



Case No: QB-2022-000174

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**MEDIA AND COMMUNICATION LIST**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 22/02/2022

**Before:**

**MR JUSTICE CHAMBERLAIN**

-----  
**Between:**

**HER MAJESTY'S ATTORNEY GENERAL FOR  
ENGLAND AND WALES**

**Claimant**

**- and -**

**BRITISH BROADCASTING CORPORATION**

**Defendant**

**PUBLIC SUMMARY OF RULING GIVEN IN PRIVATE**

**Mr Justice Chamberlain:**

**Introduction**

- 1 This is a short public summary of a longer written ruling handed down today in private under neutral citation number [2022] EWHC 380 (QB). It concerns the question whether a hearing listed on 1-2 March 2022 should take place in private pursuant to CPR r. 39.2. For reasons contained in that ruling, I have decided that it should not. I intend to make the whole of my ruling public at 10.30am on Thursday 24 February 2022. The reason I have not done so yet is so that the Attorney General (“the Attorney”) can consider whether she wishes to appeal against my ruling. If so, it might defeat the purpose of the appeal if I gave my reasons in public at this stage.

**The proceedings**

- 2 The BBC wants to broadcast a programme which identifies an individual, “X”, and makes allegations about X.

- 3 The Attorney, acting on behalf of the Crown, has brought a claim for an injunction to prevent the BBC from broadcasting the programme. She submits that, irrespective of the truth of the allegations, the BBC's proposed broadcast would (a) involve a breach of confidence or false confidence, (b) create a real and immediate risk to the life, safety and private life of X and (c) damage the public interest and national security. The Attorney invites the court to restrain what she says would be a breach of confidence by the BBC and to grant relief to protect the rights of X under Articles 2, 3 and 8 of the European Convention on Human Rights ("ECHR").
- 4 The Attorney's application for an interim injunction has been set down for a hearing on 1 and 2 March 2022. Part of that hearing will take place "in CLOSED", i.e. in the absence of the BBC and their legal team. The power to hold a CLOSED hearing arises under the Justice and Security Act 2013 ("JSA"). I decided to exercise that power after a hearing on 16 February 2022 at which I made a declaration under s. 6 JSA and gave the Attorney permission to withhold sensitive material under s. 8 JSA.
- 5 The procedure provided for by the JSA allows the BBC and its legal team to be see some of the material. The material which they do not see is shown instead to "special advocates", security-cleared lawyers who represent their interests. One of the tasks of the special advocates is to identify parts of the CLOSED material which can properly be disclosed to the BBC, sometimes in "gisted" or summarised form. The special advocates have already identified some such material. As is usual, there was a process by which the Attorney's lawyers considered the special advocates' requests and agreed what could be agreed. Outstanding points of dispute were determined by me. As a result of this process, the Attorney has provided some additional material to the BBC on 18 February 2022, in accordance with procedural directions I gave at an earlier stage.
- 6 The issue decided in my ruling today has nothing to do with the CLOSED part of the hearing on 1-2 March 2022. As everyone agrees, the CLOSED hearing will take place under the provisions of the JSA and CPR Part 82, without the BBC, or its legal team or the public being present. Once I have heard the application for interim relief, I will give two judgments, one OPEN and one CLOSED. The OPEN judgment will contain all my key conclusions, but insofar as it is necessary to say anything about the CLOSED evidence and arguments, I will do that in a separate CLOSED judgment made available only to the Attorney's team and the special advocates.
- 7 The dispute I have resolved in my ruling today concerns the other part of the hearing on 1-2 March 2022, normally referred to as the OPEN hearing. The word OPEN in this context just means that the hearing will take place in the presence of both sides and their legal teams. There is a general rule that every OPEN hearing takes place in public. Indeed, a hearing *may not* take place in private, even if the parties consent, unless and to the extent that *the court* decides that it *must* be held in private: see CPR r. 39.2(1). A hearing must be held in private if, and only to the extent that, the court is satisfied of one or more of a list of specified matters *and* that it is necessary to sit in private to secure the proper administration of justice. The specified matters include that (a) publicity would defeat the object of the hearing, (b) it involves matters of national security or (c) it involves confidential information and publicity would damage that confidentiality: CPR r. 39.2(3).
- 8 In this case, the Attorney submits that the OPEN hearing on 1-2 March should take place either wholly or substantially in private. The effect of her submission, if correct, is that

the public would be told nothing about the nature of the proposed broadcast or about these proceedings except that:

“the [Attorney] is seeking an injunction against the [BBC] to prevent it publishing a new report which the [Attorney] submits would damage national security and breach Convention rights, without sufficient countervailing public interest, and which the Defendant says is in the public interest to broadcast” (see para. 6 of the Attorney’s skeleton argument for the hearing on 16 February 2022).

## **Ruling**

- 9 I have rejected the Attorney’s submission and concluded that the OPEN part of the proceedings on 1-2 March 2022 should be conducted in public. The Attorney has not convinced me that there is a sufficiently compelling reason for departing from the principle that OPEN proceedings take place in public (the “open justice principle”). This means that, when the hearing takes place, the public will be informed about many of the important aspects of this case, apart from the identity of X.
- 10 I will invite the parties to agree a memorandum identifying the information which can and cannot be referred to at the interim relief hearing on 1-2 March 2022, so as to ensure that nothing is said at that hearing which would identify X, whether directly or indirectly. I will adjudicate in writing on any remaining issue of dispute before the start of the OPEN part of the interim relief hearing.