

In the Central Criminal Court

Metropolitan Police Service
(D.I.Collinson)

v

Times Newspapers Limited
Independent Television News Limited
Sky UK Limited
BBC

Applications for Production Orders under the Terrorism Act 2000

Ruling and Reasons

1. Introduction

- 1.1 Applications have been made by D.I.Collinson on behalf of the Metropolitan Police Service for Production Orders to be granted in respect of special procedure material held by Times Newspapers Ltd. (TN), Independent Television News Limited (ITN), Sky News UK (Sky) and the BBC. The four media organisations had given notice that the grounds for the making of any such order were contested and that in the circumstances of this matter the said material would not be provided without a Court order;
- 1.2 On 7th August 2019 Counsel appeared on behalf of the Applicant and on behalf of three of the Respondents, namely TN, ITN and Sky. Detailed skeleton arguments were submitted in advance by the Applicant and these three Respondents. The BBC confirmed in writing that they wished to be associated with the submissions made on behalf of the other three Respondents. The hearing occupied two full days during which D.I. Collinson was examined on oath and legal submissions were addressed to the Court. A witness statement was tendered by the Deputy Foreign Editor of the Times with submissions as to the importance of the journalism in this matter and the risks taken by investigative journalists in such regions. At the conclusion of the hearing the matter was adjourned until 4th September 2019 so that I could take the opportunity to reflect on the evidence and material that had been presented and the submissions that had been made before making a final ruling in respect of each application;
- 1.3 On 22nd & 28th August 2019, following a written request for information from the Court, it was confirmed on behalf of all four Respondents that, in the event of an

application for a Production Order not being granted, an undertaking would be given in respect of the special procedure material sought that it would be retained by a firm of Solicitors until further order of the Court.

2. Basis for Applications

- 2.1 Each application has been made under *Paragraph 5 of Schedule 5 of the Terrorism Act 2000* thereby engaging the criteria set out in *Paragraph 6* of the Schedule;
- 2.2 The applications arise out of a series of broadcast reports of interviews with Shamima Begum in February 2019 whilst she was staying at a refugee camp in Syria. The broadcast reports appeared to indicate that in each case there were edited parts of the interviews which had not been broadcast. The Metropolitan Police Service (Police) wished to view the material that had not been broadcast as part of their continuing investigation into Ms Begum and her activities since leaving the United Kingdom and travelling to Syria in 2015. The Police made requests to each Respondent soon after each broadcast but were informed that the provision of such journalistic material would require a Court order;
- 2.3 The Applicant has confirmed that the Production Orders are sought in relation to a terrorist investigation into one alleged offence only, namely membership of a proscribed organisation *contrary to Section 11 of the Terrorism Act 2000* - the proscribed organisation being variously known as Islamic State of Iraq and al-Sham (ISIS) and the Islamic State of Iraq and the Levant and also *DAISH*;
- 2.4 During the course of the hearing the nature and extent of the material sought by the Applicant was re-considered and each draft Order re-worded as follows:
 - TN:
A copy of the full edited and unedited recording(s) of the interview(s) between Anthony Lloyd and Shamima Begum at a refugee camp in Northern Syria that resulted in the publication of the related articles in the Times on 13.2.19 and 14.2.19.
All interview notes which record what was said by Ms Begum and Mr Lloyd generated during or after the above meeting(s) with Ms Begum.
 - ITN:
A copy of the full edited and unedited video recording(s) of the interview(s) between Rohit Kachroo and any other interviewer and Shamima Begum at a refugee camp in Northern Syria that resulted in the ITV news items on 18.2.19 and 20.2.19.
All interview notes which record what was said by Ms Begum and Rohit Kachroo and any other interviewer generated during or after the above meeting(s) with Ms Begum.

- Sky:
A copy of the broadcast recording of the interview between Sky correspondent John Sparks and any other interviewer and Shamima Begum at a refugee camp in Northern Syria that resulted in the Sky news items on 18.2.19 and 20.2.19.

- BBC:
A copy on disc (only) of the approximately 39 minutes of unedited and unbroadcast video footage of the interview of Shamima Begum answering questions from the BBC Middle East correspondent, Quentin Sommerville which took place on and was broadcast by the BBC on 18.2.19;

A copy on disc (only) of the approximately 17 minutes of unedited and unbroadcast video footage of the interview of Shamima Begum answering questions from the BBC Middle East correspondent, Quentin Sommerville which took place on and was broadcast by the BBC on 20.2.19;

3. Factual background

- 3.1 In February 2015 Ms Begum (then aged 15 years) left the United Kingdom and travelled with two school friends to Syria in order to live in the *Islamic State* caliphate that had been declared a few months earlier in 2014. This departure was the subject of considerable media coverage and continued public interest. It became known that Ms Begum had settled in Raqqa which had become a stronghold for *ISIS* and the *Islamic State*. It also became known that she had married a Dutch *IS* fighter. It was also reported that she had been sent to an *IS* training camp following her arrival in Raqqa;

- 3.2 The rise and fall of *IS* in that region between 2014 and 2019 has been the subject of extensive worldwide reporting. The activities and whereabouts of Ms Begum during that prolonged period were not widely known, if at all;

- 3.3 In February 2019 an investigative journalist from the Times newspaper came across Ms Begum in a refugee camp in Northern Syria where she had sought refuge following the retreat of the remaining *IS* forces in the Syrian region. She was pregnant and the birth was imminent. The whereabouts of her husband were unknown;

- 3.4 Video recorded interviews were conducted with Ms Begum by the Times journalist. It would appear that she gave unconditional consent to such interviews and was well aware that her comments would be published thereafter. She was now expressing the wish to return to the United Kingdom. Over the following seven days further interviews were carried at the refugee camp by journalists on behalf of ITN, Sky and the BBC. The inevitable editing process for presentational purposes meant that (with the exception of Sky) not all the questioning of Ms Begum was broadcast or otherwise published. It is this material that the Police seek to review as part of their continuing

investigation. The Respondents would appear to have no objection to providing copies of the broadcast material but do object to the provision of the material that was not broadcast or otherwise published.

4. Legal principles

4.1 There has been no dispute as to the legal principles to be applied in this matter. Counsel for the Applicant and Respondents have provided clear and detailed skeleton arguments setting out the correct approach to be taken in respect of these applications;

4.2 Attention has been focused on the following authorities in particular:

- *Malik v Manchester CC* [2008] EMLR 19
- *R(BskyB) v Chelmsford CC* [2012] 2 Cr. App. R. 33
- *R v Shayler* [2003] 1 AC 247
- *R(Bright) v CCC* [2001] 1 WLR 662
- *R v Lewes CC, ex p Hill* (1991) 93 Cr. App. R. 60

I have also had regard to the views expressed by the C/A in *R v Ahmed* [2011] EWCA Crim 184 with respect to the meaning of membership for the purposes of *Section 11 of the Terrorism Act 2000*.

5. Submissions

5.1 Detailed arguments have been advanced in the skeleton arguments and further amplified in oral submissions with regard to the application of the agreed legal framework to the facts and circumstances of this matter, bearing in mind that each application has to be considered on its own merits;

5.2 The core of the Applicant's argument is as follows:

- It is the duty of the Police in any investigation to pursue all reasonable lines of enquiry and to do so expeditiously;
- A reasonable line of enquiry may result in obtaining evidence that can implicate a suspect in relation to the offence under investigation or it might help to absolve the suspect from any further investigation or any criminal proceedings;
- The Police are in the best position to evaluate evidence obtained from an interview as they are able to assess such material in the light of other evidence that the Police have already obtained in the course of an investigation;
- A proper and reliable evaluation of the answers given by a suspect in an interview can only be safely made if the complete interview is studied and all questions and answers are read and considered in their proper context;

- An incomplete record of questions and answers in an interview session would place the Police and their investigation at a significant disadvantage when it came to preparing for their own interview of a suspect following eventual arrest or in the decision making process with regard to either charging a suspect or discontinuing an investigation;
- While there is no reason to doubt that Ms Begum travelled to Syria in 2015 having made her own free choice to go and live within the *IS* caliphate and thereafter remained there until making her way with others to the refugee camp in early 2019, there is now a live issue as to whether the circumstances of her time in the caliphate and her activities during that time reflect membership of *ISIS* such that an offence has been committed contrary to *Section 11 of the Terrorism Act 2000* or whether her position was or may have been one of desiring to live in such a caliphate but without seeking to join others in *ISIS* for the purposes of furthering the aims of that organisation. A comprehensive account of all her interviews with the Respondents would be invaluable in helping to determine that issue;
- It is accepted that there is no certainty as to when, if at all, Ms Begum would be subject to arrest and interview back in this country. At present the Police are in no position to interview her in Syria and Ms Begum has had her British citizenship withdrawn and is therefore in no position to return to this country. The decision of the Home Secretary to withdraw her British citizenship is to be the subject of an appeal process through the Courts, however there is no certainty as to how long that process will take nor its likely result. The longer the delay that occurs then the greater the likelihood of the journalist's material being lost or mislaid and the more difficult it would be to follow up lines of enquiry that might be raised by a review of the full material;
- The interference with the journalist's Article 10 rights under the *European Convention on Human Rights* is not as significant as in many cases owing to the fact that the journalists in each case have already broadcast or otherwise published parts of their interviews and did so without breaching any confidentiality and notwithstanding any purported risk to themselves from such exposure.
- The gravity of Ms Begum's activity is high when placed in the wider context of the global terrorist threat that has been demonstrated by *ISIS/IS* over the past five years or so and which relies in part on recruiting males and females to join the organisation and to further its aims whether by active participation or by encouragement and support.

5.3 The core of the Respondents' argument is as follows:

- The Applicant has failed to demonstrate on cogent evidence that there are reasonable grounds for believing that within the material that has not been published and/or the notes of the journalist who conducted the interview there is probably material which would add value to the Police investigation over

and above the value that has already been obtained from the broadcast material;

- There are no reasonable grounds to believe that the requested and unreleased material would probably contain admissions by Ms Begum to having taken part in the activities of *ISIS*;
- It is unrealistic to suppose that a responsible journalist or media organisation might have chosen not to include in any broadcast or other publication answers from Ms Begum that tended to demonstrate that she had been actively participating in terrorist activity or otherwise encouraging or supporting others to carry out terrorist acts in furtherance of the aims of *ISIS*. Furthermore there is no reason to conclude that any responsible media organisation such as each Respondent would disregard or otherwise overlook the reporting duty and/or criminal liability that arises pursuant to the provisions of *Sections 19, 38B & 39 of the Terrorism Act 2000*;
- The Orders sought are in effect speculative “fishing expeditions” for which such applications should not be made;
- The Police have more than sufficient material from the combined broadcast material with which to conduct proper interviews with Ms Begum in the event of her arrest at some stage in the future;
- The gravity of the activity of Ms. Begum’s that is under investigation is not high. If she can be shown to have become a member of *ISIS* then it could only have been at a low level of engagement offering support or encouragement as a wife of an *ISIS* fighter but not as a leader or as an active participant in terrorist acts;
- The Orders sought would represent a significant interference with the journalistic freedom protected by Article 10 of the Convention. Such orders have an inhibiting effect on the press in part because of the loss of trust in journalists that would occur if their neutrality or the perception of their neutrality was undermined by a willingness to pass over journalistic material or a routine compelling of journalists to do so by the granting of such orders, in part by the consequential withdrawing of co-operation from those from whom the journalists wish to speak and gather material, and in part by journalists thereby being discouraged from disseminating information which otherwise would be in the public interest to learn and would be part of a legitimate public debate on important issues or concerns;
- There is no clear and compelling case for over-riding or otherwise interfering with the Article 10 rights of journalists carrying out high value public interest news reporting in accordance with their duties;
- The need for the Courts to assist with the protection of journalists and their Article 10 rights is all the greater where investigative journalists are engaged in dangerous conflict zones where organisations such as *ISIS* are hostile to journalists and will readily accuse journalists of spying or otherwise being engaged on behalf of state law enforcement agencies to whom they would readily pass on information;

- At this stage there is no pressing social need to make the Orders sought by the Applicant, particularly as there is no prospect of Ms Begum's imminent return to this country nor of any criminal proceedings being instigated against her in respect to an offence under *Section 11 of the Terrorism Act* possibly for years, if ever. Furthermore any concerns about any subsequent loss of any requested material would be answered by the Respondent's providing an undertaking to retain such material in a secure environment until further notice. The applications are in effect premature.

6. Ruling and Reasons

First access condition

- 6.1 During the course of the hearing the Applicant accepted an assurance given on behalf of Sky that all but a few sentences of their interview recording had been broadcast and that the omitted part was in effect superfluous to any report and lasted but seconds. In those circumstances the Applicant has not pursued the application for any Sky extract that has not been broadcast or otherwise published;
- 6.2 It also became apparent at an early stage of the hearing that there was no reason to think that there would be any difficulty at this stage in the provision by any Respondent of copies of the previously broadcast or published material for the evidential gathering purposes of the Police investigation. It was the material that had been edited out and not broadcast or otherwise published, together with any notes of interview comments that had not been broadcast or published, that were at issue;
- 6.3 In respect of TN, ITN and the BBC there are significant periods of time in their respective interviews which did not feature in any broad cast recording:
- The journalist for TN interviewed Ms. Begum over the course of 1 ½ hours however the extracts in the broadcast recording in total only last just over 17 minutes;
 - The ITN broadcast edited out some 18 minutes of recorded interview;
 - The two BBC interviews lasted a total of 56 minutes but only 4 minutes was broadcast.
- 6.4 In my view there are reasonable grounds in each case for believing that the material that has not been broadcast or otherwise published is likely to be of substantial value to the terrorist investigation being conducted by the Police. Furthermore the substantial value to the Police investigation is likely to be re-enforced by the Police being able to aggregate the material thereby obtained from each Respondent as a result of the three discrete applications;
- 6.5 In each case it is inevitable that the approach and focus of the Respondents and the Police with regard to the interviews of Ms. Begum would be very different. The

Police would be approaching the interview on the basis of an investigation into an alleged criminal offence and would be focusing on answers which would have an evidential impact (one way or another) on the question whether Ms. Begum had *belonged or professed to belong* to *ISIS* and therefore committed an offence contrary to *Section 11 of the Terrorism Act 2000*. As the case of *R v Ahmed* demonstrates the absence of any definition of "belong" or "membership" may cause difficulties of interpretation in many cases. Establishing such membership may well depend on the inferences to be drawn from circumstantial evidence and the assessment of multiple pieces of evidence. Much of that evidence would be of no interest to a journalist who was not seeking to investigate whether Ms. Begum had become a member of *ISIS* and therefore committed an offence contrary to the *Terrorism Act 2000* but was focused on another aspect of her situation. In each case the material broadcast or published reveals a very different approach and focus. The material within the news reports appears to approach Ms. Begum on the basis that it is assumed that she was a member of *ISIS* albeit perhaps not as an active participant and that the focus of interest for the public is her personal predicament having been drawn to *ISIS* as an impressionable teenager and wanting to live in the caliphate yet by 2019 finding herself in a refugee camp with *ISIS* and the caliphate in collapse in that region. The focus of the TN broadcast was on the significant human interest story of her departure from this country, what became of her two companions and her adjustment to living in an area of such conflict and then her personal loss and plight by the time of her arrival in the refugee camp. The focus of the broadcast reporting thereafter was upon Ms. Begum's wish to return to this country and developments with regard to the withdrawal of her British citizenship. It is almost inevitable that during the interviews conducted by the Respondent's journalists questions would have been asked or comments made by Ms. Begum which would throw a light on the issue of membership but which would have taken second place to the principal human interest story. It is those answers and comments that would have value to the Police investigation. By way of example, the BBC reports include in precise or summary form the following script: '*...she told the BBC she would have let her late son become an IS fighter...*', '*(re the Manchester attack) it was "kind of retaliation" for attacks on IS*', '*Our correspondent said that "throughout the interview Shamima Begum continued to espouse Islamic State philosophy"*', '*The 19 year old told BBC News she hoped the UK would understand she made a "very big mistake" by joining IS*'. Likewise script in the ITN reports: '*...(she) has spoken of her regret at joining the jihadi fighters in Syria*', '*He [Home Secretary] has no proof that I'm a threat other than I was in ISIS but that's it.*', '*In a series of interviews Ms Begum had initially said that she had "no regrets" in going to Syria to join so-called IS*', '*She stated she ignored the pleas (of her family) "because I thought I was doing the right thing by being part of Islamic state...."*' Such short extracts alone provide ample justification for concluding that there are reasonable grounds for believing that there is further detail and information in the material that has not been broadcast or otherwise published which is likely to be of substantial value to the terrorist investigation. Those extracts are from two of the Respondents. The length of the TN interview with Ms. Begum was such that there is every reason to

believe that there would be similar unused comments by Ms. Begum during that interview.

- 6.6 Accordingly I am satisfied that the first condition as set out in *Paragraph 6(2) of Schedule 5* has been satisfied.

Second access condition & Article 10 rights

- 6.7 There is a considerable overlap in this matter between the criteria in the second condition as set out in *Paragraph 6(3) of Schedule 5* and the Article 10 right to freedom of speech that underpins the work of journalists;
- 6.8 There are two powerful public interests in play in this matter. Firstly the need for society to be protected from the horrors of terrorism and from the actions of those who would encourage or support terrorist activity and for the Police to be enabled to take steps to prevent and detect such activity and to carry out effective terrorist investigations. Secondly, there is the need for society to have a free and independent media which is able to conduct effective investigations into matters of public interest and concern and to report such matters to the public without fear or interference. The rights of a journalist are not however absolute and the two public interests may on occasion come into conflict, as in this matter. Where they do, it will be necessary to examine the competing circumstances with care. It will be necessary for a balance to be struck between these two interests having considered the nature of the purported interference with the journalist's rights and the nature of the terrorist investigation that is underway;
- 6.9 There is no doubt that the initial TN report was a commendable piece of investigative journalism and represents a significant public interest story which has opened up a important issue for public debate. Such journalistic investigation is to be encouraged, however the work of investigative journalists in particular does rely upon trust, confidentiality, protection of journalistic material and sources, their perceived neutrality, and the co-operation of people who are prepared to place their trust in the journalist. It is true that in this matter there is no suggestion that the granting of a Production Order in any case would breach any confidential relationship or expose a source or place a journalist in any greater risk of harm than he would have been placed by the original broadcasting or publishing of his reports. To that extent the purported interference with the journalists rights in this matter does not have the same direct adverse impact as would, for instance, the revealing of a source or breaching of a confidential relationship. Ms. Begum would have been well aware that she was speaking to a journalist in each case and that the journalist would broadcast or otherwise publish his account of her interview, indeed given some of her responses it would appear that she may have welcomed the opportunity to have such publicity. Nevertheless the purported interference remains and has a wider potential impact for

journalists and cannot simply be discounted in the face of the competing public interest in pursuing the Police investigation;

- 6.10 I have endeavoured to balance the nature and extent of the purported interference of journalists rights against the benefit likely to accrue to the Police investigation if the Orders were made and also against the nature of the offending that is the subject of the investigation and which, although very serious, is on the known facts not at the highest level for such offending. One highly relevant consideration is the fact that at this stage there is no prospect of Ms. Begum being subject to an arrest in this country nor subject to interview or prosecution in the foreseeable future. Equally there would not appear to be any real likelihood of an active line of enquiry being opened up for the Police should the requested material be produced at this stage;
- 6.11 In my view there is one factor which would serve to justify the conclusion that there was a pressing social need at this stage to over-ride the Article 10 rights of the journalists in each case and to justify the conclusion that there were reasonable grounds for believing that in each case it was in the public interest for the material sought to be produced and that is the real risk that such material may be lost in whole or part over the passage of time. It was for that reason that I sought confirmation on behalf of the Respondents that they remained prepared to provide undertakings as to the storage and protection of the contested material;
- 6.12 It has been confirmed on behalf of all four Respondents that, in the event of the Production Orders not being granted, an undertaking will be given that copies of the material sought by the Applicant will be passed to the same named firm of Solicitors and will be preserved by that firm until any further order of the Court;
- 6.13 In the light of that proposed undertaking, it is my view that there would no longer remain any significant risk that such material would be lost hereafter and therefore, given Ms. Begum's current status and situation, there would be no pressing social need established at this stage that would justify the making of any of the Orders sought at this time. If Ms. Begum's circumstances were to change in the future then fresh applications could then be considered.
- 6.14 Accordingly I do not grant the Production Orders that have been sought by the Applicant.

HH Judge Mark Dennis QC

4th September 2019