own initiative. In many cases, the focus will be on the strength of the case and the gravity of the alleged contempt. Assessing the strength of the case involves analysing the admissible evidence in relation to each relevant element of contempt, bearing in mind that the criminal standard of proof applies. The gravity of the conduct alleged will inform the judgment about whether the public interest demands that concrete legal consequences should flow from that conduct.

19 The court must also, however, be alive to what facts, if any, are in dispute, to the procedure likely to be necessary to prove those facts and to whether a summary procedure with no prosecutor is appropriate in the circumstances of the case. Where the evidence is complex, the court may conclude that the procedure available under CPR 81.6 is not appropriate, either because the administrative and judicial resources it would require

would be disproportionate given the gravity of the alleged conduct (*KJM Superbikes,* [16]), or because that conduct can be more appropriately addressed by other legal mechanisms.

20 Where the conduct in question may constitute contempt of court but may also separately constitute one or more criminal offences, one possible way of addressing that conduct is through the ordinary criminal investigation and justice system. In that regard, we were referred to the Crown Prosecution Service's guidance on contempt of court (as revised in 2024). That guidance provides that, in cases where the conduct in question gives rise to criminal offences "it may normally be appropriate for the criminal investigation and any prosecution to proceed, where there is a viable criminal offence to be investigated or prosecuted." The guidance gives examples of exceptions to this general observation, which include cases where the maximum penalty for contempt of court (2 years' imprisonment) is plainly more appropriate than the penalty available on criminal conviction and cases where conduct which constitutes a deliberate interference with the administration of justice is "only incidentally covered by criminal offences". Examples of the former type of case include those where the criminal offences under contemplation carry only a financial penalty.

21 This guidance is directed to prosecutors. Courts should not, in our judgment, apply any presumption, one way or the other, as between contempt proceedings under CPR 81.6 and ordinary criminal process. The decision will be fact-specific. The court should have regard to both procedural factors (whether the investigatory resources and powers of the police are likely to be required, whether the proceedings are ones which can be managed by the court without the assistance of a prosecutor) and substantive ones (whether the misconduct alleged is better captured by contempt of court or by one or more substantive offences, whether the penalties available for the latter are sufficient).

## Submissions

22 Mr Timothy Otty KC for MI5 submitted that there is no strong case that MI5 can be held corporately liable in criminal contempt proceedings for the actions of the officers which resulted in an untrue statement being made to the court and relied on before the IPT. There is also no strong case that the conduct of any officer other than Officers 2 and 3 meets the threshold of dishonesty necessary for criminal contempt proceedings. (Since Officers 2 and 3 are separately represented, Mr Otty's submissions did not address the question whether the conduct of either of those officers meets this threshold.) In any event, Mr Otty submitted that the public interest now weighs in favour of the court declining to initiate contempt proceedings. Sir John's report, the consequences of it for Officers 2 and 3 and MI5's response fulfil the dual objectives of holding individuals to account and ensuring that there is no repetition. Contempt proceedings would also involve a highly resource-intensive legal process, duplicative of that undertaken by Sir John, which would require the attention of a significant number of MI5's senior officers. This would divert these officers from their core role of protecting UK national security.

23 Mr Matthew Butt KC accepted on behalf of Officer 2 that his conduct in relation to his conversations with Daniel De Simone fell below the standard expected of him, but noted that Officer 2 denies that he acted dishonestly and does not accept Sir John's findings that he did. Mr Butt submitted that there is insufficient admissible prima facie evidence capable of proving that Officer 2 may have committed a contempt of court and that, in

any event, it would not be in the public interest to bring contempt proceedings, given that he has resigned from MI5 and Sir John's findings are likely to preclude any career in intelligence or law enforcement.

24 Mr Aaron Watkins for Officer 3 submitted that his state of mind falls far short of the standard required to proceed against him for contempt. He did not act dishonestly or wilfully or with any intention to mislead the courts or parties by his conduct. He did not act recklessly in the relevant sense. In any event, having had an unblemished career to date, he is now suspended and facing disciplinary proceedings. His professional position and reputation is very seriously damaged, if not entirely lost. In those circumstances, and for the reasons advanced by MI5 itself, it would not be in the public interest to initiate contempt proceedings against him.

25 Mr Jude Bunting KC for the BBC did not make positive submissions as to whether the court should bring contempt proceedings or, if so, against whom. He did, however, make helpful submissions on matters of fact and law, with the aim of assisting the court. He submitted that proof that a statement was made recklessly as to its truth is sufficient to make out contempt and that it is not necessary to show that the court was actually misled, a tendency to interfere with the course of justice being sufficient. Both elements can be made out in respect of Officer 2 and Officer 3. In both cases, there is clear evidence that these officers lied. A finding of contempt can be made against MI5, which was placed on a statutory footing by s. 1 of the Security Services Act 1989, though it is not a body corporate.

26 Ms Charlotte Kilroy KC for Beth submitted that, given Sir John's findings, we should initiate contempt proceedings against Officer 2 and 3 and, under the vicarious liability principle, against the Director General in his capacity as head of MI5. There is clear authority that Government departments, Ministers and other office holders can be held liable in their official capacity for contempt committed by officials acting under them: see e.g. *Buzzard-Quashie v Chief Constable of Northamptonshire Police* [2025] EWCA Civ 1502, [2026] 3 WLR 27.

## Discussion

General

27 In applying the two-stage test we have described at [15]-[21] above, our starting point is Sir John's admirably clear and comprehensive report. It draws together a very large volume of documentary material and witness interviews. It reflects a detailed and robust investigation, undertaken over months, and a careful process of revision in the light of comments from those criticised. In certain key respects, its conclusions are unequivocal. It has prompted a detailed programme of remedial actions on the part of MI5, which were outlined to us in submissions.

28 There is no doubt that the materials collated by and referenced in Sir John's report include a large volume of documentary material which would be admissible in contempt proceedings against individuals or MI5 as an entity. It may be that some or all of the witnesses whom Sir John interviewed might be prepared to give evidence in such proceedings.

29 It is, however, common ground—and in any event it is clear—that Sir John's conclusions would not themselves be admissible in contempt proceedings against individuals who do not accept them. That is because of the rule in *Hollington v Hewthorne* [1943] KB 587, that "findings of fact made by another decision maker are not to be admitted in a subsequent trial because the decision at that trial is to be made by the judge appointed to hear it… and not another": see *Rogers v Hoyle* [2014] EWCA Civ 257, [2015] QB 265, [39] (Christopher Clarke LJ).

30 The effect of that rule in a case such as the present is that, in any proceedings for contempt of court, it would be necessary to go back to the raw documentary materials which Sir John gathered and to many, if not all, of the 36 witnesses he interviewed. It is likely that it would be necessary to call many of these witnesses to prove the relevant elements of contempt in respect of each defendant. The fact that much of the relevant evidence is classified and that the witnesses' identities are themselves secret for good reason would, of course, add to the complexity of the exercise.

31 In the circumstances, we have proceeded on the assumption (but without formally deciding) that the evidence referred to in Sir John's report shows that Officers 2 and 3 "may" have committed contempt of court. We have focussed on stage 2: whether proceedings for contempt of court, brought on the court's own initiative, would be in the public interest.

Contempt proceedings against Officers 2 and/or 3: practical considerations

32 The length and factual complexity of Sir John's report shows that preparing and litigating contempt proceedings against Officer 2 and/or 3 would be a highly resource-intensive matter. Even if they were brought by a party with the court's permission under CPR 81.3, such proceedings would be likely to occupy the court for many weeks. As it is, of course, neither the BBC nor Beth has sought permission to bring contempt proceedings. What we are considering are proceedings by the court on its own initiative. As has been noted before, the court "lacks investigatory powers and personnel" and so may be "ill-equipped to proceed with contempt proceedings where the underlying facts are disputed": *Wright v McCormack* [2023] EWHC 1030 (KB), [37] (Warby LJ and Nicklin J).

33 The extent to which this matters will vary from case to case. In some cases, disputes of fact will be limited and/or will be capable of being resolved by the court in contempt proceedings. Here, however, the task of marshalling the documentary evidence and interviewing and proofing the witnesses necessary to show that any individual or entity was guilty of contempt of court, drafting the necessary summonses and adducing the relevant evidence at a hearing could not realistically be undertaken by the court on its own. Even if an amicus curiae were appointed, the investigative aspects of the task would be likely to be unmanageable.

34 In our view, this is the kind of case where, if there is to be further action against Officers 2 and/or 3, that action should follow an investigation by the police, who have the appropriate investigatory powers and resources. If, following such an investigation, the police consider that they have sufficient admissible evidence of offences—the examples given in argument by Mr Butt were misconduct in public office and perverting the course of justice—they can pass the evidence to the CPS for a decision whether to prosecute for those offences. Any such decision would, of course, involve application of the tests in

the Code for Crown Prosecutors. We consider the CPS to be the proper body to decide both whether the evidential tests are met and whether it is in the public interest to prosecute.

35 More fundamentally, even taking at face value the conclusions in Sir John's report, the submissions that we have heard have convinced us that proceedings for contempt would face some substantive hurdles, which may or may not be overcome. In particular, even if it could be shown that Officers 2 and 3 acted with the requisite state of mind (itself a legal issue contested between the parties), it would be necessary to demonstrate a causal link between what they said and did and the making of the false statement by Witness A. In a prosecution for misconduct in public office (for example), proof of such a causal connection would not be required. In terms of substantive law, we are concerned with conduct which may well fit the broader elements of that offence better than the particular species of contempt at issue here (causing a false statement to be made).

The Director General of MI5/MI5 itself

36 We heard legal argument about whether criminal contempt proceedings could be brought against the Director General of MI5 under the principle of vicarious liability. An analogy was drawn with the case law about the liability of editors of newspapers in contempt for breach of the strict liability rule referred to in s. 1 of the Contempt of Court Act 1981. It was also submitted that contempt proceedings could be brought against MI5 itself, even though it is not a body corporate. We do not consider that it is necessary for us to resolve these questions, because we are satisfied that, whatever the answer to them, it would not be in the public interest to initiate contempt proceedings against either the Director General or against MI5 itself.

37 We can see no public benefit in bringing proceedings against the Director General. Ms Kilroy's submission that he was personally responsible for criminal contempts committed by his officers rested on a principle of vicarious liability which does not require or imply any personal fault on his part. In those circumstances, even if her submission were legally correct (which we doubt), it would not be appropriate to impose any sanction on him personally.

38 We also see no public benefit in contempt proceedings against MI5 as an entity. There was a dispute about whether MI5 could be held liable for contempt under the principle in *M v Home Office* [1994] 1 AC 377 or under the principles applicable to the criminal liability of corporations in *Tesco supermarkets v Nattrass* [1971] AC 153. In the latter connection, the BBC invited us to consider whether any of the individuals who may have committed contempts were part of the "directing mind and will" of MI5. We consider it clear that they were not.

39 We would add that nothing would be gained by contempt proceedings against MI5 as an entity. We have already made trenchant public criticisms of MI5's conduct in our July 2025 Judgment, which prompted Sir John's investigation and report. MI5 has accepted Sir John's findings in full. We have underlined in this judgment the seriousness of those findings. A criminal investigation into the conduct of individual officers may follow. No purpose would be served by contempt proceedings, which are unlikely to do more than duplicate Sir John's findings. Any sanction available against MI5 could be financial only.

There could be no public interest in imposing a financial penalty whose only effect would be to deprive MI5 of funds it requires to undertake its important work.

## Conclusion

40 To return to the issue identified at [16] above, even assuming that contempts of court may have been committed, we have concluded that it would not be in the public interest to initiate contempt proceedings against any individual officer, against the Director General of MI5 or against MI5 itself.