H.M. Attorney General for England and Wales v BBC; R ('Beth') v Investigatory Powers Tribunal

Press Summary: For release at 10.05am, 3 November 2026

This summary is provided by the Court for the assistance of those reporting the judgment (neutral citation [2026] EWHC 2802 (Admin)). It does not form part of that judgment. References in square brackets are to numbered paragraphs of the judgment.

Decision

1 The Lady Chief Justice today announced the Divisional Court's decision that it would not be in the public interest for the court to initiate contempt proceedings against individual MI5 officers or MI5 itself. If there is to be action against individual officers, that should follow an investigation by the police and consideration of charges by the CPS.

Background

2 The issue was whether the Court should on its own initiative initiate proceedings for contempt of court arising out of the giving by MI5 of false evidence to the High Court. The circumstances were described in the Court's judgment of 2 July 2025 (neutral citation: [2025] EWHC 1669 (KB)). MI5's evidence was that it had not departed from its "neither confirm nor deny" policy in relation to a covert human intelligence source referred to as "X", who was the subject of an investigation by the BBC. This was untrue.

3 Following the July 2025 judgment, the Prime Minister directed the Investigatory Powers Commissioner to investigate and the Commissioner appointed Sir John Goldring. Sir John conducted a thorough investigation in which he reviewed documents and interviewed 36 witnesses. The open version of his final report, which took into account comments from those criticised, was published on 16 July 2026. See [8]-[9].

4 Sir John summarised his "core conclusions" 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.
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> (3) Officer 3 played a pivotal role in the injunction proceedings and, through his role in the IPCO response, the IPT proceedings… 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.
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> (4) Witness A… overstated the position. He contributed to MI5's continued reliance on the false account.
>
> (5) …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) …the file contained cogent evidence which suggested that [NCND] had been [departed from]. 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…"

See [10].

5 Following publication of this report, the Home Secretary informed Parliament of 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". See [11].

6 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. See [12].

The Court's reasons

7 The Court noted that Sir John's findings, on their face, suggest that false evidence was given to the High Court and the Investigatory Powers Tribunal 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. See [14].

8 These serious findings will obviously affect the confidence that courts and tribunals can have in corporate evidence from MI5 and may justify a more searching approach to such evidence. The critical issue for the Court was, however, more specific: whether it should on its own initiative bring proceedings for contempt against any individual identified in Sir John's report or against the Director General of MI5 or MI5 as an entity. See [15]-[16].

9 That required the resolution of 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. In applying this two-stage test, the starting point was Sir John's admirably clear and comprehensive report. See [16] and [27].

10 The Court assumed, without deciding, that contempts may have been committed. Even so, it was common ground—and was in any event clear—that Sir John's conclusions would not themselves be admissible in contempt proceedings. Preparing and litigating such proceedings against Officer 2 and/or 3 would be a highly resource-intensive matter.

It could not realistically be undertaken by the court on its own, even with an amicus curiae. See [28]-[32].

11 If there were 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 the police consider that they have sufficient admissible evidence of offences—for example, misconduct in public office or perverting the course of justice—they should pass the evidence to the CPS for a decision whether to prosecute for those offences. See [34].

12 In a prosecution of Officer 2 or 3 for misconduct in public office, it would not be necessary to demonstrate a causal link between what they said and did and the making of the false statement by Witness A. The conduct concerned may fit the broader elements of that offence better than the particular species of contempt at issue here (causing a false statement to be made). See [35].

13 The Court did not consider that there would be any public benefit in bringing proceedings against the Director General of MI5. It doubted whether he could be held legally responsible for criminal contempts committed by his officers. Even if he could, such responsibility would depend on a principle of vicarious liability which does not require or imply any personal fault on his part. See [37].

14 The court also considered that there would be no public benefit in contempt proceedings against MI5 as an entity. Even if MI5 could in principle be liable for contempt, the evidence does not demonstrate that the individuals involved were part of MI5's "directing mind". See [38].

15 The Court has already made trenchant public criticisms of MI5's conduct in its July 2025 Judgment. MI5 has accepted Sir John's findings in full. A criminal investigation into the conduct of individual officers may follow. Contempt proceedings against MI5 would be unlikely to do more than duplicate Sir John's findings. 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. See [39].

Ends