Appeal No: SC/205/2023
Hearing Date: 7 February 2025
Date of Judgment: 21 March 2025

SPECIAL IMMIGRATION APPEALS COMMISSION

Before:

THE HONOURABLE MR JUSTICE BOURNE
UPPER TRIBUNAL JUDGE STEPHEN SMITH
SIR STEWART ELDON

TENGBO YANG (formerly known as H6)

APPLICANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

Representation:

Guy Vassall-Adams KC and Catherine Arnold, (instructed by **Lewis Silkin**) appeared on behalf of the Appellant

Jonathan Price (instructed by **Slateford Law**) appeared on behalf of Dominic Hampshire

Mr Wolanski and Hannah Gilliland (instructed on behalf of **various media organisations**) appeared on behalf of the Medias

Mr Kinnear KC (instructed by the **Special Advocates**) appeared as the Special Advocate

Ms Nicola Parson (instructed by the **Government Legal Department**) appeared on behalf the Secretary of State

JUDGMENT ON APPLICATION BY MEDIA PARTIES FOR DISCLOSURE OF DOCUMENTS

MR JUSTICE BOURNE:

Introduction

1. This is an application by or on behalf of a number of media organisations ("the media parties") for disclosure of documents on the Commission's files relating to these review proceedings. It is opposed by the Applicant ("Mr Yang") and by a Mr Dominic Hampshire ("Mr Hampshire").

2. The background to the case, explained in the Commission's OPEN judgment which was handed down on 12 December 2024, can be summarised briefly.

3. On 15 March 2023 the Secretary of State for the Home Department ("SSHD") directed that Mr Yang be excluded from the UK. He applied to the Commission for review under section 2C of the Special Immigration Appeals Commission Act 1997 ("section 2C review"). On 15 May 2023 the Chairman of the Commission made an order that Mr Yang be anonymised and that he be referred to as "H6", and for reporting restrictions. On 14 July 2023, having reconsidered the case, the SSHD made a fresh decision directing the Claimant's exclusion from the UK. Mr Yang submitted a fresh application for section 2C review on 5 August 2023. The order of 15 May 2023 remained in force at that time.

4. We heard the review on 9-11 July 2024. At the start of the hearing Mr Yang applied for two aspects of the case to be heard in private. The Commission decided that no order was needed in respect of the first of those. The second related to a witness statement dated 24 May 2024 by Mr Hampshire and evidence which it was anticipated he would give orally. The Commission ruled that it

would not receive that evidence in private. Mr Yang thereupon decided not to rely on Mr Hampshire's evidence, so the only step taken by the Commission in respect of that application was to make an order that there be no disclosure of any document on the OPEN court files without further order. That order was subsequently sealed on 19 July 2024.

5. The Commission decided to dismiss the section 2C review application, for reasons given in its OPEN judgment which was handed down on 12 December 2024 as we have said.

6. The Commission also indicated that it was minded to lift the anonymity and reporting restrictions which had been ordered on 15 May 2023. That prompted Mr Yang to make an application for judicial review.

7. On 11 December 2024 the Divisional Court granted interim relief to Mr Yang, ordering that his anonymity and the existing reporting restrictions must be maintained.

8. The Commission's OPEN judgment was handed down with four redactions to give effect to that order.

9. There was widespread press reporting of the case after the OPEN judgment was handed down.

10. On 16 December 2024, the Divisional Court's order of 11 December 2024 was discharged at Mr Yang's request and his name was made public.

11. On this application we are dealing with the following requests for access to OPEN documents held by the Commission:

    (1) On 13 December 2024, the BBC requested access to "the letters addressed to H6 from Dominic Hampshire, which are quoted within the judgement" and "any further documents relating to the judgment that can be cleared for our reporting".

(2) Also on 13 December 2024, the Mail on Sunday requested access to “any other court documents relating to H6”.

(3) On 16 December 2024 a freelance journalist, Jon Austin, asked to be sent any orders/judgments relating to “any media challenges of the anonymity order” and “the application for anonymity and accompanying statements, legal notes explanations etc and the order”.

(4) On 17 December 2024 a lawyer acting for the Guardian and also writing on behalf of the BBC, Associated Newspapers, the Telegraph, Times Media Limited, ITN and News Group Newspapers, requested copies of:

> “a. witness statements.
> b. any skeleton arguments provided to you as the judges in this case.
> c. the summaries of the OPEN material downloaded from the Applicant’s device referred to in paragraph 113 of the judgment - (1) a letter addressed to Zhou Kairang, (2) a list of people travelling in a delegation, including Zhou Kairang; and (3) a text message sent by H6 on 7 March 2019.
> d. the OPEN material referred to in paragraph 114 of the judgment - (1)
> what H6 said in his November 2021 schedule 3 interview, (2) H6’s
> representations to IPCO on 2 March 2022; and (3) H6’s witness statement of 1 June 2023.
> e. the OPEN material discovered on H6’s devices referred to at paragraph 115 of the judgment - (1) a letter dated 30 March 2020 from Dominic Hampshire, a senior advisor to the Duke, to the Applicant to H6; and (2) the letter from Mr Hampshire to the applicant dated 22 October 2020.
> f. the OPEN material recovered from the Applicant’s device referred to in paragraph 116 of the judgment, (1) a document assessed to be questions asked by the Chinese Embassy about the Eurasia Fund; and (2) a document dated 24 August 2021 and headed “Main talking points”.

g. the Amended First National Security Statement on behalf of the SSHD referred to in the judgment in paragraph 168, where it is partially quoted from.
h. the anonymity application and its underlying documents made to SIAC earlier this year.
i. transcripts of any hearings held in private and of the anonymity hearing."

12. On 20 December 2024 the Government Legal Department indicated that the Secretary of State does not raise any general objection to the requests above but that concerns would in due course be articulated about disclosure of the Home Office witness statement of 5 July 2024. However, by a further letter dated 23 December 2004 it was indicated that the SSHD no longer wished to make any representations about the latter point.

13. The order dated 19 July 2024 had provided that any application for disclosure of material on the OPEN court files would be dealt with on paper unless the Commission considered an oral hearing to be necessary.

14. On 13 January 2025 the Commission gave directions for the resolution of the issues. Given the nature of the issues before us, we decided that it was necessary to hold an oral hearing. On 14 January the parties were told that a hearing had been listed on 7 February 2025. That date was chosen because of the limited availability of all three members of this panel of the Commission.

15. It has been necessary to take case management steps to identify (1) the "non-contentious" material which could be disclosed to the media applicants without further argument and (2) the "contentious" material – any whole documents, or passages in documents of which redaction was sought – which would be the subject of this hearing, and to determine how the contentious material could best be handled and referred to so as to enable all parties to address the issues, so far as possible.

16. We are grateful to the parties for their co-operation in this process, and in particular to Mr Yang's solicitors for providing bundles for use by all parties. Those included brief summaries, so

far as was possible, of the contentious material, which were provided to all parties on 31 January 2025.

17. When the summaries were provided, the Commission also made an order prohibiting publication of any of their contents until further order. However, at the start of this hearing on 7 February 2025 we discharged that order by agreement of the parties.

18. The non-contentious material was disclosed to the media applicants on 31 January 2025. The Commission would have preferred this (and the listing of the hearing) to have happened more quickly, but that was not possible as a result of the necessary case management steps, which were also prolonged to a degree during the Christmas and New Year period.

19. The contentious material falls into three categories:

(1) Information provided by Mr Yang on which the Commission heard argument in private during the first day of the hearing of 9-11 July 2024. We refer to this as “the personal information”.

(2) Information which (in Mr Yang’s words) “was imparted to Mr Yang in confidence and/or information which is commercially sensitive. This information is contained in the first and second witness statements of Mr Yang and will require certain limited redactions before access is provided to them. Mr Yang also opposes disclosure of a limited number of the exhibits accompanying his second witness statement.” We refer to this as “the commercial information”.

(3) Mr Hampshire’s witness statement dated 24 May 2024 and information which he seeks to have redacted from other documents reflecting the content of that statement.

20. Our conclusions, and nearly all of our reasoning, can be set out in this public judgment. We have also prepared a brief confidential annexe, adding some details about the information sought and the arguments put forward which cannot be made

public without revealing information which we have ruled should not be disclosed.

Representation

21. Mr Yang was represented by Guy Vassall-Adams KC and Catherine Arnold, who provided a skeleton argument dated 20 December 2024.

22. They also provided us with confidential submissions and a confidential schedule, which were not shared with the media parties, addressing factual matters relating to the personal information and the commercial information.

23. The media parties were represented by Adam Wolanski KC and Hannah Gilliland, who provided a skeleton argument dated 6 February 2025.

24. Mr Hampshire was represented by Jonathan Price, who provided a skeleton argument dated 29 January 2025.

25. The Commission has also seen a confidential version of Mr Price's submissions, accompanied by a request that their contents not be referred to in open court but that they be dealt with in private as necessary.

26. We heard oral argument from the counsel named above. In addition, the SSHD was represented by Naomi Parsons, and Jonathan Kinnear appeared as Special Advocate on behalf of Mr Yang, but neither Ms Parsons nor Mr Kinnear advanced submissions for or against these disclosure applications.

27. In the event, we were not asked to hear any submissions for or against these disclosure applications in private and we did not do so. Nor was there any application inviting us to disregard those submissions which have not been shared with all parties. We had regard to the confidential written submissions to which we have referred, and acknowledge that the media parties had the disadvantage of not knowing their contents.

Legal framework

28. Much of the relevant law was common ground. We deal with some more controversial points below under the heading of the parties' submissions.

29. It was agreed that on an application of this kind, (1) the starting point is the principle of open justice and (2) that principle must be balanced against the harm which disclosure may cause to the legitimate rights of others.

30. The contours of the open justice principle were set out by the Court of Appeal in *R (Guardian News and Media Limited) v Westminster Magistrates' Court* [2012] EWCA Civ 420; [2013] QB 618 ("*Guardian News*"). *Guardian News* was applied, and the principles were further discussed, by the Supreme Court in *Cape Intermediate Holdings v Dring* [2020] AC 629 ("*Dring*"). The key principles can be seen from the following extracts from the authorities:

(1) In *Dring* Baroness Hale said at [42-43]:

"42 The principal purposes of the open justice principle are two-fold
and there may well be others. The first is to enable public scrutiny of the
way in which courts decide cases to hold the judges to account for the
decisions they make and to enable the public to have confidence that they
are doing their job properly. In *A v British Broadcasting Corpn* [2015] AC
588, Lord Reed JSC reminded us of the comment of Lord Shaw of
Dunfermline, in *Scott v Scott* [1913] AC 417, 475, that the two Acts of the
Scottish Parliament passed in 1693 requiring that both civil and criminal

cases be heard with open doors, bore testimony to a determination to
secure civil liberties against the judges as well as against the Crown
(para 24).

43 But the second goes beyond the policing of individual courts and
judges. It is to enable the public to understand how the justice system works and why decisions are taken. For this they have to be in a position to understand the issues and the evidence adduced in support of the parties cases. In the olden days, as has often been said, the general practice was that all the argument and the evidence was placed before the court orally. Documents would be read out. The modern practice is quite different. Much more of the argument and evidence is reduced into writing before the hearing takes place. Often, documents are not read out. It is difficult, if not impossible, in many cases, especially complicated civil cases, to know what is going on unless you have access to the written material."

(2) Press reporting of proceedings plays a vital role in ensuring open justice. In *Khuja v Times Newspapers Ltd* [2019] AC 161 ("*Khuja*") Lord Sumption said at [16]:

> "It has been recognised for many years that press reporting of legal proceedings is an extension of the concept of open justice, and is inseparable from it. In reporting what has been said and done at a public trial, the media serve as the eyes and ears of a wider public which would be absolutely entitled to attend but for purely practical reasons cannot do so" [16].

(3) In *Guardian News* Toulson LJ observed (§85):

> "In a case where documents have been placed before a judge and referred to in the course of proceedings, in my judgment the default position should be that access should be permitted on the open justice principle; and where

access is sought for a proper journalistic purpose, the case for allowing it will be particularly strong."

(4) In the same paragraph Toulson LJ also said:

> "Central to the court's evaluation will be the purpose of the open justice principle, the potential value of the material in advancing that purpose and, conversely, any risk of harm which access to the documents may cause to the legitimate interests of others."

(5) In *Dring* Baroness Hale said at [45-47]:

> "… although the court has the power to allow access, the applicant has no right to be granted it (save to the extent that the rules grant such a right). It is for the person seeking access to explain why he seeks it and how granting him access will advance the open justice principle. In this respect it may well be that the media are better placed than others to demonstrate a good reason for seeking access. But there are others who may be able to show a legitimate interest in doing so. As was said in both *Kennedy* [2015] AC 455, at para 113, and *A v British Broadcasting Corpn* [2015] AC 588, at para 41, the court has to carry out a fact-specific balancing exercise. On the one hand will be the purpose of the open justice principle and the potential value of the information in question in advancing that purpose.
>
> 46 On the other hand will be any risk of harm which its disclosure may cause to the maintenance of an effective judicial process or to the legitimate interests of others. There may be very good reasons for denying access. The most obvious ones are national security, the protection of the interests of children or mentally disabled adults, the protection of privacy interests more generally, and the protection of trade secrets and commercial confidentiality. In civil cases, a party may be compelled to disclose documents to the other side which remain confidential unless and until they are deployed for the purpose of the

> proceedings. But even then there may be good reasons for preserving their confidentiality, for example, in a patent case.
>
> 47 Also relevant must be the practicalities and the proportionality of granting the request … ."

Submissions on behalf of the media parties

31. Mr Wolanski invited us to place considerable weight on the vital role of open justice and press reporting. Citing the Master of the Rolls' Practice Guidance, reported as *Practice Guidance (Interim Non-Disclosure Orders)* [2012] 1 WLR 1003, he reminded us that derogations from the general principle can only be justified in exceptional circumstances, when they are strictly necessary to secure the proper administration of justice. He also reminded us that our duty is to apply the balance and make the appropriate order and that this is not a question of discretion.

32. Mr Wolanski further submitted that although neither Article 8 nor Article 10 ECHR has priority over the other as such, "where the open justice principle is engaged the weight to be attributed to the art.10 right to impart and receive information is considerable": *R (Rai) v Winchester Crown Court* [2021] Cr. App. R.20 per Warby LJ at [26].

33. More fundamentally, Mr Wolanski further submitted that in the present case Article 8 is not engaged in respect of Mr Yang. That is because, by virtue of Article 1 ECHR, Article 8 can be engaged only a territorial basis and Mr Yang is not in a Convention state. He relied on *OPO v MLA* [2014] EWCA Civ 1277, [2015] EMLR 4 in which a similar submission was accepted by Arden LJ at [114].

34. In addition, he also reminded us that inconvenience or embarrassment to individuals is not a basis for imposing any restriction on reporting of court proceedings: *Khuja* per Lord Sumption at [12].

35. These principles apply, he submitted, not only to evidence directly relied on in a court or tribunal but also to documents which are placed before a judge and referred to in argument or in evidence.

36. So far as Mr Yang's objections to disclosure are concerned, Mr Wolanski of course has not seen the contentious material but he made the following submissions about the approach which the Commission should take:

(1) It was Mr Yang's choice to bring the SIAC proceedings and to adduce evidence, knowing that there would be a public hearing.

(2) It is for the Commission to assess any claim that information is confidential, and this must be proved with clear and cogent evidence rather than just an assertion that it was imparted in confidence.

(3) Where matters are claimed to be the subject of commercial confidentiality, it is necessary to identify the source and nature of the specific contractual or other obligations in play, and this is all the more so where some matters are in the public domain, such as the fact that Mr Yang's company did business with some of the companies which are named in the OPEN judgment.

(4) The Commission must also carefully scrutinise the claim for privacy rights in respect of the personal information, and the media parties are not in a position to make meaningful submissions on the facts.

37. In respect of Mr Hampshire, Mr Wolanski reminded us that although he did not give evidence at the hearing, his witness statement was referred to a number of times in Mr Yang's skeleton argument and we also made references to it in our OPEN judgment. It is therefore relevant to the Commission's decision in the case, and there is an important public interest in the media parties being able to see it in order to understand the case better.

38. As for Mr Hampshire's objections, Mr Wolanski described it as extraordinary that Mr Hampshire did not take legal advice of his own before providing his statement to Mr Yang, instead relying on assurances from Mr Yang's team that if the Commission did not sit in private then he could withdraw his evidence.

39. Mr Wolanski also referred to the supporting witness statement of Dan Sabbagh, the Defence and Security Editor of the *Guardian*, which identifies specific public interest reasons why access is sought to all of the material including the Hampshire material. In the event, those reasons have not been challenged.

Submissions on behalf of Mr Yang

40. Mr Vassall-Adams submitted that in SIAC, the proportionality exercise may more readily tip in favour of denying access for four reasons:

(1) the operation of rule 4(1) of the SIAC Rules (preventing disclosure of information contrary to the public interest) means that applicants do not know all of the case against them and therefore may "lay bare all aspects of their lives to try to meet that case";

(2) applicants do not have the advantage which the SSHD has by operation of rule 38(9)(a) of being able to withdraw evidence and thereby to guarantee that it will remain confidential;

(3) under rule 4(3) the Commission must satisfy itself that the material available to it enables it properly to determine proceedings, and therefore may enable appellants to adduce sensitive evidence by making an order prohibiting the SSHD from disclosing it (W (Algeria) v Secretary of State for the Home Department [2012] UKSC 8; [2012] 2 AC 115, §17, §19)); and

(4) the SIAC Practice Note recognises that, "onerous or intrusive procedures for obtaining anonymity orders may have a chilling effect on the initiation of appeals" (§12).

41. So, granting access to confidential or sensitive court documents may affect the way in which applicants conduct reviews or appeals and witnesses may be discouraged from giving evidence by the prospect of subsequent disclosure, and applicants might be reluctant to initiate appeals if they fear that confidential evidence given at a time when anonymity and reporting restrictions are in place will be disclosed to the media after an OPEN judgment has been handed down.

42. Addressing the application of the open justice principles more generally, Mr Vassall-Adams referred us to *Millicom Services UK Ltd v Clifford* [2023] EWCA Civ 50, [2023] I.C.R. 663 ("*Millicom*"). That was an appeal arising from an application to an Employment Tribunal to hear certain evidence in private. Warby LJ (with whom Elisabeth Laing LJ and Lewis LJ agreed), noted that a decision maker should bear in mind the harm disclosure would cause and, conversely, (inter alia) the potential value of the information in advancing the purpose of open justice, and said at [44]:

> "As a general proposition, it may be said that the more remote an item of information is from the issues requiring resolution in the case the less likely it is that a restriction on its disclosure will offend the open justice principle or compromise its purposes. In this case, the ET will need to consider the Millicom parties' contentions that the derogations they seek are 'minor' and peripheral, relate to people who are not parties or witnesses, and concern information which has 'no relevance' to the issues in dispute in the ET proceedings."

43. So far as the personal information is concerned, the detailed reasons why disclosure is opposed were set out in confidential submissions.

44. Mr Vassall-Adams also submitted that the personal information should not be disclosed because it was put forward on

the basis that it was expressly confidential, it was heard in private and, following the private session, it was not deployed in these proceedings. It is also not relied upon by the Commission in the OPEN judgment. That being so, Mr Vassall-Adams contended, it does not engage the open justice principle in the first place.

45. But if it were necessary to proceed to the test of proportionality, Mr Vassall-Adams resisted the argument that Mr Yang does not have Article 8 rights because he is not in the UK (or another Contracting State).

46. Mr Vassall-Adams invited us to apply the same reasoning as in our OPEN judgment on the section 2C review, where we held that the decision excluding Mr Yang from the UK engaged his Article 8 rights, his particular and recent connections with this country distinguishing the case from the case of *OPO* cited above. He also pointed out that if Mr Yang were subsequently to win an appeal against our rejection of his review application, it could yet be held that he is entitled to reside in the UK.

47. But in the alternative, Mr Vassall-Adams submitted that Mr Yang's rights can be protected by applying common law principles rather than Article 8. As early as *Scott v Scott* [1913] AC 417 (at 483) it was accepted that confidentiality might justify an inroad into the openness of court proceedings. And in *Millicom* Warby LJ said:

> "31. In this case, too, the appropriate starting point is the common law. This holds that open justice is a fundamental principle. But it also contains a key qualification: that every court or tribunal has an inherent power to withhold information where it is necessary in the interests of justice to do so: see *Khuja* … para 14 (Lord Sumption JSC), citing the foundational common law authority of *Scott v Scott* [at] 446 …
> …
> 33. The qualification is certainly of wider application … It certainly permits derogations that are required for the protection of the administration of justice in other legal proceedings or even to secure the general effectiveness of law enforcement authorities … It may go further. But this appeal does not require

us to identify the boundaries of the common law exception to open justice."

48. When privacy or the overall interests of justice are weighed against the open justice principle, Mr Vassall-Adams submitted, the balance must come down in Mr Yang's favour because of the absence of any real public interest in the disclosure of the information in question.

49. In relation to the commercial information Mr Vassall-Adams accepted that different considerations arise, because the relevant matters were the subject of evidence in open court. However, he submitted that Mr Yang referred to this information in evidence at a point when he did not know the whole of the case against him, and when he was protected by the Commission's order for anonymity and reporting restrictions and he would not have been bound to assume that those matters would be aired in public.

50. Meanwhile this information, he submitted, relates to commercial activity with other bodies and is not information about Mr Yang as such. It is information which was disclosed to him in the course of that activity. Some of it is the subject of non-disclosure agreements ("NDAs"). Some of it is otherwise governed by obligations of confidence of the kind identified by Megarry J in *Coco v AN Clark (Engineers) Ltd* [1968] FSR 416 at 419:

> "In my judgment, three elements are normally required if, apart from contract, a case of breach of confidence is to succeed. First, the information itself, in the words of Lord Greene, M.R. in the Saltman case on page 215, must 'have the necessary quality of confidence about it'. Secondly, that information must have been imparted in circumstances importing an obligation of confidence. Thirdly, there must be an unauthorised use of that information to the detriment of the party communicating it."

51. We interject to observe that, as Mr Vassall-Adams admitted, there is no evidence before the Commission of any NDA relating to any of the commercial information, and so we are not able to place any reliance on the assertion that such agreements exist.

52. Also bearing in mind the points made above about inequality of arms and the potentially chilling effect of disclosure, Mr Vassall-Adams submitted that the media requests should be refused in respect of the material identified in his confidential schedule.

53. He argued that outside the open justice context, it is well recognised that the public interest in disclosure may be negatived by the confidential nature of information. In *HRH Prince of Wales v Associated Newspapers* [2008] Ch 57 it was decided that when a publication would involve a breach of a relationship of confidence, an interference with privacy or both, it was necessary to consider whether those matters justified the interference with the right to freedom of expression under article 10 which a restriction would involve. It was not simply a question of whether the information was a matter of public interest but whether, in all the circumstances, it was in the public interest that the duty of confidence should be breached (see Blackburne J at [68]).

54. Mr Vassall-Adams therefore invited us to consider each suggested redaction in light of these principles.

Submissions on behalf of Dominic Hampshire

55. Mr Price contended that Mr Hampshire's witness statement dated 24 May 2024 should not be disclosed, summarising his case in this way:

> "a. The witness statement was withdrawn and was not apparently referred to in open court. Before proceedings in open court commenced the witness statement was withdrawn. The evidence in Mr Hampshire's statement does not appear to have been referred to in open court, and its substance was not referred to in the judgment.
>
> b. The witness statement was not intended for use in open court. The witness statement was not prepared by a party and was not prepared in the knowledge that it would be made public, but rather it was prepared by an unrepresented third party on the understanding from Mr Yang's lawyers that it would

remain private, and once that understanding was corrected, reliance upon the statement was immediately withdrawn by the party who had adduced it.

c. The media's purpose in seeking the documents is not served by the release of the witness statement. Whilst the open justice principle is of course engaged, there is nothing specific in the witness statement which contributes to the particular matters of public interest identified by the media in support of their application in this case.

d. The content of the witness statement is private and confidential. The statement contains highly private, confidential and commercially sensitive information of no apparent relevance to the Commission's decision-making process in these proceedings, including private and/or confidential information relating and/or belonging to third parties."

56. In the hearing before us, Mr Price accepted that the witness statement was "before the court" in a general sense, meaning that we had notice of it, but submitted that its relevance was minimal. The only substantive reference to it in the OPEN judgment was at paragraph 228, as one of the reasons why the Commission was not persuaded that the *Tameside* duty had required the SSHD to make more inquiries of Mr Hampshire.

57. Mr Price reminded us that Mr Hampshire was not called as a witness and so his statement did not stand as evidence in chief, and it would therefore not subject to the default position of being open to inspection (applying in civil proceedings under CPR 32.13(1)). Indeed, it was not relied upon or referred to in support of any substantive submission by any party at the hearing of 9-11 July 2024. It was not actually drafted for use before SIAC, but was instead intended for use in support of submissions to the SSHD.

58. Although *Dring* at [44] makes clear that the open justice principle applies to all documents put before the court in proceedings in public and does not depend upon demonstrating that any particular document was read by the court, Mr Price submitted that the practical application of the principle, which

includes the need to have regard to all the circumstances of a particular case, gives rise to this pair of converse guiding propositions:

a. There is a strong presumption that documents such as witness statements and written submissions which are read and/or referred to in open court be made available to the media, and countervailing factors will need to be particularly weighty to prevent such material being released under the open justice principle; whereas

b. the presumption in relation to material not read and/or referred to in open court (though perhaps not explicitly excluded from the underlying material technically 'before the court') is much weaker, and any countervailing factors raised against its release to the media are likely to be more significant in the balancing exercise.

59. He invited the Commission to place the statement in the second of those categories and, when applying those principles, to keep in mind the important distinction between matters which happen to be of interest to the press and the public (such as colourful detail about those in public life including the Royal Family) on the one hand, and on the other, matters of which disclosure is in fact in the public interest e.g. because they help the public to understand legal proceedings.

60. Meanwhile, Mr Hampshire has not sought to withhold information about his factual involvement in some aspects of this case. Our OPEN judgment refers to data found on a device of Mr Yang's which, in the opinion of the SSHD, demonstrated that Mr Yang was in a position to generate relationships between senior Chinese officials and prominent UK figures which could be leveraged for political interference purposes by the Chinese State. That involved Mr Hampshire in the case involuntarily. It is in that context, and with an assurance that any evidence from him would be heard in private, that he made the statement containing wider information and then sought to withdraw it.

61. Mr Price invited us, when we consider whether to order disclosure of that wider information, to give weight to factors such

as the likelihood of further interference with Mr Hampshire's private and family life, over and above that which has already taken place, and the unfairness of frustrating what had been Mr Yang's aim of protecting Mr Hampshire's private information when he disclaimed reliance on the statement, and of frustrating Mr Hampshire's reliance on the assurances he was given by Mr Yang's representatives.

62. Mr Price also submitted that the journalistic aims identified in the letter of request from the *Guardian* are not served by disclosure of Mr Hampshire's statement. Those (undisputed) aims are:

> "a. to understand intelligence and security aspirations of the Chinese state
> and how Beijing seeks to obtain improper influence in the UK;
> b. to understand better how the UK government and intelligence agencies
> assess threats to UK national security, and in particular how they sought to
> do so in this case;
> c. to understand more fully the workings of the Special Immigration Appeals
> Commission and how it reaches judgments in individual cases."

63. But if and to the extent that disclosure would serve those aims, Mr Price emphasized the need to balance competing public and private interests including privacy and confidence. That need is recognised in rules such as CPR rule 39.2(4), whereby a civil court can order non-disclosure of a person's identity if it is necessary to do so, or CPR 39.2(3)(c), which identifies the fact that publicity would damage confidentiality as one of the matters which may make it necessary for a court to sit in private.

64. In an accompanying witness statement dated 20 December 2024, Mr Hampshire explains why some of the specific information is confidential and expands on the effects on him and his family of media intrusion which has already occurred. We have considered what is said there in relation to each part of the May 2024 statement.

Discussion

65. It is not in dispute that the media parties seek access to the documents for proper journalistic purposes which engage the open justice principles to which we have referred.

66. Although we heard some argument on whether a different burden of proof applies to different categories of information in this case (documents sought by the media on the one hand, and passages in otherwise disclosable documents which a party wishes to redact on the other), we have not found it necessary to resolve that question. In respect of each category of information we have reached clear conclusions on whether the balance does or does not come down in favour of disclosure.

Mr Yang: personal information

67. We have concluded that information falling in this category should not be disclosed to the media.

68. The information is unconnected with any of the aspects of this case which have given rise to obvious public interest i.e. the debate over whether the SSHD was right to exclude Mr Yang from the UK on grounds of national security. Although open justice is always a very weighty consideration, the arguments for disclosure are much weaker in the case of the personal information than in relation to the other categories which we address below.

69. Meanwhile, we are satisfied that there is a substantial risk of disclosure causing serious harm to Mr Yang. His interests may still be protected under ECHR Article 8 for the reasons given in our OPEN judgment (and also bearing in mind that our decision on the section 2C review could still be subject to appeal) but even if they are not, we are satisfied that disclosure would be contrary to the Commission's duty of fairness to him as a party at common law.

70. In respect of that proposition, our attention was drawn to the judgment in *Millicom* at [40]:

> "An order that is required to give effect to the court's duty of fairness to a party or witness is one that is "necessary in the interests of justice".

71. In light of that passage, we were not persuaded by a submission by Mr Wolanski that the "interests of justice" exception is too narrow to be relied on by Mr Yang on the facts of this case.

72. Having considered all the facts, we accept the submission that the balance between public interest and private rights clearly comes down in favour of non-disclosure. Denial of disclosure is necessary in the interests of justice because disclosure would be contrary to common law principles of fairness, whether or not it would also infringe Article 8.

73. We are also satisfied that Mr Yang has correctly identified the material to which this part of our ruling applies and therefore that the redactions sought under this heading are necessary.

74. Some further details about the information and our reasoning are necessarily contained in the confidential annexe to this judgment.

Mr Yang: the commercial information

75. As we have said, we were not shown any documentary evidence of any contractual obligation of confidence. We would therefore have been unable to identify the parameters of any such obligation. As Mr Wolanski pointed out, a term may require information to be kept confidential in all circumstances, or it may allow for exceptions e.g. in legal proceedings where there are disclosure obligations.

76. We have nevertheless considered whether the Commission can, and should, infer from the facts that any information referred

to by Mr Yang must have been imparted to him subject to an obligation of confidentiality.

77. In the case of two specific pieces of information we are persuaded that that is so, and we are satisfied that the public interest in disclosure is outweighed by the public and private interests in the observance of obligations of confidentiality.

78. We therefore authorise the redaction of those two items. The confidential annexe to this judgment identifies the information to be redacted but does not contain further reasoning on this issue.

79. Otherwise, having careful regard to the passages of text which are proposed to be redacted, we are unable to draw the conclusion that any obligation of confidentiality applies to them.

80. It may be that some business dealings were conducted with a shared expectation that information about them would not be made public but in our judgment, the open justice principle – that is to say the public interest in allowing press coverage of facts which are relevant to the matters considered in our OPEN judgment – substantially outweighs either any public interest in expectations of confidentiality being upheld or the private interests of Mr Yang or his business associates.

81. In reaching that conclusion, we particularly bear in mind that the fact of each relevant business relationship has already been disclosed in evidence in this case and is in the public domain. And in a number of cases, the precise details of which redaction was sought seemed innocuous.

82. Conversely, we consider that there is a substantial public interest in reporting of international trading activity involving UK companies and in any involvement of any member of the Royal Family in that activity. We bear in mind that in support of the section 2C review, Mr Yang himself relied on the value to the UK of his own commercial activity.

83. Disclosure will therefore be permitted of almost all of the commercial information.

Mr Hampshire's witness statement of 17 May 2024 (and related redactions)

84. With one exception (to which we come below), we allow the media parties' application for disclosure of the witness statement and other evidence which reflects its contents.

85. We accept Mr Wolanski's submission that the circumstances in which the witness statement came into being do not justify a derogation from the open justice principle. The fact is that the statement has been placed before the Commission and has been considered by us.

86. Substantial parts of the witness statement contain material which cannot possibly be said to be confidential, such as information about Mr Hampshire's background or about how he came to know Mr Yang. There is information about his own activities which has no appearance of any particular confidentiality. There is also information about the Duke of York which is in the public domain, for example the negative impact of the Duke's *2019 Newsnight* interview.

87. There are also comments about Mr Hampshire's work with the Duke which might seem embarrassing or indiscreet, but they are not such as to give rise to the inference that a legal duty of confidentiality attaches to them.

88. So far as the information concerns commercial activity, there is a substantial public interest in the Press being able to report it for the reasons given at paragraph 80 above.

89. Overall, the determining principle is the open justice principle. The witness statement of 25 May 2024 was drafted explicitly to be used in support of representations to the SSHD against the order excluding Mr Yang from the UK, and it is headed "In the Special Immigration Appeals Commission" with the case number of the section 2C review. At the hearing the SSHD confirmed that it had been reviewed, as we noted at paragraph

228 of our OPEN judgment, and expressed an opinion on it (see paragraph 108 of our OPEN judgment). In those circumstances, and where access is sought for proper journalistic purposes, the case for disclosure is particularly strong (see the quotation from *Guardian News* at paragraph 30(3) above).

90. That principle outweighs the fact, which we readily accept, that in Mr Hampshire's dealings with the Royal Family there is an expectation of discretion (although he has not referred the Commission to any documentary evidence of any contractual obligations in that regard and we have not received any representations from or on behalf of any member of the Royal Family).

91. We do however accept the submission of Mr Price that two words in paragraph 18a of the witness statement contain information which must have been imparted to Mr Hampshire on the basis that it would be kept strictly confidential and, in respect of that information alone, we are not persuaded that the public interest in disclosure outweighs the public and private interests in the observance of obligations of confidentiality. The confidential annexe to this judgment identifies the phrase in question and adds two sentences by way of further reasoning.

Conclusion

92. The application for disclosure is allowed to the extent identified above.

93. We will receive written submissions from the parties about the appropriate form of order to reflect this judgment, including any application by any party for a stay pending any legal challenge to our decision.