# [GB] The BBC is prevented from identifying alleged MI5 informant accused of abusing former female partners

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On 7 April 2022, the High Court of Justice granted an interim injunction restraining the British Broadcasting Corporation ('BBC') from broadcasting a programme identifying 'X', an alleged MI5 covert human intelligence source ('CHIS').

The BBC programme in question included the allegations that X is a dangerous extremist and misogynist who physically and psychologically abused two former female partners; that X had told one of these women that he worked for MI5 to terrorise and control her; and that MI5 should have known about X's conduct and realised that it was inappropriate to use him as a CHIS.

The Attorney General brought a claim for an injunction to prevent the broadcast of the programme. Her stance was that she can neither confirm nor deny ('NCND') that X was or had been a CHIS. She argued that regardless of the truthfulness of the allegations, the BBC's broadcast would breach confidentiality law, it would create a real and immediate risk to X's safety and private life, and damage the public interest and national security.

Mr Justice Chamberlain said that based on the evidence he had seen, he was convinced that the injunction was necessary. The judge accepted that restraining the programme would represent "a very significant interference" with the right of the BBC to freedom of expression and the correlative right of the public to receive the information the BBC wishes to publish (para. 23), and that the BBC "comfortably" met the requirement of showing that the allegations it sought to broadcast were serious and had a credible evidential foundation (paras. 48-49).

Although an injunction restraining the BBC from identifying X would affect the appeal of the programme to the audience, it would not however prevent the broadcaster from communicating the core elements of the story, including the allegation that X abused his status, and that MI5 was at fault for continuing to use him as an intelligence source (paras. 76-80). The judge concluded that the Attorney General was more likely than not to succeed at trial in establishing that the balance of public and private interests favoured the issue of an injunction prohibiting the BBC from disclosing X's name and image or otherwise identifying him (paras. 81-83).

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Mr Justice Chamberlain's decision ultimately relied on 'closed' evidence (more on this below) which established that public disclosure of X's identity would: (a) expose him to "a real and immediate risk" of death or serious injury at the hands of others (paras. 59-65); (b) require putting in place "extensive protective measures" to protect X (paras. 66-68) which (bearing in mind the Attorney General's NCND stance) would "substantially undermine" the protective effect which disclosure of X's identity would have on women considering a relationship or liaison with X (para. 75).

The High Court decision was issued following hearings held after open court and 'closed' proceedings under the Justice and Security Act 2013, because of reliance on evidence involving national security matters. The BBC's interests in the closed material procedure were represented by security-cleared lawyers, known as Special Advocates. The Attorney General had previously unsuccessfully applied for the injunction hearing to be held wholly or substantially in private, without the press and public being present.

Responding to the judgment, the BBC emphasised in a public statement that it believed this story raised important matters of public interest, i.e., "the issues of coercive control of women, male abuse of power and the failure of state institutions to address these problems". However, the High Court decided that identifying X would present risks to his safety and national security, without the BBC fully knowing the reasons why. "This is due to the highly unusual fact that a significant proportion of the evidence in this case was heard in a closed hearing, which even the BBC as a party was not permitted to attend," the BBC stated.

Their announcement also added: "While we had Special Advocates representing our interests in those closed proceedings, we are not able to know anything about the secret hearing. The reasons the BBC is not able to identify X are largely in the closed judgment, which we cannot inspect. The secret procedures used in cases like this also constrain what the Judge is able to say about his decision in the public judgment. They are a significant departure from the principles of open and natural justice, as the Judge himself states."

The High Court will now consider further submissions on what secondary information precisely would tend to identify X, if disclosed by the BBC, before finalising the terms of the injunction order made. Once these restrictions are clarified, the BBC is expected to report the core elements of the story.

### *HMAG for E&W v BBC [2022] EWHC 826*

https://www.judiciary.uk/wp-content/uploads/2022/04/HMAG-v-BBC-judgment-070422.pdf

### *BBC Statement on Att General v BBC judgment*

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https://www.bbc.co.uk/mediacentre/statements/bbc-statement-on-judgement-attorney-general-v-bbc

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