

Investigation into the provision of false evidence to the High Court and the Investigatory Powers Tribunal in relation to Agent X

The Rt Hon Sir John Goldring

Deputy Investigatory Powers Commissioner

July 2026

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This report will be deposited in the House of Commons and House of Lords Libraries following a Written Ministerial Statement by the Home Secretary and in response to the Prime Ministerial Direction of 15 September 2025 to investigate the circumstances resulting in the provision of false evidence to both the High Court and the Investigatory Powers Tribunal in proceedings connected with Agent X.



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Letter to the Prime Minister

The Rt Hon Sir Keir Starmer KCB KC MP
Prime Minister
10 Downing Street
London
SW1A 2AA

8 July 2026

Dear Prime Minister,

I enclose the OPEN report of Sir John Goldring's investigation into the provision of false evidence to the High Court and Investigatory Powers Tribunal in relation to Agent X, which I endorse.

As you are aware, this investigation follows your Direction of 15 September 2025 pursuant to the judgments both of the Divisional Court (2 July 2025) and the Investigatory Powers Tribunal (30 July 2025). Those judgments found that MI5 had relied on false evidence, and thereby misled the courts, on the following occasions:

- (i) When seeking an injunction against the BBC in early 2022;
- (ii) In successfully seeking to 'Neither Confirm Nor Deny' ("NCND") the status of Agent X as a Covert Human Intelligence Source ("CHIS") in a claim brought by 'Beth' before the Investigatory Powers Tribunal ("IPT"); and,
- (iii) In resisting the judicial review initiated by 'Beth' of the IPT's decision allowing MI5 to maintain NCND in her claim.

The courts further found, and MI5 accepted, that I was also misled when MI5 relied on the same evidence to challenge findings made by my Inspectors. The courts requested a further independent investigation into these matters.

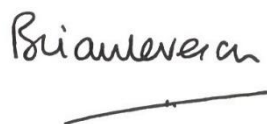
Sir John makes numerous serious findings, which will no doubt prove difficult reading for many. Given the imbalance between the resources available to the intelligence agencies and to IPCO, complete candour is fundamental to our independent oversight and, as Sir Ken McCallum readily acknowledged when he reported what had transpired to me, any case in which all those seeking to hold intelligence agencies to account are misled is of grave concern; this includes, but is not limited to, IPCO. I welcome the fact that Sir Ken and MI5 have already taken steps to seek to address the failings identified and prevent any recurrence.

IPCO's thorough independent investigation process is detailed at Annex A to the report. Preliminary matters, including document preservation requests and a limited waiver of legal professional privilege

for the purposes of the investigation, were addressed in August 2025 following the judgments of the courts. The first requests for information were sent promptly upon receipt of your Direction, on 17 September 2025. These requests continued until early 2026. Interviews with 36 individuals were conducted across four weeks in November and December 2025. Sir John's draft report was shared with MI5 and relevant individuals who faced potential criticism on 7 April 2026; responses were provided by 29 May. I am grateful to all those across Government (and to officials in IPCO) who have worked at great speed to enable this comprehensive report to be produced within this timescale.

On 6 July, I submitted a CLOSED report to the Government, the High Court and the IPT; it clearly contained details which, if made public, would impact adversely on national security or contravene the High Court's injunction in its current form. Following agreement with relevant agencies, this OPEN version of the report has now been security checked and contains appropriate redactions and gists. I look forward to receiving your direction to publish this version of Sir John's report very shortly.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Brian Leveson', with a horizontal line drawn underneath it.

The Rt Hon Sir Brian Leveson
The Investigatory Powers Commissioner

Dramatis personae and explanation of references

Dramatis personae

Reference in the report	Role at relevant time
DDS	Daniel De Simone, BBC journalist
BBC journalist	BBC journalist
DG	Sir Ken McCallum, MI5 Director General
Witness A	Deputy Director for the Regional Network
Witness B	Director General Strategy
Officer 1	Authorising Officer for Agent X in June 2020
Officer 2	MI5 Head of Communications in June 2020
Officer 3	MI5 Head of Communications in December 2021 Member of Oversight and IPCO Engagement team in 2023 – 2024
Officer 4	Case Controller for Agent X
Officer 5 (Legal)	MI5 lawyer (litigation)
Officer 6	Case Controller for an MI5 undercover officer
Officer 7 (Legal)	MI5 lawyer (operational)
Officer 8	Secondary Case Officer for Agent X
Officer 9	MI5 Officer

Reference in the report	Role at relevant time
Officer 10	Primary Case Officer for Agent X
Officer 11	Former MI5 Head of Communications
Officer 12 (Legal)	MI5 lawyer (litigation)
Officer 13	Member of Oversight and IPCO Engagement team
Officer 14	Senior Officer in Agent Running section
Officer 15	Authorising Officer for Agent X in December 2021
Officer 16	SIS Officer
Officer 17	Officer 4's line manager
Officer 18 (Legal)	MI5 lawyer (litigation)
Officer 19	Operational Security Advisor (not for Agent X)
Officer 20	Former MI5 Head of Communications
Officer 21	Senior Officer in Oversight and IPCO Engagement team
Officer 22 (Legal)	Former MI5 Legal Director
Officer 23	Operational Security Advisor for Agent X
Officer 24	Head of Counter-Terrorism Investigations
Officer 25	Case Officer for an MI5 asset
AL	GLD lawyer

Reference in the report	Role at relevant time
LW	GLD lawyer
OS KC	Leading counsel for MI5
NS KC	Leading counsel for MI5
JT	Counsel for MI5
ES	Counsel for MI5

In order to minimise any risk of identification (which could pose a national security risk), save where an individual's pronouns are already publicly known, all officers are referred to throughout as "they/ them".

Explanation of references

Document bundle	Footnote
IPCO Core Bundle 1 and 2	CB[1 or 2]/[tab]/[page]
IPCO IPT Bundle 1 and 2	IPT[1 or 2]/[tab]/[page]
IPCO Daniel De Simone Bundle	DDS/[tab]/[page]

All other references are self-explanatory.

Introduction

A short summary of my findings

1. Agent X became a covert human intelligence source (CHIS) for the Security Service (MI5) at some time before 2019. MI5 had some engagement with other agencies.
2. Daniel De Simone (DDS) was a BBC journalist in its home affairs team. He was investigating neo-Nazi extremism. In the summer of 2019, he began researching Agent X, among others. He found alarming material online. Agent X appeared to be an extremist of particular concern. DDS established Agent X's real identity.
3. Agent X had a relationship with a woman, for present purposes known as Beth. According to Beth, he seriously and persistently abused her. He told her that he worked for MI5. He claimed that made him untouchable.
4. DDS's investigations were intended to culminate in a programme. Agent X was among those who were to feature. On 5 June 2020 DDS emailed Agent X stating that in a broadcast the BBC planned to report that he was a dangerous neo-Nazi. The email gave Agent X the opportunity to respond to the allegations.
5. Agent X contacted MI5. The MI5 team managing Agent X believed that if the broadcast took place, Agent X's life would be in danger. They thought the only way to prevent the broadcast was for MI5 to contact DDS and explain that Agent X was not a real extremist, but was pretending to be so at the behest of MI5. In other words, they believed that, exceptionally, MI5 should depart from its longstanding principle of neither confirming nor denying (NCND) that someone is a CHIS. None of the several experienced MI5 case handlers to whom I spoke had ever known of declaring to a journalist that someone was an MI5 CHIS.
6. An MI5 legal advisor provided advice as to when it might be justified to depart from NCND. The advice was taken to amount to an authorisation. Authorisation was not sought from MI5's Director General (DG) or a Deputy Director General (DDG), as it should have been.

7. Officer 2 was the MI5 officer with responsibility for communications, including media engagement. He contacted DDS, whom he did not know. He had never spoken to him before. Unlike some other BBC journalists, he was not a trusted MI5 contact. In two telephone conversations on 8 and 9 June 2020, Officer 2 revealed Agent X was an MI5 agent. He did so from the outset of the first call. DDS made a contemporaneous note of the first call. He recorded the second. There were three further recorded calls between DDS and Officer 2. There were other calls which were not recorded. They spoke at some length on 10 and 11 June 2020. Officer 2 made no note of the outcome of any of the calls. That was contrary to policy and to clear guidance which not long before Officer 2 had been involved in drafting. In the further calls he revealed whether others in whom DDS was interested were, or were not, MI5 agents. In short, Officer 2 comprehensively departed from NCND. He did so in a detailed and wholly inappropriate way.
8. Officer 2 and DDS continued to exchange texts. DDS did not report on Agent X. DDS made it clear to Officer 2 that he did not accept that Agent X was pretending to be a Nazi. He also made it clear that he believed him to be a seriously violent and abusive person, with paedophilic tendencies.
9. Officer 4 was Agent X's case controller. He and Officer 2 spoke. Officer 4 understood that Officer 2 had departed from NCND. Officer 2 never produced a note of his conversations with DDS for the team managing Agent X's case. The team was required unequivocally to record in Agent X's case file that he had been identified as an MI5 CHIS to a journalist at the BBC. It made no such record. Despite the lack of an unequivocal note, on any objective reading, the contents of Agent X's case file contained cogent evidence which suggested that NCND had not been maintained. One contact note even suggested a meeting between Agent X and DDS.
10. DDS continued his investigation. On 6 December 2021 he emailed MI5. He offered MI5 the opportunity to respond to further allegations to be broadcast in December 2021. The allegations included that:
 - (1) Agent X was a dangerous extremist who had physically abused two women and threatened sexually to abuse children;
 - (2) his behaviour was overt and easily discoverable;
 - (3) MI5 must, or ought to have known about it; and
 - (4) Agent X should not have been used as an agent.

11. MI5 believed Agent X's life would be put in danger if the programme were to be broadcast. The Attorney General, acting on behalf of MI5, applied for an injunction seeking to prevent the damaging material being broadcast.
12. MI5 legal advisors, with the help of external counsel, did the necessary work in order to bring the injunction. Officer 3 had by now succeeded Officer 2 as head of communications. He played a pivotal role in providing instructions to the legal advisors. They did not speak to Officer 2 directly. Only Officer 3 spoke to him at this time. Officer 2 told Officer 3 he could not remember whether he had departed from NCND, but thought he had not. Officer 3 did not accurately report what Officer 2 had said. Instead of relaying the uncertainty expressed by Officer 2, he reported that NCND had not been breached.
13. Officer 3 also spoke to Officer 4 at the end of 2021 or the beginning of 2022. Officer 4 indicated NCND had not been maintained. Officer 3 did not give legal advisors this information. Officer 4 did not tell them directly.
14. MI5 legal advisors (and Officer 3) placed some reliance on Officer 15, who was Agent X's authorising officer in December 2021. They had been away in June 2020 and had had no involvement in these events. Officer 15 relied on their reading of Agent X's case file and their belief that Officer 2 had said NCND had not been departed from.
15. Relying on their instructions, the legal advisors, with the help of counsel, prepared an OPEN witness statement for the court proceedings. An MI5 officer, Witness A, was MI5's corporate witness. It was not a central feature in the choice of Witness A that he had been personally involved in June 2020.
16. Counsel understood that NCND had been maintained. They advised including a paragraph to that effect in Witness A's statement. MI5 legal advisors drafted paragraph 11. Counsel approved it. It falsely stated that in his conversations with DDS, Officer 2 had neither confirmed nor denied that Agent X was an MI5 CHIS. At the time neither the legal advisors nor Witness A thought that was contentious.
17. On 26 January 2022, Witness A's OPEN witness statement was filed. On 7 February 2022 Witness A made a further statement for the legal proceedings. For national security reasons it was CLOSED. To that statement he exhibited, among other things, Agent X's case file. The

case file could not be disclosed to the BBC. The court procedure provided for that material to be shown to 'special advocates', security-cleared lawyers who represented the BBC's interests. On reading Agent X's case file, the special advocates twice queried the basis upon which it was being suggested in paragraph 11 of the OPEN statement that NCND had not been departed from. On 17 February 2022, in order to respond to the special advocates' second set of questions, MI5's legal advisors held a meeting with Officer 2 and Witness A. Notes of what was said were taken. Officer 2 was now unequivocal in claiming he had not departed from NCND. Witness A said he remembered having conversations with Officers 4 and 1 in June 2020 (respectively Agent X's case officer and authorising officer), that NCND was the position that had been taken, and that he had a high degree of confidence in his witness statement, based in part on conversations in June 2020.

18. On 24 February 2022, on the basis of what was said at the meeting of 17 February 2022, in what amounted to a wholly misleading and flawed response, MI5 informed the special advocates that NCND had been maintained. The special advocates did not seek thereafter to argue that NCND had been departed from.
19. Officer 3 continued to say nothing about Officer 2's initially expressed uncertainty.
20. On 7 April 2022 the court granted MI5 an interim injunction. It was made permanent on 5 October 2022. The terms of the injunction permitted the BBC to report the essential allegations regarding Agent X's conduct, that he told Beth he worked for MI5 and abused that status, and that MI5 was at fault for using or continuing to use Agent X as an agent. Agent X could not be identified. MI5 maintained its claim of NCND.
21. In May 2022, Beth brought a claim before the Investigatory Powers Tribunal (IPT). She alleged that MI5 had failed to protect her; her human rights were accordingly breached.
22. The Investigatory Powers Commissioner's Office (IPCO) oversees MI5. At the material time Sir Brian Leveson was the Investigatory Powers Commissioner (IPC). In order to strengthen its case for an injunction, MI5 wished to rely on the fact that it was independently overseen by IPCO. Involving IPCO did not have the outcome MI5 had anticipated. Following an inspection of Agent X's case file, in February 2023 IPCO issued a highly critical draft report. Among other things, it set out the inspectors' belief that NCND had been departed from.

23. The IPCO report had to be disclosed in the IPT litigation. MI5's response to it was therefore important not only on its own terms, but for MI5's defence to Beth's claim. Officer 3 had by now moved to the MI5 department which liaised with IPCO. Again, he played a pivotal role, this time in responding to IPCO.
24. MI5 sent its first written response to IPCO on 13 October 2023. It denied NCND had been departed from. Sir Brian was not happy with it. In a letter of 5 December 2023, he maintained IPCO's view that NCND had been departed from. He gave MI5 seven days in which to respond with evidence to support its assertion that NCND was maintained.
25. On 7 December 2023 there was a meeting at MI5. Officers 3, 4 and 23 were present. Officer 23 was Agent X's Operational Security Advisor. Also present was Officer 13, a member of the department liaising with IPCO. NCND was discussed. Officer 4 made it "absolutely clear" that he and Officer 23 believed that NCND had not been maintained. He said that horse had bolted. Officer 3 made a "very unambiguous statement that it [departing from NCND] did not happen." He said he could "categorically state" that it did not happen. He misrepresented what Officer 2 had told him. Officer 4 felt as though he had been "put back in his box." Officer 3 continued to tell no-one of Officer 2's initial uncertainty. He told no-one what had been said to him.
26. On 13 December 2023 MI5 responded to IPCO. It relied on what was said in paragraph 11 of Witness A's OPEN statement. It continued to assert that NCND had not been departed from. On 20 December 2023 Witness A made a CLOSED statement in the IPT proceedings. The substance of MI5's response to IPCO was effectively relied upon.
27. On 9 May 2024 there was a hearing before the IPT. As possible support for her claim that Agent X had abused his CHIS status, Beth wanted MI5 to disclose whether or not Agent X was a CHIS. She was prepared for the disclosure to be made privately to her and her legal team. The IPT refused her application to order MI5 to make such a disclosure. In its judgment of 21 June 2024, the Tribunal, in strong terms, concluded that MI5 had maintained NCND throughout. Beth's application for MI5 to depart from NCND failed.
28. It was at that point that DDS decided he should correct the position. After some delay, on 18 November 2024 the BBC informed MI5 that far from maintaining NCND in respect of Agent X, Officer 2 had disclosed from the outset he was a CHIS. On 13 December 2024 representatives

of MI5 were shown DDS's contemporaneous note of the first call and heard the recording of the second.

29. On 12 February 2025 the court varied the injunction. The BBC was permitted to report that the assertion that NCND had not been departed from was false and to explain the circumstances in which that false statement was made. The court ordered MI5 and the Attorney General to explain how false evidence came to be deployed. It questioned whether MI5 should continue to be permitted publicly to maintain that it would neither confirm nor deny whether Agent X was in fact a CHIS. At this time the court and MI5 were not aware of the recordings of the third, fourth and fifth calls.
30. There was an internal investigation. There was also what was described in terms of an 'independent review' conducted by Sir Jonathan Jones KC.
31. As to Officer 2, the internal investigation concluded:
 - (1) he had failed to act with reasonable care;
 - (2) he should have made notes of the outcome of his conversations with DDS regarding Agent X;
 - (3) there was no evidence that he had deliberately misled anyone; and
 - (4) Officer 2 was genuine in saying he had forgotten he had departed from NCND.
32. As to Officer 3, the internal investigation concluded:
 - (1) he inadvertently overstated the position on NCND;
 - (2) the overstatement 'turned out' to have serious consequences for MI5; and
 - (3) in overstating the position, Officer 3 failed to act with reasonable care and competence.
33. Sir Jonathan did not dissent from the internal investigation's conclusions. He was satisfied there was no deliberate attempt by MI5 to mislead the court.
34. In the light of the investigation's conclusions and Sir Jonathan's review, DDS disclosed (among other things) the recordings of the further three calls in which Officer 2 had comprehensively departed from NCND in respect of other people. The internal investigators and Sir Jonathan produced supplementary reports. Their conclusions did not materially differ from what had previously been said.

35. On 23 May 2025 MI5 decided publicly to confirm that Agent X was in fact an MI5 CHIS.
36. On 3 June 2025 the case was before the Divisional Court. The court considered that so deficient were MI5's investigations and Sir Jonathan's review that it would be premature to reach any conclusions on whether to initiate proceedings for contempt of court in connection with MI5's deployment of the false evidence. It adjourned consideration of that question, pending a further investigation to be carried out under the auspices of the IPC.
37. On 10 July 2025 Beth's case was again before the IPT. In its judgment, the IPT raised several matters for the fresh investigation to consider. These were confirmed by the President in a letter of 30 July 2025 to Sir Brian Leveson.
38. On 15 September 2025 the Prime Minister exercised his power under section 230 of the Investigatory Powers Act 2016 to direct that:
"The Investigatory Powers Commissioner must investigate the circumstances resulting in the provision of false evidence to both the High Court and to the Investigatory Powers Tribunal in proceedings connected with Agent X, in accordance with the attached Terms of Reference."
39. The Terms of Reference provided, among other things:
"The investigation should consider the circumstances resulting in the provision of false evidence to both the High Court and to the Investigatory Powers Tribunal, including the degree of compliance with the duty of candour, in proceedings connected with Agent X."
40. I have carried out the investigation on behalf of the IPC. I should make clear that I was not involved with IPCO's inspection of Agent X's CHIS file in 2022, nor with the ensuing dispute.

A summary of my core conclusions

41. I have concluded:
- (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.

- (3) Officer 3 played a pivotal role in the injunction proceedings and, through his role in the IPCO response, the IPT proceedings. Officer 3 did not accurately report what Officer 2 had said. Instead of relaying the uncertainty expressed by Officer 2, he reported that NCND had not been breached. He did not disclose Officer 4's understanding that NCND had been departed from. On 7 December 2023 he 'shut down' Officer 4 when, in respect of NCND, he said that horse had bolted. He misrepresented what Officer 2 told him. He continued to say nothing about Officer 2's initial uncertainty. He did not subsequently disclose what he had been told. 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.
- (4) Witness A should have made it clear at the meeting on 17 February 2022 that his high degree of confidence that NCND had been maintained in June 2020 was in part based upon an assumption. He overstated the position. He contributed to MI5's continued reliance on the false account.
- (5) Officer 4 did not at any time inform MI5's legal advisors of his understanding that Officer 2 had departed from NCND. The handling team failed to make an unequivocal note on Agent X's case file making clear their understanding that NCND had been departed from. 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) Although there was no unequivocal note on Agent X's case file that NCND had been departed from, the file contained cogent evidence which suggested that it had been. 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. The obligations on Witness A under section 68(6) of the Regulation of Investigatory Powers Act 2000 (RIPA) were not explained to him. While there was good reason to believe Witness A and the officers understood the need to tell the complete truth and to disclose everything whether or not favourable to MI5, their duties should specifically have been explained to them.

42. Finally, I acknowledge that the Director General of MI5 has put in place a major programme of work under the leadership of the Director General Strategy to seek to address the failings which I and others have identified.

My Detailed Findings

Part One

The events in June 2020

The impact of Covid-19 in June 2020

43. By way of introduction, I should mention that June 2020 was within the acute period of the Covid-19 pandemic. That presented considerable challenges for MI5. Officers were having to work with significant restrictions. That created additional pressures on them. It is something I have borne in mind when considering what officers did or did not do.

MI5's Media Engagement Policy

The 'Security Service Media Engagement Policy' of March 2013

44. MI5 did not have a press office. It had a 'media liaison team'. Its purpose, as the 'Security Service Media Engagement Policy' of March 2013¹ put it:
- “... [was] to keep pace with the growing expectation of transparency of public bodies...”
45. Paragraph 12 stated:
- “All interactions with the media are governed by the following principles:
- the Service does not comment about its operational/investigative activities ...
 - we maintain the principle of neither confirming nor denying (NCND) Service involvement in alleged operations or other alleged intelligence matters ...”
46. Paragraphs 13 and 14 stated:
- “13. The NCND principle is a long-standing and important principle. However, there may be a small number of cases following consultation with operational sections, [Legal Advisors] ...and DG [Director General], where... [the officer in charge of communications] may make clear to a journalist that a story s/he proposes to run will cause damage to national security, if we judge there is a realistic prospect of the story

¹ CB1/4

being dropped entirely or edited to remove damaging details. Alternatively, DG may raise the matter with the editor.

14. There may be very exceptional cases where the public interest in preserving NCND is outweighed by the public interest in making a statement. Save in cases of urgency, NCND will be preserved unless and until a departure has been agreed between officials and cleared with Ministers.”

47. Paragraph 25 provided:

“In line with the recommendations of the Leveson [Press] inquiry, the Service takes a number of steps to maintain the integrity of our engagement with the media:

- ...
- contacts with the media (dates, venues, topics of questions and replies given) are written up in notes copied to senior management, ... [Legal Advisors] and filed on ...[an MI5 computer system] ...”

The ‘MI5 Media Engagement Policy’ of May 2019

48. The media policy was updated in May 2019² following agreement between Officer 22 (Legal) and Officer 2. Officer 22 (Legal) had been MI5’s legal director and at the time continued to work on a part-time basis. Officer 2 was in charge of the office dealing with MI5’s internal and external communications.

49. Paragraph 13 of the updated policy provided:

“The NCND principle is a long-standing and important principle. However, there are two situations in which [the communications officer] may depart from it in their dealings with media contacts. The first is where a contact is proposing to run a story that will cause damage to national security. In those circumstances, [the officer] may make clear to the contact that the story will cause damage, if there is judged to be a realistic prospect this will result in the story being dropped entirely or edited to remove the sensitive details. Alternatively, DG may raise the matter with the editor. The second situation applies where MI5 is aware of information (whether already in

² CB1/4/65-79

the public domain or derived from its own sources) that relates to a Subject of Interest [SOI] and the wider publication of the information would be beneficial to national security. In this situation, [the officer] may point out or disclose the information to a media contact if it is assessed (i) that the information is reliable and true and (ii) that doing so will reduce the national security threat posed by the SOI ... In both situations, [the officer] will depart from NCND only after careful consultation with investigative/operational colleagues and... [Legal Advisors] and on the express authority of DG or one of the DDGs [Deputy Directors General] ... [The officer] will also make a full written record of what is disclosed, to whom, for what purpose and on whose authority."

50. There is a side note that paragraph 13 was "amended [in] April 2019 following conversation with... [Officer 2] about the requirement for [the communications office] in appropriate cases to be able to disclose info about SOIs to media contacts."
51. Paragraph 14 was unaltered.
52. Paragraph 25 of the updated policy provided:

"[The communications office should] write up all contacts with media (dates, venues, topics of questions and replies ...), file the write-up to the corporate record and copy it where appropriate to senior management ..."
53. A footnote (from an MI5 lawyer) stated that the write-up will be "Either in a Decision document or on the Contacts Log, as appropriate."³

The background to the updated policy

54. On 3 April 2019 an officer in the communications office emailed⁴ Officer 2 and another officer, setting out:

"...a possible first step towards a less burdensome call/meeting write-up process... It might be that we use it to at least record all calls/meetings and then more

³ CB1/4/77

⁴ CB1/5/87

substantively write up those which need more detail. Hopefully a quick and easy way of doing the former and it might be useful having it all in one place ...”

55. The process envisaged involved the keeping of a ‘media contact log’. It was implicit in the suggestion of change that conversations with journalists were recorded.
56. On 4 April 2019 Officer 2 sent Officer 22 (Legal) a copy of the proposed log⁵, stating:

“Would you be able to take a look at the attached when you get a chance? I’ve had some concerns for some time that we’re not able to stay on top of the write-ups of our calls with journalists, given the increasing volume of them over the past few years. Would this log be an acceptable way of recording our telcons with journalists?”
57. On 11 April 2019 Officer 22 (Legal) responded⁶:

“From a legal and reputational perspective, the ideal is for all contacts with journos to be fully written up in order so that we can convincingly rebut later claims or allegations about what was said. Full write-ups were introduced some years ago after one of your predecessors had to give evidence at SIAC to rebut a claim from a journalist ... At that time there was no written record on which your predecessor could rely to defeat the [journalist’s] allegation. Clearly, the defensive value of a log will be significantly lower than that of a full write-up. That said, there must be a trade-off between the time [the communications officers] spend working your relationships and the time spent recording contacts afterwards; and if [the communications officers] are unable to keep on top of write-ups, then there must be a case for reviewing the system. That being so I’d be happy to explore with you whether there’s scope to adopt a middle course, where the log is used for a proportion or even the majority of contacts, on the basis that they are routine and unlikely to be pored over forensically later, but a full write-up will continue to be required for all other contacts. If this appeals as a way forward, I suggest we sit down and try to work out criteria for determining when a full write-up is appropriate and when a log entry will suffice.

⁵ *Ibid.*

⁶ CB1/5/83-87

Given the potential importance of this topic, and the need for [Private Office] to be happy with any changes we might agree, I've mentioned the matter to [the Legal Director] ...who supports what I have said above."

58. On 16 May 2019 Officer 22 (Legal) and Officer 2 met. Officer 22 (Legal) set out their conclusions in an email⁷ later that day:

"We agreed that there's no means of exhaustively identifying the types of contact that merit full recording (rather than noting in a log) and so an element of judgment will be needed. However, you propose that full recording should continue of all [communications office] face-to-face meetings with media contacts, and of any phone calls in which a topic is mentioned that is potentially sensitive in legal, political, reputational or intelligence terms. In this connection, you intend that [the communications office] will record all calls in which the contact:

- Asks about a human source;
- Indicates that they have had access to classified information;
- Indicates that any person is involved in criminality; or
- Indicates a possible threat to an individual.

There may be other calls in which [the communications office] give a nuanced or carefully worded answer to a question on a difficult or controversial topic, in which [case] it will be sensible to record the call fully. This is where the inevitable element of judgment comes in.

As for the media log, you envisage this being used to record in summary terms calls which appear to carry a low risk of creating difficulty ...

If I've recorded our conversation accurately, and subject to any comments [legal advisors] ...may have, I suggest... [the communications office] start using the log on the basis outlined above and we review after, say, 3 months whether the new system is striking a better balance between risk and advantage than the present one."

⁷ CB1/5/83

59. Officer 2 responded that this was “really helpful.”⁸ Legal advisors also agreed to the arrangement.⁹

60. On 19 December 2019 Officer 22 (Legal) emailed¹⁰ Officer 2:

“When the media contact log launched in May I suggested a review after some months to see if it was striking a better balance between risk and advantage than the previous system of full write-ups. I’ve just had a look at the log, which is clearly well used and certainly seems to be capturing salient points. I’m not sure a formal review is required, but if you have any remaining (or new) concerns about the recording of conversations with the media, perhaps we could pick these up in the New Year?

It would in any event be useful for... [the legal advisors] to understand roughly what proportion of calls are being written up in full (old style) on the basis agreed below, i.e. calls in which the contact:

- Asks about a human source;
- Indicates that they have had access to classified information;
- Indicates that any person is involved in criminality; or
- Indicates a possible threat to an individual.

I imagine such calls remain quite rare?”

61. Officer 2 explained to me¹¹ how the amended media guidance came about. He said, “We collectively had concerns that, bearing in mind when this role was originally created... there was one person talking to a very, very small number of journalists. [By this time]... the policy wasn’t reflecting... reality.” He said he brought in the amendment to paragraph 13 of the policy relating to subjects of interest, as “we had slightly more latitude.”

62. He said making notes was important. The present case, he agreed, fitted into the first three bullet points. I note in passing that it may also satisfy the fourth bullet point.

⁸ CB1/5/83

⁹ CB1/5/81-83

¹⁰ *Ibid.*

¹¹ IPCO interview/Officer 2/8-9 December 2025

63. Officer 22 (Legal) said¹² the expectation was that the communications office was working to the arrangement agreed between Officer 22 (Legal) and Officer 2, and reflected in the updated Policy. Officer 2 agreed that was the case. He agreed he should have been applying the policy in June 2020.

What I was told about departing from NCND

64. Most of those from whom I heard were unaware of any written guidance about departing from NCND. However, everyone was aware of the need to obtain authority to depart from NCND at a very high level.
65. The expectation of Officer 22 (Legal) was that authorisation would be required “really high up... the head of communications is already in the senior management group so you need someone sufficiently senior” with a “cross-Whitehall perspective.”¹³
66. Officer 18 (Legal), who was the senior MI5 lawyer who dealt with the BBC litigation until July 2022, said they would expect authority to depart from NCND to come from a very high level: DG or Private Office.¹⁴
67. Officer 20 was in charge of the communications office for approximately three years. They thought they might have had an involvement in the re-draft of the media guidance. They said disclosing a CHIS would be one of the most significant things MI5 would do, “hugely significant”. If disclosure were contemplated, it would go to very senior levels. If they had been involved, it would have gone up to the DG. They would expect a note to be taken. If they had significant conversations, they would normally have another member of the team with them. Quite often, they would have someone to take notes.¹⁵

¹² IPCO interview/Officer 22/19 November 2025

¹³ *Ibid.*

¹⁴ IPCO interview/Officer 18(Legal)/16 December 2025

¹⁵ IPCO interview/Officer 20/11 December 2025

68. Officer 11 had formerly been in charge of the communications office. They said authorisation to declare would have to be sought at a minimum from a DDG, more likely from the DG.¹⁶
69. Officer 12 (Legal), who was the senior MI5 lawyer in the IPT litigation, would have expected a possible departure from NCND to be run past someone “very senior and probably Private Office level [DG or DDG].”¹⁷
70. The DG told me he would have hoped that those departing from NCND would know that authorisation at a high level should be obtained.¹⁸

Other relevant comments

71. Officer 3 (who succeeded Officer 2) said he was not aware of the Media Engagement Policy.¹⁹ He became aware of the log when he took over from Officer 2.
72. Officer 24 was in charge of the communications office for about three and a half years. He thought he might have had input into the March 2013 policy. He said the idea was to have a trusting relationship with a journalist. It was “absolutely basic” that a note should be taken as soon as possible after a conversation.²⁰

When the updated Media Engagement Policy first surfaced

73. MI5’s media guidance as reflected by the updated Media Engagement Policy first surfaced in response to a policy search requested by Officer 12 (Legal) following DDS’s revelations in December 2024. No-one with responsibility for either the BBC or IPT litigation thought it relevant until then, or appeared to be aware of it. Prior to that point, only policies relating to CHIS or to the protection of vulnerable individuals had been requested or identified as relevant. As I have concluded below, a search for documentation which might address note-

¹⁶ IPCO interview/Officer 11/9 December 2025

¹⁷ IPCO interview/Officer 12 (Legal)/10 December 2025

¹⁸ IPCO interview/DG/15 December 2025

¹⁹ IPCO interview/Officer 3/12 December 2025

²⁰ IPCO interview/Officer 24/24 November 2025

taking in conversations with journalists would have been prudent before responding to the special advocates with an unequivocal assertion that none existed.

74. Officer 2 knew about it. He had been involved in drafting it. In any event, it was axiomatic that notes should have been taken of any conversation with a journalist about a CHIS or an alleged CHIS.

‘The NCND Principle and its Application (Official Guidance)’

75. In addition to MI5’s media guidance, a document entitled ‘The NCND Principle and its Application (Official Guidance)’ was issued in June 2012.²¹ It was reissued in July 2019 (and has since been re-issued). Its source is not clear. It adds little in the present context to the updated Media Engagement Policy. Paragraphs 24-28 concern “Justified departures from NCND.” Paragraph 28 provides that:

“In ... cases where the departure from NCND is justified in the overall public interest ... the Agencies will in deciding not to apply NCND exercise their independent judgement, consulting externally where this is appropriate in a particular case.”

76. Albeit this guidance adds very little in the present context, and much of it is simply a repetition of the case law and/or will be found in MI5’s damage assessments that are routinely provided to the special advocates, the failure to disclose it reflects a lack of knowledge within MI5 regarding it, and a failure to seek out possibly relevant documents before December 2024.

The Cabinet Office ‘Guidance Note on NCND principle’

77. In October 2017 there appears to have been promulgated a Cabinet Office ‘Guidance Note on NCND principle.’²² Its status and applicability are not clear. It is a high-level document. Paragraph 14 requires that an agency “considering a departure from NCND” should in “all instances” [original emphasis] inform “relevant Whitehall colleagues.” It envisages wide consultation. The Guidance was not widely known about. Its contents are inconsistent with

²¹ CB1/54/659

²² CB1/3/53-63

the media guidance. In the opinion of Officer 22 (Legal)²³ (MI5's former legal director) the guidance was wholly disproportionate to the present situation. I agree. It seems likely this was, at most, a Cabinet Office policy for central government and was not a policy which governed MI5 departures. That said, a search for possibly relevant documentation before December 2024 would have located this guidance.

Officer 2's background and his work in the communications office

78. Officer 2 had worked for MI5 for many years. He had extensive experience as an agent runner, among other roles. In his role before he took charge of the communications office, he was, as the DG described him to me, a very capable officer. He left the communications office in 2021 for a significant new role within MI5.
79. Officer 2 said he was responsible for both internal and external communications. He had no formal training for the role. The advent of the Covid-19 pandemic resulted in a very substantial increase in his workload. The requirement for internal communications required the production of a new platform. He said demand burgeoned because people could not come into the office. He described the pressure on him and his team as extreme. Some of the team worked part-time, some could not come into the office. He could not come in on Fridays. He and a few others were also responsible for external communications. He said there was additional pressure on him because of his concerns about his wife's health which he explained in detail.
80. The pressure upon the communications office and Officer 2 was highlighted by two of the members of the team when interviewed in the internal investigation.
81. One member of the team (who referred to Officer 2 as the best manager they ever had at MI5), spoke of their impression of Officer 2's level of work and stress being "ridiculous." The pandemic had caught out MI5. The communications office was in the "eye of a storm." Officer 2 had not spoken to them about his conversations with DDS. At the time of the calls, he had been "fraught."²⁴

²³ IPCO interview/Officer 22/11 November 2025

²⁴ Internal investigation interview/MI5 Officer/13 February 2025

82. Another member of the team spoke of Officer 2 being hard-working and keeping up morale at the time of Covid-19. The workload for the internal communications team was “pretty insane.” The level of work and stress was “very high.”²⁵
83. I shall return to these topics when I consider the psychiatric evidence submitted on behalf of Officer 2.

The “right of reply” email of Friday 5 June 2020

84. On Friday 5 June 2020, Agent X received an email²⁶ from Daniel De Simone. It was sent to him by name and to his personal email address. It stated:
- “I am writing to you on behalf of [the] BBC... to offer you the opportunity to respond to a number of points raised by our research into you and your activities for a programme which is due to be broadcast....
- In our coverage... we plan to report the following,
- You are a dangerous neo-Nazi who has been involved with extremist and terrorist groups, and that you promote your violent ideology online...”
- A response was needed urgently.
85. It set out in apparently credible detail the evidence relied upon to support the allegation Agent X was a Nazi. The email did not mention Beth. DDS told me he and Beth had not long been in contact, although he knew of her complaints about Agent X’s abusive and coercive conduct, and that he felt untouchable because he worked for the British Government.²⁷
86. Agent X contacted his MI5 handling team. The team was based at a regional office. As material, it consisted of Officer 4, who was a controller for the region and Agent X’s case controller, Officer 23, the acting Operational Security Advisor, Officer 10, Agent X’s case handler and Officer 1, as acting authorising officer. Officer 1 was filling in for Officer 15, who was away and had been seriously ill.

²⁵ Internal investigation interview/ MI5 Officer/20 February 2025

²⁶ CB1/0/1-4

²⁷ IPCO interview/DDS/28 November 2025

The response of Agent X's handling team to the right of reply email

87. The handling team was extremely concerned. Officer 23 spoke²⁸ of panic and alarm. DDS had apparently identified by name an MI5 CHIS whose conduct and identity (although not his role as an MI5 CHIS) he was very shortly to reveal. If he did, the life of the CHIS would be in danger. Something urgently needed to be done. Officer 4 arranged for Officers 23, 10 and 1 to meet in the office the next day, 6 June 2020 (although it is not clear whether Officer 1 attended). They reached the decision reflected in an email²⁹ Officer 23 sent to Officer 1 at 13:09 and entitled "... [Agent X]- Summary of Allegations and Risk Assessment." Having set out the background and the allegations, Officer 23 stated:

"...

Risk Assessment

Risks to CHIS

[Agent X] has been identified by the BBC as a member of neo-Nazi groups... [Agent X] only pursued membership of these groups and purported to support this ideology as a result of tasking and direction by MI5... and has provided intelligence of value... The BBC have also identified [Agent X's] ...real name, ...a recognisable personal photograph... and his personal email address. If the [programme] is aired as proposed by BBC... and contains all of the identifying detail, this could present physical and reputational risk to [Agent X], his family, his employers and [others]..."

88. There was reference to the "Reputational Risk to MI5."

89. The "Recommendations" were:

"Whilst we need to take advice from... [legal advisors, the communications office] and SMG [senior management group], the option that best mitigates the outlined risks, would be to make a discreet approach to our confidential contacts at BBC, declare [Agent X]'s... role as CHIS and request that they remove any detail from the [programme] that could lead to the identification of [Agent X]... This would include his real name, his personal email address..., one of his online aliases, [and] the personal

²⁸ IPCO interview/Officer 23/17 November 2025

²⁹ CB1/6/95-99

photograph of [Agent X]... [MI5] would then formulate... [a] plan for [Agent X]... that best protects his role as a CHIS, as well as his physical safety and the reputation of MI5... with a view to the ultimate cancellation of his CHIS role.”

90. Later that day, Officer 4 forwarded the email³⁰ to, among others, Officer 2 and one of MI5’s legal advisors, Officer 7 (Legal). Officer 4 wrote:

“Please see below an [Operational Security Advisor] assessment... of potential myriad risk [sic] emanating from a scheduled BBC [programme] concerning extreme right-wing activity... We’re looking to meet on Monday morning to discuss.”

91. Officer 2 told me that at that point MI5 thought the BBC believed Agent X was a real Nazi, not a CHIS. The task was to disabuse them of that belief and make sure they did not publicly identify him. As to the suggestion in Officer 23’s email that Agent X would have to be disclosed as a CHIS, Officer 2 said that most of his conversations with journalists involved him dancing around a specific point. Often, because of a relationship or deference, they might seek to step away from reporting if he indicated it might cause a problem.³¹

92. The next day Officer 4 telephoned Officer 2. Officer 4 imagined he did so to ask him to go to the office on Monday.³²

Events during the week beginning Monday 8 June 2020

Monday 8 June 2020

93. Officer 10 had discussed the allegations with Agent X. At 09:23 Officer 10 sent an email to Officer 2, among others, in which they described Agent X as upset and denying the allegations. Officer 10 arranged to speak to Agent X that day.³³

³⁰ CB1/5/93-95

³¹ IPCO interview/Officer 2/8-9 December 2025

³² CB2/A

³³ CB1/6/91

The meeting and the decision reached

94. A meeting took place on the morning of 8 June 2020. The participants in the regional office took part remotely. Officer 2 and Officer 7 (Legal) were at Thames House (although Officer 7 (Legal) said they could not recall if they were at the meeting). They discussed how to avert what Officer 4 described as a “catastrophic disaster.”³⁴ They ran through the background, using the right of reply email as a template. Officer 23’s recollection³⁵ was they discussed trying not to disclose Agent X’s role as a CHIS, but that Officer 2 thought that because MI5 was reaching out to the BBC rather than reacting, they might need to disclose him as a CHIS and would need to take legal advice. Officer 2 said³⁶ he did not recall specific meetings, but he was having what felt like a number of conversations with Officers 4 and 1. He said he thought he had contacted Officer 7 (Legal) because of a concern that MI5 contacting the journalist directly (in response to an email sent to Agent X) would make the position obvious. Officer 2 said it was important to him to obtain advice from a lawyer on disclosure of CHIS identity. He told the internal investigation that the handling team had left it to him as to how far to go. He would have been conscious that if he went into the call making a big fuss over one individual, the journalist would draw his own conclusions about what that meant. He “therefore sought legal advice in order to cover himself in the event he disclosed CHIS identity.”³⁷
95. Officer 10 summarised the position in a “security” note³⁸ referring to 8 June 2020 which they made in Agent X’s “Case Record...Decisions Log”:
- “1. In light of the forthcoming [programme] that the BBC plan to air about... [Agent X], [the handling team] agreed that we should approach the BBC in order to reveal the MI5 link to... [Agent X] and to request that they remove... [Agent X] from the [programme]. This was discussed with... [Officer 2], who subsequently approached the BBC in order to begin this conversation. Although we would never want to reveal the identity of a CHIS to the BBC, it was agreed that in this case there was no

³⁴ IPCO interview/Officer 4/18 November 2025

³⁵ IPCO interview/Officer 23/17 November 2025

³⁶ IPCO interview/Officer 2/8-9 December 2025

³⁷ Internal investigation (first) interview/Officer 2/17 January 2025

³⁸ CB1/38/423

alternative as the consequences for... [Agent X] should the [programme] have been broadcast would have been huge...

2. This matter was discussed with [an overseas organisation] ...and... [Agent X] himself on 8 June 2020. [Agent X] confirmed that [he was] content for the declaration to be made to the BBC in an effort to have [Agent X] removed from the [programme].”

96. Officer 23 said they thought it was key first to contact Agent X and the overseas organisation. As will shortly become apparent, Officer 2 in fact declared Agent X to the BBC before his agreement had been sought and obtained.

97. Officer 7 (Legal) provided detailed legal advice on departing from NCND. They set it out in an email³⁹ sent at 11:30 on 8 June 2020 to Officers 4, 10 and 23, and copied, among others, to Officer 2. It stated:

“The Covert Human Intelligence Sources Revised Code of Practice (August 2018) provides guidance on the protection of CHIS identity in line with RIPA [Regulation of Investigatory Powers Act 2000] (which sets out at 29(5)(e) that records maintained by the relevant investigating authority that disclose the identity of the source will not be available to persons except to the extent that there is a need for access to be made available to those persons).

The Codes set out at 8.22 onwards that organisations have a responsibility to protect the identity of individuals working as CHIS, and others who may be affected by the disclosure of the CHIS’s identity. Exposing their identity, even long after their deployment has concluded, may cause risk not only to them but may cause risk to other individuals associated with the role they performed or be harmful to the future sustainability of the CHIS tactic. The Codes also set out that organisations using CHIS should attempt to protect the identities of CHIS by all reasonable and lawful means possible and where appropriate by neither confirming nor denying the existence or identity of the CHIS.

³⁹ CB1/6/89-91

In rare cases, although the disclosure that is contemplated would involve some risk of damage to national security, it may be justifiable to depart from NCND [original emphasis]. However, this should only be done in exceptional circumstances. Departure from NCND should only be undertaken on a principled basis and when there is some sufficiently compelling countervailing public interest to justify this and the departure, on balance, serves rather than damages the public interest. This will involve a balancing of the competing public interests. [original emphasis]

Clearly, the precise context in which the disclosure is made will have a significant effect on the degree of damage to national security resulting from the disclosure and hence will have an important bearing on how extensive the departure from NCND actually is. What is anticipated here is that it will be an extremely limited disclosure to trusted MI5 contacts within the BBC with a view to protecting [Agent X]'s...identity and MI5 tasked actions from being exposed.... [original emphasis]

The Codes also provide guidance that any public authority deploying a CHIS should take into account the safety and welfare of that CHIS when carrying out actions in relation to an authorisation, and to determine the risk to the CHIS of any tasking and the likely consequences should the role of the CHIS become known. Consideration should also be given to the management of any requirement to disclose information which could risk revealing the identity of a CHIS. For example this could be by means of disclosure to a court or tribunal or any other circumstances where disclosure of information may be required, and strategies for minimising the risks to the CHIS or others should be put in place. [original emphasis]

When balancing the competing public interests, you may want to take into account matters such as;

- the likely personal consequences to... [Agent X], and our ability to maintain his safety and welfare in light of the [programme].
- the likely NS [national security] damage to MI5 corporately should he self-expose his role as CHIS and tasked actions, and any NCND response to this
- ...

You will want to consider all of the above in the round when determining the next steps to take. Happy to discuss further as needed."

98. Officer 7 (Legal) said they had never before advised on the possible disclosure of a CHIS to a journalist. In order to give the advice, they typed 'NCND' into the system and "a bunch of notes would have been returned." They "lifted" the relevant parts. What they had in mind was disclosure to those in the BBC with whom the communications office had "pre-existing relationships." They did not know of the updated Media Engagement Policy. The NCND guidance which they found did not refer to it. They were giving advice, not providing authorisation to depart from NCND. They said if there were policies governing authorisation, that was for their "clients" to implement (meaning the handling team).⁴⁰
99. Officer 22 (Legal) (the former MI5 legal director) said they would have gone one step further in the advice, adding that the decision to depart is "not ultimately for you... but you should be forming a view and making a recommendation to senior management", one of the DDGs at the very least, if not the DG.⁴¹
100. Officer 4 said he took the advice as saying they could depart from NCND. He said he needed a lawyer and the communications office.⁴²
101. Officer 2 said he did not know the extent to which he gave thought to the authority to depart: "I think we may have all collectively seen this legal advice... [as] a kind of green light." He did not think, despite being relatively familiar with the updated Media Engagement Policy, it was "in [his] head that [he] must go into [DG or others] ... to get approval for this." He suspected that, with respect to the later disclosures regarding other assets, he was working on the basis that the original authorisation (as he regarded it) was extant. He said he "absolutely" agreed with the case officers that it was important to remove Agent X from the programme both for safety and to enable Agent X to carry out his work: it was reasonable to consider the test met.⁴³

⁴⁰ IPCO interview/Officer 7 (Legal)/25 November 2025

⁴¹ IPCO interview/Officer 22 (Legal)/19 November 2025

⁴² IPCO interview/Officer 4/18 November 2025

⁴³ IPCO interview/Officer 2/8-9 December 2025

Was proper authorisation to depart from NCND obtained?

102. In my view, proper authorisation to depart from NCND was not obtained. The advice of Officer 7 (Legal) was not authorisation. Paragraph 13 of the updated Media Engagement Policy (which Officer 2 had played a part in drafting) made it clear that authorisation should have been obtained from at least DDG level. The updated Media Engagement Policy apart, Officer 2 should have known that authorisation from Private Office was required.
103. Officer 2's explanation that he would have had in mind Officer 7's (Legal) advice in departing from NCND in other cases is plainly misconceived. The advice solely related to Agent X. It provided no conceivable authorisation in respect of anyone else. The evidence does not suggest he regarded the legal advice he then had as amounting to authority to depart from NCND in cases other than that of Agent X.
104. The handling team similarly appears to have believed authority to depart from NCND had been properly obtained.

The first phone call between DDS and Officer 2

105. At 08:21 on Monday 8 June 2020, Officer 2 sent a message to a BBC journalist whom he knew and trusted, asking for a "chat." Whether or not they spoke, Officer 2 did at some stage speak to a second trusted BBC journalist. That person recalled a conversation with Officer 2 in June 2020 in which Officer 2 asked him about DDS and mentioned an agent. Something, he said, appeared to be nagging Officer 2 about the nature of DDS's story.⁴⁴ It was most unusual for a press officer (as he described Officer 2) to discuss another reporter or their story. As I set out below, on 28 July 2020 the second journalist met Officer 2 when they discussed DDS.
106. Officer 2 told the internal investigation he was "not wild on the idea [of a call] because he did not know DDS and because Officer 4 had made it clear it would be a tricky subject."⁴⁵

⁴⁴ IPCO interview/BBC journalist/16 December 2025

⁴⁵ Internal investigation (first) interview/Officer 2/17 January 2025

107. At 12:22 Officer 2 indicated in a text message to a colleague he would telephone DDS “in an hour or so.”⁴⁶ DDS thought the first call took place at about the middle of the day.

108. DDS’s contemporaneous note⁴⁷ records Officer 2 as revealing from the outset that Agent X was an MI5 CHIS:

“What I’m about to tell you would ordin [sic] be illegal-I’ve been authorised to tell you by [illegible]

‘One person is doing it on our behalf’- [Agent X named]

We recruit as agents people who can fit in...

He’s been asked to be [a member of an extreme right-wing group] by MI5...

Agents not authorised to commit crimes, unless needed for national security reasons...

...[Officer 2] will speak to case handler to see if we can all get on the phone

Asks me to email him the alleged acts of violence”

109. At paragraph 24a of his third witness statement for the High Court proceedings DDS said:

“The information about [Agent] X being a CHIS was volunteered...by MI5, not in response to a query...about whether [Agent] X was a CHIS (which was not a question...asked...), but as a positive disclosure after MI5 called my phone.”⁴⁸

110. At paragraph 12b of his fourth witness statement DDS said that Officer 2 “simply called me up and immediately told me that [Agent] X was a CHIS. I did not know he was about to do so.”⁴⁹

111. DDS told me Officer 2 called, gave his name, said he was “comms” for MI5, then very quickly got into why he was calling. DDS had not written to MI5. The only reason for the call could be Agent X. DDS said it is hard to know how it was that Officer 2 would have called him for a conversation about not including Agent X in the programme, without breaching NCND. MI5 would have to explain how, if he was not a CHIS, days after Agent X had received DDS’s email,

⁴⁶ CB2/A

⁴⁷ CB1/7/101-105

⁴⁸ *HMAG v BBC* – Bundle for Hearing on 12 February 2025, tab 2

⁴⁹ *HMAG v BBC* – Bundle for Hearing on 3 June 2025, tab 19

MI5 was responding on his behalf. DDS said he then thought there might be something in what Beth had been telling him.⁵⁰

112. While there may conceivably be other ways in which MI5 could have become aware of DDS's story and contacted him, the obvious conclusion in the circumstances was the one DDS reached. Within one working day of DDS having emailed Agent X, MI5 contacted DDS. Officer 2 would have had to provide an extremely convincing explanation to dispel the obvious, and correct, conclusion that Agent X was a CHIS.
113. In paragraph 20 of his third witness statement DDS disputed a suggestion being advanced by MI5 that the calls were confidential. He said:

“There was no suggestion in the calls, or any agreement between me and the [MI5] representative, that the discussion would be confidential, save that I asked that [Agent] X not be informed of details I provided to the representative... I was clear in the calls that I would need to have internal editorial discussions about the content of our conversations... neither [Witness A] nor the Attorney General made any suggestion that the conversations were confidential.”⁵¹
114. Officer 2 said that when he was first shown DDS's record of the first call, he was surprised that on the face of it there was almost immediate disclosure. Nothing was noted regarding the terms of disclosure or that what was being disclosed was confidential or off the record. Officer 2 said it was “extremely likely” he would have set out parameters before disclosing. It was likely to have been done in the first conversation.⁵²
115. It is striking that in none of the four recorded conversations is there any indication from Officer 2 that what he was saying was confidential or off the record. While I accept that had he laid down such terms, they would primarily have featured in the first conversation, it does seem probable there would have been at least some subsequent reference to it. It seems to me, as DDS said in his witness statements and to me, that Officer 2 said nothing about the terms of the conversation. After a short introduction he immediately disclosed that Agent X

⁵⁰ IPCO interview/DDS/28 November 2025

⁵¹ *HMAG v BBC* – Bundle for Hearing on 12 February 2025, tab 2

⁵² IPCO interview/Officer 2/8-9 December 2025

was an MI5 CHIS. He may well have assumed it would be clear to DDS that he was making confidential or off the record disclosures.

116. I also observe that Officer 2's immediate disclosure of Agent X as a CHIS is powerful evidence that, as Officer 23 envisaged in their email of 6 June 2020,⁵³ persuading DDS to exclude Agent X from the programme was very difficult without from the outset disclosing he was an MI5 CHIS, not a neo-Nazi.
117. During the first call, DDS provided Officer 2 with his Gmail address. Officer 2 must have noted it. He created DDS as a contact on his phone at 16:01. At 16:17 DDS sent Officer 2 an email.⁵⁴ DDS thought the email was sent some hours after the call. It stated:
- “As discussed ... [Agent X] was and is the subject of allegations of violence and fraud involving a... female. The alleged violence extends up to attempted murder. He is alleged to have engaged in domestic abuse and sexual violence, expressed paedophilic tendencies, and caused serious mental harm to people in his life...
...There is other context I can mention on the phone.”
118. DDS told me that during the third call, Officer 2 pretended for some time to be trying to locate this email. He claimed he had not had it. DDS only realised he had received it when he read the internal investigation.⁵⁵

Officer 10's contact with Agent X

119. Officer 10 (Agent X's case handler) spoke to Agent X again. Their note stated:
- “...
- Telephone call with... [Agent X] to continue discussions around [BBC] allegations;
- [Agent X] content for us to approach BBC to try and get him removed from the [programme]...
... I told [Agent X] ...that we were proposing to intervene with the BBC in order to try to get his name removed from the [programme]. I said that I could not yet promise

⁵³ CB1/6/95-99

⁵⁴ CB1/8/107

⁵⁵ IPCO interview/DDS/28 November 2025

that this would be successful, but I was hopeful that it would be. However, I noted for [Agent X] ...that we could not do this without briefing a small number of senior trusted contacts in the BBC about his links to MI5. I said that I wanted [Agent X's] ... permission in order to do this... [Agent X] agreed for us to do it without hesitation, noting that intervening with the BBC was definitely the lesser of two evils. I told [Agent X] ... that I would update him once discussions with the BBC had taken place.”⁵⁶

120. Of course, unbeknown to Officer 10 and the others within the handling team, Officer 2 had already told the BBC Agent X was a CHIS.
121. Officer 2 told me that before going into the call he probably would have reflected on the legal advice, the email chain (from 6 June 2020) and would have had on a notepad the key things he wanted to cover. He described it as a striking set of circumstances. At the time he would have had “101 other” professional priorities as well as personal ones. It was “extremely likely” he would have taken notes at the time. They would “possibly” have recorded that DDS was told Agent X was a CHIS. He suspected he went in with the intention of writing up notes, but then it snowballed and he fell behind. He agreed the handling team needed notes for the CHIS file. He did not recall being pressed for them. He said he did not know why he disclosed Agent X was a CHIS before Agent X had agreed.⁵⁷
122. Officer 2 described his failure to write up the discussions with DDS as “unforgivable”. He ascribed it to the extreme pressure he was under.

Tuesday 9 June 2020

The second call between DDS and Officer 2

123. On Tuesday 9 June 2020, DDS returned a call which Officer 2 had made to him. Officer 2 said he:

“...was just following up on yesterday’s conversation, having had a further conversation with [the] case officer...”

⁵⁶ CB1/9/111-113

⁵⁷ IPCO interview/Officer 2/8-9 December 2025

124. They spoke for some 40 minutes. DDS recorded what was said.⁵⁸ They proceeded on the basis that Agent X was an MI5 CHIS who had, as Officer 2 put it, been “kind of coached...to be able to speak eloquently about right-wing matters... everything he has done in recent times has kind of been done at our behest...[We]...know precisely what he’s doing...”
125. Officer 2 said that Agent X “was involved in lots of kind of drug gang activity before we ran him.” He suggested that DDS might “at a later date” talk to Agent X. He said Agent X’s case handlers had “mentioned to me...they were kind of surprised - you obviously have identified this person.” As was the case during the first call, Officer 2 was using the fact that Agent X was an MI5 CHIS as a means of dissuading DDS from referring to him in the programme.
126. During the second call DDS raised the topic of an extreme right-wing organisation. He said he knew quite a lot about the group. He suggested he be warned if MI5 has knowledge of any individuals in the group. Officer 2 said he would do some “digging.”⁵⁹
127. At 16:22 Officer 4 sent⁶⁰ a message to Officer 15, who had been Agent X’s authorising officer but was away ill. Officer 1 was covering for them. The message read:
- “...Just waiting on a call from [Officer 2] ...a long and painful story, but I’m hoping we’re out of the woods....!”

Officer 10’s contact with Agent X that day

128. Officer 10 spoke to Agent X “to continue the discussion about the allegations that have been made against him by a journalist.” Officer 10’s note stated:
- “...Following our conversation the previous [day], I told... [Agent X] that we had begun the conversation with the BBC about getting him removed from the programme. I said that we had not yet received confirmation that this would happen- I said I was hopeful that it would, but could yet [sic] say so for sure. However, I assured... [Agent X] that we were working to achieve that end, which he was grateful for...

⁵⁸ CB1/10/117

⁵⁹ CB1/10/131

⁶⁰ CB2/A/not paginated

...We agreed to speak again on 10 June 2020, when I said I would hopefully have an update for him.”⁶¹

Wednesday 10 June 2020

The third call between DDS and Officer 2

129. At 08:33 on Wednesday 10 June 2020 Officer 2 sent DDS a message stating:
- “...let me know if you’ve got any update your side. We probably also need to discuss [an extreme right-wing group]...”⁶²
130. Officer 2 called DDS from home. It was an open line. They spoke for some 20 minutes. Early in the call DDS said:
- “...as things stand...I won’t include him [Agent X] in the programme based on the fact that you’re saying that he is, you know, doing certain things at your behest.”⁶³
131. DDS made it plain he was not resiling from his previous allegations regarding Agent X’s violence. He suggested Agent X was not reliable.
132. They discussed an extreme right-wing group.
133. Officer 2 offered DDS a background briefing on extreme right-wing terrorism on the following day.

Officer 10’s bullet point email at 13:37

134. Officer 2 must have reported back to the handling team that DDS had agreed to remove any reference to Agent X from the programme. For at 13:37 on 10 June 2020 Officer 10 sent

⁶¹ CB1/11/145

⁶² CB2/A/2

⁶³ CB1/13/151

Officers 1 and 4 some “DRAFT BULLET POINTS.”⁶⁴ The final bullet point made it quite apparent that Officer 10 believed there had been disclosure. The email stated:

“On [Monday] 8 June 2020... [Officer 2] engaged directly with the... journalist in an effort to get [Agent X] ...removed from the story. [An overseas organisation was informed.] Permission was sought from [Agent X] ...to do this ([who] agreed). The basis of the engagement was that the reporting on [Agent X] ...was incorrect as the person being described in the [programme] was based in large part on a fictitious persona. The rationale for engagement was that the consequences of allowing the programme to air with [X]...in it would have been hugely detrimental to his life, and that the majority of the material that the BBC were reporting about [Agent X] ...was as a direct result of his tasking.... On [Wednesday] 10 June 2020, the BBC confirmed that all references to [Agent X] ...would be removed...”

135. In a subsequent contact note, Officer 10 recorded that they had informed Agent X that “...all references to him would be removed....”⁶⁵

Thursday 11 June 2020

The fourth call between DDS and Officer 2

136. The arrangements for what would be the fourth call began when, at 08:37 on Thursday 11 June 2020, Officer 2 sent DDS a text which stated he could “chat” at 11:00.⁶⁶
137. They spoke for some 12 minutes. Officer 2 apologised for having missed DDS earlier. He said he was in another meeting “about this specific issue.” They discussed matters of interest to DDS.

⁶⁴ CB1/12/149

⁶⁵ CB1/14/172

⁶⁶ CB2/2

138. At 11:37, following the fourth call, Officer 2 sent⁶⁷ an email to colleagues including Officer 4, updating them on his conversation with DDS and requesting information, which one of the recipients provided.

The fifth call between DDS and Officer 2

139. At 13:59 on Thursday 11 June 2020 Officer 2 indicated⁶⁸ to DDS he would call soon. When the call took place, it was on speakerphone. The call lasted some 45 minutes. Officer 24, Head of Counter-Terrorism Investigations, was present to give the background briefing promised during the fourth call. Early in the conversation, in the presence of Officer 24, Officer 2 said:

“...what I was thinking we could do, if we start with, kind of the background briefing...and then you and I can [continue our conversation from earlier].”

140. It is not necessary to go through the detail of Officer 24’s briefing. After he left, Officer 2 gave DDS the information he had been provided with by a colleague earlier.

141. During the course of the conversation DDS raised the topic of the current leadership of a group. Among other things, he wanted to know where the leadership was located. Officer 2 said he would have to speak to a colleague.

142. There was a general discussion. It ranged far and wide. It concluded by Officer 2 indicating he would hopefully be in touch with DDS later.

143. Officer 24 told me he had replaced someone else to give the briefing on the extreme right wing. He said he did not believe Officer 2 gave him much background. He did not think he was told NCND had been departed from. He understood he was being used by Officer 2 as part of his tactics to manage the relationship between him and DDS.⁶⁹ However, that he did know something about the context is suggested by an email exchange between Officers 2 and 24 the next day. Officer 24 asked:

“How are we looking for [the programme]?”

⁶⁷ CB1/17/209

⁶⁸ CB2/0

⁶⁹ IPCO interview/Officer 24/24 November 2025

144. Officer 2 responded:

“Still haggling. I’ve asked him to remove all reference to [certain] individuals... He’s talking to his editor.”⁷⁰

145. In my view Officer 24 did know more than he now recollects about Officer 2’s conversations with DDS. He knew from the early part of the call that Officer 2 and DDS were talking about details in respect of which Officer 2 was to provide “an answer.” The evidence does not suggest Officer 2 had held back anything about his discussions with DDS. DDS told me it was “perfectly obvious” Officer 24 knew what was going on. As he had pointed out in paragraph 14 of his third witness statement, Officer 2 might at any stage have said something which indicated to Officer 24 he had disclosed someone as an MI5 CHIS.⁷¹

146. However, in the final analysis Officer 24’s role in these events was peripheral. He played no part subsequently. It is also clear from the sources cited above that by the time of his involvement, others within MI5 were aware Officer 2 was discussing sensitive details with DDS.

Further emails on 11 June 2020

147. At 17:19 there was an email⁷² from an officer in a different team in the Counter-Terrorism branch seeking information about a specific point, because:

“...[Officer 2] wants to give some informal confirmation to the journalist if he is correct, and maybe suggest he’s incorrect if we think so...”

148. At 18:12 there was a request to check some details against MI5’s holdings.⁷³

⁷⁰ CB1/20

⁷¹ IPCO interview/DDS/28 November 2025

⁷² CB2/B/11

⁷³ CB1/17/207

Other individuals

149. During these calls, DDS and Officer 2 discussed several pseudonyms. Officer 2 confirmed some of those pseudonyms were in use by MI5 assets. In respect of an MI5 undercover officer, Officer 2 commented on certain distinctive characteristics. More than once, Officer 2 offered DDS the chance to meet the undercover officer. DDS said the offer surprised him. He thought Officer 2 was seeking to “woo” him as part of persuading him to do what MI5 wanted. Officer 6, the undercover officer’s controller, did not know that Officer 2 had suggested DDS might meet the officer. Officer 6 would not have agreed to it.⁷⁴

The ‘summary document’

150. In a Secret Intelligence Service (SIS) document outlining notable events over a given period (the summary document), SIS’s understanding of the position as at 11 June 2020 was set out. The document⁷⁵ stated:

“**Operational/Media:** ...[Agent X] contacted by the BBC who planned to run a story on him based on his involvement with right-wing organisations.... MI5 have intervened with the BBC and declared [Agent X’s] ...role to a very limited group. MI5 confident the story will be dropped and the fallout managed (albeit not yet confirmed)...”

Friday 12 June 2020

151. The telephone messaging between Officer 2 and DDS continued. Some 20 messages passed between them. Officer 2 was also in contact with Officers 4 and 1.⁷⁶
152. At 09:25 Officer 2 responded to DDS’s question during the fifth call about the location of the leadership of a group, confirming that DDS was correct.⁷⁷

⁷⁴ IPCO interview/Officer 6/11 December 2025

⁷⁵ CB1/19/249

⁷⁶ CB2/A

⁷⁷ CB2/A

153. At 10:10 Officer 2 sent DDS a message stating there was “still some concern [in MI5] about the reference to names”.⁷⁸
154. In paragraph 9 of his witness statement of 14 May 2025, DDS said there was also a call in which Officer 2 expressed this concern.⁷⁹
155. At 12:57 DDS sent Officer 2 a link to an image of two people. Officer 2 asked if they were people linked to the pseudonyms he and DDS had discussed. DDS responded that one of them was.⁸⁰
156. At 16:01 and 16:20 Officer 2 sent Officers 1 and 4 respectively a message with an update on his recent conversations with DDS.⁸¹
157. DDS made a short, handwritten note of a message from Officer 2.⁸²
158. The messages between DDS and Officer 2 continued until 17:45.

A follow-up call on 11 or 12 June 2020

159. On 11 or 12 June, there was some follow-up concerning a matter discussed in a previous call, which involved a departure from NCND. DDS made a note.⁸³

⁷⁸ CB2/A

⁷⁹ DDS/14/353

⁸⁰ CB2/A

⁸¹ CB2/A

⁸² DDS/15/513

⁸³ DDS/14/471

Events thereafter

160. DDS told me there was an ongoing concern that if the programme mentioned some people, but said nothing about their associates, it would raise questions as to why. On Thursday 18 June 2020 at 14:20 Officer 2 sent DDS a message seeking an update.⁸⁴
161. There was also a phone call on 18 June 2020 in which Officer 2 “sought assurances about the BBC’s [programme].”⁸⁵
162. At 13:50 on Friday 19 June 2020 Officer 4 sent Officer 2 a query about his discussions with DDS.⁸⁶
163. Shortly thereafter, at 13:54, Officer 2 asked DDS Officer 4’s question.⁸⁷
164. There was also a phone call on 19 June 2020 in which Officer 2 “sought further reassurance about the BBC’s [programme].”⁸⁸
165. It seems DDS responded, for at 18:45 on Friday 19 June 2020 Officer 2 sent a message to Officer 4 with DDS’ answer to his earlier query.⁸⁹

Officer 2 meets a trusted BBC journalist on 28 July 2020

166. Officer 2 was contacted by the trusted BBC journalist to whom he had spoken in June 2020. He was the last person I interviewed. On 28 July 2020 they met in a public place in London. The journalist said the topic of DDS was brought up; he could not recall by whom. As the journalist put it to me:

⁸⁴ CB2/A

⁸⁵ DDS/14/353

⁸⁶ CB2/A

⁸⁷ CB2/A

⁸⁸ DDS/14/353

⁸⁹ CB2/A

“...we talked a lot about [DDS] ... this is where he was definitely asking for more information...and I felt.... [Officer 2’s] phrase that sticks in my mind...is, “he is like a dog with a bone” ... I didn’t know what the story was... so I am slightly in the dark here and I’m thinking okay he’s clearly very troubled about this stuff. I can’t remember the exact questions, but just the nature of the conversation, the things he was asking about how, you know about... [DDS] and about the stories he does... it just felt to me he was trying to... almost as if he was trying to build a psychological profile of somebody he was having to deal with...

... he was clearly concerned... and he made very clear to me that there was a risk, without again, he didn’t tell me the details of the story... I left that meeting with a very clear impression that there was a risk that the BBC was going to publish or broadcast a story which was going to be compromising or damaging to national security in terms of saying something about an agent and he used words or said things along the lines of, “I don’t think...everyone’s quite clear about where this could lead” ... I stress at no stage did he break NCND...

...he didn’t say this agent was a real agent or not a real agent...

...I felt he was effectively asking me for help to intervene in this story and to get involved...

...It was definitely one of the principal things he wants [sic] to talk about...

...it was one of the most specific things we talked about...in terms of stuff which was...really operationally relevant...”⁹⁰

167. Officer 2 argues this conversation reflects his concern there was a risk the BBC would broadcast a story which would compromise or be damaging to national security. He also notes the conversation addressed a number of other topics. He further suggests he would have discussed DDS with the journalist as a way of conducting due diligence, albeit after the event.
168. I accept this conversation does reflect Officer 2’s concern. However, it also reveals he well remembered his conversations with DDS. He knew DDS did not believe Agent X was pretending to be a Nazi. He knew DDS believed Agent X was a violent and abusive person. He (rightly) feared DDS was continuing his investigation into Agent X. This does not suggest, as

⁹⁰ IPCO interview/BBC journalist/16 December 2025

Officer 2 said to me, it was a successful outcome and his mind had moved on. I doubt this had anything to do with conducting due diligence.

The nature of Officer 2's disclosures to DDS

169. Not only did Officer 2 depart from NCND on a comprehensive scale, he did so in a surprising and inappropriate way. For example, he volunteered that another agency was aware of Agent X. He commented on the distinctive characteristics of a serving MI5 undercover officer who was in the field. He offered DDS a meeting with that officer without asking that officer's controller. He confirmed that certain pseudonyms were used by MI5 assets without any reference to the relevant handling teams. Officer 20, one of Officer 2's predecessors, described the transcripts as "a little excruciating to read and to see how it unfolds. I'm deeply surprised at the level of detail that was disclosed." They did add that, in the context of Covid-19, when times are busy, it can be high-paced and stressful.⁹¹
170. Officer 22 (Legal), the former MI5 legal director, told me that they were quite surprised "that we decided to engage with them on the level of detail that I've read... the whole tenor... is that you carefully establish a relationship...the failure to record was an error, but the primary error was not carefully establishing beforehand and having authorised the boundaries of what one was prepared to disclose." The lack of clarity was "fatal."⁹²
171. Officer 6 said the transcripts were not what they expected. They were more definitive in terms of identifying MI5 assets.⁹³
172. The DG said he was "deeply disappointed" by the manner of disclosure.⁹⁴
173. Even Officer 2 agreed that the contents of the second call "would be considered indiscreet."⁹⁵

⁹¹ IPCO interview/Officer 20/11 December 2025

⁹² IPCO interview/Officer 22 (Legal)/19 November 2025

⁹³ IPCO interview/Officer 6/11 December 2025

⁹⁴ IPCO interview/DG/15 December 2025

⁹⁵ IPCO interview/Officer 2/8-9 December 2025

The different accounts

Officer 2's account

174. Officer 2 said it was his recollection that he was to contact DDS “for a scoping call,” and then try and get Agent X removed. DDS was intransigent. Officer 2 did not remember the content of the call or revealing information or, particularly, disclosing that Agent X was an agent. He had spent a lot of time thinking about that. “Almost certainly” he would have made notes at the time of the second call. There was a whirlwind of conversations. When first approached, he probably conflated different conversations. It was a difficult time. He was focussed on other things. This was a distraction. “I simply forgot the content of the [first] call.” He did not recall disclosing in other calls. Two of the pseudonyms discussed in the later calls triggered memories. Offering a meeting with an undercover officer might have been his idea and an appropriate thing to do. He had had dozens if not hundreds of calls when in the communications office. The calls with DDS did not feel like the most important thing he was dealing with. Once he fell behind, he could not keep up. At the end, it felt as though the objective had been achieved. It was a successful outcome and his mind moved on. He did not recall the texts.⁹⁶

175. I deal with the credibility of Officer 2's account below.

Officer 4's account

176. Officer 4 was the only member of the handling team to speak directly to Officer 2. He told me he thought they spoke once or twice. There were also updates by mobile phone, which required exceptional care. He first recalled speaking to Officer 2 on Tuesday 9 June 2020. He did not know about the first call or that during it Officer 2 had revealed Agent X as an MI5 CHIS. In their first conversation Officer 2 described “horse trading.” In the second, they discussed another MI5 asset. Officer 4 recalled being told that DDS was content to remove Agent X, but it would not be such a good programme. Officer 4's very strong inference was that Officer 2 had had to go beyond NCND.⁹⁷

⁹⁶ IPCO interview/Officer 2/8-9 December 2025

⁹⁷ IPCO interview/Officer 4/18 November 2025

177. Officer 4 told the internal investigation⁹⁸ (at paragraph 48):

“... [Officer 2] had called him to give him an update. [He]...said that ... DDS had agreed [to remove... [Agent X]] ... his recollection was that... [Officer 2] had “gone beyond NCND and named him”...due to... [Officer 7’s (Legal) advice] it “was cool” as it was legal.”

178. Paragraph 51 records Officer 4 as confirming what was recorded at paragraph 48. Paragraph 62 records him as saying that:

“...he only had one call with...[Officer 2], and that was on Tuesday [9 June 2020] morning...[T]his was when...[Officer 2] told him that he...had departed from NCND to DDS...[Officer 2] told him that he...and DDS had spoken about ‘one other asset’ ...[Officer 2] told him there had been some ‘horse trading’ ...DDS said as an aside that “I’ve got more-I’ve got others...and...[Officer 2] had replied that ‘we’ve got those too.’”

179. Officer 4 had earlier said, at paragraph 49, it was “a possibility” there was more than one call between him and Officer 2.⁹⁹

The accounts of other members of the handling team

180. Officer 23 (Agent X’s Operational Security Advisor) spoke of trying to obtain a write-up from Officer 2. It was needed for Agent X’s risk assessment. They remembered asking Officer 10 (Agent X’s case handler) whether they had received one. They had the impression Officer 10 had been trying to chase Officer 2. To begin with, Officer 23 said they gave Officer 2 the benefit of the doubt because of the pandemic. The handling team worked on the basis there had been disclosure.¹⁰⁰

181. Officer 10 said it was difficult to see how they could persuade the BBC not to refer to Agent X without declaring him as CHIS. They told me they understood that had happened. The

⁹⁸ Internal investigation (first) interview/14 February 2025/paragraph 48

⁹⁹ *Ibid.*

¹⁰⁰ IPCO interview/Officer 23/17 November 2025

summary document¹⁰¹ reflected their understanding. They did not know Agent X had been declared before his agreement had been obtained.¹⁰² They had told the internal investigation that they did not recall Officer 4 telling them in terms that Agent X had been declared. In their response to my Preliminary Draft Report, Officer 10 has made it clear that they always understood Agent X's relationship with MI5 had been declared, as their contemporaneous notes suggest. Officer 10 did not recall chasing up Officer 2 for a write-up.

182. An SIS officer, Officer 16, was probably the author of the summary document. They said it reflected their and their colleagues' understanding, and what an overseas organisation had been told.¹⁰³ Officer 16 was succeeded by an MI5 officer, Officer 9. Although Officer 16 said they had briefed Officer 9 fully, that (former) officer told me that they did not know Agent X had been declared to the BBC.¹⁰⁴
183. Officer 1 told me (as they had the internal investigation) that they had a poor recollection of these events. Given they were Agent X's authorising officer and had significant responsibility for their welfare and security, that is unfortunate. They said they could not remember conversations between Officer 2's calls. They were not explicitly told NCND had been departed from. They would have had conversations with Witness A, updating him. Their updates would reflect their understanding at the time. They could only assume that the conversation between them was around being willing to go up to NCND if necessary. It would have been helpful to have a formal update in Agent X's file.¹⁰⁵ Officer 1 has explained how their workload increased "exponentially" due to Covid-19. They were covering for more senior officers. The case of Agent X was one among a number of other cases.
184. I am bound to say, I did not find Officer 1 to be an impressive witness. I do not feel able to place much reliance on their very limited recollection of these events.

¹⁰¹ CB1/19

¹⁰² IPCO interview/Officer 10/20 November 2025

¹⁰³ IPCO interview/Officer 16/25 November 2025

¹⁰⁴ IPCO interview/Officer 9/16 December 2025

¹⁰⁵ IPCO interview/Officer 1/19 November 2025

185. In my view, what Officer 4 told the internal investigation was probably correct. As he rightly said, there had been a conversation at some stage between Officer 2 and DDS when there was talk about another MI5 asset. Moreover, Officers 23, 10 and 16 plainly believed NCND had not been maintained. That belief was derived from what Officer 4 said. That is what an overseas organisation was told. That is what Agent X's contact notes suggest, as I set out in more detail below. Finally, for what it is worth, Officer 2 said he believed the agent handling team would have known that he had disclosed. Officer 2 also said he thought the handling team's records seemed to reflect their understanding.¹⁰⁶
186. While I recognise some inconsistencies in Officer 4's account, one thing seems to me quite clear. Whether Officer 2 told Officer 4 in terms, or merely left him with the very strong inference there had been disclosure of Agent X's CHIS status, Officer 4 would never have told anyone that he believed NCND had been maintained. That is a topic to which I shall return.

The proposed meeting between Agent X and DDS

187. In early August 2020 Officer 10 (Agent X's handling officer) again met Agent X. Before they met Agent X, they spoke to the representatives of the overseas organisation. Paragraph 2 of the note made by Officer 10 states:

"I told [the organisation] that we had come up with the idea to potentially offer the... journalist that had uncovered... [Agent X] the opportunity to meet directly with... [Agent X]. No decisions had been made and it would obviously have to be done in a controlled manner, but it was something we were thinking about given the journalist already knew who [Agent X] ...was, and had been very helpful around removing him from the [programme]. Subsequently... I also asked [Agent X] ...if he would be happy to meet with the journalist. [Agent X] ...said that he would be happy to do so, and if he did it would hopefully serve to counter some of the conclusions that the journalist had reached about [Agent X] ..." ¹⁰⁷

¹⁰⁶ IPCO interview/Officer 2/8-9 December 2025

¹⁰⁷ CB1/27/347

Two consequences of Officer 2's failure to produce any record of his departures from NCND

188. As I have set out, one of those whose status was disclosed by Officer 2 was an MI5 undercover officer. Their cover officer was Officer 14. At some stage during the events in June 2020, Officer 4 had contacted Officer 14. Officer 14 understood that Officer 2 was dealing with the journalist. One concern regarding the undercover officer was that if their distinctive characteristics were made public, somebody, for example, a neighbour, might recognise them.
189. The seriousness of Officer 2's failure to make any record and share it with the appropriate case handler is underlined by Officer 14's July 2020 CHIS renewal document for the undercover officer. The document stated, in relation to Officer 2's discussions with the BBC:
- "Although details of [the officer] ...were presented as NCND, the clear assumption is that the BBC journalist...would know that [the officer] is an MI5 asset..."¹⁰⁸
190. As Officer 14 said, had they known the officer had been declared to DDS, it would have been recorded in the narrative and risk assessment.¹⁰⁹
191. When Officer 2 was shown this CHIS renewal document during the internal investigation, he "wondered whether the genesis of this incorrect information came from how we...define NCND." He claimed he was not in the position to depart from NCND. Only the DG was. A private disclosure still maintained NCND. He did not consider the disclosure of the officer's status as a departure from NCND.¹¹⁰
192. Officer 2 also suggested as much to me. He said it was his consistent view there was a distinction between an on the record disclosure and a private disclosure to a journalist. However, he "absolutely" accepted a disclosure to a journalist amounted to a departure from NCND.
193. While I accept that there is a difference between a public disclosure by the DG and a disclosure to a journalist, Officer 2's suggestion that the "genesis" of the entry in the CHIS renewal

¹⁰⁸ CB1/26/321

¹⁰⁹ IPCO interview/Officer 14/25 November 2025

¹¹⁰ Internal investigation (sixth) interview/Officer 2/23 May 2025 at paragraphs 21-2, 35-6.

document was possibly down to confusion about the meaning of NCND was, in my view, entirely spurious. It is quite plain that Officer 14's reference to NCND not having been departed from had nothing at all to do with any public disclosure. To suggest there might have been some confusion was, as I suggested to Officer 2, a 'red herring.'

194. Officer 2 disclosed another MI5 asset to DDS. It appears there had been no prior consultation with the relevant handling team. The team was unaware of Officer 2's disclosures until approximately 30 May 2025.¹¹¹ Officer 25, a member of the team, told me they first became aware of this disclosure during the internal investigation. On first reading the transcript of this call, they were "very shocked" that their team had not been informed of these conversations, with the consequence that no record could be made.¹¹²

¹¹¹ Witness statement of Case Officer at [50]

¹¹² IPCO interview/Officer 25/27 November 2025

Part Two

The BBC's second right of reply email

The BBC's right of reply email of 6 December 2021

195. On Monday 6 December 2021 DDS sent a right of reply email¹¹³ to MI5 via the Home Office. He sent similar emails to the police, the Crown Prosecution Service, and Agent X. It stated:
- “I am writing to you on behalf of BBC News to offer MI5 the opportunity to respond to a number of points raised by our research into the activities of... [Agent X] for a report which is due to be broadcast on BBC News in December 2021.”
196. In broad terms it alleged that Agent X:
- “...[was] a dangerous extremist and misogynist. He physically and psychologically abused two female partners, and threatened to sexually abuse children...[His] behaviour was often overt and has been easily discoverable through our investigations, meaning MI5 must, or ought to have known about it. In the circumstances, it was wholly inappropriate to use [Agent X] as an MI5 agent.”
197. It then set out in considerable detail the basis of the allegations. One set of allegations related to Beth. Another set related to another woman. The email was received at MI5 at some time before 9 December 2021. By then Officer 2 was no longer in the communications office. His successor and incumbent was Officer 3.

MI5's response

The case record for 9 December 2021

198. The case record for Agent X has a note for 9 December 2021.¹¹⁴ It is said to relate to the:
- “Response to BBC letters [sic] to MI5...concerning allegations made about [Agent X's] ...conduct from two ex-girlfriends.”

¹¹³ CB1/0

¹¹⁴ CB1/38/417

199. Among other things, the record states:

- “We have assessed the potential impact should the BBC report the allegations and have concluded: (a) identifying...[Agent X] (or providing enough personal details to allow others to do so) will raise the threat to [Agent X]...both from ERWT linked individuals... unhappy that he was a CHIS, and, from anti-fascist groups unhappy with his alleged extremist mindset; (b) damage confidence of other CHIS and potential CHIS in our ability to protect their identities; (c) damage, on the basis of, inaccurate information, the public’s confidence in MI5.
- Given this assessment, and in discussion with... [Officer 3], we have decided that the latter should speak directly with the journalist concerned to explain the damage which would be caused by publication and seek undertakings to revise/withdraw publication.”

200. Officer 3 called DDS. The first time they spoke was between 14:22 and 15:02 on 9 December 2021. He made detailed notes.¹¹⁵ It is not necessary to set them out. From the outset Officer 3 repeatedly said that he would neither confirm nor deny that Agent X was an MI5 agent. DDS did not demur. They discussed the allegations. Among other things, Officer 3 emphasised that irrespective of the truth of Agent X’s status, if the BBC allege he is an agent, it will be widely believed. DDS agreed to pass on Officer 3’s concerns to editors and lawyers and talk to him again.

201. DDS told me that he was in listening mode when speaking to Officer 3. Officer 3, whom he did not know, had called him. DDS spoke from a booth in the office. Matters were now at quite a serious stage. What was said in the right of reply was highly critical of MI5. He let Officer 3 do the talking. He never once thought that Officer 3 did not know there had been a previous departure from NCND. He assumed Officer 3 was relying on NCND because they were at a different stage. He was trying to be careful on the phone. DDS thought the way Officer 3 relied on NCND was almost as if he was waiting for him to respond, “You didn’t do that before.”¹¹⁶

¹¹⁵ CB1/35/393-395

¹¹⁶ IPCO interview/DDS/28 November 2025

202. The next day (10 December 2021) Officer 3 continued to try and prevent the programme going out. He spoke three times to DDS, who finally indicated that he could not guarantee the programme would not go out on the following Monday.¹¹⁷ Officer 3 spoke to other BBC journalists seeking their influence to prevent publication. One of the BBC journalists described Officer 3 as being very, very forceful. He insisted the journalist could not call back later. "There was a real sense of urgency, if not panic."¹¹⁸ He also spoke to the Secretary of the D Notice Committee.¹¹⁹
203. Following conversations on 10 and 11 December 2021 between the DG and Tim Davie, the Director General of the BBC, Mr Davie gave the assurance that the story would not run on Monday 13 December 2021.¹²⁰
204. The senior member of the legal team at MI5 dealing with the response was Officer 18 (Legal). From mid to late December 2021, they were assisted by Officer 5 (Legal). Officer 18 (Legal) described Officer 5 (Legal) as conscientious and very thorough, a "great lawyer."¹²¹ In fairness to them, I should point out they were a junior officer in a new role. They worked to the instructions of Officer 18 (Legal) or in their absence, another senior officer. Alexandra Laskowski (AL) and, later, Louise Wallace (LW) from the Government Legal Department (GLD) subsequently became involved.
205. Everyone was working under considerable time pressure. Officer 18 (Legal) said that because of the fast-paced nature of events, not every conversation was recorded on the corporate record. Based on the material I have seen, it appears that in fact a significant number of conversations were not recorded.

¹¹⁷ CB1/35/397-399

¹¹⁸ IPCO interview/BBC journalist/16 December 2025

¹¹⁹ CB1/35/399-401

¹²⁰ CB1/37/413

¹²¹ IPCO interview/Officer 18(Legal)/16 December 2025

Officer 3's "Background" email

206. At 19:25 on 10 December 2021 Officer 3 sent an email¹²² to Officer 18 (Legal), Officer 5 (Legal) and Officers 2 and 4. He had by then obviously spoken to Officer 2 and probably Officer 4. The subject matter was "Background." The email stated:

"... [Oliver Sanders KC, (OS KC), counsel instructed by MI5] asked for a note on the... background. I wasn't involved, and we don't have a contemporaneous note, so... [Officers 4 and 2], would you mind checking this is accurate? [Officer 3].

Note on... background with De Simone

In May/June 2020 our regular security contact at the BBC brokered a conversation with [DDS]...[who] was producing a news piece... on the extreme right wing.... As part of that process, he suspected (in general terms) that some of the people he had identified may be agents or role-players for state or private organisations.

He shared details of some of those he had identified, and one was... [Agent X]. Following discussion between [Officer 2] ...and... [those managing Agent X], the decision was taken to approach...[DDS], and reveal that running aspects of his story would cause damage to national security. We did not breach NCND, but asked [DDS]...to remove references to [Agent X] ...from his piece. The conversation was prefaced with confirmation that this conversation was not on the record, but that we would reveal some sensitive details in confidence, to manage the greater risk to national security.

After being initially fairly bullish, [DDS] ...said he acknowledged the strength of the argument, and agreed to remove those references... Our assessment at the time, and since, was that [DDS]...is highly likely to assessed [sic] that [Agent X] ...was a CHIS, following the conversation."

207. As I set out in some detail below, it is clear that in much of the email, Officer 3 is purporting to report what Officer 2 had told him. Neither Officer 2 nor Officer 4 at this stage responded to the email.

¹²² CB1/36/407-409

The meeting with the BBC

208. On 14 December 2021 there was a without prejudice meeting with the BBC. Officer 18 (Legal) described it as a last-ditch attempt to persuade the BBC not to publish. Representing MI5 were OS KC, Officer 3, and Officer 18 (Legal). NCND was maintained. They did not persuade the BBC not to publish. Neither MI5 attendee took any notes.

MI5's application for an injunction

209. MI5 concluded it had no option but to request that the Attorney General seek an injunction to prevent the BBC identifying Agent X. Officer 18 (Legal) said the decision to do so involved senior management in consultation with the DG.¹²³ The DG told me the two key people in the discussions were Officer 18 (Legal) and Officer 3.¹²⁴ As will become apparent, Officer 3 was pivotal in bringing the injunction application. On 17 January 2022 the BBC undertook not to broadcast until determination of the application.
210. Work preparing for an urgent application began in December 2021. It continued during early 2022. As Officer 18 (Legal) put it in an email of 20 December 2021:
- “...we currently have counsel in [Emmanuel Sheppard (ES)] reviewing the relevant...files to ensure that if we need to apply for an injunction we don’t inadvertently put forward a case which is inconsistent with the information we hold on our systems relating to... [Agent X]. Counsel is producing a timeline of relevant events...”¹²⁵
211. As OS KC put it in an email to ES on 15 December 2021, the review was to:
- “check for evidence supporting or undermining the BBC version of events so (a) we can reassure the AG and (b) we can say to the court - pursuant to our duty of candour - that we’ve reviewed the available closed materials and they do not contain anything that is inconsistent with or undermines our application.”¹²⁶

¹²³ IPCO interview/Officer 18 (Legal)/16 December 2025

¹²⁴ IPCO interview/DG/15 December 2025

¹²⁵ Email of 20 December 2021 at 15:45, provided in response to IPCO’s Ninth Request for Information

¹²⁶ Witness statement of Oliver Sanders KC (added to CB2/C1)

212. ES told me that he considered the main issue of his review to be the extent to which MI5 could say the story posed a threat, and whether there was anything to contradict that position.¹²⁷
213. The disclosable material was identified. It was subsequently exhibited to Witness A's CLOSED statement. At the time of the review, no issue regarding NCND had arisen. There is in my view no reason to criticise ES, or any of the MI5 lawyers, in respect of this review.
214. Officer 15 played a central role in representing the view of the handling team. They had just returned to work and replaced Officer 1 as Agent X's authorising officer, having been away in June 2020.
215. Officer 18 (Legal) did not recall any specific conversation with Officer 4.
216. By 17 January 2022 it had been decided that Witness A should be the corporate witness. I deal with how that came about below.
217. At 10:03 on 20 January 2022 Officer 3 re-sent his "Background" email to Officers 18 and 5 (Legal):
- "... I see you did get this at the time, but this is the short note I produced on the contact with Daniel De Simone. I've talked to... [Officer 2], again, who is now... unlikely to be contactable, and he's confirmed that he was unable to locate a contemporaneous write-up.
- I've got a call out to [Officer 4] to see if we can tighten up the dates."¹²⁸
218. At 10:42 Officer 3 sent a further email to Officers 18 and 5 (Legal), and to Officer 4, in which he said:
- "To follow this up- and thanks to... [Officer 4] for checking his records:
- ... [Agent X] contacted MI5 on Friday 5 June 2020 to report that he had received a letter from the BBC/Daniel De Simone, which asked for a response [urgently].
- Following work over the weekend, [Officer 2] ... made contact with De Simone on Monday 8 June. [Officer 4's] recollection is that there was further discussion between

¹²⁷ IPCO interview/ES/8 December 2025

¹²⁸ CB1/36/407

[Officer 2] and [DDS] over the course of that week, and towards the end of the week, De Simone agreed that he would not publish any details of [Agent X] ...

Do you mind if I just check my understanding of the timings [in respect of the proceedings] as we understand them now..."¹²⁹

219. At 11:05 on 20 January 2022 Officer 5 (Legal) thanked Officers 3 and 4 for their "really helpful" detail.¹³⁰ At 20:39 Officer 5 (Legal) sent a further draft to Witness A for review. They copied in Officers 15 and 4 and thanked them for their input.¹³¹ Officer 5 (Legal) asked Witness A to complete paragraph 2, which dealt with his background with MI5. They asked him to check that:

"...you are happy with the content..."¹³²

220. Paragraph 5 of the statement read:

"The BBC are proposing to publish a report in which they will strongly assert that a named individual was an MI5 CHIS. I can neither confirm nor deny in this statement whether this individual was an MI5 CHIS without causing damage to national security. However, irrespective of the truth of these assertions, should the BBC publish the report, it would place that individual and those connected to them, at risk of serious harm and would also risk serious damage to wider national security interests. The BBC is a reputable and trustworthy organisation and it is highly likely that the public, on the basis of the BBC's assertions, would conclude that this individual was an MI5 CHIS."

221. At 14:47 on 21 January 2022 Officer 5 (Legal) sent out a further draft. In their email they referred to "making some amendments to [the then] paragraphs 11 and 12." Witness A had highlighted them as having been "a bit repetitive."¹³³ (The paragraph references are to the statement as originally drafted, rather than to the text which became paragraph 11 in the final version of Witness A's statement).

¹²⁹ CB1/36/405-407

¹³⁰ CB1/36/405

¹³¹ CB1/42/459

¹³² CB1/42/459-461

¹³³ CB1/42/459

Meeting with counsel on Monday 24 January 2022

222. Officer 5 (Legal) said the timetable was rapid. Counsel were in Thames House to review documents and were often advising at legal advisors' desks.¹³⁴ On Monday 24 January 2022 there was a meeting with OS KC and ES. At 13:45 that day, OS KC sent an email to GLD and ES stating:

"... [We have] reviewed the draft statement of "Witness A" and then discussed it with... [Officer 5 (Legal)], who will work through the comments and expand a few parts. Generally in good shape..."¹³⁵

223. ES did not remember a discussion about what became paragraph 11 at this time. He did not remember either OS KC or himself advising on it.¹³⁶

224. At 16:45 on 24 January 2022 Officer 5 (Legal) sent an email to Witness A, copying in, among others, Officers 15, 4 and 3. The email stated:

"We have made some further amendments to your witness statement following discussions with Counsel today...

...we have included additional detail on the risk of real and immediate threat to the individual...but have not expanded further on the potential consequences which, in our view, risks undermining NCND...

...For context, new paragraph 11, which details conversations that were had between MI5 and the BBC regarding the 2020... programme, has been included on Counsel's advice and to supplement GLD's statement which explains the more recent conversations that have taken place in respect of the proposed broadcast... **[Officer 3]** – I've taken this from your helpful write up, but please do let me know if any changes are required."¹³⁷

¹³⁴ IPCO interview/Officer 5 (Legal)/27 November 2025

¹³⁵ Witness statement of Oliver Sanders KC (added to CB2/C1)

¹³⁶ IPCO interview/ES/8 December 2025

¹³⁷ CB1/42/455

The draft OPEN statement

225. Under the heading, "RISKS TO THE INDIVIDUAL THAT WOULD ARISE FROM PUBLICATION," paragraph 11 of the draft read:

"On Friday 5 June 2020, we became aware that the BBC were planning to broadcast a ~~separate~~ [word later removed at Officer 3's suggestion] news piece... on the extreme right wing... being produced by Daniel De Simone... Discussions took place between a representative from MI5 and a representative from the BBC during the week beginning Monday 8 June 2020. The BBC indicated during the course of those discussions, that... in producing the... Report Mr De Simone suspected that ~~some one~~ [later amended at Officer 3's suggestion] of the individuals he had identified... may be a CHISs or role-players for the state ~~or private organisations. One of those~~ That individuals identified by Mr De Simone was the same individual who is to be the subject of the BBC's proposed news report for which the Claimant seeks this interim injunction. [words later removed at Officer 3's suggestion who noted, "I think it was only one person that he was suspicious of. One."¹³⁸] During those discussions in June 2020, MI5 neither confirmed nor denied whether or not this individual was a CHIS, role-player or otherwise. However, MI5 did explain that running aspects of this story relating to this individual would cause damage to national security. MI5 asked that those aspects be removed, and Mr De Simone agreed to remove them..."¹³⁹

226. It seems to me probable that Officer 5 (Legal) drafted paragraph 11 following some general comments of counsel in respect of NCND. They did so, as they told me, on the basis of the instructions of Officer 3¹⁴⁰. They told the internal investigation that it had never been suggested to them that Officer 2 had indicated he could not remember if he had departed from NCND. If it had been, the OPEN statement would have been different.¹⁴¹ Although Officer 3 commented to a limited degree on paragraph 11, he never suggested in response to Officer 5's (Legal) invitation to suggest any changes, that the unequivocal assertion that NCND had been maintained should in any way be tempered to reflect what Officer 2 had told him.

¹³⁸ CB1/43/471

¹³⁹ CB1/43/471

¹⁴⁰ IPCO interview/Officer 5 (Legal)/27 November 2025

¹⁴¹ Internal investigation (first) interview/Officer 5 (Legal)/20 February 2025 at paragraph 73

227. On 25 January 2022, the Attorney General applied for the injunction.

The accounts of events leading up to the application for an injunction

Officer 2's account

228. Officer 2 told me he remembered receiving phone calls from Officer 3. There was a question in his mind if Officer 3 called before speaking to DDS in December 2021. Officer 3 told him DDS had come back and wanted to run a story about Agent X being a CHIS; that MI5 had somehow protected him from prosecution. Officer 3 described DDS's story as a bit spurious. Officer 2 thought it implausible that NCND would not have been raised. "I think [Officer 3] would have said, 'do you remember confirming [Agent X] ...was a CHIS.'... I think my immediate response probably would have been, 'Oh, I don't know.' You know... 'I haven't thought about it for 18 months'...my recollection is incredibly patchy, I think my instinctive response would have been 'Oh, I don't know'... I can't say with any certainty [what I said to Officer 3]. I certainly wouldn't have been unequivocal in my position.... I think he probably came away from that call with the view that... I couldn't recall disclosing." He thought Officer 3 said they were looking for files. "I think he'd probably given me the impression that they certainly hadn't found anything at that point...I would have loved to remember this.... The fact I didn't take notes on this will itself have likely impacted on my recollection of those events." He accepted that 'I don't remember, but I don't think I departed' probably summarised his position. He noted eighteen months had passed. A lot had happened at an incredibly challenging time.¹⁴²

229. During the internal investigation, Officer 2 said he felt quite sick as Officer 3 started to tell him that DDS had been back in contact. He had not thought there was any personal jeopardy for him if he had disclosed, but that the personal jeopardy had been the fact that he had not written up any contemporaneous notes electronically. He said the absence of notes was a bad thing.¹⁴³

¹⁴² IPCO interview/Officer 2/8-9 December 2025

¹⁴³ Internal investigation (third) interview/Officer 2/30 January 2025 at paragraphs 14, 16-17

230. He told me the assertion, 'We did not breach NCND,' in Officer 3's 'Background' email was not an accurate reflection of what he had told Officer 3. Officer 3's statement was stronger.¹⁴⁴
231. He told the internal investigation that he might not have responded to the email because of pressures in his job at the time. If he did see it, he would have said, this looks correct.¹⁴⁵ Officer 2 told me that, assuming he had received it, it would have been very sensible of him to say that NCND was not as definitive as stated in the email.¹⁴⁶
232. Officer 2 told me he remembered more than one conversation with Officer 3. "My sense is that over the course of that month, probably my view would have hardened... it would seem like the sort of thing I would have remembered given how unusual it was and... how unique it was... there were no other records and no other contradictory accounts... suggesting that I had disclosed." He was clear with everyone that his recollection was partial. "I didn't remember disclosing and that combined with the fact that no-one else recalled me disclosing... probably led me."¹⁴⁷
233. He told the internal investigation that by the time of his second conversation with Officer 3, he had been more confident "because he had been thinking that surely if he had departed from NCND, he...would have written it down... He thought that departing from NCND would have 'stuck in (his) memory' because he knew that the disclosure of an agent's identity was very important..."¹⁴⁸
234. Officer 2 spoke of having a meeting with Officer 18 (Legal) to discuss what he had said to DDS. His "hunch" was this was at some time after Christmas. He described sitting on a sofa and setting out in more detail what he had said to Officer 3: that he did not have a recollection of departing from NCND, so it was unlikely he would have done. He said he might have told Officer 18 (Legal) that DDS may inevitably have come to the conclusion that Agent X was a

¹⁴⁴ IPCO interview/Officer 2/8-9 December 2025

¹⁴⁵ Internal investigation (third) interview/Officer 2/30 January 2025 at paragraph 30

¹⁴⁶ IPCO interview/Officer 2/8-9 December 2025

¹⁴⁷ IPCO interview/Officer 2/8-9 December 2025

¹⁴⁸ Internal investigation (third) interview/Officer 2/30 January 2025 at paragraphs 23-24

CHIS.¹⁴⁹ Officer 18 (Legal) recalled no such meeting. They said the 'Background' email reflected their understanding.¹⁵⁰

235. I very much doubt any meeting took place at which Officer 2 expressed doubt to Officer 18 (Legal) about whether or not NCND had been departed from. I accept Officer 18's (Legal) evidence that the 'Background' email reflected their understanding. It is clear Officers 18 and 5 (Legal) were working on the basis of what Officer 3 was telling them.

Officer 3's role

236. Officer 18 (Legal) said¹⁵¹ Officer 3 was their main contact. He played a major part. They spoke many times a day. As he would have known, a lot of reliance was placed on him. His word was of considerable importance. The legal team were depending on what he told them. Officer 18 (Legal) thought Officer 3 was having conversations with both Officer 2 and the handling team.
237. Officer 5 (Legal) said they were receiving instructions from Officer 3 as head of the communications office. He had spoken to his predecessor (Officer 2). Officer 5 (Legal) understood there had been no departure from NCND. Officer 3 never said Officer 2 could not remember. Officer 3 agreed that he never indicated to Officer 5 (Legal) how equivocal Officer 2's recollection was.¹⁵²
238. OS KC understood that Officer 3 was "our principal lay client." It seems at one stage he was considered as a possible corporate witness.¹⁵³
239. Officer 3 told the internal investigation that he was "'instrumental in the decision to bring the injunction'... [the communications office] were effectively the people... bringing the injunction... and so, as [the person in charge] ... he was heavily involved in the process... he

¹⁴⁹ IPCO interview/Officer 2/8-9 December 2025

¹⁵⁰ IPCO interview/Officer 18(Legal)/16 December 2025

¹⁵¹ IPCO interview/Officer 18(Legal)/16 December 2025

¹⁵² IPCO interview/Officer 3/11 December 2025

¹⁵³ Witness statement of Oliver Sanders KC (added to CB2/C1)

was also involved due to his previous experience as an agent handler and as a controller, which enabled him to be an ‘independent help for... [the legal advisors]’.”¹⁵⁴

240. In a later interview, Officer 3 said he did not believe he was instructing the lawyers, certainly not in respect of NCND.¹⁵⁵

Officer 3's account

241. Officer 3 told me¹⁵⁶ he thought he spoke to Officer 2 before he first spoke to DDS. Officer 2 told him he did not recall departing from NCND. He did not think he had. He was equivocal. Officer 3 had spoken to Officer 2 by the time of the ‘Background’ email of 10 December 2021.¹⁵⁷ He had relayed a summary of what Officer 2 had told him to Officer 18 (Legal). Some of the information in the email would have come from Officer 2. That part which recounted, “We did not breach NCND” was from Officer 2, the rest from the handling team, with whom he had had a number of discussions. Officer 3 said the comment about not breaching NCND was his assumption, based on his general understanding.
242. Officer 3 thought he spoke to Officer 2 perhaps three times (in all). He did not recall the conversations becoming more specific. The conversation referred to in the ‘Background’ email of 20 January 2022 was on an open line. He did not recall NCND being mentioned in that conversation.
243. During the internal investigation Officer 3 was asked how he had moved from Officer 2’s position of uncertainty about NCND to the certainty in the ‘Background’ email. Officer 3 said that “he did not think he had provided certainty... he had provided a short email summary, where he had been seeking to present an account of where ‘they had got to’, rather than a definitive position of what had happened... he was not saying it was ‘my belief’, but rather he was asking [Officer 4] and [Officer 2]... if the summary was accurate... [Officer 4]... came back

¹⁵⁴ Internal investigation (second) interview/Officer 3/12 February 2025 at paragraph 16

¹⁵⁵ Internal investigation (third) interview/Officer 3/7 March 2025 at paragraphs 30-34

¹⁵⁶ IPCO interview/Officer 3/11 December 2025

¹⁵⁷ CB1/36/407-409

to him regarding timing, but with no other observations... [Officer 2] did not come back to him at all.”¹⁵⁸

244. Officer 3 also told the internal investigation that when in the office he had asked Officer 2 “...if he had a record of the [DDS] meeting, including whether NCND had been departed from, as it was the belief of some of the agent handling [sic] that it had been.... He said to [Officer 2] that if he couldn’t find a record, could he ‘think quite hard about it.’” He said Officer 2’s recollection had been “hazy as time had passed.” Officer 2 did not remember departing from NCND. On checking the record later, Officer 3 said he was “confident” he never discussed the belief of some members of the handling team.¹⁵⁹
245. During the course of his interview with me, Officer 3 described Officer 2 as being “very close to the level of certainty [described by Officer 2 during the meeting of 17 February]. It was not that strong when I spoke to him, but I was left with a fairly clear impression that [Officer 2] was confident he hadn’t departed from NCND.” It was “firmer than, ‘I don’t know.’”¹⁶⁰
246. Officer 3 told me of having conversations with Officers 4 and 15 over a period of time. He could not say which officer was involved in which conversation. He said Officer 4 did not answer the questions put to him about departing from NCND.¹⁶¹
247. Finally, Officer 3 told me there were discussions following the December 2021 right of reply letter in which departing from NCND was considered. That was not something which had ever been mentioned before, as far as I am aware. No-one else speaks of it. There is nothing in writing to suggest it. The case handling team had operated on the basis that NCND had been departed from in mid-2020. I very much doubt there were such discussions.

¹⁵⁸ Internal investigation (second) interview/Officer 3/12 February at paragraphs 53-54

¹⁵⁹ Internal investigation (first) interview/Officer 3/6 February 2025 at paragraph 47

¹⁶⁰ IPCO interview/Officer 3/11 December 2025

¹⁶¹ IPCO interview/Officer 3/11 December 2025

Officer 4's account

248. Officer 4 told me he had several conversations with Officer 3 about NCND. In the face of Officer 4's belief that MI5 had departed from NCND, Officer 3 maintained that while they might have got close, they did not. Officer 4 said he began to doubt himself. He was quite clear he at no time told Officer 3 they had not departed from NCND.¹⁶²

Officer 15's account

249. Officer 15 believed Agent X's role as a CHIS had not been disclosed. In their view, the paperwork did not suggest as much. No doubt that is what they told Officer 3. The absence of a report from Officer 2 was, they told me, noticeable. Officer 15 emphasised that although they saw Officers 4 and 23 every day, the focus of their work was on the substance of the allegations, not NCND. They said they did not recall discussing whether there had been a departure from NCND.¹⁶³

Officer 5's (Legal) account

250. As well as being in daily contact with Officer 3, Officer 5 (Legal) said they were in contact with members of the handling team. They said their instructions were predominantly from Officer 15. They had contact with Officers 4 and 23 regarding the full narrative and background to the handling and running of Agent X.¹⁶⁴

Witness A

251. I now turn to the selection of, and evidence relating to, Witness A.

252. In June 2020 Witness A was the Deputy Director responsible for regional stations around the country. He was also leading on the development of work on extreme right-wing terrorism. At the time he was seen by the internal investigation he was still a Deputy Director, but in a different role.

¹⁶² IPCO interview/Officer 4/18 November 2025

¹⁶³ IPCO interview/Officer 15/24 November 2025

¹⁶⁴ IPCO interview/Officer 5 (Legal)/27 November 2025

253. Officer 18 (Legal) said there were various conversations as to an appropriate corporate witness. They were trying to identify someone who could talk with credibility, had the appropriate level of seniority and time to read in. They thought the decision was taken by Private Office. It was not a central feature in the choice of Witness A that he had been personally involved.¹⁶⁵
254. Witness A told the internal investigation he had not been a corporate witness before. He understood he was representing MI5's position. He did not think that anyone explained to him what signing the statement meant. Accuracy was crucial. It was a very serious matter. As a corporate witness one had to be as confident as one could be that the statement was true. By the statement of truth, he was giving the truth to the best of his ability, confirming that the content of the statement was true to the best of his knowledge. He said he could only go on the information presented to him because he had not been involved in the case at the time. He admitted to being a little anxious due to the gravity of the situation. Seeking the injunction was absolutely the right thing to do. His engagement was primarily with Officer 18 (Legal).¹⁶⁶
255. Officer 18 (Legal) told me that they and Officer 5 (Legal) had conversations with Witness A around his role and the importance of the statement of truth. Witness A appeared to understand his duty as a corporate witness. As a senior MI5 Officer he would have undergone the legal training provided by the legal advisors and would have been aware of the obligation to disclose information which undermined MI5's case. They thought Witness A would have had the opportunity to go through all the documents.¹⁶⁷
256. There was an exchange of emails between Officer 18 (Legal) and Witness A about his role as a witness. In an email to Officer 18 (Legal) at 11:12 on 17 January 2022, Witness A asked:
- “...what I will need to do to fulfil my role as a corporate witness.”¹⁶⁸

¹⁶⁵ IPCO interview/Officer 18 (Legal)/17 December 2025

¹⁶⁶ Internal investigation interview/Witness A/7 February 2025 at paragraphs 36-9, 40, 43

¹⁶⁷ IPCO interview/Officer 18 (Legal)/17 December 2025

¹⁶⁸ H MAG v BBC – (Updated) Closed Bundle for Hearing on 3 June 2025 for the purpose of the Hearing listed on 10-11 July 2025 in the IPT Proceedings, tab 35, page 3

257. In their email of 18 January 2022 in response, Officer 18 (Legal) wrote:

“Your closed statement will need to address our relationship with... [Agent X], our knowledge (or lack thereof) of the domestic abuse issues, the fact we did not interfere with the criminal process. We will annex to your closed statement the full risk and damage assessment re [Agent X] ... (which we still need to finalise). The open version... will NCND our involvement with... [Agent X] ...We will then need you to make sure that you are entirely happy with the [OPEN and CLOSED] statements before you sign them.”¹⁶⁹

258. Officer 5 (Legal) recalled several conversations with Witness A about his role as a witness. They recalled that on one, if not multiple occasions, he satisfied himself of the accuracy of the statement. They did not know if anyone spoke to him about the duty of candour.¹⁷⁰

259. In his statement, OS KC said he emphasised the importance of the duty of candour from the outset and throughout, including the need for clarity about what had happened in 2020. In his view, all the legal teams were doing their best to discharge this. No-one had any reason to doubt that NCND had been maintained in June 2020. It was consistent with the practice of MI5. The BBC had not suggested to the contrary. Its case was that DDS had deduced Agent X’s status and corroborated it from ‘sources.’ He put it in the following way:

“I approached both BBC witness statements on the basis that they had been produced by responsible journalists with the benefit of professional legal input, were intended to be reasonably comprehensive and to assist the Court, were supported by statements of truth and were therefore an attempt to provide the truth...I am therefore certain that I would not have read “It does not correspond with my recollection in various respects” to mean anything like “it is untrue and contradicted by recordings I made of the relevant conversations and messages I received from MI5 at the time.”¹⁷¹

¹⁶⁹ *HMAG v BBC* – (Updated) Closed Bundle for Hearing on 3 June 2025 for the purpose of the Hearing listed on 10-11 July 2025 in the IPT Proceedings, tab 35, page 2

¹⁷⁰ IPCO interview/Officer 5 (Legal)/27 November 2025

¹⁷¹ Witness statement of Oliver Sanders KC (added to CB2/C1)

The final OPEN witness statement

260. On 26 January 2022, Witness A signed the OPEN witness statement.¹⁷² Paragraph 11 read:
- “On Friday 5 June 2020, we became aware that the BBC were planning to broadcast a news piece... on the extreme right wing... being produced by Daniel De Simone... Discussions took place between a representative from MI5 and a representative from the BBC during the week beginning Monday 8 June 2020. The BBC indicated during the course of those discussions, that in producing the ... Report Mr De Simone suspected that one of the individuals he had identified, and who would feature in the Report, may be a CHIS or role-player for the state. That individual identified by Mr De Simone was the same individual who is to be the subject of the BBC’s proposed news report for which the Claimant seeks this interim injunction. During those discussions in June 2020, MI5 neither confirmed nor denied whether or not this individual was a CHIS, role-player or otherwise. However, MI5 did explain that running aspects of the story relating to this individual would cause damage to national security. MI5 asked that those aspects be removed, and Mr De Simone agreed to remove them...”
261. Witness A described the lawyers as having taken a key role in preparing the OPEN statement. They had taken ownership of its production. Officer 18 (Legal) wrote it. He (Witness A) regularly reviewed it. He did not read all the underlying material. He was confident in the handling team. NCND was not regarded as contentious. He was confident with the content on the basis that he was being assured by the lawyers that it was accurate.¹⁷³
262. Officer 18 (Legal) said NCND was not at this stage a huge issue.¹⁷⁴ Officer 5 (Legal) agreed.¹⁷⁵ NCND only became a live issue when the special advocates put in their requests, something with which I deal below.

¹⁷² CB1/44

¹⁷³ Internal investigation interview/Witness A/7 February 2025 at paragraphs 44-5, 48, 54, 56

¹⁷⁴ IPCO interview/Officer 18(Legal)/16 December 2025

¹⁷⁵ IPCO interview/Officer 5 (Legal)/27 November 2025

263. Officer 12 (Legal) was the successor to Officer 18 (Legal) and not involved at the time. They said that in retrospect it would have been better to do things differently. The witness statement was being compiled at speed from many people feeding in instructions, with Officer 3 as one of the key clients assisting in the production of the material. By definition, the maker of a corporate witness statement has no first-hand knowledge. The addition of paragraph 11 arose relatively late in the day on instructions from counsel, who felt it was an issue of enough significance to be addressed in the statement. One has to make a call on a corporate statement. One has to be satisfied it is all accurate. In circumstances where NCND was not the most crucial issue, they felt able to rely on the instructions they were given.¹⁷⁶

The hearing of 16 February 2022

264. The nature of the application for an injunction, and the broad issues it raised, are apparent from paragraphs 1 and 2 of Mr Justice Chamberlain’s OPEN judgment¹⁷⁷ concerning the Attorney General’s application under the Justice and Security Act 2013 (the 2013 Act) for the hearing of the substantive application to be wholly or substantially in private:

“1. The BBC wants to broadcast a programme about an individual, “X”. The programme is to include the allegations that X is a dangerous extremist and misogynist who physically and psychologically abused two former female partners; that X is also a...CHIS...; that X told one of these women that he worked for MI5 in order to terrorise and control her; and that MI5 should have known about X’s behaviour and realised that it was inappropriate to use him as a CHIS. The BBC says that the broadcast of this story, and the identification of X by name, is in the public interest.

2. The Attorney General (“the Attorney”), acting on behalf of the Crown, has brought a claim for an injunction to prevent the BBC from broadcasting the programme. The Attorney’s stance has been that she can neither confirm nor deny that X is or was a CHIS, other than in CLOSED proceedings...She submits, however, 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.

¹⁷⁶ IPCO interview/Officer 12 (Legal)/10 December 2025

¹⁷⁷ *HMAG v BBC* [2022] EWHC 380 (QB)

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”).”

265. Mr Justice Chamberlain made a declaration under section 6 of the 2013 Act giving the Attorney permission to withhold sensitive material.

MI5’s reliance on paragraph 11 at the time of filing Witness A’s OPEN statement

266. As I conclude, the position regarding NCND at the time Witness A’s statement was filed was as follows.
267. NCND was not thought contentious. The real area of contention was believed to relate to the substantive allegations DDS was making.

Officer 2’s position

268. As I shall shortly explain, I have concluded Officer 2 knew throughout he had departed from NCND. He told Officer 3 he could not remember whether he had done so, but thought he had not. Officer 2’s lies formed the foundation of MI5’s false account.

Officer 3’s position

269. Before turning to my assessment of the position of Officer 3, I should make it clear that, as is the case with Officer 2, he was a very well regarded and able member of MI5. He was vetted to a high level. He has made a significant contribution to MI5’s work in many important respects. All these are matters I bear in mind when considering Officer 3’s role in these matters. They are factors which, among other things, would make it less likely he would seek to mislead.
270. In my view, Officer 3 has sought to downplay his role. He says he had nothing to gain from bringing the injunction proceedings. He was not involved in 2020. He had no reason to misrepresent the position. Officer 4 and the handling team (alongside others) were involved in the provision of instructions.

271. I do not accept Officer 3's account of his role. He played a pivotal part in the bringing of the application for an injunction. He knew he was the sole conduit through which Officer 2's account was being relayed. He was central to the instructions being provided to Officers 18 and 5 (Legal) and to counsel. The email traffic shows it. Officers 18 and 5 (Legal) have said so. So has counsel. What he originally told the internal investigation suggests as much. He went so far as to suggest amendments to the statement, including to paragraph 11. As Officer 5 (Legal) put it, they received instructions "from the incumbent Head of [the communications office]... who had spoken to his predecessor, who had been the individual to have had those conversations with... [DDS]." ¹⁷⁸ As someone with a high degree of professional responsibility for the success of the application, he would naturally also feel a significant personal commitment to its success (and how it would reflect on his effectiveness and competence).
272. Neither do I accept that Officer 2 was "close to the level of certainty" when he spoke to Officer 3. He told Officer 3 he could not remember whether he had departed from NCND, but thought he had not. Officer 3 did not tell Officers 18 and 5 (Legal) about Officer 2's uncertainty. He overstated the position, in his 'Background' emails of 10 December 2021 and 20 January 2022. Moreover, the statement "We did not breach NCND..." in the email was not in my view an assumption from all the circumstances, as Officer 3 said. When read in context, Officer 3 was purporting to report what Officer 2 had told him. Officer 2 was plainly the purported (query actual) source of the comment which followed, namely that "... [we] asked De Simone to remove references to... [Agent X] from his piece. The conversation was prefaced with confirmation that this conversation was not on the record, but we would reveal some sensitive details in confidence, to manage the greater risk to national security." The source of the later reference to DDS "being initially fairly bullish" was also ostensibly Officer 2.
273. As Officer 3 rightly points out, neither Officer 2 nor Officer 4 responded to the Background email as far as NCND was concerned. Officer 4 accepts he should have done. I set out below why in my view he did not. Whether Officer 2 did not respond because (twice) he did not receive the email or because he considered there were more pressing demands on his time or because he was prepared to go along with its contents, I cannot say.
274. I also find that Officer 4, although much more concerned about the substance of DDS's allegations, told Officer 3 that he believed NCND had not been maintained. I reject Officer 3's

¹⁷⁸ IPCO interview/Officer 5 (Legal)/27 November 2025

account to the contrary. For Officer 4 impressed me as a straightforward and truthful person, although more interested in dealing with the practicalities rather than the paperwork. Officer 17, who became Officer 4's manager, in my view rightly, described him as being "straight as a die," completely truthful.¹⁷⁹ Although no doubt confident in dealing with agents, I suspect Officer 4 is not so confident in other ways.

275. Officer 3 has sought to argue that Officer 4 and the rest of the handling team were not sure that there had been a departure. In my view, that is of limited help to his case. For it was Officer 3 who was definite that NCND had been maintained.
276. As I have said, the internal investigation noted Officer 3 as referring to "...the belief of some of the handling agent team that...[NCND] had been [departed from]."¹⁸⁰ However, given Officer 3's disagreement with the note, I place little weight upon it.
277. I accept that Officer 15, as representative of the handling team, did tell Officer 3 that NCND had been maintained. To that extent, Officer 3 may well have been provided with a degree of false reassurance. However, unlike Officer 3, Officer 15 had not spoken to Officer 2.
278. Officer 3 highlights a number of actions that he took in late 2021 and early 2022 which are said to support his belief that Officer 2 had maintained NCND and that Officer 2's recollection about departing from NCND was not uncertain. He relies on his maintenance of NCND when engaging with DDS. He also highlights reaching out to his trusted BBC contacts and the D Notice Committee, his involvement in the decision to brief the DG to engage with his counterpart at the BBC and his support of the injunction proceedings. I do not consider any of these actions suggest Officer 2's recollection was certain. It would have been surprising had Officer 3 departed from NCND in talking to DDS. His actions suggest how invested Officer 3 became in preventing the broadcast and how he had an increasing personal stake in the position MI5 had taken.
279. Officer 3 also draws to my attention the lack of contemporaneous documentation suggesting a departure from NCND. Officer 3 argues that the lack of records showing the handling team's

¹⁷⁹ IPCO interview/Officer 17/24 November 2025

¹⁸⁰ Internal investigation (first) interview/Officer 3/6 February 2025 at paragraph 47

action to protect X supports his position that Officer 4 and the handling team could not have been so clear that there had been a departure.

280. I agree that Officer 4 and the handling team deserve significant criticism regarding the paperwork. However, that does not exonerate Officer 3. He was the only person who spoke to Officer 2. Officer 2 was not clear that NCND had been maintained. In any event, the contents of Agent X's case file contained cogent evidence suggesting that NCND had not been maintained (as Officer 3 himself accepted).
281. Officer 3 argues that any culpability on his part should be mitigated by the false confidence provided by a lack of records of the conversation between Officer 2 and DDS. While such mitigation may be reasonable in respect of someone who had had no first-hand contact with Officer 2, Officer 3 is in an entirely different position. He was not confined to working off records (or the absence of records).
282. What it comes to is this. Officer 3 was the sole source of Officer 2's account. He said nothing about Officer 2's initial uncertainty. He overstated the position, in his 'Background' emails of 10 December 2021 and 20 January 2022. He ignored what Officer 4 had told him. In my view, Officer 3 significantly contributed to MI5's reliance on the false account.

Officer 4's position

283. Officer 4 should have responded to Officer 3's emails of 10 December 2021 and 20 January 2022 regarding the assertion that NCND was not breached. He should have read paragraph 11 of the draft OPEN statement when it was sent to him and expressed his disagreement with it. He should have made clear to Officers 18 and 5 (Legal) his understanding that NCND had been departed from.
284. There was some mitigation. First, in the face of the assertions of Officer 3, who was senior to him, he began to doubt himself. Having interviewed both Officer 4 and Officer 3 I can see why. Officer 3 presented to me as authoritative and difficult to challenge. Second, I believe Officer 4 when he says he was focussed on the substance of the allegations. They amounted to a serious attack on his and his team's handling of Agent X. He and Officer 23 found them very upsetting. The BBC's proposed story also presented a real and immediate risk to Agent X's

security and welfare, for which the handling team bore a statutory responsibility.¹⁸¹ Responding to the substantive allegations required considerable work.

The handling team's position

285. I accept the Agent X issue arose at a particularly difficult time. Due to Covid-19 restrictions the workload on the team's members was increased and considerable. Individuals were responsible for a greater number of cases. Fewer people were in the office. Communications were difficult. Once the Agent X issue had been successfully resolved (as it was perceived), the team moved on to the other urgent issues confronting it. Thoughts of chasing up Officer 2 for a write-up and making clear their understanding regarding NCND on Agent X's case file faded into the background. That having been said, the handling team should have made an unequivocal note on Agent X's file making clear their understanding that NCND had been departed from.
286. In the circumstances, Officer 4 and the handling team bear some responsibility for MI5's reliance on the false account.

Officer 15's position

287. In hindsight, Officer 15 was an unfortunate choice to represent the handling team's understanding. They had not been there in June 2020. It was their view that the absence of any note from Officer 2 to the effect that he had departed from NCND and an entry in Agent X's case file unequivocally stating the same, plus their understanding of what Officer 2 was saying, meant that NCND had been maintained.
288. Officer 15 did not sufficiently consider the implications of the many entries which suggested NCND had been departed from, not least the contact note of early August 2020. They did not appreciate that what was said in the Background email to the effect that DDS would probably have concluded Agent X was a CHIS, required an entry in Agent X's case file in accordance with Regulation 3(e) of the Regulation of Investigatory Powers (Source Records) Regulations

¹⁸¹ [Regulation of Investigatory Powers Act 2000](#), s.29(5)(a). See also the [CHIS Code of Practice](#).

2000.¹⁸² Officer 15, as Agent X's authorising officer, had grounds to make further enquiries. However, I accept that Officer 15's shortcomings may have been due in part to their focus on conducting a thorough review of the substance of the allegations against Agent X. Officer 15 was in a very different position from Officer 3. They had not spoken directly to Officer 2.

The position of Officers 18 and 5 (Legal)

289. I have some sympathy for the position of Officers 18 and 5 (Legal) at this time. They were working under very considerable pressure. NCND was not thought contentious. The addition of paragraph 11 came late in the day and at the suggestion of counsel. Officer 2 was unlikely to be contactable for some of the time. Officer 3 misled them. Officer 15 assured them NCND had been maintained. Officer 2 did not respond to the 'Background' email (although that was not picked up). Officer 4 did not respond to the email on the topic of NCND. He said nothing when sent a draft of Witness A's OPEN statement.

The duty of candour

290. I deal with the duty of candour in the injunction proceedings below.

CPR PD paragraph 18.2

291. As the Divisional Court set out in paragraphs 97 – 106 of its judgment, paragraph 11 did not comply with CPR PD paragraph 18.2. Officer 5 (Legal) appears to have drafted the paragraph. Officer 18 (Legal) was the responsible lawyer. Counsel saw and approved it.

¹⁸² [Regulation of Investigatory Powers \(Source Records\) Regulations 2000](#)

Part Three

The involvement of the Special Advocates

DDS's first witness statement: 1 February 2022

292. On 1 February, DDS made a lengthy and detailed witness statement¹⁸³ in support of the BBC's case and in response to that of Witness A. For present purposes I need only refer to parts:

"3 ... [I have] ...established that... [Agent X] worked for MI5... Two women, who have never met, have independently given strikingly similar accounts of [Agent] X's predatory and abusive conduct. Most importantly, [Agent] X told... 'Beth', that he worked for the security services, shared information with her about this work and used this status to terrorise, threaten and isolate her...

29. On 5 June 2020 I sent [Agent] X a 'right of reply' letter...The letter set out the information about extremism which we were considering for inclusion in the... programme and asked for his response. I did not mention anything about Beth, his treatment of her, or any work as an informant, as I was still investigating these matters...

30. Over the following days Beth, unprompted, gave me information about [Agent] X's work as an informant for the British authorities...

31. On 8 June 2020, I received a call from a representative of MI5 and went on to have several conversations with him. I have read the account provided by 'Witness A' of these conversations. It does not correspond with my recollection in various respects.

32. During this week I decided not to include [Agent] X in my [programme] since I thought his case needed more investigation."

293. DDS went on to describe Beth's account of Agent X's dealings with the security services. At paragraph 36, he said:

"I considered Beth's account of what [Agent] X had said about his connections to intelligence agencies to be credible. She did not seem to be exaggerating what [Agent] X had said or done. I then received corroboration of Beth's account of X's work with MI5 from another source. I received further corroboration of Beth's account of

¹⁸³ HMAG v BBC – Bundle for Hearing on 12 February 2025, tab 8

[Agent] X's intelligence work from a different source. This source also provided specific information about [Agent] X being involved with MI5..."

294. DDS told me this reference, which was essentially repeated at paragraphs 40 and 41 of his IPT witness statement of 23 November 2023,¹⁸⁴ was not to Officer 2.
295. At paragraphs 93 to 97 DDS explained why publication of [Agent] X's identity was "crucial;" why, in his view, publication would not damage national security.
296. At paragraphs 103 to 105 he dealt with (and to some extent disputed) the conversations with Officer 3 on 9 and 10 December 2021.
297. I asked DDS about paragraph 31. He said the reference was fundamentally, but not exclusively, about what was said in paragraph 11 of Witness A's OPEN statement. I asked him if it was a real shock when he first saw paragraph 11. He said in a way it was not. He was sceptical of the extent to which MI5 was always candid about things. They regarded NCND as totemic. He was not wholly surprised, but disappointed. He knew paragraph 11 was not accurate.
298. DDS explained why it was only later that he specifically disputed the contents of paragraph 11 and produced the evidence relating to the first and second calls. In essence, it came to this. He was present at the IPT on 9 May 2024 when NCND was argued. The judgment of 21 June 2024 was absolutely unequivocal on NCND. He saw the impact of the decision on Beth's claim. The majority of the case would be closed to her. He had to put right a judgment based on MI5's false account. He decided he had to produce the evidence. The process took some time. It was not until November 2024 that the BBC wrote to MI5.¹⁸⁵

Witness A's CLOSED witness statement

299. On 7 February 2022 Witness A made a CLOSED statement for the hearing to take place on 16 February 2022.¹⁸⁶ The substantive application was listed for 1 and 2 March 2022. Exhibited to

¹⁸⁴ DDS/11

¹⁸⁵ IPCO interview/DDS/28 November 2025

¹⁸⁶ CB1/45

the statement were the disclosed documents from Agent X's file. ES had advised on disclosure under the duty of candour at an early stage and before any issue about NCND had arisen.

300. Under the heading 'The CHIS Capability,' Part (iv) dealt with the "Confidentiality of the CHIS Relationship." Paragraphs 37 and 38 stated:

"In paragraphs 6 and 13-17 of my OPEN witness statement I refer to the importance of MI5's ability to build trust in our relationship with CHIS, and how crucial it is that CHIS remain reassured of our ability to keep their identities secret in perpetuity. I now provide further detail in CLOSED. In MI5 we place paramount importance on keeping our CHIS safe, including protecting their identities by all reasonable and lawful means possible in accordance with the CHIS Code of Practice. This includes how we handle CHIS identities even within MI5; only MI5 officers who have a significant need to know for national security reasons will be aware of the identity of a CHIS... Operational plans which do not sufficiently protect the CHIS will not be approved by Authorising Officers. Independent Operational Security Advisors... scrutinise these plans, with one of their specific areas of focus being the protection of CHIS. [Operational Security Advisors] will also challenge handling or tasking of a CHIS which unacceptably elevates risks to a CHIS's identity."

301. Paragraph 102 referred to paragraph 11 of the OPEN witness statement. The statement also referred to, and exhibited, the different contact notes to which I have referred, as well as the email chain culminating in Officer 7's (Legal) advice on NCND.¹⁸⁷ Paragraph 107 dealt with the contact note of early August 2020:¹⁸⁸

"....MI5 were considering suggesting that the BBC journalist meets... [Agent X] as a way to counter some of the journalist's conclusions about... [Agent X]... In a meeting... [Agent X] confirmed that he wanted to continue as a CHIS..."

302. This seems to me not to confront the difficulty of the suggested previous maintenance of NCND with the proposed meeting.¹⁸⁹

¹⁸⁷ CB1/6/89-91

¹⁸⁸ CB1/27

¹⁸⁹ CB1/27/347

303. Witness A told me that to the best of his recollection, no-one told him to read all the attached documents. He would have read some. His focus was on the most contentious areas. There was no reason to dwell on the events in June 2020.¹⁹⁰
304. Officer 5 (Legal) said they first became aware of the email chain culminating in Officer 7's (Legal) advice of 8 June 2020 on departing from NCND when preparing the CLOSED witness statement.¹⁹¹

The involvement of the special advocates

305. As Mr Justice Chamberlain said at paragraph 5 of the judgment previously referred to:
- “The procedure provided for by the JSA allows the BBC and its legal team to be see [sic] 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...”
306. Before the hearing on 16 February 2022 the special advocates raised two requests “FOR DISCLOSURE UNDER THE DUTY OF CANDOUR” relevant for present purposes.

The special advocates' requests

The first requests

307. In requests dated 13 February 2022 the special advocates raised¹⁹² the apparent inconsistency between the assertion in paragraph 11 of the OPEN statement¹⁹³ that NCND had not been departed from and Officer 23's email of 6 June 2020 to the effect that “...the option that best mitigates the outlined risks would be...to declare [Agent X's]...role as a CHIS,”¹⁹⁴ Officer 7's

¹⁹⁰ IPCO interview/Witness A/1 December 2025

¹⁹¹ IPCO interview/Officer 5 (Legal)/27 November 2025

¹⁹² CB1/46/603-607

¹⁹³ CB1/44/487

¹⁹⁴ CB1/6/99

(Legal) advice on departing from NCND of 8 June 2020,¹⁹⁵ Officer 10's contact note of 8 June 2020¹⁹⁶, and Officer 10's "bullet point" email of 10 June 2020.¹⁹⁷ They did not refer to the contact note of early August 2020¹⁹⁸. They made the following submissions:

"3. The relevance of the detail of the exchanges is hopefully clear. The engagement between MI5 and the BBC in June 2020 was effective in neutralising the risk that had been presented. If during that engagement MI5 did indeed confirm that... [Agent X] was acting as a CHIS, then the justification of withholding that information from the Defendant in connection with the present proceedings is significantly weakened (and arguably falls away altogether).

4. This is not a speculative request for disclosure:

(a) There is a clear conflict between what is set out in the OPEN witness statement of Witness A and what had been contemplated, both internally at MI5 and in discussion with... [Agent X], in terms of disclosure to the BBC of... [Agent X's] status as a CHIS.

(b) Mr. De Simone disputes the account provided by Witness A of their exchanges in June 2020, although he is not specific about the area of dispute:

"On 8 June 2020, I received a call from a representative of MI5 and went on to have several conversations with him. I have read the account provided by 'Witness A' of these conversations. It does not correspond with my recollection in various respects."

[original emphasis]

[OPEN w/s of Daniel De Simone, [para 31]]

(c) It seems likely that contemporaneous notes of any exchanges between MI5 and the BBC in June 2020 exist. [The] OPEN Exhibit [recording Officer 3's conversations with DDS] ...contains a composite note of a series of exchanges between various individuals within an [sic] MI5 and individuals at the BBC, dating from December 2021. Similar records would be expected to exist in relation to the contact in June 2020."

¹⁹⁵ CB1/6/89-91

¹⁹⁶ CB1/9/109-115

¹⁹⁷ CB1/12/149

¹⁹⁸ CB1/27/339-351

MI5's response to the first requests

308. On 14 February 2022 there was a conference with ES. There was a "Follow up call" with GLD. ES made notes which read:

"- No minutes of calls in June 2020

Person before did not take notes

- Re departure from NCND in June 2020

No we did not. We considered departure from it.

That discussion did not take place

... [Officer 10's Bullet Point email of 10 June 2020] is what actually happened
"fictitious persona"

NB June 2020... [Bullet Point email] was not prepared by author of conversation with BBC. This person would have been more interested in where they talk about permission

A formal departure from NCND would be recorded somewhere."¹⁹⁹

309. On 15 February 2022 MI5 responded.²⁰⁰ Officer 5 (Legal) told the internal investigation that while they had some input, Officer 18 (Legal) had led the responses. Officer 5 (Legal) said:

"...[They] assumed that the responses would have been drafted in close conjunction with [Officer 3]... [they] also thought that [Officer 15]...would have had some involvement on the agent handling side, and that...[Witness A] would possibly have also been involved."²⁰¹

310. Officer 5 (Legal) also told the internal investigation that:

"...[they] had been fully aware that there were no contemporaneous records on the 2020 calls...what they did have however, were documents that were exhibited to the [CLOSED] witness statement and disclosed to the court...[T]hey had been confident that there had been no reason to doubt those that were instructing [them]...[they] had no reason to have doubts about their openness or about not being honest to the best of their ability...they had also assessed that there had not been a departure from NCND because it was not recorded in the risk assessment of the agent, and the BBC

¹⁹⁹ IPCO interview/ES/8 December 2025. ES List of Documents page 39

²⁰⁰ CB1/47/609-613

²⁰¹ Internal investigation (second) interview/Officer 5 (Legal)/25 February 2025 at paragraph 12

had not said that there had been in their calls with... [Officer 3]... and subsequent proceedings... this weighed in favour of their assessment that they didn't depart."²⁰²

311. Officer 18 (Legal) said that in light of documents referred to, there were discussions about possible disclosure of Agent X's CHIS status:

"...it comes back to... very clear instructions from [Officer 3] ...that there hadn't, in fact, been that departure and it hadn't been brought... to our attention verbally... from the operational team that... they had a different recollection.... I can now see with the benefit of hindsight it'd been better if perhaps we had been more probing on the topic, but... at the time that's where we were coming from...I still, I am afraid, find it slightly odd... as to why they haven't raised it and why they didn't raise it at the time in an explicit way... they had many opportunities to do so...."²⁰³

312. Officer 18 (Legal) agreed that Officer 2 should have made a note, even had there been no departure.

313. MI5's response to the special advocates stated:

"There are no contemporaneous notes of the discussions which took place between MI5 and the BBC in June 2020.

The underlying documents referred to by the SAs... relate to the internal MI5 considerations of potential options available to protect... [Agent X's] identity as a CHIS. This included consideration of whether to disclose... [Agent X's] identity as a CHIS on an exceptional basis to an extremely limited number of trusted contacts at the BBC, in confidence. In the event, that option was not pursued - and NCND was maintained in the discussions which then took place, as detailed in paragraph 11 of Witness A's confidential statement.

The underlying documents simply record that such considerations took place. For example... [Officer 10's contact note of 8 June 2020] indicates that... [Agent X] was briefed on the risks that might arise upon the proposed conversation with the BBC

²⁰² Internal investigation (second) interview/Officer 5 (Legal/25 February at paragraph 20

²⁰³ IPCO interview/Officer 18 (Legal)/17 December 2025

taking place... [Officer 10's bullet point email of 10 June 2020] refers to the basis and rationale for engagement with the BBC, and describes MI5's motivations for engaging with the BBC, rather than what was said to the BBC in the course of those discussions. Whilst there is no contemporaneous note of the discussions in June 2020 between MI5 and the BBC, it is evident NCND was maintained because:

- 1) Had there been a departure from NCND in... [Agent X's] case, that departure would have been recorded by... [Agent X's] handling team as part of their risk assessment in accordance with their duties under RIPA and the Code of Conduct [sic] to consider the risks to... [Agent X] in light of the fact that his identity would have then been known other [sic] individuals outside the handling team and outside MI5. It was not...
- 2) The BBC have not stated that... [Agent X's] identity was confirmed to them. On the contrary, De Simone states that he decided not to include... [Agent X] in his... [programme] since he thought [sic] 'his case needed more investigation' (para 32 De Simone statement).

In response to the specific requests at paragraph 4 of the SAs submissions:

- a) There is no conflict between Witness A's evidence of the discussions that took place and the underlying evidence which records what options were contemplated. The option to disclose to a limited number of trusted contacts in confidence at the time, does not equate to disclosure either in OPEN or to the BBC within a confidentiality ring (and thus to a wider audience).
- b) That De Simone disputes the account does not assist in the absence of further details as to what elements are disputed. In any event, and importantly, De Simone does not state that... [Agent X's] identity as a CHIS was confirmed.
- c) Contemporaneous records of exchanges between MI5 and the BBC in June 2020 do not exist.²⁰⁴

The second requests

314. The special advocates were not satisfied with MI5's response. On 16 February 2022 (the day of the 2013 Act hearing before Mr Justice Chamberlain) they submitted requests "IN RESPECT OF JUNE 2020 EXCHANGES".²⁰⁴ They stated:

"2. We are...surprised by the response that *"There are no contemporaneous notes of the discussions..."* and *"Contemporaneous records of exchanges between MI5 and the BBC in June 2020 do not exist"*.

3. The following questions arise from the response:

- (i) Were any notes (or other record) ever made by MI5?
- (ii) If notes (or other record) were made, why do they now not exist?
- (iii) If notes (or other record) cannot be found, what searches have been carried out?
- (iv) Would it not be expected/good practice that notes of any such calls would be made, as in December 2021, particularly given the possibility, which had been contemplated, that MI5 would need to disclose [Agent] X's status as a role-playing CHIS?
- (v) Is there any other contemporaneous (or near contemporaneous) record of the detail of the engagement in June 2020? (For example in a subsequent risk assessment by X's handling team?) If so, could we be provided with any such record?
- (vi) In the absence of contemporaneous notes, how/on what basis is Witness A able to state that *"during the course of those discussions in June 2020, MI5 neither confirmed nor denied whether or not this individual was a CHIS, role-player or otherwise"* [OPEN w/s para. 10 [sic]]
- (vii) If not relying on his own knowledge, on what record(s) did Witness A draw to make that apparently categorical statement?
- (viii) With what degree of confidence can Witness A make that statement?
- (ix) Was Witness A the person from MI5 who spoke to Daniel De Simone in June 2020?
- (x) If the answer to (ix) is "yes", why does Witness A not say so in terms in either his OPEN or CLOSED statements...Can that position be corrected?
- (xi) If the answer to (ix) is "no", or if others within MI5 spoke to Mr. De Simone, in addition to Witness A, could all those who did speak with Mr. De Simone make a witness statement(s) setting out their recollection of the conversations?

²⁰⁴ CB1/48/615-617

4. For the avoidance of doubt, we consider that answers to the above fall to be given under the duty of candour.”

The meeting between Officers 18 and 5 (Legal), Officer 2, and Witness A on 17 February 2022

315. Officer 18 (Legal) said they wanted to speak to the person who had spoken to the journalist. They agreed²⁰⁵ that in hindsight they would have spoken to Officer 2 before committing to paragraph 11, but was pretty confident Officer 2 was not around. A meeting was arranged to which Officer 2 and Witness A were invited. Officer 18 (Legal) thought they and Officer 5 (Legal) probably decided who should come. The purpose of the meeting was to respond to the special advocates’ questions.

316. Unusually (at least as far as this case is concerned), notes were taken, in this instance by Officer 5 (Legal), and stored on the corporate record.²⁰⁶ In setting them out, I have sought to insert a reference to the likely speaker:

“**[Witness A]** Can say:

I’ve spoken to the individual [Officer 2] who spoke to the journalist.

[Officer 2]

Didn’t deviate from ncnd-never did in conversations. Reason I was very keen in speaking to the h[andling] team was because I was trying to persuade him in doing something he didn’t want to do.

Stuck to ncnd but revealed that we were specifically interested in this individual. I may not have used those words.

AH [agent handling] team came to me (call), asked to speak to me

Relayed conversation to AH team verbally

I sought him out to have a conversation about his [programme]. I can’t remember if I raised him first or he did. But I wouldn’t have spent time speaking about other aspects of the [programme]. Several reasons why I could have been calling about this individual, but in that conversation I would have appeared to have been more interested in that individual than others.

[Witness A]

²⁰⁵ IPCO interview/Officer 18 (Legal)/17 December 2025

²⁰⁶ CB1/49

[Witness A]-remember calls with... [Officer 4] and... [Officer 1]

[Officer 2]

... [Officer 4] tipped ... [Officer 2] off verbally. ... [Officer 2] verbally relayed to... [Officer 4] the content of my conversation with D[D]S

[Question from Officer 18 (Legal) reflecting the special advocates' questions in paragraph 3 of the second requests]

Practice to make a note?

[Officer 2]

If hadn't been so busy during that time, would have made a note. But purpose was to get it off [the programme], and we did so didn't feel like an enduring issue

[Comment from Officer 18 (Legal) relating to request 3(iii)]

No searches because we've spoken to the person who had the call.

[Officer 2]

6. In an ideal world best practice might dictate you make a note of everything but busy time, covid and not policy or practice to dictate that we should do.

[Question from Officer 18 (Legal)]

7. Had there been a departure that would have featured in the (write up?)

[Witness A]

[Witness A] - would maybe expect to see something in the risk assessment

8. spoken to... [Officer 2] now, but also remember having conversations at the time with... [Officer 4] and... [Officer 1] and recall that that was the position that had been taken. No contemporaneous notes of those conversation. [sic]

DD [Deputy Director]-branch responsible for ERWT.

[Comment from Officer 18 (Legal) relating to request 3(iii)]

Speak to Counsel about whether to do a full search. Documents relevant to running will be on file. Possible emails exist outside [MI5 IT system] Speak to... [named person]

Premise of our searches, clear with SAs

[Comment from Witness A relating to request 3(viii)]

High degree of confidence in statement. That is based on conversations had at the time and the conversations now and in only very limited circumstances would we depart and that would be recorded and it isn't-8

[Comments relating to requests 3(ix) and (x)]

9-no

10-n/a

[Officer 2's answer to request 3(xi)]

11-note of... [Officer 2's] recollection of the conversation he had... [Officer 2]:

-We did mostly focus on this individual, dds would have focused on other aspects of [programme]. But he clearly expressed concerns about the individual and a range of things he thought he was involved in mostly er [extreme right wing] and raised concerns about the relationship he might have with his partner. Concern t...obviously spoken to partner as partner has revealed to [DDS] that [Agent X] had disclosed to partner. Keen to include in [programme]. I kept insisting for ns [national security] reasons it would be extremely helpful to keep out. Couldn't go into detail as to why.

-Conversation went on for a long time...

-I recall the long pauses of him saying need it in there. Me saying it would be really really unhelpful for him to be in there. Went round in circles for a long time. I undoubtedly would have shown that we were more interested in this particular individual. Because of time spent talking about that individual...

It included him saying he thought he could be an a[gent] of ours given what the girlfriend had said. Didn't confirm.

By end, ds seemed to be relatively cooperative. He said he really didn't want to get in the way of investigations- I recall that being because he'd 'seen the light'

Awkward conversation because he was stubborn

-When put to me that he was a[gent] I would have said something along the lines of 'I can't get into those sorts of details I can't talk about that sort of thing'

-Because I've had lots of conversations in the course of my 3 years about soi [subjects of interest] or people of interest etc.

-Never departed, apart from one instance when we pushed back on the Sunday times story re us not being behind the home secretary. Did then put the line out saying that was incorrect. Didn't relate to intel,

-On a[gent], never departed from ncnd. On invest targets you might steer if got wrong name etc."

What Officers 18 and 5 (Legal) said about the meeting

317. Officer 18 (Legal) said they placed considerable reliance on what Officer 2 was saying. They knew Officer 2. He was respected. Never in their long career at MI5 had Officer 18 (Legal) known something like this to happen. There was the clear expectation that everyone would work with integrity and that you could rely on what people say. To depart from NCND to an untrusted journalist would be "very exceptional." They accepted there should have been a note of the conversation, whether or not NCND had been departed from. They thought the absence of a record of the conversation might have given them false confidence that it had not been departed from.
318. The accounts of Officer 2 and Witness A were "pretty unequivocal." Officer 18 (Legal) was not concerned that NCND had been departed from. They had clear instructions. They and Officer 5 (Legal) were clear in their minds.²⁰⁷
319. Officer 5 (Legal) did not recall Officer 2 saying he was not sure, when speaking of not deviating from NCND. He did not mention subsequent conversations. They told me there "were elements that perhaps [Officer 2] was less clear on. As to whether he departed from NCND in respect of... [Agent X's] CHIS status, my recollection was he was very clear there had been no departure." They did not recall it being clear how he had succeeded in removing [Agent X].²⁰⁸
320. They told the internal investigation that Officer 2 said he had not deviated from NCND, that Witness A recalled a conversation from that time (June 2020) and that they had no reason to doubt their recollections.²⁰⁹ They said that they "could recall both... [Officer 2] and... [Witness

²⁰⁷ IPCO interview/Officer 18 (Legal)/16 December 2025

²⁰⁸ IPCO interview/Officer 5 (Legal)/27 November 2025

²⁰⁹ Internal investigation (second) interview/Officer 5 (Legal)/25 February 2025 at paragraphs 35 and 39

A] giving careful thought to their answers on 17 February 2022, and that the impression that [they] had from... [Witness A] ...was that he had spoken to... [Officer 4] at the time (June 2020), and that (no departure from NCND) was the position that had been taken....” [They] “believed that [Witness A] ... had a high degree of confidence in his statement... in the sense that those were the instructions that... [Officer 18 (Legal)] and I received from... [Witness A].”²¹⁰

321. Officer 5 (Legal) also told the internal investigation that they understood that Witness A was not involved to a significant degree in June 2020. They recalled their conversation with Officers 4 and 1. Their interpretation, and that of Officer 18 (Legal), was that Witness A had understood there had been no departure. They did not know if Witness A had assumed that or been deliberately told. It had not been included in the risk assessment. They added, on reviewing the note, that:

“...the notes record that these were the instructions given by Witness A during the 17 February meeting... [Officer 5 (Legal)] and... Officer 18 (Legal) had interpreted the instructions provided by Witness A as Witness A having understood at the time that NCND had not been departed from.”²¹¹

What Officer 2 said about the meeting

322. Officer 2 said at this point that it would have remained the case that he did not believe he had departed. He put his percentage of belief at about 80%. He made the following points, among others:

- The context of the reference in the note to not deviating from NCND, “never did,” was a reference to not departing when discussing agents;
- “Stuck to NCND but revealed we were specifically interested in this individual,” was consistent with what he previously had said;
- He was sure he would have said he did not remember the call, “but perhaps not at this meeting;”

²¹⁰ Internal investigation (second) interview/Officer 5 (Legal)/25 February 2025 at paragraph 73

²¹¹ Internal investigation (second) interview/Officer 5 (Legal)/25 February 2025 at paragraph 74 (Officer 5’s (Legal) amendments)

- "...I wouldn't have spent time speaking about other aspects of the [programme]" was wrong;
- The reference to lack of notes would have been to electronic notes;
- As to the reference to "not policy or practice to dictate that we should [make notes]," he was not certain it was his comment. He was always absolutely clear that he should have taken a note;
- He recollected long pauses. It was a "mis-recollection;"
- From the partial recollection he had, he was trying to fill in the gaps;
- "Never departed" was wrong; "I absolutely explained I didn't have a clear recollection;"
- "I don't know if I was explicit enough."²¹²

323. The tenor of Officer 2's account to me can be gauged from the following exchange. It began with a quote from the meeting note which recounted Officer 2 stating that he never departed from NCND apart from one instance with the Sunday Times:

Q: "...that's a pretty unequivocal statement, isn't it?

A: Yes.

Q: And it's simply wrong?

A: Yep.

Q: So why were you saying this? On what basis? Did you explain to them that you were piecing this together but had no clear recollection, or what?

A: I absolutely explained it wasn't a clear recollection, as they themselves would have known from me not having notes from the calls that were 18 months prior to this taking place.

Q: ...I don't want you to be under any misunderstanding. The evidence we have heard so far is that they [Officers 18 and 5 Legal] ...say that you unequivocally were stating that you never departed - not any reservation, not 'I don't really recall,' but unequivocally stated?

A: So that was my belief and that was my recollection.

Q: ...You actually seem to recall one instance when you had departed?

A: Mm. Mm.

Q: You were drawing a distinction?

²¹² IPCO interview/Officer 2/8-9 December 2025

A: Yeah.

Q: Then on the penultimate line: 'on agent...never departed from NCND' ...that is pretty unequivocal on the face of it, isn't it?

A: Yeah.

Q: So, are you saying the notes are wrong?

A: No. I'm not saying the notes are wrong. I'm saying that my recollection was wrong, as is demonstrated by this account of this call where there are flashes of it I remember, but actually in some instances they are actually references to conversations...with [Officer 4] ...I was like, I understand of course why other people may be saying I was unequivocal, and from these notes I was unequivocal at this stage.

Q: Well, were you or weren't you?

A: Well, as in the way that's been set out here, I was unequivocal and, as a result of, but there were a number of factors that led me to that position.

Q: ...I'm sorry to interrupt you and by all means finish in a moment, but I just want to understand. Are you saying you did unequivocally tell them you hadn't departed from NCND or does the note omit something, namely that you did tell them you couldn't really recall all the details?

A: So, sorry just give me a second just to refer back to it. (Pause). So, I don't know whether I was explicitly [sic] enough with the lawyers. It was clear, I think, from [Officer 3's] casework interviews that he was left with the impression from early conversations with me that my recollection was partial and I wasn't absolutely certain. Over the course of the next month or two, I did become more confident because I'd seen no paperwork that disabused me in my position. I didn't remember departing from NCND and it was my belief that others also had the view that I hadn't departed from NCND. So, I think I was pretty confident actually at this point. I don't know whether I use [sic] that language, and that was a huge mistake of me not to use that language. But, by February of 2022, I think I was confident in my position..."²¹³

324. A little later, the following exchange took place:

Q: "...at this stage, all this detail that was in the transcripts, in the contemporaneous note, none of it could you recall?

A: No."

²¹³ IPCO interview/Officer 2/8-9 December 2025

325. As he had told the internal investigation more than once, Officer 2 said there was nothing to suggest that DDS did not have notes; he would obviously have taken a note. It would have been ludicrous wilfully to give false evidence.²¹⁴

What Witness A said about the meeting

326. In broad terms, Witness A told me that in June 2020 he had taken a call from Officer 4 about a BBC programme. The programme was problematic. The communications office was having conversations with the BBC about the removal of the problematic content. There was a follow up conversation with Officer 4. The problematic content had been removed. He was not surprised that Officer 2 could achieve the removal. Officer 4 gave no detail. Witness A did not recall anything being said about NCND. He assumed NCND had been maintained. He could not be sure if he spoke to Officer 1 as well.²¹⁵
327. Witness A told the internal investigation that he could not recall a conversation about whether NCND had been maintained. He would presume so, given that was the normal position, but he was not sure. He said it was “quite challenging” for him to distinguish what he knew at the time from what he had since learned.²¹⁶
328. He thought he first saw the special advocates’ questions at the time of the meeting on 17 February 2022. Not having a contemporaneous record of what had happened in terms of Officer 2’s conversations with DDS and the handling team did not feel a good place to be in. When asked whether it changed how he felt about his OPEN statement, he said that it did a bit, but not to the point he thought there was a problem, although in hindsight “maybe it should have.” He described MI5 being put in a vulnerable position. However, having been assured of the position that NCND had been adhered to, given there was no evidence to the contrary, they were confident of their position “right up until the BBC informed us they held

²¹⁴ See, for example: internal investigation (second) interview/Officer 2/23 January 2025 at paragraph 51

²¹⁵ IPCO interview/Witness A/1 December 2025

²¹⁶ Internal investigation interview/Witness A/7 February 2025 at paragraph 35

contradictory evidence.” He also said that he thought it had been checked with the handling team.²¹⁷

329. Witness A thought the meeting of 17 February 2022 was the first time he had spoken directly to Officer 2 about this. Officer 2 was confident in saying there had been no departure. It had not been, ‘I don’t know what happened.’ He had given a detailed response.²¹⁸

330. I asked Witness A a number of questions about the meeting note. He said he never saw it at the time. I asked him about what is recorded at point 8 of the note, to the effect that he had “spoken to... [Officer 2] now, but also remember having conversations at the time with ... [Officer 4] and ... [Officer 1] and recall that [NCND] was the position that had been taken.” The following exchange took place:

Q: “...when it says ‘recall that that was the position that had been taken,’ that might be thought to be something to indicate that it was something actually said?

A: It might.

Q: Was it?

A: I cannot say now...you know...my view, as I have already stated, was that I had left those conversations with the assumption that we had not departed from NCND.

Q: I understand that completely, but obviously what I am interested in is... what you were saying in February ’22, namely that you understood, not simply assumed, but understood from what you were told, that NCND had not been departed from?

A: That is an entirely reasonable inference.

Q: So, if that is the case, it would mean, would it not, that the only two candidates to have told you that would be... [Officer 4] or... [Officer 1]?

A: Yes.”

331. I also asked him about the note to the effect there had been a “high degree of confidence in statement... based on conversations had at the time and the conversations now and in only very limited circumstances would we depart and that would be recorded and it isn’t.”

Q: “...that seems to be saying that you had conversations at the time in which you were reassured...that NCND had not been departed from?

²¹⁷ Internal investigation interview/Witness A/7 February 2025 at paragraphs 61, 65, 67

²¹⁸ Internal investigation interview/Witness A/7 February 2025 at paragraphs 71-3

A: Yes, and to repeat, I have not seen this note. I think that overstates...the confidence that I would derive from that position because, as I say, the conclusion that I had reached on the back of conversations with... [Officer 4] and... [Officer 1] possibly was that we had a problem with this... programme... [Officer 2] had been asked to remove it and that had been successful.

Q: So actually, what it should say is that you 'assumed'...that NCND had not been departed from...?

A: Yes...

Q: I'm just wondering how you could have 'a high degree of confidence' if it was based on an assumption?

A: The confidence was primarily, the assumption was around the conversation with... [Officer 4]. The conversation with... [Officer 2] on 17 February...was categoric...

A: ...I had made an assumption about what had happened based on (a) being not told that there was a suggestion that we might seek to depart, or indeed, we had had a conversation about pre-authorising that departure, and no subsequent confirmation...whether we had or hadn't. And, as I say, my role, just to be super clear here, is that I'm not part of this authorisation of this agent."

332. Witness A told me he could not recall talking to Officer 1.²¹⁹

333. Officer 4 told me he did not recall whether or not he had spoken to Witness A about departing from NCND. He said he would never have told Witness A that NCND had not been departed from.²²⁰

Conference with counsel on 21 February 2022

334. On 21 February 2022 Mr Justice Chamberlain's draft embargoed judgment was received. The same day, MI5 requested a conference with counsel. OS KC, ES and Jennifer Thelen (JT) were present. OS KC said he was there to advise on appeal. ES did not recall being involved in the response to the special advocates. He did not charge for doing so. As I set out below, Officers 18 and 5 (Legal) prepared drafts of the response for the GLD. Others present included Officers

²¹⁹ IPCO interview/Witness A/1 December 2025

²²⁰ IPCO interview/Officer 4/18 November 2025

18 and 5 (Legal), and Officers 3 and 15. LW of the GLD took notes.²²¹ They referred back to the numbered questions in the special advocates' second request. The note stated:

"i) No notes

ii) falls away

iii) we haven't done searches/individual confirmed made no notes

4 [sic] we may make note call trusted contacts- this not a trusted contact-didn't foresee ongoing and agreed not to publish

Reported back verbally

not just about X, also other assets

v) no-other than contact notes

vi) spoken directly individual concerned and discussed at the time and that was his recollection

viii) high degree confidence

ix) no

x) falls away

xi) not necessary/proportionate

-Witness A already dealt with it

-doc

-BBC haven't said anything inconsistent..."

335. The note at vi) suggests Witness A spoke to Officer 2 in June 2020. That is not what Witness A said at the meeting of 17 February 2022. As will become apparent, that error was reproduced in MI5's response to the special advocates.

336. The response appears to have been the prime responsibility of Officer 18 (Legal), with input from Officer 5 (Legal).

²²¹ Provided by LW by email of 10 December 2025.

MI5's response to the second requests

337. On 24 February 2022 LW sent MI5's response.²²² It broadly reflected the conference note. It followed drafting suggestions from Officers 18 and 5 (Legal). It stated:

"...a. **Paragraph 3(i) and (ii)**- no notes or other records were made by MI5 in respect of the June 2020 meeting between MI5 and the BBC.

b. **Paragraph 3(iii)**- no specific searches have been completed in respect of the June 2020 exchanges because the individual at MI5 who spoke to the BBC in June 2020 has confirmed that no notes or other records were made.

c. **Paragraph 3(iv)**- there is no MI5 policy or practice to make notes of all calls with all journalistic contacts. The immediate focus of the conversation in June 2020 was to mitigate the risk of this individual being featured in the BBC's proposed programme. The result of that conversation was that that risk had been mitigated - the BBC agreed not to include the individual in the programme. There was therefore no enduring impact arising from this conversation which may have warranted a note to be drafted. In contrast, the conversations which took place in December 2021 [with Officer 3] did not result in that risk being mitigated and there was an enduring impact, including contemplating litigation.

d. **Paragraph (v)**- there are no other contemporaneous or near-contemporaneous records of the detail of the engagement in June 2020. The outcome of the meeting was reported verbally to the individual's handling team.

e. **Paragraphs (vi), (vii) and (viii)**- Witness A spoke to the MI5 officer who had contact with the BBC in June 2020. The MI5 officer confirmed that it was his recollection that MI5 neither confirmed nor denied that Agent X was a CHIS, role player or otherwise. This also reflects Witness A's recollection of what the MI5 officer confirmed verbally to Witness A at the time of the meeting. Witness A has a high degree of confidence that this position is accurate based on (i) the recent conversations he has had with the MI5 officer who had contact with the BBC at the time, and (ii) conversations in which he was personally involved in [sic] regarding the matter back in June 2020.

f. **Paragraphs (ix) and (x)**- no. Witness A was not the individual who spoke to Daniel De Simone in June 2020.

g. **Paragraph (xi)**- no. We do not consider that obtaining further witness evidence in respect of the June 2020 meeting [sic] is either necessary or proportionate in

²²² CB1/51/631-633

accordance with the Claimant's duty of candour. The meeting is already dealt with by the statement of Witness A, and what Witness A sets out in respect of the June 2020 meeting isn't inconsistent with anything set out by the BBC. In any event, NCND was maintained in the June 2020 discussions; any departure would have been recorded by the handling team as part of their risk assessment in accordance with their duties under RIPA and the Code of Conduct [sic] to consider the risks to Agent X in light of the fact that his identity would have been known to other individuals outside of the handling team and outside MI5 and it was not. Furthermore, the BBC have not stated that X's identity as a CHIS was confirmed to them."

338. Officer 3 said the second request of the special advocates did not cause him to reconsider what had been said about NCND. He said in hindsight, it was a matter of regret that he did not have a concern about Officer 2's equivocation about NCND. He took the view that there had been extensive engagement by the handling team in the process, including the discovery of documents. Officer 15 and the handling team were the right people to be handling it. At the time he also believed that Witness A had spoken to Officer 2 in June 2020.²²³
339. Officer 3 said he did not recall having seen the documents exhibited to the CLOSED witness statement prior to attending the injunction proceedings. He told the internal investigation that the "implication that a departure from NCND had taken place ran through all the documents."²²⁴ He highlighted in that respect the contact note of early August 2020.²²⁵ As I understand it, Officer 3 was referring to his understanding at the time of the internal investigation.

MI5's continued reliance on paragraph 11 in response to the special advocates

340. NCND may not have been an issue when paragraph 11 was included in the OPEN statement. As a result of the special advocates' questions, it was now unarguably of real significance. This was the first opportunity MI5 had to correct paragraph 11.

²²³ IPCO interview/Officer 3/11 December 2025

²²⁴ Internal investigation (second) interview/Officer 3/12 February 2025 at paragraphs 38 and 39

²²⁵ CB1/27

Officer 2's position

341. I start by emphasising a number of matters which I throughout keep in mind. Officer 2 is someone of so far impeccable character. He was vetted at a high level. He was highly respected at MI5. He had roles of considerable responsibility and made a significant contribution to the important work done by MI5. Any misconduct by him is inherently less likely.
342. Covid-19 caused a substantially increased workload in the communications office as far as internal communications were concerned. The detailed evidence to the internal investigation of the two witnesses from the communications office underlines the pressures on those at the office and upon Officer 2 during June 2020. Officer 2 was also seriously concerned about the wellbeing of his wife because of Covid-19. Professor Greenberg, a psychiatrist instructed on behalf of Officer 2, described this in his first report as being the most impactful factor on Officer 2. I have read and bear in mind the detailed and lengthy representations on all these topics which have been made on Officer 2's behalf.

The conversations in June 2020

343. The position confronting Officer 2 was this. A BBC journalist was proposing shortly to reveal the name of an active MI5 CHIS. He was intending to describe him as a Nazi. Were he to do so, the agent's life would be in danger. It was of the very highest importance that Officer 2 prevented such an outcome. This was a unique and memorable situation.
344. The probable need for Officer 2 to tell the journalist the suspected Nazi was in fact an MI5 CHIS was apparent from the outset. Officer 23's email of 6 June 2020, the obtaining of Officer 7's (Legal) advice and Officer 2's immediate declaration to DDS of Agent X as a CHIS suggest as much. Departing from NCND was not incidental to the call or a detail. It was an integral part of it. That was similarly the case with the other calls. It is implicit in what Officer 2 is saying that he has no recollection of the central basis upon which the calls took place.
345. This was not a single event. There were five main interlocking telephone conversations between Officer 2 and DDS. They took place between 8 and 19 June 2020. They lasted in all for at least 2 hours. They were sustained, detailed and memorable. DDS was alleging MI5's

CHIS was a Nazi, abusive and had paedophilic tendencies. As well as Agent X, other MI5 assets were discussed. The conversations involved Officer 2 disclosing who was or was not an MI5 CHIS. Frequent text messages were exchanged. The extent of the disclosures was strikingly unusual. Among other things, Officer 2 disclosed the details of a serving MI5 undercover officer in the field. He suggested a meeting between that officer and DDS. He disclosed the awareness of an overseas organisation. He departed from NCND in respect of five other people apart from Agent X. Throughout, Officer 2 was in touch with colleagues by phone and email about the ongoing discussions. He reported back to Officer 4 that he had departed from NCND. It is clear from the content of the conversations and texts and emails that Officer 2 remembered from one conversation or text or email to the next, the detail of what were very detailed discussions with DDS. The evidence suggests he was on top of everything. It is implicit in Officer 2's account that he cannot recall what he then remembered over some time and in great detail.

346. Officer 2 persuaded DDS to exclude Agent X. It is implicit in Officer 2's account that he cannot recall the basis upon which he achieved that success.

December 2021 and 17 February 2022

347. Officer 2's account has not been consistent. In December 2021 he told Officer 3 he was uncertain as to whether he had departed from NCND. On 17 February 2022, as I find, he unequivocally told Officers 18 and 5 (Legal) he had not departed from NCND. He presently says he cannot remember departing.
348. As the notes of the meeting of 17 February 2022 make clear, in answers to the specific questions raised by the special advocates, Officer 2:
- (i) continually and unequivocally claimed he did not depart from NCND;
 - (ii) supposedly recalled telling DDS that he could not go into detail as to why Agent X should be kept out of the programme;
 - (iii) failed to refer to the other lengthy conversations he had had with DDS in which other MI5 assets were discussed and disclosed;
 - (iv) as I find, said he made no note, an account which he subsequently went back on;
 - (v) said it was not policy or practice to make a note, when, as he must have known:

- a. the updated Media Engagement Policy which he had not long before been involved in drafting, required it;
 - b. standard practice in any event required a note in the circumstances he was portraying;
 - (vi) claimed there were long pauses and that they went round in circles for a long time when, in fact:
 - a. there were no long pauses;
 - b. he had immediately told DDS Agent X was a CHIS;
 - c. the conversations were fluent, open and apparently relaxed.
349. Officer 2 has subsequently said (to Professor Greenberg, the psychiatrist) he “thinks he was trying to be more helpful than he should have been” and in hindsight “realises he should have kept saying, “I don’t know” rather than “coming across” as being certain that he had not breached NCND.²²⁶

The meeting on 28 July 2020

350. As I have said, on 28 July 2020, Officer 2 spoke to a BBC journalist. He plainly remembered his conversations with DDS and was very concerned. He knew DDS believed Agent X was a genuine Nazi and a violent and abusive person. He (rightly) feared DDS was continuing his investigation into Agent X.

The internal investigations and my interviews with Officer 2

351. The MI5 internal investigators interviewed Officer 2 at length. I interviewed him for some five hours in two sessions. I have set out an extract from my second interview. As I shall explain, I did not believe what Officer 2 told me.

²²⁶ First Psychiatric Report on Officer 2, Professor Neil Greenberg (25 February 2026) at paragraph 33

Professor Greenberg's reports

352. In support of his case that he had no recollection of departing from NCND, Officer 2 has relied upon two reports from Professor Greenberg. The first was dated 25 February 2026. The second, which followed my Preliminary Draft Report, was dated 7 May 2026. Professor Greenberg met Officer 2 on 4 February 2026 and spoke to him “for over an hour.” He was provided with some documents for the first report and further documents for the second. Professor Greenberg was asked to provide:

“...a general view on the impact of stress on memory and cognition; any opinion on the potential or actual impact of stress on Officer 2’s memory and cognition during the relevant period; whether Officer 2 was suffering from a mental disorder or had memory impairment during the relevant period and whether Officer 2’s account of his difficulties with his memory is consistent with the effects of any diagnosis or impairment.”²²⁷

353. Necessarily, Professor Greenberg had to rely on Officer 2’s account of events in June 2020. Officer 2 told Professor Greenberg of the extreme stress under which he said he was working during the pandemic. He also provided considerable personal detail about himself and his family. I shall take it all into account. I shall simply highlight some aspects. In doing so, I shall adopt Professor Greenberg’s paragraph numbering:

“26. He said that by the time the call with DDS happened, no one had been interested in external comms; instead he had been “hammered” on internal communications by his seniors...the DDS conversation was “incidental” to his work at the time...his managers were not experienced in internal communications so were not able to provide him with much specific support...his whole focus, in mid-2020, was on trying to make internal comms work.

27....as a result of the various pressures he was experiencing, he became more anxious about many things including whether he was doing a good job...some financial pressures...and his wife’s health. He felt very distracted and would often forget things which was unusual for him. Therefore, he had to write lists which is not what he usually did. He felt that he had “brain fog” at times...

²²⁷ First Psychiatric Report on Officer 2, Professor Neil Greenberg (25 February 2026)

28...he was obsessively thinking about what would happen if his wife died...

29...his deputy had repeatedly asked him if he was OK which was unusual for [them]...However, he acknowledges that during COVID whilst he definitely felt very stressed, in his view he was still able to function to a reasonable degree most of the time.

30. He said that he now knows what had had [sic] told DDS very well as he has read all the transcripts. However, in November [sic] 2021 when he was first asked about what he had spoken with DDS about, he had [recently] taken over ... [an important new role] ... work was very busy...

31. He said he had been called by... [Officer 3] about DDS wanting to run a programme about X. Officer 2 thinks that he was asked if he wrote any notes about his previous contact with DDS and he got a sinking feeling as he could not recall if he had written any notes or not.

32. ...Officer 2 said that when [he had] spoken to DDS in June 2020, he had given a lot of information to him. He said that as soon as he was told there were no notes of the June 2020 meeting [sic] with DDS, he felt “traumatised” as he knew he should have made notes. He recalls having a meeting with a lawyer... [about breaching NCND]. By February 2022, as no-one had found any information on NCND on the system by February 2022 [sic] and so he felt that it was unlikely that he had in fact NCND [sic].

33. His view, now, is that he just could not recall himself having breached NCND and he now thinks he was trying to be more helpful than he should have been in February 2022. In hindsight, he now realises he should have kept saying “I don’t know” rather than coming across as being certain that he had not breached NCND.”²²⁸

354. At paragraph 52 and following, Professor Greenberg expressed his opinion:

“52. In my opinion, based on the information provided to me by Officer 2 at interview, he was someone who was predisposed to experience a significant degree of anxiety when faced with significant life stressors...

²²⁸ *Ibid.*

57. In my view, based on the information I have been provided with, and my interview with Officer 2, it is more likely than not that in June 2020, he had been subjected to a very significant number of stressors. Most impactful of these was his wife's health...

61. In my view, it is far more likely than not that during June 2020, Officer 2 had been experiencing a mild to moderate adjustment disorder...which is a psychiatric diagnosis which occurs as a result of stressors such as the ones I describe above. Adjustment disorders impair people's ability to carry out day to day activities and impair their concentration and judgment to some degree. In my view, it is highly likely that the adjustment disorder would have resolved, without treatment, over time as it became evident that his wife had not been severely injured by Covid...

62. I note that people who have common mental health conditions, including adjustment disorders, often complain of poor memory. This may occur because the mental health condition impairs attention which lead[s] to information not being properly processed at the time an event happens and consequentially this leads to memories not being effectively laid down. I note that there is published scientific evidence which supports this view...

63. Whilst I cannot be completely sure that Officer 2's adjustment disorder led to him not effectively laying down the memory of having breached NCND, in my view it presents a plausible explanation which is in keeping with the information I have seen. Of course, whether Officer 2 purposely misled his employer or not will be a matter for the Court to form a view on. However, in my experience as a consultant psychiatrist with particular expertise in the impact... of mental health conditions on people's ability to do their job, Officer 2's description of simply not having recalled breaching NCND when asked about it more than a year later fits with him having an adjustment disorder in June 2020. I note that Officer 2 reported that at the time he breached NCND, he was under a lot of pressure to get internal communications working better and him talking to a journalist was a distraction rather than a key part of his job.

64. In respect of him responding to be asking if he had breached NCND [sic] in November [sic] 2021 and February 2022, it is my view that he would not have been able to clearly recall what happened in June 2020 as the memories (from June 2020) had not been laid down effectively and thus he would have been unable to recall them."²²⁹

²²⁹ *Ibid.*

355. Professor Greenberg's report of 7 May 2026 was prepared in response to the views I had expressed in my Preliminary Draft Report. In that response, I had rejected Officer 2's account. For reasons I explained, I said that "there seem to me real problems with Professor Greenberg's 'plausible explanation.'"

For the second report, Professor Greenberg was provided with my detailed comments and "selected information from the interview transcript" of Officer 2's interview of 8 December 2025. (This may be intended to refer to both parts of my interview with Officer 2, which was conducted across two days; however, the parts of the interview from which I have quoted took place on 9 December). Again, adopting Professor Greenberg's paragraph numbering, he said:

"2...it is important to consider what other activities was Officer 2 doing related to his job during the relevant period. In my view, if the answer is little or nothing, then I agree it is not plausible that he would have failed to recall five detailed telephone calls breaching NCND in respect of X and four other people along with discussing an overseas ...organisation with X [sic]. However, if the five calls were a minority of his workload during the relevant period, with other aspects of his workload being substantial, pressing and cognitively challenging at a time that he had a mild to moderate mental health disorder due to intense stressors, then in my view his failure to recall whether he specifically breached NCND or not stands [i.e. whether he deliberately lied or simply failed to recall important facts]...I do not consider that I am able to form a view on the totality of the responsible roles that Officer 2 had to contend with during the relevant period. In my view, given my above view, it should be a matter for the Court to determine whether his interactions with DDS were a minority of his challenging workload during the relevant period.

3. I also note that having a sufficient short-term memory of the last call that Officer 2 had made to DDS, helped possibly by reading over notes he had made of previous calls before engaging on subsequent calls, so he could successful [sic] engage with DDS does not indicate that his memories has [sic] been laid down well so they would be available for recall over a year later. Put another way, the fact Officer 2 handled five calls with DDS over an 11-day period between 8th and 19th June 2020, does not mean that he would remember the detail of those calls over a year later...

4...it is wholly possible to remember that 'something happened' without remembering any detail of what it was that happened; this is much more likely to happen should someone has [sic] a stress-related mental health disorder as it is accepted that Officer 2 had during the relevant period.

5. In my view, it remains plausible that Officer 2 would have been able to recall that the engagement with DDS was successful without remembering how that success was achieved as long as he can show that the time/effort he spent on X's case was not the sole, or main incident he was dealing with at that time. If he did, in fact, have little else to work on during the relevant period then, in my view, it would be more likely than not that he would have remembered some important details of his engagement with DDS including breaching NCND...I would agree that 'uniqueness/novelty' would increase the likelihood of details being remembered... I note that it was a time when the term 'unprecedented' was in common parlance which might suggest that there were plenty of unique/novel situations that Officer 2 was required to deal with.

6. In my view, the inaccuracies [at the meeting of 17 February 2022] detailed in para 340 of the preliminary draft investigation report, may also indicate that he had not encoded information well into his memory during the relevant period. It will of course be a matter for the Court to determine if Officer 2 purported failure [sic] to recall other events [at para 340] is also a fabrication taking into account that it is accepted that he was an able and well-respected officer."²³⁰

My view

356. I am prepared to assume for present purposes that in June 2020 it was "far more likely than not" that Officer 2 had been experiencing a mild to moderate adjustment disorder. At the heart of Officer 2's failure to recall his departures from NCND is said to have been the failure caused by the adjustment disorder to 'lay down' any memory of having done so. Professor Greenberg states in paragraph 62 of his first report that, "the mental health condition impairs attention which lead[s] to information not being properly processed at the time an event happens." In his second report, Professor Greenberg speaks in terms of Officer 2 having failed to remember the "detail" of the calls due to having encoded them into his short term, as opposed to his long term, memory. Although expressing that opinion, I note that in paragraph 4 of his second report, Professor Greenberg states he is "not an expert of encoding of information into short- and long-term memory."

²³⁰ Second Psychiatric Report on Officer 2, Professor Neil Greenberg (7 May 2026)

357. First, and fundamentally, I do not believe Officer 2's (varying) account. I do not accept that he has no proper recollection of his conversations with DDS or of departing from NCND. He was, as the extract of my questioning suggests, evasive and in my view untruthful.²³¹
358. Second, Officer 2's explanation of the 'hardening' of his account does not bear analysis. In December 2021 he told Officer 3 he was uncertain, but he did not remember departing from NCND. By 17 February 2022 that account had changed. He unequivocally told Officers 18 and 5 (Legal) that he had not departed from NCND. (The fact, as has been suggested, that he may from time to time have used the phrase "would have" as opposed to 'did' in some of his answers, does not change that). He presently says he has no recollection of having departed, although recognises he did. If on 17 February 2022 Officer 2 genuinely had no recollection of these conversations and of departing from NCND, he could have said so. If he was uncertain as to whether he had departed, he could have said so. If, as he suggested to me, he believed he had not departed from NCND because there was no record that he had, again, he could have given that as the basis of any assertion that NCND had not been departed from. Instead, as I conclude, Officer 2 put forward a wholly fictitious account.
359. Third, I reject the suggestion made on behalf of Officer 2 that the note of the meeting is partial and incomplete and incapable of amounting to cogent evidence that Officer 2 lied. I also reject the suggestion that a number of biases "may well have unknowingly affected Officer 2's belief about what had happened in June 2020" or that there were factors which "operated against helping Officer 2 give an accurate and unbiased account" at the meeting of 17 February 2022. As a senior MI5 officer, Officer 2 was well able to tell the truth if that is what he wished to do.
360. Fourth, it is plain that when Officer 2 spoke to the journalist on 28 July 2020 he remembered his conversations with DDS. They worried him. It seems to me inconceivable he could have had this discussion with the journalist without having any recollection of what he had said to DDS and, necessarily, of having departed from NCND. Adopting Professor Greenberg's analysis, the conversations must have remained sufficiently encoded in his memory a month and a half later, but thereafter faded. This seems to me an unlikely scenario.

²³¹ IPCO interview/Officer 2/8-9 December 2025

361. Fifth, in my view Professor Greenberg has failed sufficiently to recognise the huge significance of these calls in assessing the likelihood of Officer 2 forgetting what might be thought to be the most important aspect of them. For an MI5 officer to contemplate a departure from NCND, let alone actually depart, is wholly exceptional. Officer 2 departed from NCND in respect of not one but six individuals. Departing from NCND does not amount to a mere detail. These conversations would, it seems to me, inevitably dwarf in importance whatever else Officer 2 had to do.
362. I also note Professor Greenberg has made no mention of the fact DDS and Officer 2 discussed these matters for at least two hours in all.
363. Sixth, when NCND became an issue, Officer 2 did not carry out those basic checks which could have refreshed his memory. His text messages to DDS would have told him how often they spoke and about whom. He could have spoken to Officer 4. I do not accept, as he told me, he did not do so to avoid an allegation of putting their heads together. In my view, he took no such steps because he knew what the reality was.
364. In the final analysis I have to decide whether I believe what Officer 2 told me. I do not. In my view, from the time he was first confronted with the issue of whether he had departed from NCND, Officer 2 knew he had and had failed to make a note of it. What he said at the meeting on 17 February 2022 was more than “trying to be helpful.” It did not amount to “coming across as certain.” Knowing what he said would form the backbone of MI5’s response to the special advocates, I am driven to conclude Officer 2 fabricated an account. That account was fundamental to MI5’s maintenance of the truth of paragraph 11 of Witness A’s statement.
365. It follows that I do not accept Professor Greenberg’s suggestion that Officer 2’s account might reflect his uncertainty because the events were not encoded into his long-term memory.

Motive

366. While it is unnecessary for me to decide why Officer 2 lied, I suspect the following may explain it.
367. From the moment Officer 2 was confronted with DDS’ reappearance in December 2021, it seems to me likely he panicked. Over a period of some nine days he had in considerable detail

disclosed to a journalist he did not know several MI5 assets, including an active MI5 employee. He had not kept a single note of these disclosures. It must have been obvious to him that his failure to do so was very serious indeed, whether or not he realised he had failed to comply with guidance he himself had been involved in drafting not long before, or had no proper authority to disclose. He spoke of the absence of notes in terms of a “bad thing” and of the “personal jeopardy” in not having any contemporaneous electronic notes.²³² He started to dissemble. At first, he to some extent left the position open and expressed a degree of uncertainty about departing from NCND. By the time of the meeting on 17 February 2022 he knew that MI5 had committed itself in serious and high-profile litigation to an account which was untrue. Telling the truth would have serious implications. His failings would come to light. So might the extent of his disclosures. MI5 would have to change the account it had put forward, itself a serious matter. Officer 2 doubled down.

368. Officer 2 has continually made the point that he would not lie as he believed DDS would have taken a note. That may well be why he was at first equivocal. By 17 February 2022, however, the position had changed. Officer 3 had spoken to DDS. DDS had not, in the face of Officer 3’s continual assertions of NCND, suggested there already had been a departure. DDS had made his first witness statement. He had not specifically disputed reliance on NCND in paragraph 11 of Witness A’s statement. He had spoken of his recollection differing “in various respects.” Everyone at MI5 (and including external Leading Counsel) assumed his differences did not relate to NCND, that if they had, DDS would have said so. It would not in all those circumstances be surprising if, by 17 February 2022, Officer 2 believed that had DDS a note relating to NCND, he would by then have relied upon it and specifically challenged the reliance on NCND in paragraph 11. It is moreover possible he thought DDS would regard him as a confidential source and not betray his confidence. Indeed, had not the issue of NCND featured in Beth’s litigation in 2024, the falsity of the contents of paragraph 11 might never have become known.

369. It is also the case that by 17 February 2022 Officer 2 believed that MI5 had no documentary evidence to suggest he had disclosed.

²³² Internal investigation (third) interview/Officer 2/30 January 2025 at paragraphs 14, 16-17

370. In short, I have concluded Officer 2 did not forget his comprehensive departures from NCND. He has not told the truth. He has been untruthful from his first conversation with Officer 3. His lies formed the foundation of MI5's false account.

Officer 3's position

371. Officer 3 continued to play a pivotal role in these events. The comments I have previously made still apply, but with increasing force.
372. While Officer 3 may not initially have thought NCND was contentious, as he must have appreciated, the special advocates' questions made it so. Officer 3 attended the conference on 21 February 2022 at which the special advocates' questions were discussed. He must have become aware that Officer 2 was now definitively saying he maintained NCND. It is likely this was when his (mistaken) understanding that Witness A spoke to Officer 2 in June 2020 was reached. The difference between what Officer 2 had initially told him and what he was then saying was stark. Officer 3 continued to say nothing about Officer 2's initial uncertainty. Furthermore, as I set out below, as a former agent runner, Officer 3 should have appreciated the importance of recording information relevant to CHIS security.
373. Officer 3's conduct at this time significantly contributed to MI5's reliance on the false account being maintained.

Witness A's position

374. I accept, as Witness A said at the meeting of 17 February 2022, that he did not talk to Officer 2 in June 2020, that he played a peripheral role at that time and that he has not found it easy to recall the detail of events, or to distinguish between what he learned at the time and subsequently. I also bear in mind that Witness A did not see the note of the meeting of 17 February 2022 until several years later.
375. I am prepared to accept that when Witness A and Officer 4 spoke, NCND was not raised, that Witness A assumed it had been maintained. I am sure, however, that at no point did Officer 4 ever tell Witness A that there had been no departure from NCND.

376. Reading what is said at paragraph 8 of the meeting note of 17 February (“...spoken to...[Officer 2] now, but also remember having conversations at the time with... [Officer 4] and... [Officer 1] and recall that was the position that had been taken”) in conjunction with what is said a few lines later (“High degree of confidence in statement [that NCND not departed from]...That is based on conversations had at the time and the conversations now and in only very limited circumstances would we depart and that would be recorded and isn’t...”) plainly suggests Witness A spoke to the two officers in June 2020 and that is what they told him. It does not suggest a mere assumption by him that NCND had been maintained. Although, as I point out above, the internal investigation did record Officer 5 (Legal) saying they did not know if Witness A had assumed that or been deliberately told, on reviewing the record, they said they and Officer 18 (Legal) had interpreted the instructions as Witness A having understood at the time that NCND had not been departed from. I cannot avoid the conclusion that Witness A overstated the position at the meeting. Accordingly, to the extent that paragraph e. of MI5’s response to the special advocates of 24 February 2022 reflected Witness A’s “high degree of confidence” based upon “conversations in which he was personally involved in [sic] regarding the matter back in June 2020,” it was misleading. To that extent, Witness A played a part in the continued promulgation of the false account. Having spoken to Witness A, I do not rule out that what he said at the meeting on 17 February 2022 reflected a degree of misrecollection or confusion on his part.

The position of Officer 4 and the handling team

377. Officer 4 was not consulted regarding the special advocates’ questions. The position of the handling team continued to be represented by Officer 15. My previous observations continue to apply. I shall not repeat them.

MI5’s response to the special advocates of 24 February 2022

378. MI5’s response to the special advocates’ questions was seriously flawed.
379. The assertion at c. that there was no policy or practice to make notes of all calls with journalists was wrong. The updated MI5 Media Engagement Policy required a detailed note. So too did practice. The argument that because there was “no enduring impact arising from this conversation which may have warranted a note to be drafted” was unsustainable, as should have been apparent and as Officer 2 would have known. Regulation 3(e) of the

Regulation of Investigatory Powers (Source Records) Regulations 2000 was applicable on the facts as they were then believed to be. As the IPC put it in his letter of 7 March 2024, when replying to MI5's second response to IPCO:

"...there is one critical point of action that concerns documentation of discussions where these may impact on the welfare and security of a source. My inspectors were told that the MI5 policy was not to record contemporaneously the details of discussions held with journalists (in this case the BBC). Whilst that may be appropriate in relation to certain discussions with journalists, it clearly was not appropriate here. Such discussions play directly into the welfare and security of an authorised source, and comprehensive records concerning such matters are required to be kept..."²³³

380. The assertion in the penultimate sentence of g. that because NCND was maintained there was no requirement to record anything on Agent X's case file was similarly unsustainable.
381. Officers 3, 15 and Witness A, each of whom had agent running experience, should have appreciated the importance of recording information relevant to CHIS security and have questioned whether Officer 2 could really be correct that no note was warranted. Officers 18 and 5 (Legal) could be taken to have some knowledge of the legal provisions regarding CHIS and the need in the circumstances described by Officer 2 for a note to be taken. When Officer 12 (Legal), who was the successor to Officer 18 (Legal), considered these issues in their email of 8 December 2023, it was something they noted.²³⁴
382. Before responding to the special advocates with the unequivocal assertion that there was no MI5 policy or practice to make notes of all calls with all journalistic contacts, it would have been prudent to check. A search for possibly relevant policies would have located the updated Media Engagement Policy.
383. The final sentence of paragraph g. assumed that the "various respects" in which DDS's recollection differed from that of Witness A did not include disputing that NCND was maintained. While I accept there is some force in the view of Officer 12 (Legal), and the similar point made by OS KC, that in an action for breach of confidence the BBC might have been

²³³ Letter from The Rt Hon. Sir Brian Leveson, The Investigatory Powers Commissioner, to Sir Ken McCallum, Director General MI5, dated 7 March 2024

²³⁴ IPT1/39/883

expected to assert that MI5 had already breached confidence by its departure from NCND to them, and that such a departure would be relevant to the application under the 2013 Act, I do not accept MI5 should without more have assumed that was so. Neither do I accept the criticisms of the BBC which OS KC has made and Officer 12 (Legal) has relied upon. As the Divisional Court said at paragraph 33 of its judgment:

“...great reliance seems to have been placed on the fact that... [DDS] had not said that there had been a departure from NCND. He had, however, said that Witness A’s description of the conversations (the key element of which was that there had been no departure from NCND) did not accord with his recollection. The fact that he had said nothing since was hardly surprising, because the enquiries being made by the special advocates were being made entirely in CLOSED... [DDS] had no knowledge of them, or of the answers to them.”²³⁵ (My emphasis)

384. What was said at e. misstated the position of Witness A as he explained it at the meeting of 17 February 2022. He did not suggest he had spoken to Officer 2 in June 2020 or that Officer 2 told him at the time that NCND had not been departed from.
385. There are further problems with the response.
386. As Officer 3 told the internal investigation, the “implication that a departure from NCND had taken place ran through all the [Agent X] documents.”²³⁶ Those documents had been exhibited to Witness A’s CLOSED statement. They made it clear the plan envisaged declaring Agent X to DDS as an MI5 CHIS. Agent X’s case file suggested a continuing belief by the handling team that had happened. It contained nothing to suggest it had not. It was virtually impossible to reconcile the maintenance of NCND with the contact note of early August 2020.²³⁷ No-one at MI5 appears to have considered the implications of the content of the Agent X documents, or, in the absence of any note from Officer 2, at least questioned his account.
387. I readily accept it is possible for an MI5 officer to persuade an organisation such as the BBC not to broadcast a contemplated programme merely by citing national security concerns.

²³⁵ [HMAG v BBC and R \(Beth\) v IPT and others \[2025\] EWHC 1669 \(KB\)](#)

²³⁶ Internal investigation (second) interview/Officer 3/12 February 2025 at paragraph 38

²³⁷ CB1/27

However, in this instance, it was entirely unclear how Officer 2 had achieved that without a departure from NCND. The context is important. On Friday 5 June 2020 DDS sent Agent X the “right of reply” email in which he accused Agent X of being a “dangerous neo-Nazi.” On Monday 8 June 2020 what was taken to be authority to depart from NCND was obtained. The same day, Officer 2, obviously in response to the email sent to Agent X, contacted DDS. While, as Officer 5 (Legal) said, Officer 2 was clear at the meeting on 17 February 2022 that he had not departed from NCND, he was not clear how he had persuaded DDS to exclude Agent X from the broadcast.

388. While it was not easy for Officers 18 and 5 (Legal) to question what Officer 2 was telling them, it does seem to me they do bear some criticism for not standing back and questioning what they were being told. As the Divisional Court said (at paragraph 33 of its judgment):

“The fact that there had been conversations of which no written record had been taken should have decreased, not increased, the confidence with which MI5 responded to the enquiry.”²³⁸

389. It is not clear that counsel were instructed to advise on the merits of the response to the special advocates or asked to consider the CHIS legislation. OS KC said he was asked to advise on appeal.²³⁹ ES did not recall being involved in the response and did not charge for doing so.²⁴⁰ They were assured NCND had not been departed from. What was said at the conference included the mistaken assertion that Officer 2 had told Witness A in June 2020 there had been no departure from NCND.

390. The special advocates received MI5’s response on 24 February 2022, in other words, after the hearing on 16 February 2022. The main hearing was listed for 1 and 2 March 2022. In the light of MI5’s response, and given the pressure of time, the special advocates understandably did not seek to argue that NCND had been departed from.

²³⁸ [HMAG v BBC and R \(Beth\) v IPT and others \[2025\] EWHC 1669 \(KB\)](#)

²³⁹ Witness statement of Oliver Sanders KC (added to CB2/C1)

²⁴⁰ IPCO interview/ES/8 December 2025

The duty of candour

391. I accept that OS KC emphasised the importance of the duty of candour from the outset and throughout, including the need for clarity about what had happened in 2020.
392. The duty of candour was never in terms explained to Witness A. However, the legal advisors had good reason to believe he well understood the need to tell the complete truth and fully to disclose anything relevant, whether or not favourable to MI5's case. They had no reason to believe he overstated the position at the meeting of 17 February 2022.
393. The duty of candour was never explained to Officers 2 or 3 or any MI5 officer. As I understand it, the legal advisors believed all MI5 officers would know the need to be entirely truthful and open. Although the duty of candour should have been explained to anyone whose evidence was feeding into MI5's case, the fundamental problem relates not to the failure to explain the duty of candour, but to officers' compliance with their obligations.
394. Witness A said that to the best of his recollection, no-one told him to read all the documents attached to his statement. He only read that material which he considered most contentious.²⁴¹ That is not satisfactory. It is difficult to see how a witness can sign off a statement as true if he has not read the exhibits, some of which may call into question what he is saying. If, exceptionally, a witness has not read an exhibit, or part of an exhibit, that must be made quite clear and accompanied by a full explanation.

The hearings on 1 and 2 March 2022

395. The application for the interim injunction was heard on 1 March (in OPEN) and on 2 March 2022 (in CLOSED). OPEN and CLOSED judgments were handed down on 7 April 2022.²⁴² Mr Justice Chamberlain granted an interim injunction (made permanent on 5 October 2022). Each of Mr Justice Chamberlain's OPEN judgments and orders was drafted so as not to reveal Agent X was a CHIS. As presently material, the injunction read:

“...the Defendant shall be restrained... [from] publishing or disclosing or causing or permitting to be published or disclosed any information which directly or indirectly

²⁴¹ IPCO interview/Witness A/1 December 2025

²⁴² [HMAG v BBC \[2022\] EWHC 826 \(QB\)](#)

identifies the individual referred to as “X” in the OPEN Judgments of the Court in these proceedings...”.

Part Four

Beth's claim before the Investigatory Powers Tribunal

The involvement of the Investigatory Powers Commissioner's Office

Beth's claim before the IPT

396. On 11 May 2022 Beth brought a claim before the IPT. In short, she alleged that MI5 had breached her human rights by reason of its failure to protect her from Agent X. She was out of time. MI5 agreed to her bringing the claim. From June 2022 MI5 legal advisors and staff worked on Beth's claim. From 10 July 2022 Officer 12 (Legal) was leading on the work. For a period during 2023 MI5 legal advisors and other personnel were dealing both with Beth's claim and an extremely critical draft report from IPCO regarding their conduct of the Agent X case. It was regarded as important that there was no inconsistency between what was said in response to Beth's claim in the IPT and to IPCO. It was considered important that perceived inaccuracies in the draft IPCO report were corrected in case they might weaken MI5's defence in the IPT.

The involvement of IPCO

397. On 15 December 2021, Officer 18 (Legal) sent an email to Officer 7 (Legal) (the MI5 lawyer who had provided the advice on departing from NCND). It stated:

"...DG is keen for us to raise (in a low-profile way) the...X case with IPCO just to put it on their radar. This is especially important given we are saying to the BBC that there are more appropriate mechanisms to oversee our work on CHIS (i.e. IPCO and the IPT) than the court of public opinion! Would you mind liaising with... [the IPCO oversight and engagement team] about how best to take this forward with IPCO? We ought to sight them on this sooner rather than later, i.e. in the next day or two."²⁴³

²⁴³ CB1/39/445

398. There followed an exchange of emails within MI5. In an email of 16 December 2021, Officer 7 (Legal) set out their understanding of the position prior to the approach to IPCO. Among other things, they stated:

“...Regarding CHIS identity, the MI5 approach to date has been to NCND...

...MI5 have also raised with the BBC that there are more appropriate mechanisms to oversee our work on CHIS, specifically the IPT and IPCO...

...We are of course happy to provide... [Agent X] files for inspection should the Commissioner wish to do so...”²⁴⁴

399. Officer 7 (Legal) did not mention the advice they had given²⁴⁵ regarding NCND in June 2020.
400. Officer 13, a member of the oversight and IPCO engagement team, informed the Chief Executive of IPCO of the Agent X case that afternoon.²⁴⁶
401. The thinking behind bringing in IPCO is apparent from a widely distributed email of 4 January 2022 from Officer 18 (Legal), in which they stated:
- “...At the point at which we go into closed court to explain to the court the true position regarding...[Agent X]...we will then be able to inform the Court that (1) [Agent X’s]...file was made available for inspections (but was not selected by IPCO for review) and; (2) the case was specifically brought to IPCO’s attention following our engagement with the BBC...It might be that by the time we get to a closed hearing we will be able to confirm that IPCO have...inspected the case...”²⁴⁷
402. A draft letter for the IPC was prepared and widely distributed. During the course of email correspondence about the draft, in an email at 15:35 on 5 January 2022, distributed, among others, to the oversight and IPCO engagement team, Officer 18 (Legal) and Officers 3 and 15, Officer 4 stated:

²⁴⁴ CB1/39/441-443

²⁴⁵ CB1/6/89-91

²⁴⁶ CB1/39/439

²⁴⁷ CB2/M/109

“Re Para 4 [of the draft]: Sorry if I’m reading this wrong, but I’m not sure this accurately reflects the outcomes of our initial engagement with the BBC. On that occasion, we successfully persuaded the BBC to remove all content relating to... [Agent X] (and to withdraw [other sensitive information])...”²⁴⁸

403. No-one appears to have picked up the significance of Officer 4’s reference to other sensitive information. As Officer 21 (who later became the senior officer in the oversight and IPCO engagement team) told me, it would have raised the question, ‘what is Officer 4 talking about.’²⁴⁹ It is impossible to say where such an enquiry might have led.

404. As Officer 18’s (Legal) email of 4 January 2022 suggested, MI5 initially believed that Agent X’s file was available to be selected by IPCO during the 2020 IPCO CHIS inspection, but that IPCO had not selected it. MI5 intended to inform IPCO that that was the position. It soon became apparent, however, that the Agent X file was not on the CHIS list provided to IPCO for the 2020 inspection due, as MI5 then believed, to an administrative error. MI5 at first intended that IPCO should be told that:

“The documentation relating to... [Agent X] has previously been made available for selection at the MI5 CHIS/DSA inspections in 2019 and 2021, but this case was not ever selected for examination on these occasions. We have identified that, due to an administrative error, [Agent X] ...was not included in the 2020 selection list. We are, of course, happy to provide the... [Agent X] files to your inspectors at the next CHIS/DSA inspection, should you feel this would be appropriate and beneficial”²⁵⁰

405. The first response of Officer 7 (Legal) was:

“Would it [the omission of Agent X] have been because he [fell outside MI5’s search parameters] at this point...”

406. Officer 7 (Legal) in a further email then stated:

“Sorry, I’ve just read the email properly and can see that’s not the case!!

²⁴⁸ CB2/M/108

²⁴⁹ IPCO interview/Officer 21/15 December 2025

²⁵⁰ CB2/O/132

Perhaps just lose the middle line...?"²⁵¹

407. Officer 5 (Legal) agreed:

"That para with ... [Officer 7's (Legal)] amendment looks fine to me. If pushed, we can let them know the absence in 2020 was due to an error, but given this was made available last year I agree we can leave the 2020 bit out for now."²⁵²

408. Officer 5 (Legal) assured me it was not their intention to withhold an administrative error. They were not seeking to avoid transparency.²⁵³

409. No-one at MI5 demurred. So it was that on 11 January 2022 MI5 wrote to the IPC, informing him of the possible BBC broadcast and stating:

"...

3. We are in discussions with the BBC, during which we have neither confirmed nor denied the central allegation that ... [Agent X] was a CHIS...

...it is possible that MI5 may seek injunctive relief. We have also raised with the BBC that there are more appropriate mechanisms to oversee our work on CHIS, specifically IPCO and the IPT...

4...We do not consider that any breach of our obligations under RIPA or the CHIS Code of Practice has taken place.

5...

6. The documentation relating to... [Agent X] has previously been made available for selection at the MI5 CHIS/DSA inspections in 2019 and 2021, but this case was not selected for examination on these occasions. We are, of course, happy to provide the... [Agent X] files to your inspectors at the next CHIS/DSA inspection, should you feel this would be appropriate and beneficial."²⁵⁴

410. For the reasons I have previously given, even on Officer 2's false account, what was said in paragraph 4 is incorrect.

²⁵¹ CB2/O/131

²⁵² CB2/O/131

²⁵³ IPCO interview/Officer 5 (Legal)/27 November 2025

²⁵⁴ CB1/40/447-449

411. It now transpires that the absence of Agent X on the 2020 list available for inspection may have been due to the fact he fell outside MI5's search parameters, as Officer 7 (Legal) initially thought. However, that was not understood to be the case at the time.
412. Officer 7 (Legal) sought to justify their deletion of the sentence on the basis that it could not be said with confidence that the list located was the actual document used for the inspection. While it was known what had happened in 2019 and 2021, the position in 2020 was not definite. It could not reliably be said there was an administrative error.²⁵⁵
413. Officer 5 (Legal) appears to have thought there was an error, but seems to have been unconcerned it was not being disclosed.
414. Although I accept that Officer 7 (Legal) was not seeking to mislead me, I am sceptical regarding their explanation. Those with the responsibility for dealing with IPCO inspections believed Agent X was not on the list when he should have been. The documentation available at the time suggested as much. It was accurate to state that Agent X was not on the 2020 list, even if the reason could not be identified. I fear that the removal of the sentence may have been driven by the wish not to disclose that MI5 had made an error, rather than accuracy. The deletion Officer 7 (Legal) suggested, and Officer 5 (Legal) readily agreed to, suggests a lack of the sort of openness which should be axiomatic in MI5's relationship with IPCO. It is an irony that at the same time as requesting IPCO's assurance as part of its response to DDS's allegations, MI5 may well have been loath to reveal it had made an administrative error. The general acceptance of the omission of the sentence may suggest an inappropriate defensiveness, something I comment upon more broadly below.
415. On any view this was an important and high-profile case which raised novel and contentious issues. There is a strong argument that it should in any event have been specifically drawn to IPCO's attention as part of the 2020 inspection. Officer 4 suggested as much in an email²⁵⁶ of 4 August 2020. Unfortunately, it did not happen. The case was only brought to IPCO's attention when MI5 considered that this might bolster its position in the BBC litigation. I

²⁵⁵ IPCO interview/Officer 7 (Legal)/25 November 2025

²⁵⁶ Exhibit 11 of MI5's Witness Statement in response to IPCO's Third Request for Information

acknowledge that the processes for IPCO's inspections of MI5 CHIS cases have evolved since these events, and understand that the criteria for bringing specific cases to IPCO's attention are under discussion. It is of the highest importance that systems are devised to enable MI5 to bring high risk cases to IPCO's attention.

IPCO's draft preliminary inspection report

416. IPCO carried out a routine CHIS inspection from 17 – 19 May 2022, during which the inspectors conducted a preliminary review of the Agent X case. This “flagged enough areas of potential concern that the inspectors felt a detailed review of the case file was required.”²⁵⁷ Such a review took place between 1 and 5 August 2022. IPCO's draft preliminary report²⁵⁸, received by MI5 on 6 February 2023, was highly critical of MI5's handling of Agent X. As to NCND, the report stated:

“During... [Agent X's] authorisation, Case officers made poor decisions in relation to... tradecraft when... [Agent X] was recruited... this resulted in prioritising intelligence production over security, and led to real risks to... [Agent X] and ultimately necessitated the extraordinary decision to disclose his identity as an MI5 CHIS to a BBC journalist.”²⁵⁹

MI5 works on its response to IPCO and on Beth's claim in the IPT

417. The oversight and IPCO engagement team had the responsibility of engaging with IPCO in respect of the draft report. By March 2023 Officer 3 had joined the team. Although Officer 3 claimed to me he was merely a co-ordinator as far as the response to IPCO was concerned,²⁶⁰ he was plainly leading on it. That is clear from the many emails I set out below. Officer 12 (Legal) described him as playing the “leading role.”²⁶¹ Officer 21 said there was an argument that having been previously involved, Officer 3 should not have played a substantive role in

²⁵⁷ IPT2/3/65

²⁵⁸ IPT1/3/63-98

²⁵⁹ IPT1/3/71

²⁶⁰ IPCO interview/Officer 3/11 December 2025

²⁶¹ IPCO interview/Officer 12 (Legal)/10 December 2025

the IPCO response. Officer 21 said they “went with” Officer 3 because of his experience and expertise.²⁶²

418. Officer 3 points to the involvement of the handling team in the response to IPCO. While the team was plainly involved, its primary concern was the serious criticism it faced of the manner in which it had handled Agent X. Rebutting criticism of that sort was at the heart of MI5’s response to Beth’s claim. Officer 3’s role was inevitably of a different order. Having played an important role in the BBC litigation, he was now playing a similar role in the MI5 IPCO response.

419. On 23 March 2023 MI5 and IPCO met to discuss the draft report. MI5 disagreed with many aspects. On 29 March 2023 there was a meeting within MI5 in which the many disagreements were noted. Officer 3 prepared an “IPCO Draft Gap Analysis” setting them out. In a note entitled “[Agent X] ... Response to Preliminary IPCO Report,” Officer 3 noted:

“...the most serious [IPCO] assertions - and criticisms of case officers - are related to...inadequate risk assessments... SI 2000/2725 [Regulation of Investigatory Powers (Source Records) Regulations 2000] compliance (alleged breach of NCND with BBC)...
...There is a distinction to be drawn between disagreement with IPCO’s preliminary report because we think it is factually inaccurate, and where we think it reaches conclusions which are unsupported by the evidence, unreasonably apply hindsight or an unreasonable test, or are beyond IPCO’s remit.”²⁶³

420. On 14 April 2023 a “lessons learned” meeting relating to the BBC litigation was scheduled. Those invited included Officers 3, 4 and 23 and Officers 18 and 5 (Legal). Item 5 of the proposed agenda stated:

“How NCND was handled throughout- including initial considerations in 2020, and subsequent considerations throughout these proceedings.”²⁶⁴

421. There appears to be no note of this meeting.

²⁶² IPCO interview/Officer 21/15 December 2025

²⁶³ IPT1/6/111-112

²⁶⁴ ‘HMAG v BBC - lessons learned’ meeting invitation, attached to email from MI5 of 12 June 2026

422. On 19 April 2023, Officer 3 sent out the Draft Gap Analysis both to those within the oversight and IPCO engagement team and the MI5 lawyers concerned with the Beth IPT litigation, stating:

“We agreed that I would draft something to try and identify any documentary or other gaps in the preliminary IPCO report on... [Agent X], and our key points of disagreement.”²⁶⁵

423. Officer 3’s analysis received general support. In an email of 18 August 2023 an MI5 lawyer responsible for providing operational legal advice to the Counter-Terrorism branch stated:

“...apologies for darkening your doors with this again...

I think that IPCO were waiting for us to get back to them...

In relation to the IPT proceedings, ‘Beth’ has now put in her substantive complaint. Counsel is currently...reviewing our documentation for disclosure purposes and will need to draft MI5’s response to that complaint in early Autumn. The report will need to be disclosed to counsel and, ultimately, to the IPT. The response document, compiled by [Officer 3] ...a number of months ago, will be helpful for counsel to see so that he is aware of our position on it.

... [the team of Officer 12 (Legal)] (leading on the IPT litigation) ... are keen for us to resolve matters with IPCO as soon as possible. That being said, are there any further documents that we consider IPCO should review? If so, should we be putting a timeframe on when these will be gathered by...”²⁶⁶

424. Officer 3 responded, indicating that he had started to review what further documents might be useful. Among other things, he stated:

“...we should consider whether we provide a stronger written rebuttal of the approach they have taken, and the lack of relevant experience of the Inspectors, and suggest the only sensible next step would be to discuss the case, and IPCO’s concerns, with the... [handling team].”²⁶⁷

425. On 31 August 2023, in an email to Officers 3 and 21, among others, Officer 12 (Legal) stated:

²⁶⁵ IPT1/5/109-110

²⁶⁶ IPT1/5/107

²⁶⁷ IPT1/5/105-106

"...We need to provide to the IPT our response to Beth's complaint...some time in November. I'm afraid the IPCO report will fall to be disclosed and we must address that report in our response to the IPT. It would also be very helpful if we were able to provide the IPT with a copy of our response at the same time. This would in fact save a significant amount of work in the IPT context, as if we already have a settled corporate position on the IPCO report that is committed to writing, we will not have to create one from scratch as part of our response to the IPT.

...

We...would of course be very grateful for sight of the response once concluded. I would also appreciate access to the draft to ensure that nothing we say to IPCO creates any potential issues before the IPT."²⁶⁸

426. Officer 3 responded, stating:

"...That all makes sense, and it is helpful to know the timeframes the IPT is working to. I quite agree that it would be preferable to have settled this in [sic] its own terms, rather than trying to generate a position to satisfy the IPT's timings. We will keep you all involved."²⁶⁹

427. Officer 3 prepared a draft response to IPCO. Officer 12 (Legal) had concerns about it. As their email of 8 September 2023 put it:

"...From the perspective of the IPT proceedings, I have a couple of concerns with this letter.

First, we do appear to be making concessions about the criticisms in the report and the way the case was risk assessed...We may want to tone down these admissions-unless we are also prepared to make the same admissions in our response to the IPT. Secondly, we want to avoid the need for witness evidence before the IPT (either corporately or individually)... there is a risk in the current form that this response would push the IPT towards requesting oral evidence (albeit we might get there anyway if we can't make the case we want on the documents alone...) ..."²⁷⁰

²⁶⁸ IPT1/5/101

²⁶⁹ IPT1/8/143

²⁷⁰ IPT1/9/145

428. Officer 3's draft response was not sent.

429. On 11 September 2023 another MI5 operational lawyer sent an email to Officer 12 (Legal) in which they said:

"It seems to me that the impending IPT litigation has to be at the forefront of any response to IPCO on the basis that it will be disclosable. Presumably for the purposes of the litigation we need something clearly on record that we do not agree with the IPCO conclusions. I think there is a question as to how we do that so as not to interfere with your position of not exposing officers to IPT witness evidence while also not conceding any points..."²⁷¹

430. There was a conference with junior counsel. Present, among others, were Officer 3 and Officer 12 (Legal). JT said that it was in September 2023 that she first became aware of the draft IPCO report. Between counsel and GLD, they reviewed all the documents disclosed in the injunction proceedings. That included the contact notes. JT said that "I suppose in my mind, I wasn't concerned [about NCND] because it was a quite clear instruction from clients that there hadn't been that disclosure and none of the documentation was inconsistent with that position." She could not say "black and white" that there had been disclosure. She occasionally spoke to Officer 3 who spoke of IPCO's fundamental premise being wrong.²⁷² ES was told that in terms of their working practice, a departure from NCND simply would not happen without a note.²⁷³

431. On 15 September 2023, Officer 3 set out in an email that junior counsel wanted to discuss the matter of the draft IPCO report with leading counsel, Neil Sheldon KC (NS KC). A holding reply was sent to IPCO.²⁷⁴

432. NS KC described MI5's general concern about the draft IPCO report in terms of it casting doubt on the professionalism and expertise in the way Agent X was handled. As far as he could recall, by the time of getting to draft Witness A's IPT statement, the discussion about IPCO and NCND

²⁷¹ IPT1/10/157-159

²⁷² IPCO interview/JT/8 December 2025

²⁷³ IPCO interview/ES/8 December 2025

²⁷⁴ IPT1/12/185

was not focussed on whether or not there was a contemporaneous note, but on a combination of the fact that the position had already been checked in the injunction proceedings, a witness statement produced and accepted by the court, and the BBC not having said anything to the contrary about NCND. The position as he understood it was that IPCO made a mistake based on the fact they had conducted a records-only review. The problem was that IPCO had not seen Witness A's OPEN statement (of 26 January 2022).²⁷⁵

433. On 10 October 2023 Officer 12 (Legal), in an email to Witness A and Officer 3, among others, stated:

"...We are currently working to prepare our response to the IPT complaint...The timetable for our response is currently being established...

... [Witness A]- I am sure you will be interested given your role as a witness in the injunction proceedings, but please let us know if you would like anyone else to review [the draft response] before it comes to you...

...there is another, separate point which I just wanted to put on your radar (as unwelcome as that may be). Our standard position is that we should not provide individual witness evidence to the IPT...However, if there are evidential gaps in the documentary record that could best be addressed by evidence, and if counsel advise our position would be significantly improved by such evidence, that is something we might need to consider. If evidence is required, I can see an argument that you might be the best person to add suitable weight and gravitas to its provision. There would, however, also be the risk that if you give a statement you would be called to give oral evidence, and if so, that is something we would need to give serious thought to. Not least because of the preparation that would be involved for a hearing in 2024..."²⁷⁶

MI5's first response to the IPCO report

434. On 13 October 2023 MI5 finally sent IPCO the "MI5 Response to... [the Agent X] Draft Inspection Report." It disputed IPCO's findings. As to IPCO's conclusion that Agent X was declared as a CHIS, MI5 stated,

²⁷⁵ IPCO interview/NS KC/8 December 2025

²⁷⁶ IPT1/13/201

“...the report concludes that MI5 took an “extraordinary” decision to declare... [Agent X’s] status as a CHIS to a BBC journalist and, as a result, failed to comply with the requirements of Regulation 3(e) of S.I. 2000/2725. We would like to make it clear that we did not in fact take any such decision... [Agent X’s] CHIS status was not disclosed to the BBC either at that time or subsequently. We worry that a misunderstanding on this important issue might have had a wider impact on the Inspectors’ views of our handling more generally.”²⁷⁷

435. Officer 21 described this response to me as “institutional.”²⁷⁸

436. On 1 November 2023 Officer 12 (Legal) sent out a provisional timetable for the IPT litigation. They also said something about MI5’s anticipated approach to Beth’s claim:

“ ...

Much of our response will draw heavily on the witness statements already provided by ... [Witness A] in the injunction proceedings last year, so to that extent much of the factual narrative is already established. However, there are new elements particular and specific to Beth’s complaint which will have to be addressed...

...Counsel is becoming increasingly convinced that the most effective way to provide a response will be through witness evidence and not merely a letter of response or legal submissions... [Witness A] ...I am afraid that you would be the obvious candidate for providing such a statement. That would carry a potential risk of being called to give oral evidence, although our position would be that on judicial review principles oral evidence should not be necessary. I will contact you separately about that.”²⁷⁹

²⁷⁷ CB1/52/635-637

²⁷⁸ IPCO interview/Officer 21/15 December 2025

²⁷⁹ IPT1/14/205-206

The draft “statement/narrative” for the IPT litigation is sent out

437. On 8 November Officer 12 (Legal) sent out²⁸⁰ the first draft of Witness A’s “STATEMENT/NARRATIVE”²⁸¹ to the handling team and Officer 3, copying in, among others, Witness A. It had been drafted by junior counsel (JT and ES).
438. Officer 12 (Legal) also sent it to LW at the GLD. The draft dealt in detail with MI5’s case in response to Beth’s allegations. In their email, Officer 12 (Legal) asked different individuals to deal with a number of specific queries.
439. Paragraph 117 referred to paragraph 11 of Witness A’s OPEN statement of 26 January 2022.
440. Paragraphs 133-142 of the draft dealt with “confidentiality” and referred to the injunction.
441. Paragraphs 144-151 dealt in some detail with what was said in the IPCO report. JT said she probably had drafted that section. The draft broadly sought to set out why IPCO was wrong. It referred to IPCO’s suggestion that Agent X’s identity had been disclosed to the journalist in terms of a “key erroneous conclusion.”²⁸²
442. Officer 12 (Legal) asked Officer 3 to deal with some questions relevant to the IPCO report.
443. Witness A was told that it was looking “increasingly likely that a witness statement might be necessary.”²⁸³ Witness A told me thoughts at the time were concentrated on Agent X’s conduct, not NCND, which had been dealt with.²⁸⁴

²⁸⁰ IPT1/14/203-204

²⁸¹ IPT1/15/209-264

²⁸² IPT1/15/262

²⁸³ IPT1/14/204

²⁸⁴ IPCO interview/Witness A/1 December 2025

The first draft of Witness A's CLOSED statement for the IPT litigation

444. By 27 November 2023 the first draft of the CLOSED witness statement was available.²⁸⁵ It had been drafted by junior counsel, who told me that NCND was not the primary issue that everybody was focussing on. The primary issue was the substantive defence of the claim. The draft was sent to Officer 3, among others. NS KC accessed the draft on a secure laptop. Paragraph 3 of the draft stated:

“In making this statement, I have spoken to members of the case team for the individual known as... [Agent X] including... [Officer 4] the case controller...”

445. Paragraphs 32-34 dealt with the “Confidentiality of the CHIS Relationship.”

446. Paragraphs 35-45 dealt with “CHIS Policies.” Paragraph 35 stated:

“MI5 maintains a number of policies which consider and guide our approach to the way in which we assess and manage risks which arise from our CHIS.”

447. Paragraphs 46-151 set out MI5’s summary of its dealings with Agent X.

448. Paragraphs 149-150 dealt shortly with the events in June 2020. NCND was not mentioned.

449. Paragraphs 153-161 dealt with the IPCO report. It broadly followed the pattern of the draft statement/narrative. In an email of 29 November 2023, Officer 3 made some comments on paragraphs 152, 157 and 158 of the draft statement.²⁸⁶

450. NS KC said he did not make any amendments. He did remember wondering why they were getting into the detailed critique of IPCO’s approach. He was not sighted on the detail.²⁸⁷

451. On 30 November 2023, one of the case workers on the Beth IPT case had sent an email to Officer 12 (Legal), among others, in which was stated:

“ ...

²⁸⁵ IPT1/18/279-341

²⁸⁶ IPT1/19/344

²⁸⁷ IPCO interview/NS KC/8 December 2025

Yesterday, we sat with... [Witness A] and discussed the statement. As you can imagine, he was very thorough, and asked lots of questions. In some areas, he thinks we just need a slight edit to amend the wording..."²⁸⁸

452. On 4 December 2023 Witness A looked at the statement again, as recorded in Officer 12's (Legal) email of that date.²⁸⁹

IPCO's response to MI5's letter of 13 October 2023

453. On 5 December 2023 Sir Brian Leveson responded²⁹⁰ to MI5's letter to IPCO of 13 October 2023. He stated:

"...

I note that my inspectors conducted the inspection in early August 2022 and shared the draft report with MI5 on 6th February 2023. I find it extremely disappointing that it has taken almost nine months for IPCO to receive such a short response which largely repeats points which were made at a meeting with IPCO officials in April [sic] 2023. As agreed at that meeting, we were expecting MI5 to complete a comprehensive review of all relevant documentation and to share any additional documents with us so we could properly understand the reasons for challenging the findings in our draft report...

Turning to the substance of your letter, there are a number of issues to which I would like to respond:

Disclosure of... [Agent X's] status as a CHIS to a Journalist

Your letter states unequivocally that no such disclosure or decision to disclose was ever taken by MI5, but no documentary evidence has been provided to demonstrate that fact or what (if anything) was disclosed. I am afraid I simply do not understand how there is room for any justification for this failure. The law is clear: adequate records of any significant information connected with the security and welfare of the CHIS must be kept (see regulation 3(f) of The Regulation of Investigatory Powers (Source Records) Regulations 2000). I note that MI5 had not disputed that disclosure

²⁸⁸ IPT1/23/491

²⁸⁹ IPT1/29/637

²⁹⁰ IPT2/63

was, at least, contemplated and decisions regarding the disclosure or potential disclosure, of the identity of a CHIS plainly fall within this category- regardless of whatever decision was ultimately taken. Thus, either there was inadequate record keeping or there has been a failure to make such records available to inspectors. Either would represent a serious compliance failure.

Having consulted with my inspectors, it remains IPCO's view, based on the records available, that there is evidence upon which IPCO is entitled to conclude as a justifiable inference, on the balance of probabilities, that MI5 disclosed... [Agent X's] role as a CHIS (either directly or indirectly) to a contact at the BBC... There are decision logs suggesting as much and, furthermore, the internal correspondence suggesting a plan where... [Agent X] may even be introduced to the BBC journalist... The records reviewed by the inspectors describe this operational plan, with... [Agent X's] 'consent' to it being recorded in the decision logs.

It would seem highly likely that some engagement from MI5 had to have occurred to dissuade the journalist from including... [Agent X] in the initial [programme], given that it appears that initially he was to be the main focus of it. I understand there are records confirming the intention that an MI5 officer...make contact with... the BBC... Again, it is disturbing that the records made available to inspectors did not include the detail of this contact.

MI5 has provided no documentary evidence to support its position, no alternative explanation for the [removal] of... [Agent X] from the [programme], and no alternative interpretation of the documents provided to IPCO which are capable of undermining the finding of the report. It may be that the BBC were persuaded to change their approach but, again, without detail (and the relevant contemporaneous material not least to maintain the records required by the Regulations) would be entirely speculative. A bare assertion that this did not happen is simply unsatisfactory.

...

Having considered the points raised in your letter, I am prepared to provide MI5 with one further opportunity to [sic] what I consider the entirely legitimate concerns which have been raised and which I have articulated in this letter. More than ample time has been afforded to MI5 to produce an appropriate response to the facts and the request for further documentation. I am prepared to allow a further seven days for you to respond before issuing the final report."

MI5's response to Sir Brian's letter

454. MI5 was concerned about the criticisms. On 5 December 2023, Officer 3, in a widely distributed email, stated:

“...In short, it’s a punchy response from the IPC himself...Curiously, they have majored on the point that they believe we must have breached NCND with the BBC- he says that there has certainly been a serious compliance failure by either inadequate record keeping, or a failure to make relevant records available to inspectors. He goes on to say that there are reasonable grounds to conclude that MI5 did disclose... [Agent X’s] CHIS status to the BBC (ie that we have lied to inspectors, and perjured ourselves in the injunction).

It’s an interesting approach to take, so I suggest that we get together once all have had the time to absorb this, let off some steam privately, and then get together to discuss how we want to respond...

... [Officer 12 (Legal)] - it might be helpful if we are able to pull out the relevant parts of the injunction case. SAs [special advocates] made a similar allegation, which we rebutted successfully. It is true that there was not a write-up of the...conversations with the BBC, but that is not unusual, especially where we did what we usually do, maintain NCND. There is a written confirmation from... [Officer 2] that he did not declare... [Agent X] at the time, and more detailed write ups from me, confirming that the later conversations with the BBC also maintained NCND...”²⁹¹

455. Officer 12 (Legal) told me this was the first time they really addressed their mind to the impact Sir Brian’s letter would have on the IPT proceedings. They were also concerned that “if your regulator writes to you in these terms... [you] must do better.”²⁹² In the early hours of the morning of 6 December 2023 they set out their views in an email.²⁹³ At the time they thought there had only been one conversation between Officer 2 and DDS. The email stated:

“I am afraid I am unsighted on what material was, and was not, within scope of the IPCO inspection records review. However, from a limited selection of some material, I can see how the IPCO inspectors could have concluded that... [Agent X’s] agent status

²⁹¹ IPT1/30/667

²⁹² IPCO interview/Officer 12 (Legal)/10 December 2025

²⁹³ IPT1/30/665-667

was confirmed to the BBC on 8 June 2020, based on a number of email exchanges (assuming they were shown these)."

456. They set out part of Officer 23's email of 6 June 2020 and Officer 10's 'bullet point' email of 10 June 2020:

"...The basis of the engagement [with the BBC] was that the reporting on... [Agent X] was incorrect as the person being described in the [programme] was based in large part on a fictitious persona. The rationale for engagement was that the consequences of allowing the programme to air with... [Agent X] in it would have been hugely detrimental to his life, and that **the majority of the material that the BBC were reporting about... [Agent X] was as a direct result of his tasking as an MI5... CHIS.** On 10 June 2020, the BBC confirmed that all references to... [Agent X] would be removed... [original emphasis]

I accept that the stated rationale for engagement with the BBC may not actually have been communicated in the engagement itself, but it was recorded contemporaneously that the BBC was told by MI5- at the very least- that the [programme] was based on a "fictitious persona". In the records I have seen, there is nothing to suggest that the operational plan agreed with... [Agent X] on 8 June (and communicated to various recipients including... [Officer 2] on 9 June) was not the plan that was executed by... [Officer 2] on 8 June. (I completely accept that there might be other documents that I haven't seen though...)"

457. There was reference to the Agent X decision log of 8 June 2020.²⁹⁴ The email continued:

"There is no contemporaneous record of the...engagement with the BBC on 8 June 2020, but as you [Officer 3] note...there is an account written subsequently."

458. There was reference to Officer 3's Background email of 10 December 2021:²⁹⁵

"It seems as though you [Officer 3] produced that account after a conversation with... [Officer 2] ...and he confirmed that he couldn't find a contemporaneous write up. But it is not apparent from the email chain that... [Officer 2] confirmed that account was accurate... [Officer 3] - you subsequently engaged with the BBC on 9 and 10 December

²⁹⁴ CB1/9

²⁹⁵ CB1/36/407-409

2021 and those engagements were recorded contemporaneously...and you expressly maintained NCND.

One thing I did wonder was what... [Officer 2] could have said to make De Simone pull the story if it wasn't that... [Agent X] was a CHIS. If...[he] just referenced general risks to national security, that could have been consistent with... [Agent X] being an SOI [subject of interest] rather than a CHIS and any BBC reporting interfering with an ongoing MI5 investigation, would de Simone have drawn that conclusion if he hadn't been (inaccurately) directed there? And if nothing express was said, would de Simone not have more obviously drawn the conclusion that... [Agent X] was a CHIS?

You [Officer 3] say that this was raised in the injunction case by the Special Advocates, and that we successfully rebutted the allegation of a departure from NCND..."

459. I observe in passing that, as I have previously said, while there may conceivably be other ways in which MI5 could have become aware of DDS's story, the obvious conclusion in the circumstances was because Agent X was a CHIS.

460. Officer 12 (Legal) questioned whether the reference in paragraphs 40 and 41 of DDS's confidential witness statement in the IPT proceedings,²⁹⁶ in which DDS spoke of receiving corroboration of Agent X's intelligence work with MI5 from confidential sources, might have been to Officer 2.

461. Finally, Officer 12 (Legal) stated:

"More broadly, the timing of this letter isn't ideal. We need to address the IPCO report and subsequent correspondence in the statement for the IPT proceedings, which we are currently trying to finalise...

One possibility is that we do not try and engage the IPT and IPCO separately, but we align our responses..."

462. NS KC said that he did not remember "these doubts that are becoming evident in... [Officer 12's (Legal)] email."²⁹⁷

²⁹⁶ DDS/11/232

²⁹⁷ IPCO interview/NS KC/8 December 2025

463. MI5's Legal Director suggested (by email):

"Bearing in mind that time is very tight here and we have seriously annoyed the IPC, can I jump into this chain to suggest a set of actions and timings to allow us to respond in the best way possible. I know we will all have domestic commitments at this time of year but this feels significant. Actions are:

- ...
- We should focus on the NCND criticism and getting our position absolutely clear. Some of it is captured in... [Officer 12's (Legal)] note...but in the interests of being sure we have everything can we do two things: (1) ...capture... [Officer 2's] response to what IPCO are saying- probably a meeting that that will need to **be later today or tomorrow**... (2) can we have the results of the "gap analysis" with the documents IPCO have not seen..."²⁹⁸

464. Officer 12 (Legal) said that a meeting with Officer 2 had been suggested before the notes of the meeting of 17 February 2022 were located, and at a time when Officer 2 might not have been available. Officer 12 did not consider it necessary to have a meeting with Officer 2 in connection with the IPT witness statement. Save for the above email, there is no indication that anyone considered it necessary to speak to Officer 2 to assist in preparing the response to IPCO.

Conference with counsel

465. On the morning of 6 December 2023 there was a conference with counsel. LW took notes.²⁹⁹ Among others, NS KC was present. The question of Agent X's anonymity in the IPT proceedings was discussed. In broad terms, NS KC advised that Mr Justice Chamberlain's decision should be relied on in respect of that.

466. A GLD lawyer made notes of the conference. As relevant, they stated:

"Contemporaneous records indicate discussi[on] ref. disclosure...
[D]DS evidence para 40: references conf[idential] sources.
...q[uestio]n whether... [Officer 2] was the source.

²⁹⁸ IPT1/30/663

²⁹⁹ IPT1/33/705

-How does this play into anonymity/CLOSED?

(7 Feb 2022 [Witness A's CLOSED] statement)

Csl [counsel] best recollect[ion] = SAs did not say in the proceedings already confirmed.

NS KC say posit[ion]= entirely consistent with the proceedings.

As a matter of fact, NCND maintained. Accept unfortunate that a contemporaneous record wasn't maintained...

Check statement, S[pecial] A[dvocates] request + judgm[en]ts in the proceedings ...separate IPCO handling piece. Q also re: what we provided to them.

NS KC: this is clearly a different issue as to whether we put X at risk. IPCO letter doesn't bear on the litig[ation]

Anonymity app'n

...Need to rely on the evidence that was put before Chamberlain plus his judgment...

Confirm risk is the same...

Purpose = to obtain an order to prevent Beth from disclosing what she knows. Beth doesn't consider herself to be otherwise constrained..."³⁰⁰

467. Before the conference, NS KC jotted down some notes as a reminder to himself on his copy of Witness A's draft statement for the IPT. When he had looked at the statement the week before he had put a general question mark next to the IPCO section. He went through topics raised by the notes. Among the notes were the following:

"- Did we disclose... [Agent X's] status to BBC.

- Contep [sic] docs say that we were going to tell BBC that he is a CHIS..."³⁰¹

468. NS KC said there had been a discussion led by the clients as to how they would make a compelling case to IPCO this time around, having failed on the last occasion. The clients' position was consistent with the defence taken in the (BBC) proceedings: that there had been no disclosure, but it was unfortunate no record had been kept. He felt he had received reassurance that there had been no disclosure of Agent X's status to the BBC.³⁰²

³⁰⁰ IPT1/33/706

³⁰¹ IPT1/38

³⁰² IPCO interview/NS KC/8 December 2025

469. As to the reference in the note to paragraph 40 of DDS's witness statement of 23 November 2023, NS KC said he did not recall the detail of what was said.
470. NS KC had crossed out paragraphs 164 to 174 of his copy of the draft statement, (which was that section which contained the detailed critique of the draft IPCO report). He made a note which read:
- “MI5 currently in correspondence with IPCO on a number of aspects of the draft report. In particular MI5 has some concerns about aspects of the IPCO methodology and some of the draft conclusions.”³⁰³
471. The explanation for the crossing-out and the comment was to the following effect. NS KC understood from MI5 that IPCO had produced a misconceived report based on a documents-only review. It was not only misconceived in respect of the disclosure issue but more generally. MI5 was “pulling out all the stops” to demonstrate this to IPCO. Given this was an on-going process, and that part of the witness statement was to support MI5's claim, he took the view that this was not the place to set out MI5's detailed criticisms. It was important to refer to it, and exhibit all the correspondence, but not for Witness A to tell the IPT all the ways in which IPCO went wrong. He therefore advised taking out the detailed criticism and exhibiting the documents.³⁰⁴
472. NS KC added an important comment. With hindsight, he would have preferred the statement to have had a paragraph which expressly flagged up two things: first, that IPCO reviewed the documents and concluded there had been disclosure and, second, that Agent X had himself authorised the disclosure of his identity to the BBC.³⁰⁵ I shall return to this topic.
473. Officer 12 (Legal) told me that, “we had increasing difficulties in how to deal with the IPCO report in a way that was fair and proper.” The BBC NCND issues were not relevant to the IPT claim. The relevance of the IPCO report was to the substance of Beth's claim. It became more prominent because of the need to show IPCO's flawed methodology. They did not think anyone turned their minds to the relevance of NCND to the IPT proceedings. If Officer 2 was

³⁰³ IPT1/38

³⁰⁴ IPCO interview/NS KC/8 December 2025

³⁰⁵ *Ibid.*

the source of DDS's belief that Agent X was a CHIS, it would need to be addressed. It might have made the confidentiality argument harder. However, it would not have altered MI5's position. Officer 2 disclosing Agent X's CHIS status to DDS was different from the court ordering disclosure to Beth.³⁰⁶

474. Following the conference, Officer 12 (Legal) sent a widely distributed email in which they stated:

"...

On the IPCO stuff, we have done some further digging...and I am feeling happier. However, I just wanted to check one thing more with you...do you have any record of the Special Advocates taking points about the 8 June 2020 conversations with the BBC after 24 February 2022? We think the GLD letter [of 24 February 2022] killed the issue, and we don't think it went to a disclosure hearing and we don't think chamberlain ruled on it, but would be v grateful if you might be able to confirm that from your records/memory!"³⁰⁷

Meeting on 7 December 2023

475. On 6 December 2023 Officer 13 (from the oversight and IPCO engagement team) arranged an urgent meeting for the next day to discuss how MI5 should respond to the IPC's email. The invitation for the meeting still exists. There are no meeting notes. Officer 13 described a meeting at which they and Officers 3, 4 and 23 were present, either in person or remotely. They could not remember whether Officer 12 (Legal) was present.³⁰⁸ It is clear they had been invited. There was a second meeting concerning Agent X later that day. It was arranged by the Director General Strategy. Officer 3 was invited. Officer 12 (Legal) was not. Again, there are no meeting notes.
476. In respect of the first meeting, Officer 4 told me this was the first time NCND was referenced as a "massively significant issue." He said he made it "absolutely clear" that it was his belief and that of Officer 23 (Agent X's Operational Security Advisor) that NCND had not been

³⁰⁶ IPCO interview/Officer 12 (Legal)/10 December 2025

³⁰⁷ IPT1/36/730-731

³⁰⁸ IPCO interview/Officer 13/15 December 2025

maintained. Officer 4 said he spoke of that horse (the maintenance of NCND) having bolted. Officer 3 made a “very unambiguous statement that it did not happen.” He could “categorically state” that it did not happen. Officers 4 and 23 maintained it did. Officer 4 said he felt as though he had been put back in his box, “shut down;” there were “some very senior people” at the meeting. He felt “weird” and thought, “what is happening here.” Officer 4 described Officer 3 as very intelligent, direct, not dominating and not afraid to challenge. It was the “conviction” of what he said.³⁰⁹

477. Officer 23 was present to talk about digital tradecraft. They thought that legal advisors were at the meeting. They too said they thought they had departed from NCND. “It was surprisingly firm from... [Officer 3] who said that did not happen.” They did not think Officer 3 was wrong. They assumed he had seen what they had not.³¹⁰

478. Officer 13 was asked about the meeting. They indicated that they could not be “totally sure” what they had remembered and what they had read and talked about since. They recalled NCND being mentioned at the meeting, that Officer 4 said he thought NCND had been departed from. They described it in terms of a conversation between Officers 3 and 4. They understood Officer 3 had spoken to DDS and maintained NCND. They recounted that Officer 3 said:

A: “...he had spoken to [Officer 2] ...who said, “I didn’t depart”...

Q: That was your understanding of what... [Officer 2] had said to [Officer 3]?

A: Yes. And that’s what [Officer 3] ...had said, that he’d spoken...to [Officer 2] ...and that there... hadn’t been a departure and I suppose that [is] quite compelling and I think also, I would say that I think... [Officer 4] and I actually both probably sort of were more junior at the meeting and, if someone- it makes it sound really hierarchical, but I guess...when someone more senior is saying, “I’ve literally spoken to the person that had the conversation with the journalist and he says he didn’t depart,” you... go, “well, okay then.”

Q: Do you think... [Officer 4] might have said something like, “That horse has bolted, pal”?

A: Possibly. I mean, that does sound like the way he would speak...

³⁰⁹ IPCO interview/Officer 4/18 November 2025

³¹⁰ IPCO interview/Officer 23/17 November 2025

A: ... my recollection of it was that... [Officer 4] did sort of refer to the fact that we had departed and, as I say, then we were sort of told that actually hadn't happened, but, like I say, ultimately when the person that spoke to the journalist, when [Officer 3] ...said "I've spoken to him and he said he didn't," it's hard to argue with that really."³¹¹

479. Officer 3 disagreed with the accounts of Officers 4 and 23 (and, implicitly, the account of Officer 13). They did not say there had been a departure from NCND. Nothing was said to the effect that the horse had bolted. Others present would have heard such a conversation.³¹² Officer 12 (Legal) said they did not recall Officers 4 and 23 suggesting that NCND had been departed from.³¹³

Officer 17's evidence

480. Officer 17 was Officer 4's line manager. They described Officer 4 coming into their office at some time after IPCO became involved "to unburden himself." Officer 4 felt "quite bruised by the whole thing." He explained the background to the decision that it would be permissible for Officer 2 to depart from NCND. Officer 4's understanding was that Officer 2 had departed from NCND "but then that was later clarified to him that ... [Officer 2] had not departed". Officer 4 did not say who had said that. Officer 17 said:

"My impression from the context of the conversation was that it was ... [Officer 2] who made these clarifications. So ... [Officer 2] had said that he'd departed and then clarified that he hadn't in [Officer 4's] understanding. But [Officer 4] wasn't very specific about it."³¹⁴

481. Officer 4 did not mention any conversations with Officer 3 to Officer 17. There is nothing to suggest Officer 2 ever "clarified" matters with Officer 4.

³¹¹ IPCO interview/Officer 13/15 December 2025

³¹² IPCO interview/Officer 3/11 December 2025

³¹³ IPCO interview/Officer 12 (Legal)/10 December 2025

³¹⁴ IPCO interview/Officer 17/24 November 2025

My view about the meeting of 7 December 2023

482. I believe Officers 4 and 23. I accept the account of Officer 13. I have little doubt Officers 4 and 23 did say that NCND had been departed from. That is what, entirely correctly, they believed. I accept that Officer 4 spoke of that horse having bolted. What Officer 13 said provides powerful corroboration of the substance of their account. Officer 13 was not involved in 2020. They were a plainly truthful witness for whom there was no benefit in supporting Officer 4's account. It is also clear that Officer 3 misrepresented what Officer 2 had told him. What Officer 17 said is to some extent consistent with the accounts of Officers 4 and 23. I reject Officer 3's denials. He was not in my view truthful about this.
483. Having heard from both Officer 3 and Officer 4, I believe that the confidence with which Officer 3 spoke effectively shut down Officer 4.
484. I do not know why Officer 12 (Legal) cannot recall what Officers 4 and 23 said. It may be they were not present at the time it was said. Whatever the reason, their failure to recall does not change my view.
485. Officer 3 told no-one what Officers 4 and 23 believed. He continued to say nothing about Officer 2's initial uncertainty.
486. As I have indicated, while Officer 4 was involved in matters relating to the response to IPCO, his focus (as Officer 15 had recounted) was on the allegation that the handling team had mishandled the case. For that reason, and having been 'shut down,' he focussed on that aspect of the draft IPCO report.

Officer 3's draft response to the IPC

487. On 8 December 2023 Officer 3 sent a first draft of the proposed letter to IPCO to Witness A, Officer 12 (Legal) and Officers 23, 4 and 21, among many others.³¹⁵ He asked for comments (including from Officer 23 on a section unrelated to NCND). Officers 4 and 23 did not respond

³¹⁵ IPT1/39/884

on the topic of NCND, no doubt, to adopt Officer 4's phrase, because they had been 'shut down' and 'put back in their box.' Officer 12 (Legal) did respond. They stated:

"...there are a couple of fundamental points I thought worth highlighting:

It does not appear to me that... [Witness A's] witness statement was included in the material provided to IPCO. We provided the CLOSED statement, but the evidence we did not depart from NCND was in the OPEN statement. That is not in the list of documents. I understand that it was separately provided to the inspectors, but it does not appear in the list of docs, so we might need to make that clear.

I think there is a risk that the lack of a record of the call is a free-standing problem. It may not simply be a case that we didn't depart from NCND and therefore didn't need to make a record. The case team (and [the overseas organisation] and... [Agent X]) may have been under the impression that we would confirm CHIS status to the BBC, and it doesn't appear in the written record that anyone ever told them that (a) the plan had changed and (b) we had not confirmed CHIS status. The initial proposal...was that we would confirm CHIS status. In fact, you [Officer 3] and I discussed and we think the operational proposal might have changed over time to something less than that, and "declaring an MI5 interest" might mean declaring CHIS status, or something less. So when it was subsequently written [by Officer 10 in the "bullet point" email³¹⁶] that we were "proposing to intervene" with the BBC and brief on his "links to MI5" that might have been CHIS status. Or it might have been that MI5 "had an interest" and no more.

The case team might have been labouring under the misapprehension that the BBC had been told of CHIS status at least a month later (because they were considering a plan to introduce... [Agent X] to De Simone...) ... [Officer 2] did not confirm CHIS status, and surely it would have been of vital importance to tell the case team... [and Agent X] as quickly as possible that NCND was maintained re CHIS status. [The overseas organisation would also have to be informed] Not knowing that, [Agent X] ...might have spoken to the BBC thinking that the BBC knew he was a CHIS. Not knowing that, [the overseas organisation] might have confirmed CHIS status to [others] if they thought MI5 had already confirmed to the BBC...So surely for CHIS protection reasons, the [handling team] should have been told that there was not a disclosure. The discussions you had with [Witness A] and [Officer 2] reveal that [Witness A] was told

by [Officer 2] after the call, but that is not recorded anywhere. Secondly, it seems as though De Simone was already speculating in June 2020 that... [Agent X] was a CHIS. The [handling team] was unaware of that, and De Simone stated in his witness statement in the injunction proceedings that by June 2020 Beth had told him... [Agent X] was a CHIS but he did not mention that in his initial contact to... [Agent X]. However, it seems from the subsequent recollection of the call by... [Officer 2] that [as put in Officer 3's Background email]:

In May/June 2020 our regular security contact at the BBC brokered a conversation with [DDS]... [DDS] was producing a news piece... on the extreme right wing... As part of that process he suspected (in general terms) that some of the people he had identified may be agents or role-players for state or private organisations.

He shared details of some of those he had identified, and one was...[Agent X]. Following discussion between [Officer 2] ... and [those managing Agent X] ... the decision was taken to approach De Simone, and reveal that running aspects of his story would cause damage to national security.

Again, we think...[Officer 2] told...[Witness A] about this, but if the BBC suspected...[Agent X] was a CHIS (and if the BBC could work that out, surely others could too?) for RIPA [Regulation of Investigatory Powers Act 2000] COP [Code of Practice] reasons, the assessment about the BBC speculation should (probably - I think we need to check what our precise obligations are) have been recorded as it revealed new information about a significant threat to...[Agent X]."³¹⁷

488. It is clear that in the discussions with Officer 3 to which Officer 12 (Legal) referred in this email, Officer 3 had said nothing about Officer 2's initial uncertainty or Officer 4's belief.

489. On 11 December 2023, in an email to an information management team entitled "URGENT Access Request for... [Agent X] file," Officer 3 stated:

"I am leading the drafting for a response to IPCO on their report into the running of... [Agent X] ...I have read all C[ontact] notes and D[ecision] logs previously in hard copy."³¹⁸

³¹⁷ IPT1/39/883

³¹⁸ Email provided in response to IPCO's Eleventh Request for Information

MI5's response to the IPC

490. On 13 December 2023 MI5 responded to the IPC's letter.³¹⁹ The response was signed by Officer 21 (the senior officer in the oversight and IPCO Engagement Team). It enclosed the documents relied upon in the injunction proceedings. Paragraph 11 of Witness A's OPEN statement was referred to. So were the responses to the special advocates in those proceedings. It was said that DDS "importantly does not suggest that he was told [Agent X] was a CHIS."
491. Regarding the question of documentation, it stated:
- "...that, having come so close to departing from NCND, it would have been strongly preferable if we had records clearly showing that we did not do so and also recording what was in fact said on that call both by us and by the BBC and what consequences flowed from it... We also accept that the documentation generally in this period was not as full as we would expect...As the draft report acknowledges, these were difficult circumstances. The handling team found out about the letter on 5th June (a Friday) with [a response required urgently]. The agent was [away] and the UK was in lockdown due to COVID. I offer that explanation to reassure you that... we would normally expect a more complete and detailed set of records than were created in this case..."
492. The comment that the "documentation...was not as full as we would expect," understated it. It was plainly inadequate, even on the basis of the account being advanced.
493. Officer 21 told me that a number of things reassured them of the correctness of the second response. It was unprecedented to depart from NCND. Having themselves been a corporate witness, they knew how careful the process was to avoid inaccuracy. They knew Officer 2 was competent. They were aware of MI5's response to the special advocates. DDS had not challenged what was said about NCND. They did say, however, that had Officer 3 indicated there was a degree of uncertainty in what Officer 2 had said about NCND, that would have

³¹⁹ CB1/53/639-643

been taken on board and raised with Officer 12 (Legal). They said Officer 3 was “adamant” that NCND had always been maintained.³²⁰

Witness A’s final witness statement for the IPT: 20 December 2023

494. Paragraph 164 of Witness A’s statement dealt with the IPCO report.³²¹ The report was exhibited (as Exhibit 107). Paragraph 164 stated:

“IPCO provided MI5 with a draft Inspection Report... This followed a records-only review of CHIS records relating to... [Agent X]. The Draft IPCO Report describes the review being focussed on MI5’s compliance obligations to assess if... [Agent X] had been authorised and managed in accordance with RIPA and the CHIS Code of Practice. IPCO informed us on 23 March 2023 that they had intended to carry out a further inspection and so described the report as “preliminary.” IPCO subsequently informed MI5 that they did not intend to carry out a further inspection and that they would be unlikely to alter their conclusions without new evidence. However, the report has been left in its preliminary form and no final form report has been provided to MI5. MI5 is currently in correspondence with IPCO on a number of aspects of the Draft IPCO Report. MI5 has some concerns about the aspects of the IPCO methodology and some of the draft conclusions reached.”

495. I have referred to NS KC’s regret that the statement did not expressly flag up, firstly, that IPCO had reviewed the documents and concluded there had been disclosure and secondly that Agent X had himself authorised the disclosure of his identity to the BBC. He also observed that the statement did not accurately reflect the fact that all of the IPCO material was exhibited.³²²

496. Witness A said NCND was not the central issue. The focus was on Beth’s allegations.³²³

497. I asked Officer 12 (Legal) whether they explained the duty of candour to Witness A, or drew his attention to section 68(6) of the Regulation of Investigatory Powers Act 2000 (which, in

³²⁰ IPCO interview/Officer 21/15 December 2025

³²¹ IPT2/58

³²² IPCO interview/NS KC/8 December 2025

³²³ IPCO interview/Witness A/1 December 2025

broad terms, required Witness A to disclose any possibly relevant document or information to the IPT). Officer 12 (Legal) said Witness A would have been in no doubt he would have had to be happy with his statement. They did not believe they drew attention to section 68(6). They were sure Witness A would have had no doubt of the need to include everything relevant, or that his role as a corporate witness was to assist the court. Witness A was focussing on, and responding to, the substance of Beth's complaints. His witness statement and candour were focussed on that. Any MI5 failure corporately to meet its candour obligations in respect of the operational plan and conversations with the BBC was not relevant to the statement which responded to the substantive claims.³²⁴

The IPC's response of 7 March 2024

498. On 7 March 2024 Sir Brian Leveson responded to MI5's email of 13 December 2023.³²⁵ On the basis of what MI5 had said, and copies of the documents it had submitted to the court, Sir Brian was persuaded to accept that NCND had not been departed from. Attached to Sir Brian's letter was what was intended to be the final IPCO report in respect of Agent X. Paragraphs 4.54 and 4.55 stated:

"4.54...Whilst the possibility of disclosure of... [Agent X's] CHIS status was considered and his consent sought, an operational plan was agreed that there would be no disclosure...and to maintain the policy of 'neither confirm, nor deny'.

4.55 An approach to the BBC was made in early June 2020, and an MI5 officer responsible for management of external media relationships had several exchanges with BBC... journalist Daniel De Simone. No contemporaneous record of these discussions was made as it was not MI5 policy to record all such exchanges, despite its direct relevance to the management of a CHIS case in these circumstances. This policy was inadequate because any discussion such as this, concerning the welfare and security of a CHIS, is subject to the requirements of statutory instrument 2000/2725; this instrument sets out what documentation relating to RIPA authorised CHIS must be maintained, and thus a record should have been made of the nature of the discussions, even if there were no disclosure."

³²⁴ IPCO interview/Officer 12 (Legal)/10 December 2025

³²⁵ HMAG v BBC – Further Disclosure Following Special Advocates' Requests of 07/05/2025: IPCO Correspondence, tab 8

499. At paragraph 4.56 the inspectors appear to accept and somewhat overstate MI5's argument that because DDS did not specifically state he disagreed with MI5's case regarding NCND, he "confirms that no disclosure of... [Agent X's] status as CHIS was made, although it also indicates that he was already aware of allegations... [Agent X] was an MI5 CHIS."
500. A "critical point of action" was that:
 "Any discussions that have the potential to influence the safety and security of a source must be contemporaneously documented and retained as part of the CHIS record in accordance with statutory instrument 2000/2725."
501. As I have said, in his accompanying letter to MI5, Sir Brian referred to this critical point of action.
502. When it ultimately became apparent that NCND had been departed from, the DG speedily informed Sir Brian and apologised both to him and the IPCO inspectors.³²⁶

The case management hearing before the IPT on 9 May 2024

503. On 9 May 2024 there was a case management hearing before the IPT. One of the issues to be resolved was whether MI5 should be permitted to rely on NCND. It was Beth's case that Agent X had used his MI5 CHIS status as a significant element of his serious abuse of her. She submitted that her claim could not fairly be tried in OPEN unless MI5 stated whether or not he was a CHIS. She further submitted that any disclosure of his CHIS status could be fully protected by the use of a 'confidentiality ring.' His status would only be revealed in private proceedings to her and her legal representatives, and be subject to the existing anonymity order.
504. In its OPEN judgment of 21 June 2024,³²⁷ the Tribunal roundly rejected Beth's submissions. It concluded that MI5 had gone to "extensive lengths" in both the BBC and IPT proceedings to

³²⁶ *HMAG v BBC* – Further Disclosure Following Special Advocates' Requests of 07/05/2025: IPCO Correspondence, tab 13

³²⁷ [Beth v The Security Service \[2024\] UKIPTrib 3](#)

uphold the NCND policy. It should be permitted to continue to do so: see paragraphs 37 and 60 of the OPEN judgment.

MI5's continued reliance on paragraph 11 in response to IPCO

505. This was the second opportunity MI5 had to correct paragraph 11. Again, it did not take it.
506. In its response to my Preliminary Draft Report MI5 states it “fully accepts that in a number of respects, the conduct of MI5 and of individual officers... fell below the high standards which the public, the courts and IPCO are entitled to expect of MI5”. It is not clear whether this admission extends to its response to IPCO. What is clear is that MI5's position is that it was (at least) not irrational for those who later read Agent X's case file to believe Officer 2's account that he had successfully persuaded DDS to remove Agent X without needing to depart from NCND. MI5 also places weight on, among other things, the absence of any positive assertion or express challenge by DDS and the BBC, and the fact that it is possible to persuade journalists not to run stories concerning individuals without departing from NCND. MI5 emphasises how understandable it was for it to accept what were the unequivocal assertions of Officer 2.
507. This is a position shared by Officer 12 (Legal) in their interview and response to the Preliminary Draft Report. They make a number of points. I summarise. The special advocates on exactly the same material as that looked at by IPCO had reached the same conclusion as IPCO. Very significant work had been done in February 2022 to understand what the position was. Officer 2 had been spoken to and had been unequivocal. Officer 5's (Legal) note of the meeting of 17 February 2022 gave more reassurance. The special advocates appeared satisfied. On the same material IPCO ultimately accepted that NCND had been maintained. The BBC could have been expected to challenge something manifestly false. In retrospect, it can be seen that paragraph 31 of DDS's first witness statement³²⁸ was very carefully drafted.³²⁹ It was reasonable to assume DDS and the BBC would have indicated if the assertion regarding NCND was disputed. They question why DDS did not correct MI5's false account in the BBC litigation. They note and agree with the views of OS KC which I have set out above. They cannot be expected to

³²⁸ *HMAg v BBC*, Bundle for Hearing on 12 February 2025, tab 8

³²⁹ IPCO interview/Officer 12 (Legal)/10 December 2025

have foreseen “unreasonable or improper” actions on the part of the BBC. They speak of the BBC having “deliberately withheld...relevant information from the substantive and procedural elements of the injunction proceedings to which they were a party and deliberately obfuscated the truth in sworn witness evidence.” Not only was additional due diligence by MI5 not called for, it was unlikely to result in any change to MI5’s position.

508. It appears to come to this. Absent the BBC revelations in December 2024, MI5 cannot be blamed for proceeding as it did. Any suggestion that additional due diligence should have been done before responding to IPCO relies on the benefit of hindsight.

My view

509. The response to IPCO was not only important on its own terms, but also as far as the IPT proceedings were concerned. What was said to IPCO would need to be disclosed to the IPT. While, as Officer 12 (Legal) said, the primary relevance of the IPCO report may have been to the substance of Beth’s claim, IPCO’s assertion that NCND had been departed from was of real significance. If Officer 2 had disclosed Agent X’s status (with his consent) as a CHIS to the BBC, MI5’s argument that it should not be disclosed to Beth would inevitably be weakened. While I accept there is a distinction between MI5 disclosing Agent X’s CHIS status to the BBC and the tribunal ordering disclosure to Beth, MI5’s case would become more difficult. It would have to argue there cannot be a ‘confidentiality ring’ with Beth and her legal advisors, whereas there can be with a journalist with whom MI5 had no trusted relationship. The emphasis the IPT placed in its OPEN judgment of 21 June 2024 on the “extensive lengths” MI5 took to uphold the NCND policy underlines the point.
510. In maintaining to IPCO that NCND was maintained, MI5 essentially relied on what was understood to have happened in response to the special advocates’ requests of 13 and 16 February 2022, as reflected by MI5’s response of 24 February 2022. On this occasion, however, as they set out in their email of 8 December 2023, Officer 12 (Legal) had picked up from Agent X’s case file what they described as “a risk that the lack of a record of the call is a free-standing problem. It may not simply be a case that we didn’t depart from NCND and therefore didn’t need to make a record.” They also picked up that the “case team might have been labouring under the misapprehension that the BBC had been told of CHIS status at least a month later (because they were considering a plan to introduce... [Agent X] to De Simone...)... [Officer 2] did not confirm CHIS status, and surely it would have been of vital

importance to tell the case team, ...[and Agent X] as quickly as possible that NCND was maintained re CHIS status. Not knowing that, [Agent X] ...might have spoken to the BBC thinking that the BBC knew he was a CHIS.”³³⁰

511. In truth, that “free-standing problem” was serious. It underlined how significant Officer 2’s failure to make any record was, even on his account. It gave reason to question his account. It indicated how unsustainable was MI5’s assertion in its response to the special advocates that there was “no enduring impact arising from this conversation which may have warranted a note to be drafted.” It acutely raised the question as to how, for so long, the handling team could have “laboured under the misapprehension” that Agent X had been declared. It adds force to the Divisional Court’s comment to which I have previously referred, namely:

“The fact that there had been conversations of which no written record had been taken should have decreased, not increased, the confidence with which MI5 responded to the enquiry [of the special advocates].”³³¹

512. As I have said, while I accept there is some force in the view that the BBC might have been expected to assert that MI5 had already breached confidence by the departure from NCND to them and that such a departure would be relevant to the application under the 2013 Act, I do not accept that MI5 and Officer 12 (Legal) should without more have assumed that was so. Neither do I accept the criticisms of DDS and the BBC. What the Divisional Court said at paragraph 33 of its judgment bears repetition:

“...great reliance seems to have been placed on the fact that... [DDS] had not said that there had been a departure from NCND. He had, however, said that Witness A’s description of the conversations (the key element of which was that there had been no departure from NCND) did not accord with his recollection. The fact that he had said nothing since was hardly surprising, because the enquiries being made by the special advocates were being made entirely in CLOSED... [DDS] had no knowledge of them, or of the answers to them.” (My emphasis)

³³⁰ IPT1/39/883

³³¹ [HMAG v BBC and R \(Beth\) v IPT and others \[2025\] EWHC 1669 \(KB\)](#) at [33]

513. While I understand how Officer 12 (Legal) came to place reliance on (among other factors) the fact the special advocates did not pursue the NCND argument, that failed to recognise the reality of the position they faced. As the Divisional Court said at paragraph 42 of its judgment:
- “...these proceedings were heard on a highly expedited timetable. The special advocates’ initial enquiries were sent shortly before the hearing at which the declaration under s. 6 of the 2013 Act was made. The response came afterwards, on 24 February 2022. The main hearing was due to start on 1 March 2022. It was very unlikely that there would be time to raise disclosure questions of this kind even if it had been considered worthwhile doing so in the light of MI5’s unequivocal response. This must have been obvious to those involved.”
514. It does not seem to me reasonable to think the special advocates might, after the hearings on 1 and 2 March 2022, have subsequently pursued the matter.
515. It is not in my view a point in favour of MI5 that IPCO ultimately accepted its assertions. The reality is that IPCO was persuaded to accept MI5’s false account. It was MI5’s responsibility to do all it reasonably could to ensure the account was correct. As the Divisional Court observed, in the face of MI5’s “clear denials,” neither IPCO nor the special advocates could “take the matter any further.”³³²
516. As Officer 12 (Legal) observed in their early morning email of 6 December 2023,³³³ there was a question as to whether the reference in paragraphs 40 and 41 of DDS’s confidential witness statement in the IPT proceedings, in which he spoke of receiving corroboration of Agent X’s intelligence work with MI5 from confidential sources, might have been to Officer 2. This was something also raised in the conference with counsel later that day. If, as Officer 12 (Legal) thought, it was at least possible, that Officer 2 was the source, that would suggest that NCND might not have been maintained.
517. As I have explained above, it remained entirely unclear how precisely Officer 2 had persuaded DDS to omit Agent X from the programme.

³³² [*HMAG v BBC and R \(Beth\) v IPT and others* \[2025\] EWHC 1669 \(KB\)](#) at [72]

³³³ IPT1/36/733-734

518. The flaws in the MI5 response of 24 February 2022 were not picked up.
519. I accept it is easy to criticise in hindsight. I accept that MI5 was at this time working under considerable time pressure (not least due to its delayed and inadequate initial response to IPCO). I bear in mind, as Officer 12 (Legal) said, there was an “awful lot of work going on and not many lawyers.”³³⁴ However, MI5 was contemplating doubling down on its previous unequivocal assertion, both to its regulator and consequentially to the IPT, that NCND had been maintained. It was proposing to do so without any fresh consideration of what it had previously said. Before doing so it was required in my view to take every step it reasonably could to ensure that what it was saying was correct.
520. In summary, the position was as follows. MI5 recognised that the handling team had “labour[ed] under the misapprehension” that Agent X had been declared. That raised the inevitable question of how that could have happened. Officer 2 had persuaded DDS to omit Agent X from the programme. That raised a similar question. There was an issue as to whether Officer 2 might have been the source of DDS’s information. The response to the special advocates of 24 February 2022 was seriously and obviously flawed.
521. I acknowledge the force of the point that a trusted colleague had unequivocally said that NCND had been maintained. However, the features I have highlighted should in my view have led MI5 to undertake additional due diligence before responding to IPCO. In particular, there were grounds to speak to Officer 4 to seek to understand how the handling team could for so long have believed that NCND had been departed from. While I cannot forecast how events might have unfolded, it seems to me likely Officer 4 would have made clear the basis of the handling team’s understanding. The implications of the contents of Agent X’s file would have become clear. It may have become apparent that Officer 2’s conversations with DDS covered considerably more matters than Agent X. (Officer 4’s email of 5 January 2022 indicated he was aware of other elements of the programme which had been removed.³³⁵) There was reason to locate every possibly relevant document. The updated Media Engagement Policy would then have come to light. A wider search would sensibly have included any SIS documents. The summary document would then have been revealed. The many flaws in the response of 24

³³⁴ IPCO interview/Officer 12 (Legal)/10 December 2025

³³⁵ CB2/M/108

February 2022 to the special advocates would have become even clearer. The difficulties in MI5 maintaining its unequivocal assertion that NCND had not been departed from in paragraph 11 of Witness A's statement should have become apparent.

The position of Officer 3

522. A pillar upon which Officer 3 had apparently based his NCND assessment in the injunction litigation was his understanding of the view of the handling team, represented as it then was, by Officer 15. At the meeting on 7 December 2023, Agent X's case controller (Officer 4) and Operational Security Advisor (Officer 23) had in terms indicated that his previous understanding of the view of the handling team was wrong. He misrepresented what Officer 2 had said to him. He told no-one what Officers 4 and 23 had told him. He continued to say nothing about Officer 2's initial uncertainty regarding NCND. He, as a pivotal and senior player in these events, was content for matters to proceed as they had before. Officer 3 bears considerable responsibility for the continuation of MI5's falsehood.

The position of counsel

523. JT, together with ES and GLD, reviewed all the documents that had been disclosed in the injunction proceedings. That included the contact notes and the statement of Witness A in the injunction proceedings. JT was asked to consider the "proper way to respond" to the draft IPCO report, one element of which raised the issue of NCND. She discussed it with NS KC. They raised no concerns. NS KC was aware of Witness A's OPEN statement. He was consulted by Officer 12 (Legal) regarding the letter to IPCO in the context of the IPT proceedings. In broad terms, MI5 argues that if its legal advisors fell short, so too did counsel. Counsel should equally have picked up the significance of the contents of Agent X's case file and the implications of the absence of any note from Officer 2.

524. I can see the force of MI5's argument. I do however question whether counsel could reasonably have been expected to challenge or question the clearest possible assurance that NCND had been maintained and that IPCO's assessment was wholly misconceived. That is particularly so given that those instructing them had the appropriate expertise in these matters and worked closely with the individuals concerned.

525. Moreover, NS KC was not, as I understand it, instructed to undertake an analysis of all the documentation in order to advise whether further investigations should be done before responding to IPCO. The response to IPCO was essentially the product of work done by MI5, not counsel.
526. I note too that ES, JT and GLD divided the document review between themselves. No one individual had the overall picture.
527. In the final analysis it does seem to me counsel were probably entitled to accept their professional client's unequivocal instructions. There is a difference in this respect in the positions of independent counsel and MI5 in-house lawyers. However, I agree with MI5 that the roles and responsibilities across MI5 litigation and as between internal legal advisors, GLD and counsel require clarification.

The duty of candour

528. While I accept, as Officer 12 (Legal) told me, Witness A would not have been in any doubt that he would have had to be happy with his statement, the duty of candour should in terms have been explained to him and to those others feeding into the IPT proceedings, including through the vehicle of the IPCO response. I shall not repeat what I have previously said in this regard. Similarly, section 68(6) of RIPA should have been in terms explained.
529. I shall also not repeat the comments I have previously made about the need for Witness A to have read the whole of his statement, including the exhibits, before signing it off.
530. It is clear, as NS KC himself volunteered, that the duty of candour required that Witness A's statement for the IPT expressly flag up that IPCO had reviewed the documents and concluded there had been disclosure, and that Agent X had himself authorised the disclosure of his identity to the BBC. It was incumbent on MI5 as a public body to draw the Tribunal's attention to something as significant and arguably damaging to its case. This is so notwithstanding that the primary purpose of the statement concerned the substance of Beth's case and that the IPCO report was in draft. The fact that, by the time of the hearing before the IPT in May 2024, MI5 had persuaded IPCO to alter its view has no bearing on that. Given the involvement of counsel in drafting the statement, as NS KC accepted, they bear some responsibility for this failure of candour.

Part Five

Subsequent events

The BBC's letter of 18 November 2024

531. On 18 November 2024 DDS, on behalf of the BBC, wrote to the GLD (as representatives of MI5) stating:

“...we now plan to report the following:

- In the IPT ruling of 21/06/2024, the IPT held that MI5 has gone to “*extensive lengths*” to maintain NCND in relation to X. This was in reliance on the submissions made during an open IPT hearing on 09/05/2024 by Neil Sheldon KC, representing MI5, to the effect that, if made to dispense with NCND, it would mean MI5 being forced for the “*first time ever*” to confirm to a third party whether someone was a CHIS. However, it was not accurate for MI5 to argue to the IPT and High Court that it has maintained a policy of NCND in relation to X.
- In fact, MI5 positively volunteered to me that Agent X was a CHIS during several phone calls on a date prior to the injunction proceedings. The representative of MI5 who I spoke to told me he had been authorised to share this information with me. The calls were initiated by MI5, as MI5 was seeking to prevent the BBC naming X as an extremist in an intended story. During the calls, I explained that I had separately heard that X was a CHIS. I also said I was concerned about abusive, violent and misogynistic conduct by X in recent times. MI5 claimed its assessment was that he had not been recently violent, something I have since shown to be false. During the calls, MI5 invited me to meet X and learn about his work as a CHIS, an invitation I ignored as I considered it wholly inappropriate...

For the avoidance of doubt, I have no intention of identifying the MI5 officer who spoke to me...” 336

532. A response was sought by 25 November 2024. GLD was also told that the BBC would seek consent to vary the injunction imposed by Mr Justice Chamberlain, to allow reporting of a section of paragraph 11 of the MI5 witness statement of 26 January 2022.

533. The letter went on to say:

“In that section, Witness A introduced the phone calls described above with me (which occurred in June 2020) in the proceedings and gave a false account of their content. Witness A said that during those calls MI5 had neither confirmed nor denied whether X was a CHIS. This was not true and the inevitable inference is that there has been an organisational failing resulting in a lie. There is an overwhelming public interest in this fact being reported. Please can you explain why Witness A provided this inaccurate evidence to the Court, and why MI5 misled two courts...

Please can you also explain whether MI5 informed the Home Office and Cabinet Office of its departure from NCND in relation to X when it called me. Please note the policy for planned departures from NCND is set out in a Guidance Note on the NCND Principle from October 2017...”

534. There followed some aggressive correspondence from GLD to the BBC in which, on behalf of MI5, surprise was expressed about the allegations the BBC was making. It was said that MI5 “stands by the entirety of the account given to the High Court.”³³⁶
535. On 2 December 2024, the BBC suggested it held “contemporaneous evidence” supporting the strong public interest in the variation of the injunction.³³⁷ That evidence was disclosed to MI5 on 13 December 2024 when MI5’s representatives attended the BBC and were given access to DDS’s note of the first call, the email of 8 June 2020 following that call and the transcript of the second call. On 18 December 2024 MI5 agreed not to oppose the BBC’s application to vary the injunction.

DDS’s third witness statement

536. DDS made a third witness statement dated 24 December 2024.³³⁸ Paragraph 19 referred to paragraph 31 of his first witness statement (in which he said that Witness A’s account of the conversations did not correspond with his recollection in various respects). DDS stated that he did not go into further detail in the first statement because, without any waiver of legal

³³⁶ Email from Louise Wallace (GLD) to the BBC, dated 25 November 2024, contained within HMAG v BBC - Bundle for Hearing on 12 February 2025, tab 3

³³⁷ Email from the BBC Litigation Department to the GLD, dated 2 December 2024, contained within HMAG v BBC - Bundle for Hearing on 12 February 2025, tab 3

³³⁸ HMAG v BBC - Bundle for Hearing on 12 February 2025, tab 2

privilege, he had been advised it was not pertinent to the key issues in dispute in the High Court proceedings.

537. In paragraph 20, DDS disputed the suggestion made on behalf of MI5 that the calls were confidential.

538. In paragraph 31, having made a number of (cogent) points about the first and second calls, DDS said:

“Following the second call, there were further calls with... [Officer 2] on later days. The overwhelming majority of the further calls were about other matters relating to...[ERWT] and my... investigation. MI5 will be aware of the content of the further discussions. I can provide more information about the calls should that be required by the Court. X was not the focus of these further calls. I told... [Officer 2] I had decided to remove X..., but I also made clear I considered him to be an extremist and that I remained concerned about his personal conduct. In fact, I had decided to spend more time investigating the case of X.”

539. At paragraphs 44 and 45, DDS explained why he felt it in the public interest to reveal the content of the calls relating to X. At paragraph 45, he said:

“When I saw... that the IPT had accepted MI5’s continued reliance on their claim that they had consistently upheld NCND in respect of X, and that this could impact on Beth’s ability to have a fair trial... I felt that there was a very strong public interest in the true position being reported.”

540. I need not set out the further points DDS made in this third witness statement.

The variation of the injunction

541. On 12 February 2025 the BBC made its unopposed application to Mr Justice Chamberlain for the injunction to be varied. The BBC was permitted to report on the fact that, and the circumstances in which, false evidence had been given to the court. MI5 was still maintaining NCND in respect of Agent X. The parties were directed to file evidence and submissions and a hearing fixed before the Divisional Court to consider:

(a) How did the Attorney General and MI5 come to deploy false evidence before the court and what further steps (if any) should now be taken by the court?

(b) Should the Attorney General be permitted to maintain NCND on the question whether Agent X was a CHIS?³³⁹

542. At the hearing, the court was told that the Home Office and the DG had agreed to appoint an independent external reviewer “to establish the facts of how incorrect information came to be included in paragraph 11 of Witness A’s January 2022 statement (and subsequently relied upon) with the further objective of identifying lessons and making recommendations to avoid any repetition.”³⁴⁰ The independent reviewer was Sir Jonathan Jones KC.³⁴¹ At the same time MI5 was conducting an internal investigation in accordance with its disciplinary casework procedures.

MI5 consider whether publicly to declare Agent X as an MI5 CHIS

543. Following the hearing on 12 February 2025, on 26 February 2025, in a “Decision document”³⁴² drafted by MI5 legal advisors, the DG’s instructions were sought on whether Agent X should be declared as an MI5 CHIS. The recommendation to the DG was in the following terms:

“DG is asked to agree that:

- MI5 does not depart from NCND in the ongoing BBC injunction proceedings; and
- The AG seeks to maintain NCND over the CHIS status of X because of the damage that would be caused by confirming in OPEN that X was indeed an MI5 CHIS.”

Attached to the document was a draft of the legal submissions which would be filed should the DG agree with the recommendation.

544. At paragraph 8 of the document, it was said:

“...In order to persuade the Court to uphold the injunction in its current form and maintain NCND over X’s CHIS status, we would need to successfully argue that the

³³⁹ [HMAG v BBC and R \(Beth\) v IPT and others \[2025\] EWHC 1669 \(KB\)](#) at [7]

³⁴⁰ [HMAG v BBC and R \(Beth\) v IPT and others \[2025\] EWHC 1669 \(KB\)](#) at [54]

³⁴¹ Sir Jonathan was not interviewed in the course of this investigation.

³⁴² MI5 decision document, ‘[Internal reference] – approach to take re X’s CHIS status’ (26 February 2025). Document provided on 12 December 2025 in response to IPCO’s Eighth Request for Information.

June 2020 departure and the subsequent provision of incorrect evidence do not undermine the basis for the Judge's maintenance of NCND in his four previous judgments; and that confirmation of X's CHIS status in OPEN legal proceedings would damage the interests of national security."

545. Paragraphs 11 to 18 set out what were said to be the advantages of confirming CHIS status. In very broad terms they were:

- maintaining the goodwill of the court;
- confirming CHIS status would only confirm what those aware of the press coverage would believe from what was already in the public domain;
- the BBC and special advocates would challenge MI5's attempted maintenance of NCND;
- the court might, in finding against MI5, make damaging observations resulting in further negative reporting;
- confirmation of CHIS status would avoid further argument in the IPT;
- confirmation of CHIS status would strengthen the case that Agent X should not publicly be identified;
- this would not set a precedent; the facts were unique; and
- MI5 would have "more room for manoeuvre around what level of detail to include in the statement we are due to file in April 2025."

546. The disadvantages of confirming CHIS status were, again in very broad terms, said to be:

- confirmation that Agent X was a CHIS would confirm to all those already aware of his identity the identity of an MI5 CHIS; they amounted to an unquantified and unknown group of people; 9.26 of the CHIS Code of Practice required MI5 to protect the identity of a CHIS "by all reasonable and lawful means possible and where appropriate by neither confirming nor denying the existence or identity of a CHIS;"
- MI5 might be required to confirm CHIS status to the Centre for Women's Justice and Beth in private IPT proceedings; Sir James Eadie KC and NS KC were (now) of the view that the prospects of maintaining NCND in respect of them were 30%, although they were 50% as far as the wider public was concerned;
- confirmation of CHIS status would confirm to the world at large that CHIS status had previously been revealed to the BBC; the marginal increased risk in damage to capability was sufficient to support an argument to maintain NCND; and

- any departure will in future cases be used to seek to justify other departures, particularly in legal proceedings.

547. At paragraphs 23 and 24, the document stated:

“23. If the disadvantages of confirming CHIS status are considered sufficiently significant, the AG could seek to maintain NCND in these proceedings. This would be based on elements of the damage argument...combined with a submission that the issue of CHIS status is not ultimately determinative or significant in the injunction proceedings. The issue in these proceedings was the need for an injunction to protect X’s identity. That injunction was granted on the basis that it was necessary whether X was or was not a CHIS. The AG could submit to Mr Justice Chamberlain that CHIS status is not a significant issue in the proceedings before him; and that the issue of status is a matter currently before the IPT in the *Beth* proceedings and it would be more appropriate for the specialist tribunal to determine the issue.

24. Counsel advise that the prospects of successfully maintaining NCND over X’s CHIS status in the injunction proceedings are 50%... A positive judgment would include helpful commentary on NCND and helpful commentary on the difference between a limited operational disclosure to a trusted contact and a public departure to the world at large (even where the trusted contact subsequently discloses the information to the world at large).”

548. On 27 February 2025, the DG accepted the recommendation to maintain NCND. In an email of that date, it was stated that a decision to depart from NCND would have required consultation across Government.³⁴³

549. The matter was reconsidered. On 23 May 2025, in another Decision document, an MI5 legal advisor stated that events since February 2025 “have pushed the balance in favour of departing from NCND and publicly acknowledging that X was in fact an MI5 CHIS.”³⁴⁴ The following broad points were made:

³⁴³ Email sent at 12:05 from MI5 legal advisor to DG’s private secretary, copying others. Provided on 12 December 2025 in response to IPCO’s Eighth Request for Information.

³⁴⁴ MI5 decision document, ‘Decision Document – NCND 23.05.25 (002)’ (23 May 2025). Provided on 12 December 2025 in response to IPCO’s Eighth Request for Information.

- in preliminary hearings the court expressed “apparent incredulity” over MI5’s maintenance of NCND;
- IPCO’s OPEN annual report contained language from which it could strongly be inferred that Agent X was an MI5 CHIS;
- the hearing listed for 3 June 2025 will consider not only whether NCND should be maintained, but also how the incorrect evidence came to be filed by MI5; First Treasury Counsel advised that MI5 should focus on the incorrect evidence issue and on whether the court should initiate contempt proceedings;
- the prospects of success in respect of the NCND issue are now assessed as “very weak”;
- confirmation of CHIS status would not be as damaging as might normally be the case for the reasons given in the decision document of 26 February 2025; and
- the injunction prohibiting publication of information which could assist in identifying Agent X should provide reassurance.

550. The advice was accepted. At paragraph 10 of his witness statement of 27 May 2025,³⁴⁵ Witness B (with whose evidence I deal more fully below), said the decision publicly to depart from NCND was taken on 23 May 2025. He described the change of position as having been taken “in light of the unique and developing circumstances... including legal advice... Account was also taken of the fact that the identity of X remains protected by the Injunction Order.”

551. NS KC explained the background. He said that as the Divisional Court hearing approached it became increasingly untenable to maintain NCND. It took the advice of First Treasury Counsel in conference “to get the clients over the line.” MI5’s view had been that the distinction between disclosing CHIS status to a trusted interlocutor and disclosing publicly should be maintained. It was only late in the day, at a conference involving senior lawyers (but not the DG), that MI5 was persuaded. NS KC also made the point to me that there had never been an occasion in which a court had ordered MI5, against its will, to disclose CHIS status.³⁴⁶

552. It has subsequently been explained by MI5 that this was the first time that First Treasury Counsel had advised on NCND since February 2025, and it represented a change in advice in

³⁴⁵ *HMAG v BBC* - Confidential Supplementary Bundle of Documents for the Hearing on 3 June 2025, tab 11

³⁴⁶ IPCO interview/NS KC/8 December 2025

that maintaining NCND was no longer said to be tenable, unlike in February 2025 when prospects had been assessed at 50%. This new advice took into consideration the recent hearing before Chamberlain J and the constitution of the Divisional Court for the upcoming hearing.

553. The recommendation to maintain NCND in the “Decision document” of 26 February 2025 was in my view surprising. It amounted to a recommendation that MI5 adopt, as the Divisional Court put it, “a patently unrealistic position.”³⁴⁷ The arguments in favour seem to me weak. Those in favour of departing were in my view measurably stronger. The DG accepted that ultimately it was his decision for which he took full responsibility. He did however make a more general point which was to the following effect. MI5 was not seeking to ignore common sense. However, it was not easy. MI5 was trying to protect national security in a range of different contexts. The principle of NCND was important. It contributed to protecting national security. MI5 defended certain nuanced policy or legal positions on the advice of external counsel.
554. As the DG put it, “It’s been a very, very difficult period in trying to defend a principle which does contribute pivotally to the maintenance of our national security but where one is almost always trying to maintain it in the face of uncomfortable and difficult facts.”³⁴⁸
555. I acknowledge how difficult this issue can be for MI5.

MI5’s explanations as to how it came to deploy false evidence

556. As I have said, there were two aspects to MI5 seeking to establish how incorrect information came to be included in paragraph 11 of Witness A’s statement. The first was the internal investigation conducted in accordance with MI5’s human resources procedures. That involved often lengthy interviews with 14 people. As I understand it, only current employees of MI5 were interviewed. DDS was not. Neither was Officer 18 (Legal), although they were the senior legal advisor on the bringing of the injunction. They had left MI5. On the other hand, Officer

³⁴⁷ *HMAG v BBC and R (Beth) v IPT and others* [2025] EWHC 1669 (KB) at [77]

³⁴⁸ IPCO interview/DG/15 December 2025

5 (Legal), who was considerably more junior and with less ultimate responsibility, was interviewed twice during the internal investigation.

557. The interviewees were frequently thanked for their time and honesty in answering questions, irrespective of what they had said and whether it may have conflicted with what someone else, similarly thanked, had said.

558. In its initial conclusions of April 2025, the internal investigation found that Officer 2 “failed to act with reasonable care,” but that there was “no evidence” of him having deliberately misled MI5.³⁴⁹ In respect of Officer 3, it found “no evidence” that he sought deliberately to overstate the position on NCND, or to mislead, although he had done so “inadvertently.”³⁵⁰

559. The second aspect of MI5’s investigations to explain how it came to deploy false evidence was, as I have said, Sir Jonathan Jones’s review. Sir Jonathan was to “establish the facts of what happened in relation to journalistic and legal disclosure in the Agent X/Beth case...with the wider objective of identifying lessons and making recommendations for the future.” He was not, however, “to make findings about why specific individuals did or did not do certain things.”³⁵¹ I am told that this was an effort to ensure Sir Jonathan’s report did not interfere with the internal disciplinary process which was already underway. Sir Jonathan carried out very few interviews. He never interviewed Officer 2 or DDS. He overwhelmingly relied on the content of the interviews conducted during the internal investigation and the conclusions reached.

560. Paragraph 76 of his report encapsulates Sir Jonathan’s initial findings:

“From all I have seen and heard, I am satisfied that there was no deliberate attempt on the part of MI5 to mislead or “lie to” the court about the waiver of NCND in June 2020.

- As explained, all the evidence shows that the misleading evidence flows ultimately from Officer 2’s recollection of their conversations with the BBC, which they now accept to have been wrong.

³⁴⁹ *HMAG v BBC* – Further Disclosure Following Special Advocates’ Requests of 07/05/2025: Investigatory Report and related documents, tab 36

³⁵⁰ *HMAG v BBC* – Further Disclosure Following Special Advocates’ Requests of 07/05/2025: Investigatory Report and related documents, tab 37

³⁵¹ Terms of Reference for External Review

- In the absence of a written record (deeply regrettable though that is), it is understandable that those responsible for producing MI5's evidence, including Witness A, relied on Officer 2's personal account. There was nothing else for them to go on. By the time the evidence was produced, that account was clear and unqualified.
- In the absence of evidence that NCND *had* been waived (which would have been a significant and exceptional step) it was not unreasonable for those producing the evidence to accept Officer 2's assurance that it had *not* been waived.
- Once MI5 had given its evidence, DDS did not, up until November 2024, contradict or query MI5's continued assertion of NCND, so MI5 was not on notice of any dispute about that issue.
- It is impossible to see what advantage anyone in MI5 would have gained from lying about the June 2020 conversations. An operational decision had been taken authorising waiver of NCND, unusual step though that may have been. This had been shared with Officer 2. If Officer 2 had correctly remembered waiving NCND, this would have amounted to no more than giving effect to that decision. MI5's evidence could have reflected this.
- All the evidence I have seen and heard reflects the seriousness which was attached within MI5 to ensuring the accuracy and honesty of evidence given to the court.
- In any case, MI5 will obviously have realised that the other party to the June 2020 conversations (i.e. DDS) knew what was said during those conversations, may well have kept his own notes or recordings of them, and thus would be in a position to refute any misstatement by MI5 about what was said. In other words, any "lie" could easily be disproved. What would be the point of MI5 running that risk?"³⁵²

561. With respect to the comment regarding the authorising of waiver of NCND, I observe that by the time of Sir Jonathan's report, the draft updated Media Engagement Policy, to which Officer 2 was ostensibly working, had been located. As I have said, it required authorisation at DDG level at least.

Witness B's first statement

562. On 26 April 2025, Witness B, MI5's Director General Strategy, made a witness statement seeking to explain how false evidence came to be deployed.³⁵² In doing so, he relied on the conclusions of the internal investigations and Sir Jonathan's report. He said:

"69. The Internal Investigation has... taken account of two further important contextual factors. The first is the fact that the nature of the injunction proceedings meant that Witness A's statement was produced under significant pressure of time. The second is that the issue of what was, or was not, said during the Officer 2 Conversations concerning NCND was not perceived by the parties to be a central issue in determining the risk that X would face were he to be publicly identified as an alleged CHIS, as proposed by the BBC in early 2022. The Internal Investigation did not lead to findings in respect of misconduct or competence [sic] in respect of any other Officer.

70. I have reviewed the report of the Internal Investigation. I accept the findings... I am satisfied that there was no dishonesty, or attempt deliberately to mislead, on the part of those involved, and no conspiracy to provide false, inaccurate or misleading evidence to the Court. In particular, the Internal Investigation has not identified any documentary record held by MI5 at the point that Witness A's statement came to be prepared that records a departure from NCND during the Officer 2 Conversations.

71. I agree with the findings and conclusions in Sir Jonathan's report. In particular, I agree with Sir Jonathan's assessment that the root cause of the issues in this case was the lack of a contemporaneous note of the Officer 2 Conversations. This meant that, many months later when the evidence was being prepared in the injunction proceedings, there was nothing more to go on than Officer 2's imperfect recollection, which was largely consistent with the surrounding circumstances (as detailed in paragraph 65 of Sir Jonathan's report). This regrettable situation was then compounded by the process of MI5's corporate position '*hardening*'...

72. Like Sir Jonathan, I am unable to identify any advantage that would have accrued to MI5 by giving incorrect evidence concerning the Officer 2 Conversations. On the contrary, the events leading up to the conversations, including the authorisation to depart from NCND if necessary, only served to emphasise the seriousness with which MI5 was treating this issue and the extent of the risk we had identified should X be named as an alleged CHIS."

³⁵² HMAg v BBC – Confidential Bundle of Documents for Hearing 3 June 2025, tab 17

563. Witness B did not mention the authorisation requirement under the draft updated Media Engagement Policy to which Officer 2 was working. Neither was there mention of the IPCO report.

DDS's fourth witness statement

564. On 14 May 2025 DDS made a fourth statement³⁵³ in response to the internal investigation, Sir Jonathan's report (insofar as it was disclosed in OPEN) and Witness B's statement. Having observed that Sir Jonathan did not contact him as part of the investigation, DDS went on to produce the recordings and transcripts of the third, fourth and fifth calls. He referred to further calls. He made a number of powerful points, among them, the following.

- The multiple calls that took place were a sustained departure from NCND.
- The departure from NCND on Agent X would have been memorable and unusual on its own. It was sustained, detailed, and even included an offer to meet Agent X.
- There were departures from NCND in respect of five other people. They were part of the same series of interlocking conversations. This made the chain of events even more unusual and memorable. Any claimed loss of memory by Officer 2 - and in MI5 more widely - was unbelievable. There were multiple calls over the course of the two weeks (between 8 June and 19 June 2020) (see paragraphs 11 and 21-22 of the witness statement)
- Witness B's comment (in paragraph 32 of his witness statement³⁵⁴) to the effect that it was not possible for Officer 2 to meet DDS before the first conversation to set ground rules, was misconceived. No question of setting ground rules arose. Officer 2 immediately revealed Agent X was a CHIS.
- Sir Jonathan was wrong that only Officer 2 had been party to the calls. On 11 June another, more senior, officer had also spoken to him. It was not conceivable the other officer did not know what previously had been said. The departure from NCND might have been mentioned at any stage.
- It is clear from what Officer 2 told DDS, that he spoke to others about what they were discussing. He could not realistically have updated colleagues without describing his

³⁵³ *HMAG v BBC* – Confidential Bundle of Documents for Hearing 3 June 2025, tab 19

³⁵⁴ *HMAG v BBC* - Confidential Bundle of Documents for Hearing 3 June 2025, tab 17

departures from NCND, nor the various matters of concern he raised. It was not conceivable others did not know there had been a departure from NCND.

- To remember the calls at all is to remember the departures from NCND.
- Officer 2 not only offered a meeting with Agent X, he also made such an offer in respect of the MI5 undercover officer.
- When Officer 2 texted DDS on 26 October 2021, he implicitly referred to their previous contact.
- No-one has explained how DDS was convinced to remove Agent X from the programme.

565. DDS told me he did not initially disclose the further recordings because his story was about Agent X. His criticisms did not relate to MI5's handling of other people. He did not hide the fact there were other calls. He was conscious of the sensitivity of the content of the other recordings. When he read Sir Jonathan Jones' first report, he felt the other recordings required to be produced. He had thought Sir Jonathan would speak to him.³⁵⁵

The internal investigators' supplementary report

566. Following DDS's further revelations, some additional interviews took place. The further revelations did not result in any substantive change to the previous conclusions. The investigators remained of the view that Officer 2 was open and honest and had genuinely forgotten the detail of the calls. He could not recall departing from NCND.³⁵⁶

Sir Jonathan's supplementary report

567. Sir Jonathan also provided a supplementary report. At paragraph 12 he said:

"I have considered whether the new BBC material suggests an additional motivation for Officer 2 to lie or obfuscate about his calls with the BBC – because they provide evidence of wider disclosures. My terms of reference state that it is not for me "to make findings about why specific individuals did or did not do certain things". Serious though Officer 2's failings no doubt were, I note the finding of the internal

³⁵⁵ IPCO interview/DDS/28 November 2025

³⁵⁶ HMAG v BBC – Supplementary Investigatory Report and Supporting Documents 27 May 2025, tab 1

investigation that he has been open and honest with them throughout the process. In any event, even if (contrary to the findings of the internal investigation) Officer 2 had deliberately lied about the content of his calls with DDS when he came to the production of evidence for the High Court, as mentioned above there is no evidence that others within MI5 connived in any such lie or set out deliberately to mislead the Court.”

Witness B's further statements

568. Witness B made two further statements in which he produced and relied upon the supplementary reports. I shall only refer to two aspects of the first of Witness B's further statements, that of 27 May 2025.³⁵⁷

569. At paragraph 10 it was stated:

“As of 23 May 2025 MI5 has amended its NCND position regarding X and has now confirmed that it does not seek to maintain NCND in respect of X's status as a CHIS. That change of position was taken in light of the unique and developing circumstances of this case including legal advice, over which privilege is maintained. Account was also taken of the fact that the identity of X remains protected by the Injunction Order.”

570. At paragraphs 10 to 38, Witness B dealt with “NCND and IPCO.” At paragraph 34, he stated that:

“...On reflection, I accept that the engagement with IPCO, although not directly connected to the production of Witness A's first statement, is an aspect of the surrounding circumstances. As such it would have been beneficial for it to form part of the evidence presented to the court on 28 April 2025, even if that had to be in the form of a CLOSED statement (given MI5's position on NCND at that point). I have now sought to rectify this in this statement.”

571. At paragraphs 37 and 38, Witness B said that he did not think that describing how IPCO initially came to an ultimately correct, and a revised incorrect view, was necessary or relevant to

³⁵⁷ HMAG v BBC – Confidential Supplementary Bundle of Documents for the Hearing on 3 June 2025, tab 11

explaining how “incorrect” evidence came to be included in Witness A’s statement in the first place. He did not believe omitting the IPCO reference from Sir Jonathan’s OPEN report undermined its fairness or accuracy. The intention had been to provide as full an explanation of all relevant matters as possible. Witness B accepted that IPCO’s first (draft) report gave MI5 the opportunity to check the accuracy of the evidence it had provided. He apologised for not recognising the importance of explaining the IPCO aspect of the chronology.

572. For reasons I have explained, I do not accept that MI5’s response to IPCO was merely “an aspect of the surrounding circumstances,” as Witness B said at paragraph 34 of his statement. It was of real significance as far as the IPT proceedings were concerned. It was plainly relevant to the issue of “incorrect” evidence. It is difficult to understand its omission both in Witness B’s initial statement and in the OPEN version of Sir Jonathan Jones’ initial report.

573. Witness A made a short additional statement in which, among other things, he stated he was in no doubt about the truth of the statement of 26 January 2022 and that “on reflection” he recognised that MI5 should have addressed the IPCO issue in a statement he made on 10 January 2025.³⁵⁸ That omission too is difficult to understand.

The hearing before the Divisional Court of 3 June 2025

574. The court’s conclusions were summarised at paragraph 12 of its judgment.³⁵⁹ As presently relevant, the court stated:

“(a) The evidence that has been put before the court indicates that the special advocates, the High Court, the IPT and the Investigatory Powers Commissioner were all misled on the key question whether MI5 had departed from NCND in relation to X’s CHIS status. The proper operation of each of these safeguards is dependent upon high standards of candour on the part of the agencies. Any evidence of a departure from these standards must be promptly and effectively investigated.

(b) NCND was maintained until shortly before the hearing before us on 3 June 2025, long after MI5 had filed evidence making clear that Witness A’s evidence was incorrect and

³⁵⁸ [*HMAG v BBC*](#) – Confidential Supplementary Bundle of Documents for the Hearing on 3 June 2025, tab 12

³⁵⁹ [*HMAG v BBC and R \(Beth\) v IPT and others* \[2025\] EWHC 1669 \(KB\)](#)

any justification for its maintenance had disappeared. Thought should have been given at a much earlier stage to the question whether it was realistic to maintain NCND in the circumstances, particularly given that doing so was to cast formal doubt on the veracity of Mr De Simone's evidence.

- (c) It is regrettable that MI5's explanations to this court were given in a piecemeal and unsatisfactory way - and only following the repeated intervention of the court.
- (d) The investigations carried out by MI5 to date suffer from serious procedural deficiencies. Their conclusions cannot presently be relied on.
- (e) In those circumstances, we consider that it would be premature to reach any conclusions on whether to initiate contempt proceedings against any individual. We accordingly adjourn consideration of that question pending the outcome of a further investigation which we anticipate will not suffer from the defects that we have identified. We consider that this further investigation should be carried out under the auspices of the Investigatory Powers Commissioner, who has oversight of MI5's surveillance activities."

575. At paragraphs 83-89 the Divisional Court set out "The inadequacy of the investigations." I shall not repeat their criticisms.

The internal investigation and Sir Jonathan's review

576. The DG assured me that Sir Jonathan's review was a genuine attempt to get to the truth and to "take our medicine."³⁶⁰ It is clear the attempt did not succeed. The reality was that the internal investigation, taken in conjunction with Sir Jonathan's report, did not amount to an independent review. On the one hand, the internal investigation was not independent and was limited in its scope. On the other, Sir Jonathan's report essentially relied upon the findings of that investigation without interviewing the most significant witnesses. It was also

³⁶⁰ IPCO interview/DG/15 December 2025/

constrained by the “fundamental incoherence”³⁶¹ of its terms of reference. I do accept, however, that the DG did genuinely wish to get to the truth.

The hearing before the IPT of 10 July 2025

The duty of candour

577. On 10 July 2025 there was a further hearing before the IPT. In his judgment of 30 July 2025³⁶², the President summarised the law in respect of the duty of candour. As he said (citing paragraph 106 of the Court of Appeal decision in *R (Citizens UK) v Secretary of State for the Home Department* [2018] EWCA Civ 1812):

“ ...

(2) One of the reasons why the ordinary rules about disclosure of documents do not apply to judicial review proceedings is that there is a different and very important duty which is imposed on public authorities: the duty of candour and co-operation with the court. This is a ‘self-policing duty’. A particular obligation falls upon both solicitors and barristers acting for public authorities to assist the court in ensuring that these high duties on public authorities are fulfilled.

(3) The duty of candour and co-operation is to assist the court with full and accurate explanations of all the facts relevant to the issues which the court must decide...

(4) The witness statements filed on behalf of public authorities in a case such as this must not either deliberately or unintentionally obscure areas of central relevance; and those drafting them should look carefully at the wording used to ensure that it does not contain any ambiguity or is economical with the truth. There can be no place in this context for ‘spin.’

(5) The duty of candour is a duty to disclose all material facts known to a party in judicial review proceedings. The duty not to mislead the court can occur by omission, for example by the non-disclosure of a material document or fact or by failing to identify the significance of a document or fact.”

578. The President (in paragraph 66) referred to section 68(6) of RIPA.

³⁶¹ [HMAG v BBC and R \(Beth\) v IPT and others \[2025\] EWHC 1669 \(KB\)](#)

³⁶² [Beth v The Security Service \[2025\] UKIPTrib 8](#); IPT2/59

579. At paragraph 67 the President said:

“...the fundamental fact remains that the Claimant and their OPEN representatives will be excluded from CLOSED hearings and will not see some of the evidence in the case. This makes it all the more important that respondents fully comply with the duty of candour and co-operation and that, in particular, their in-house and external lawyers have their obligations at the forefront of their minds.”

580. The President also referred, at paragraph 70, to the guidance on “Discharging the Duty of Candour and Disclosure in Judicial Review Proceedings” promulgated by the Treasury Solicitors’ Department in January 2010, following *R (Al-Sweady) v Secretary of State for Defence* [2009] EWHC 2387 (Admin). The guidance remains in effect. Paragraph 2 concerns “Roles and responsibilities.” The introduction to that paragraph states:

“It is useful to think of disclosure as a project which requires a project manager of appropriate seniority and experience as a single directing mind to co-ordinate effort and deal with queries...

2.1 It is the role of the TSol case-handler to:

- have overall responsibility for the disclosure exercise...
- instruct counsel, arrange conferences and prepare and circulate notes of conferences approved by counsel...

2.2 It is the role of the defendant department(s) to:

- nominate a single contact point, usually a departmental lawyer, to liaise with the case-handler and ensure that the department’s views are represented in discussions concerning the litigation and its handling...
- appoint a person of suitable seniority and experience of the organisation, who may or may not be a lawyer but, who understands the obligation of disclosure and duty of candour to supervise...

2.3 It is the role of counsel to:

- give advice on disclosure when instructed by the case-handler to do so. Instructions focusing on this important topic should be properly recorded so that it is absolutely clear what counsel is being asked to advise on and an audit trail is maintained. Notes of conferences prepared by the case-holder should always be approved by counsel...”

581. At paragraph 75 of the judgment, the President raised a number of possible questions for IPCO. He put them in a letter of 30 July 2025³⁶³ to Sir Brian Leveson in the following way:

“a. In responding to Beth’s claim, and in responding to the queries from IPCO, to what extent, and by whom specifically, was consideration given to whether Witness A’s witness statement dated 26 January 2022 served in the BBC injunction proceedings... remained accurate?

b. If no such consideration was given to whether the statement remained accurate, did anyone (and if so who) turn their mind to whether such consideration needed to be given? If not, why not?

c. Was the duty of candour and/or the duty of cooperation to the Tribunal contained in s. 68(6) of RIPA and in case law ever explained to Witness A and/or those on whose knowledge he relied (such as Officer 2 or Officer 3)? If so, when and by whom? If not, why not?

d. In respect of the CLOSED witness statement of Witness A dated 20 December 2023, what was the decision-making process behind: (i) the account given of the IPCO inspection process, and (ii) the failure to draw the Tribunal’s attention to the fact that X had consented to his CHIS status being disclosed to a BBC journalist?

e. What was the decision-making process behind the decision not to disclose relevant policies in relation to NCND (including the three policies referred to in Sir Jonathan Jones KC’s report) both in responding to Beth’s claim and in preparation for the hearing on 9 May 2024? Without prejudice to the generality of the above:

i. Did lawyers ask the Respondent for any relevant policies?

ii. If so, were they provided?

iii. If so, why were they not disclosed?”

My response to the questions raised by the President

582. Before turning to the response in detail, it may be helpful if I make one general point.

583. Although this is not the occasion to re-visit the Treasury Solicitor’s guidance of January 2010, it does seem to me to present some difficulties in litigation such as the present. The primary Treasury Solicitor case-handler for both the BBC and IPT litigation was LW. Although no doubt

³⁶³ [Letter of 30 July 2025 from The Rt. Hon. Lord Justice Singh to The Rt. Hon. Sir Brian Leveson](#)

someone of great ability, she inevitably did not have the expertise in national security matters which Officer 18 (Legal) and Officer 12 (Legal) possessed. They were in substance instructing counsel, who, as Officer 5 (Legal) said, were at times working at MI5 on an ongoing basis. They were taking effective responsibility (with counsel) for the disclosure exercise in the BBC litigation (although ultimately no signed disclosure statements were needed). While LW had “overall responsibility for the disclosure exercise” according to the guidance, the reality is that her ability to fulfil that role was inevitably limited.

584. These are matters for future consideration. I understand that MI5 and GLD have already undertaken joint work to review the way in which they operate alongside one another when conducting litigation, with the aim of clarifying respective roles and responsibilities and improving understanding of matters relevant to MI5 disclosure exercises.

585. I now turn to the President’s questions.

Questions (a) and (b)

586. I have set out above the considerations that were given to Witness A’s statement of 26 January 2022. For the reasons I have explained, it is my view that the response to IPCO with its knock-on effect on the IPT proceedings was ultimately inadequate.

587. Officer 12 (Legal) and Officer 3 played the leading roles. I have no doubt Officer 12 (Legal) acted in good faith. I am unable to say the same in respect of Officer 3.

Question (c)

588. Although neither the duty of candour nor his obligations under section 68(6) of the Regulation of Investigatory Powers Act 2000 (RIPA) were in terms explained to Witness A, the legal advisors had good reason to believe he was aware of the need to tell the complete truth and to disclose everything, whether or not favourable to MI5. He should, however, have been told to read and understand all the exhibits before signing the statement. The legal advisors did not know that what Witness A said at the meeting of 17 February 2022 overstated the position to the extent I have indicated.

589. The duty of candour was never explained to Officers 2 or 3 or any MI5 officer. The legal advisors did not consider doing so. As I understand it, they believed all MI5 officers would know the need to be entirely truthful and open.
590. The fundamental problem relates not to the failure to explain the duty of candour, but to officers' compliance with their obligations. Officers knew they were providing information in the context of legal proceedings.

Question (d)

591. As I have said, NS KC accepted two elements of the draft IPCO report should have been expressly mentioned in Witness A's statement: that in reviewing the documents, IPCO had concluded there had been disclosure and that Agent X had agreed to disclosure to the BBC. By the time of the IPT hearing in May 2024, the disagreement between MI5 and IPCO had apparently been resolved. That said, the fact Agent X had agreed to disclosure remained relevant to Beth's application.

Question (e)

592. There was no decision not to disclose any of the policies regarding NCND. As the response to the special advocates of 24 February 2022 stated, MI5 accepted Officer 2's assertion that no note was needed as NCND had not been departed from. No search was made for possibly relevant policies. They were only searched for in December 2024.

The position of MI5 Legal Advisors

593. MI5 legal advisors do very important work. This case has underlined the extent to which the organisation, up to the highest level, relies on their expertise. The issues upon which they have to advise are frequently very difficult. They often have to work under considerable time pressure. Nothing I have said or am about to say is intended to question their expertise or integrity.
594. It is axiomatic that the advice which any legal advisor gives must be wholly independent and objective, irrespective of whether they are employed by the client or in independent practice. It is not easy for the 'in house' legal advisor. Their clients are their colleagues. It is difficult to

question or challenge a colleague, particularly in an organisation which relies so much on trust. It can be difficult to interpret a document in a way which is prejudicial to your employer's case. There are instances in this case which suggest a possible problem at MI5.

The unquestioning response to Officer 2's account of 17 February 2022

595. As I have said, on 17 February 2022 Officer 18 (Legal) spoke to Officer 2 while Officer 5 (Legal) took notes. One of the things Officer 2 said was that it was neither policy nor practice to make notes when talking to a journalist about an MI5 CHIS. That assertion was obviously unsustainable. It was not questioned. A number of similarly unsustainable and unquestioned assertions were made. Officer 2's account was subsequently relied upon in the response to the special advocates which was in substance drafted by MI5 legal advisors.

Officer 12's (Legal) comments about the summary document of 11 June 2020

596. The summary document³⁶⁴ was located at SIS in response to my inquiries. It had not been considered before. I asked Officer 12 (Legal) about it. They did not consider it in any way definitive. It did not refer to Agent X as a CHIS. It was not first hand. It might have been based on an assumption that the contemplated declaration of Agent X's CHIS status had been made when it had not. On being asked about the document, they pointed to the reference to Agent X's role being declared to a limited group and said:

"... it doesn't say "CHIS status"...Well, I'm not, I'm not seeking to take a point other than I think... had we had this document available to us at the time...one of the things we might have considered..."Well, what do we say if [Officer 2] ...was not declaring CHIS status but declaring that we had an interest and there was a national security reason about why...he shouldn't run the story", that might be because of... [Agent X's] role within [an extreme right-wing group] and not his role as a CHIS, possibly. I don't think that's a definitive confirmation of CHIS status...[T]he other thing that we would say is that, whilst this is close to contemporary, it's...at least second or third hand reporting and so presumably the individual writing that was not in the call or on the call with [Officer 2] ... But, I suppose, we were trying to reconcile the documentary records with the evidence that we had from ... [Officer 2] and the lack of evidence from the BBC and...I think what we could definitely definitively say is that people knew and had signed up to and agreed an operational plan which went up to and included

³⁶⁴ CB1/19/249

disclosure of CHIS status and that...there was engagement with ... [Officer 2] with the BBC.... Therefore, it's an inference that, if anyone knew there was an operational plan to disclose and knew the outcome, they may well have inferred that [Officer 2] had gone that far; but, in the absence of a record confirming it, that is potentially only an inference..."³⁶⁵

597. They continued to say that the document is not definitive. It could be consistent with the author knowing there was an operational plan envisaging a departure and the author not having been told the result. They said:

"I think we felt it was more likely than not that, if there had been a departure, that would have been recorded and there was no record...and these sorts of ... near close contemporaneous documents are at second or third hand after the event, not the person that actually was on the call with the BBC."³⁶⁶

Officer 5's (Legal) comments on the contact note regarding the proposed meeting between Agent X and DDS in early August 2020³⁶⁷

598. Officer 5 (Legal) told the internal interview that the contact note did not indicate that Agent X's status had been confirmed to DDS. It merely indicated he "knew who [Agent X] ...was." A meeting between DDS and Agent X might have been contemplated in circumstances where DDS did not know but nevertheless suspected Agent X was an agent. ³⁶⁸ Officer 5 (Legal) said this response was intended to explain that the note did not *expressly confirm* (my emphasis) that a departure had in fact taken place. At paragraph 56 of their internal interview of 20 February 2025 they said the reference to the journalist already knowing who Agent X was, was ambiguous. "[They] didn't read that as necessarily...indicative of departure ... [in respect of his] CHIS status...there was no record of a departure...in any of the records."³⁶⁹ Counsel did not consider the documentation as being inconsistent with NCND having been maintained.

³⁶⁵ IPCO interview/Officer 12 (Legal)/10 December 2025

³⁶⁶ *Ibid.*

³⁶⁷ CB1/27

³⁶⁸ Internal investigation (second) interview/Officer 5 (Legal)/25 February 2025 at paragraph 74

³⁶⁹ Internal investigation (first) interview/Officer 5 (Legal)/20 February 2025 at paragraph 56

599. Officer 5 (Legal) has described their interpretation of the contact note as cautious.

My observations on the comments of Officers 12 and 5 (Legal)

600. I accept that what Officer 12 (Legal) said regarding the summary document was arguable. I note that they state they did not understand that I was asking for a neutral analysis of what the document showed. I understand the points Officer 5 (Legal) is making about the contact note. I note their assertion that they were not attempting to read the document in a way most helpful to MI5. However, it does seem to me that a straightforward reading of each of these documents strongly suggests that NCND had been departed from, something which Officers 12 and 5 (Legal), it seemed to me, were loath to accept.

The approach of Officers 7 and 5 (Legal) to the non-inclusion of Agent X for the IPCO inspection in 2020

601. As I have explained the Agent X file was not included for selection by IPCO in the 2020 inspection. Officer 7 (Legal) deleted the sentence which referred to that fact (and referred to an administrative error). Officer 5 (Legal) did not demur.³⁷⁰ I have expressed scepticism regarding Officer 7's (Legal) explanation for deleting the sentence in which MI5 would have admitted to an error and Officer 5's (Legal) ready acceptance of it.

The recommendation to the DG in the "Decision document" of 26 February 2025 to maintain NCND

602. As I have said, the "Decision document" of 26 February 2025³⁷¹ made the surprising recommendation to the DG to maintain NCND. Even if this was legally tenable, a more balanced and less defensive approach would have produced a different recommendation (to the ultimate benefit of MI5).

My overall comment

603. It seems to me these examples suggest a degree of over-defensiveness on the part of the MI5 lawyers and an absence of sufficient objectivity. Avoiding this is all the more important where

³⁷⁰ CB2/O/131 - 132

³⁷¹ MI5 decision document, '[Internal reference] – approach to take re X's CHIS status' (26 February 2025). Document provided on 12 December 2025 in response to IPCO's Eighth Request for Information.

the MI5 legal advisors, rather than GLD, have the expertise, and are in practice often driving MI5 litigation.

‘Fallibility of memory’

604. Both Officers 2 and 3 have drawn my attention to the judgment of Leggatt J (as he then was) in *Gestmin SGPS S.A. v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm). In broad terms, it is suggested that I have been too accepting of oral evidence and drawn conclusions from it which I was not entitled to. I do not accept that criticism. I briefly consider *Gestmin* in Annex B.

Part Six

A summary of findings

The MI5 media guidance

605. MI5's media guidance as reflected by the updated Media Engagement Policy first surfaced in response to a policy search following DDS's revelations in December 2024. No-one with responsibility for either the BBC or IPT litigation thought it relevant until then, or appeared to be aware of it. A search for documents which might address note-taking in conversations with journalists would have been prudent before responding to the special advocates with an unequivocal assertion that none existed.
606. Officer 2 knew about the Media Engagement Policy. He had been involved in its drafting. He had been asked to update MI5's Legal Advisor branch on its application in early 2020. It required him to record his conversations with DDS. It was in any event axiomatic that notes should have been taken of any conversation with a journalist about a CHIS or an alleged CHIS.

Authority to depart from NCND

607. Proper authority to depart from NCND was not obtained.
608. Officer 7 (Legal) provided advice, not authorisation. The advice was not, and did not purport to be, authorisation.
609. Paragraph 13 of the updated Media Engagement Policy, to which Officer 2 had contributed and was supposedly working, required any departure from NCND to be authorised by at least a DDG. Furthermore, irrespective of the updated Media Engagement Policy, authority should have been sought from Private Office.
610. Officer 2's explanation that he would have had in mind Officer 7's (Legal) advice in departing from NCND in the additional cases is on any view misconceived.

Whether Officer 2 told DDS what he was saying was confidential

611. As DDS said both in his witness statements and to me, I have concluded that Officer 2 said nothing about the terms of any conversation. He may well have assumed DDS would regard his disclosures as confidential or off the record.

What Officer 24 knew about the calls

612. In my view Officer 24 (who gave the briefing on extreme right-wing terrorism in the fifth call) knew more than he now recollects about Officer 2's discussions with DDS. However, his role was peripheral. He played no part in the subsequent events.

What Officer 4 and the handling team knew about the calls

613. Officer 4 (Agent X's case controller) was the only member of the handling team to speak directly to Officer 2. He believed Officer 2 had departed from NCND. That is what members of the handling team believed. That is what the overseas organisation were told. That was the understanding of Officer 16, as reflected by the summary document. That is what the Agent X contact notes suggest. At no time did Officer 4 tell anyone that he believed NCND had been maintained.

Obtaining a write-up from Officer 2

614. Officer 23 (Agent X's Operational Security Advisor) tried, without success, to obtain a write-up of the conversations with DDS.

Officer 2's meeting with a trusted BBC contact on 28 July 2020

615. Officer 2 remembered his conversations with DDS. He knew DDS did not believe Agent X was pretending to be a Nazi. He feared DDS was continuing his investigation into Agent X. Officer 2 had not moved on.

Officer 2's spurious comment about NCND

616. Officer 2's suggestion both to the internal investigation and to me that a private disclosure to a journalist of a person's CHIS status may not be thought to amount to a departure from NCND was entirely spurious.

MI5's reliance on paragraph 11 at the time of filing Witness A's OPEN statement

617. NCND was not thought contentious. The area of contention was believed to relate to the substantive allegations DDS was making.

Officer 2's position

618. In assessing how "plausible" Officer 2's "mild to moderate adjustment disorder," is as an explanation for forgetting his departures from NCND, I have had regard to all the evidence. I have been driven to conclude that Officer 2 has not forgotten the departures from NCND but has lied. His lies formed the foundation of MI5's false account.

Officer 3's position

619. Officer 3 played a pivotal role in the bringing of the application for an injunction. He was central to the instructions being provided to Officers 18 and 5 (Legal) and to counsel. Officer 3 did not accurately report what Officer 2 had said. Instead of relaying the uncertainty expressed by Officer 2, he reported that NCND had not been breached. He overstated the position in his Background emails of 10 December 2021 and 20 January 2022. Officer 15, as representative of the handling team, but who had not been working during June 2020, told Officer 3 that NCND had been maintained. Officer 4, who was directly involved in the events in June 2020, told Officer 3 that he believed NCND had not been maintained. By his conduct Officer 3 significantly contributed to MI5's reliance on the false account.

Officer 4's position

620. Officer 4 should have responded to Officer 3's Background emails of 10 December 2021 and 20 January 2022 in relation to NCND. He should have read paragraph 11 of the draft OPEN

statement when it was sent to him and expressed his disagreement with it. Although his focus was on the substance of the allegations, he should have made clear to Officers 18 and 5 (Legal) his understanding that NCND had been departed from.

The handling team's position

621. Albeit Officer 2 produced no record of his conversations with DDS, the handling team should have made an unequivocal note on Agent X's file making clear their understanding that NCND had been departed from.
622. Officer 4 and the handling team bear some responsibility for MI5's reliance on the false account.

Officer 15's position

623. Officer 15's view was that NCND had been maintained. Their focus was on the substance of DDS's allegations. They did not consider the implications of Agent X's case file. They should have known that even on Officer 2's account an entry was required in Agent X's case file.

The position of Officers 18 and 5 (Legal)

624. They were working under very considerable pressure. Officers 18 and 5 (Legal) were at this time entitled to rely on the instructions they received.

MI5's continued reliance on paragraph 11 in response to the special advocates

625. This was the first opportunity MI5 had to correct paragraph 11.

Officer 2's position

626. In the meeting of 17 February 2022, Officer 2 added to the lies he had initially told Officer 3. He provided an account of his engagement with DDS which was false. Officer 2's lies continued to form the foundation of MI5's false account.

Officer 3's position

627. Officer 3 continued to play a pivotal role in these events. Following the conference with counsel on 21 February 2022, it was apparent there was a stark difference between what Officer 2 had initially told him and what he was then saying. Officer 3 continued to say nothing about Officer 2's initial uncertainty. His conduct significantly contributed to MI5's reliance on the false account being maintained.

Witness A's position

628. Witness A overstated the position at the meeting of 17 February 2022. To the extent that paragraph e. of MI5's response to the special advocates of 24 February 2022 referred to Witness A's "high degree of confidence" being based upon "conversations in which he was personally involved in regarding the matter back in June 2020," it was misleading. To that extent, Witness A played a part in the continued promulgation of the false account.

The position of Officer 4 and the handling team

629. My previous observations continue to apply.

MI5's response to the special advocates of 24 February 2022

630. MI5's response to the special advocates' questions was seriously flawed. The assertion that there was no policy or practice to make notes of all calls with journalists was incorrect. It would have been prudent to conduct a policy search. The argument that because there was "no enduring impact arising from this conversation which may have warranted a note to be drafted" was unsustainable. The assertion that because NCND was maintained there was no requirement to record anything on Agent X's case file was unsustainable. This should have been obvious to everyone. MI5 should not without more have assumed DDS did not challenge the assertion that NCND had been maintained. Witness A's account was misstated. No-one sufficiently considered the implications of Agent X's contact notes. It was entirely unclear how precisely Officer 2 had persuaded DDS to omit Agent X from the programme.

631. The MI5 legal advisors should have stood back and questioned what they were being told. Officer 5's (Legal) responsibility was less than Officer 18's (Legal). They had a more junior role.

The meeting of 7 December 2023

632. I have little doubt Officers 4 and 23 told Officer 3 that NCND had been departed from. Officer 4 spoke of that horse having bolted. I disbelieve Officer 3's account to the contrary. Officer 3 misrepresented what Officer 2 had told him. Officer 3 told no-one what Officers 4 and 23 had said to him. He continued to tell no-one about Officer 2's initial uncertainty.

MI5's continued reliance on paragraph 11 in response to IPCO

633. The response to IPCO was important for the IPT proceedings. If Officer 2 had disclosed Agent X's status as a CHIS to the BBC, MI5's argument that it should not be disclosed to Beth would inevitably be weakened.
634. For the reasons set out in detail above, there were grounds for MI5 to undertake additional due diligence before responding to IPCO.

The position of Officer 3

635. Officer 3 told no-one what Officers 4 and 23 had said to him. He continued to say nothing about Officer 2's initial uncertainty regarding NCND. He was content for matters to proceed as they had before. He bears considerable responsibility for the continuation of MI5's falsehood.

The duty of candour

The injunction proceedings

636. OS KC emphasised the importance of the duty of candour from the outset and throughout. The duty of candour was never in terms explained to Witness A. The legal advisors had good reason to believe he well understood the need to tell the complete truth. He did not understand his obligations included reading and understanding the exhibits. The duty of

candour was never explained to Officers 2 or 3 or any MI5 officer. The legal advisors did not consider doing so. They believed MI5 officers would know the need to be entirely truthful and open. The fundamental problem relates not to the failure to explain the duty of candour, but to officers' compliance with their obligations.

The IPT proceedings

637. Although neither the duty of candour nor the obligations under section 68(6) of the Regulation of Investigatory Powers Act 2000 (RIPA) were in terms explained to Witness A, there was good reason to believe he understood the need to tell the complete truth. The duty of candour was never explained to Officers 2 or 3 or any MI5 officer. The fundamental problem relates not to the failure to explain the duty of candour or the obligations under section 68(6), but to officers' compliance with their obligations.
638. The fact that IPCO had concluded there had been disclosure and that Agent X had agreed to his CHIS status being disclosed to the BBC should have been expressly stated in Witness A's statement for the IPT.

The DG's decision not to disclose Agent X's CHIS status sooner

639. The recommendation to the DG to maintain NCND in the "Decision document" of 26 February 2025 was surprising.

The MI5 internal report and the review of Sir Jonathan Jones KC

640. The internal investigation taken in conjunction with Sir Jonathan's report did not amount to an independent review. Moreover, Sir Jonathan's terms of reference were 'fundamentally incoherent.' I accept that the DG wished to get to the truth.

The position of MI5 legal advisors

641. It is important that MI5's legal advisors are sufficiently objective and not over-defensive.

The position of the GLD and counsel

642. I do not consider counsel or GLD bear responsibility for the false account in paragraph 11 of Witness A's statement or its maintenance. The roles and responsibilities across MI5 litigation and as between internal legal advisors, GLD and counsel require clarification.

Part Seven

Some over-arching concerns

643. Finally, I turn to some other matters that have become apparent during the course of the investigation and upon which it may be helpful for me to comment.

MI5's record keeping and the 'corporate record'

644. I make clear that I have not conducted, nor was I asked to conduct, a comprehensive review of MI5's information management systems. I sought evidence on MI5's record keeping and document retention policies where such evidence was relevant to my terms of reference and the questions posed by the IPT, particularly in respect of the duty of candour and searches for relevant documentation. The matters set out below are issues which have caused me concern while reviewing that evidence; they are not intended as general conclusions or recommendations regarding MI5's information management as a whole.

645. In the course of the investigation, the vital importance of MI5's "corporate record" has become clear. This is the centralised repository (albeit, in fact, several repositories) of MI5's documentary records. Typically, it is only the corporate record which is searched for the purposes of disclosure in legal proceedings, save in "significantly complex" or exceptional cases.³⁷² The absence of important information from the corporate record is a matter of central importance in this case. It therefore appeared to me essential to try to understand how the corporate record is compiled and maintained.

646. I have been provided with MI5's 'Retention and Disposal Policy for Data, Information and Record'.³⁷³ This was created in May 2023, and therefore post-dates many of the relevant events in this case. In response to my Preliminary Draft Report, I have also been provided with MI5's IM Policy (version 3.1) which was in force at the relevant time. Both of these policies deal in broad terms with MI5's retention and disposal of records. The Review, Retention and

³⁷² 'MI5 IM Policy', *HMAG v BBC* - Further Disclosure Following Special Advocates' Requests of 07/05/2025, tab 67.

³⁷³ Exhibit 23 to MI5's witness statement in response to IPCO's First Request for Information

Disposal (RRD) Schedule in the IM Policy in force until 2023 states: "E-mail messages passed within the Service or outside and items on the Service Intranet are "records" if they contain material, discussions or decisions of more than ephemeral interest. This type of information that is identified as a record must be made a record of the Service and retained in line with the category of information that it falls within".

647. Neither the IM Policy nor the Retention and Disposal Policy contain significant practical guidance to staff as to how to implement their requirements. Instead, in respect of practical guidance, I have seen a document entitled "The Record and your responsibilities" which I am told was drafted in July 2017 and amended in March 2020.³⁷⁴ It is by no means a model of clarity. Under the heading "What to record" it states:

"The important factor in deciding whether to retain a piece of information is the value or significance of the information itself, rather than the format in which it is presented (e.g. report or email).

To ensure you are storing documents correctly and making them centrally retrievable:

- ...
- Save emails if they contain decisions, advice we have given or detail actions we have taken.
- Record decisions made in meetings and file the minutes in the appropriate File
- Record decisions or actions agreed during informal meetings and telephone calls."

648. There is a problem with the guidance. Unless a document is stored on the corporate record it is not retrievable unless non-Record searches are considered necessary in a particular case. Even if searches are run, they do not ordinarily capture items which have already been automatically deleted. Whether an email or a draft document is stored depends upon whether someone is of the view that the information it contains is of "value or significance." In the case of emails, I was told that unless they are stored within a short period, they are usually automatically deleted. That means that whether an email or email chain is of value or significance is entirely a matter of someone's judgment at the time. That 'someone' is, ordinarily, the sender of the email. A user effectively self-selects what emails fall within that

³⁷⁴ Documents provided by MI5 to Sir Jonathan Jones KC and provided to IPCO October 2025, tab 3

definition. Decisions as to relevance, which may be of great importance in the context of legal proceedings, are therefore effectively delegated to individual members of MI5. When I asked why that was, I was told no specific decision document relating to this policy could be found: that it had been in place since MI5 moved to using email.

649. I entirely accept that it is neither practicable nor desirable for every email to be retained indefinitely. I further accept that a degree of reliance on individual users correctly selecting material for retention may be unavoidable. However, I consider this to create a risk of important material being irretrievably deleted before its relevance can be properly, or objectively, assessed. MI5 has acknowledged that reliance on user judgement presents a known risk in the system. I consider that this risk is exacerbated by MI5's adoption of a retention period for emails which seems to me surprisingly short. I note that guidance produced by the National Archives suggests a range for email retention periods of between 90 days and four years,³⁷⁵ meaning MI5's chosen retention period falls toward the bottom end of this range. I also understand the period chosen by MI5 to be very substantially shorter than those used by SIS and GCHQ. In the absence of a decision document, I have not had sight of the various considerations taken into account when MI5 adopted this approach.

650. I have also seen an undated document entitled 'Emails – managing and storing' which I understand to have been drafted in July 2017 and amended in March 2020.³⁷⁶ This provides as follows:

"You should manage emails you create or receive as part of your work. Many should be treated as records because they provide evidence of and information about our business transactions. Ask yourself:

- Does the email relate to a project, programme or policy that I'm working on?
- Does the email provide approval for an action?
- Does the email provide advice, give direction or record a decision?
- Has the email been used to document the minutes of a meeting?
- Does the email prove that an activity or event did or did not occur?

³⁷⁵ [The National Archives, 'Guidance principles on the auto-deletion of email' \(October 2016\)](#)

³⁷⁶ Exhibit 25 to MI5's witness statement in response to IPCO's First Request for Information

If the answer to any of these questions is “yes”, you must ensure that the email is saved to the appropriate File. If none of the above criteria is met, it is unlikely that the email has any record value.”

651. This guidance imposes responsibilities on the senders of emails to file them, unless an action is required by the recipient, in which case they should also file a copy. Emails from external senders should be filed by any MI5 recipient who replies to the email, or any sole MI5 recipient.
652. Although this provides a little more guidance as to when emails should be saved to the corporate record, it also highlights the enormous and at times duplicative administrative burden. It appears to me likely that very many emails, if they are of any substance at all, will fall to be saved to the corporate record under this guidance. Indeed, the guidance itself acknowledges that “Many [emails] should be treated as records”. However, MI5’s policy is that all emails are subject to automated deletion unless they are manually saved; in other words, the approach to retaining emails on the corporate record is exclusive rather than inclusive. I would not be surprised to learn that the administrative burden of saving each relevant email chain to the correct file might, at times, be overshadowed by pressing operational demands on individual officers, with the result that important information may not always be retained. This is all the more likely at times of particularly high pressure or unusual working arrangements, such as during the Covid-19 pandemic. I have received extensive representations regarding the challenges faced by MI5 during the pandemic and the additional burden on staff of adapting to a wholly new way of working. This included far greater use of non-secure communications.
653. In addition to automated deletion of emails, I understand that documents which are created and saved to MI5’s IT system are only formally added to the corporate record if they are marked as being “final”. If a document is created but remains saved as a draft, it is automatically deleted after a short period. There is a further short period in which it is recoverable, after which it is irretrievably deleted. I have been told that it is very easy to forget to convert a document’s status from “draft” to “final”; I find this easy to believe.³⁷⁷ Accordingly, even where records are properly created and saved, they may be irretrievably

³⁷⁷ Response to request for information placed on MI5 Intranet, received 18 December 2025.

deleted from MI5's corporate record if the author does not manually change the status to "final".

654. Further, it is my understanding that only "final" documents are responsive to MI5's disclosure search process. There may be sound practical or technical reasons why this is so. The consequence, however, is that even within the initial retention period, relevant documents which have not yet been converted to "final" will be excluded from MI5's disclosure exercise. I acknowledge that MI5 takes steps to ensure documents are finalised before a disclosure search process, although I note that these steps will be less successful if the search process is initiated beyond the short retention period for the relevant record. I note, too, that the deletion of "draft" documents can render it very hard to establish how a document, such as a witness statement, may have evolved through multiple iterations, with input from interested parties. All such changes are lost unless users manually save each iteration of a document as a new file on the corporate record.
655. While during the course of the investigation, very many emails and documents have been disclosed, I inevitably do not know if MI5's record retention policy, or individuals' compliance with that policy, may have hindered my investigation. For example, had a draft note or an email chain which shed greater light on Officer 2's engagement with DDS ever been created in June 2020, it is entirely feasible that it would have been automatically deleted long before any enquiries came to be made in December 2021. This illustrates powerfully the risks inherent in the current system.
656. The Director General quite properly brought this possibility to IPCO's attention from the outset of my investigation: "any emails not identified at the time as being valuable or significant will (as is standard) have been automatically deleted after [a short period]; while draft documents stored on our corporate record but not saved as 'final' versions will have been automatically deleted after [a short period]. This likely means that, as a consequence of our standing approach to records management, there will be some emails or documents which were generated in the course of: (i) handling [Agent X] as a CHIS; (ii) the High Court or IPT proceedings; or (iii) our engagement with IPCO's inspection into our handling of [Agent X],

that no longer exist.”³⁷⁸ I have no reason to have any concern as to MI5’s level of compliance with the numerous requests for information made in the course of my investigation.

657. I appreciate that given the enormous number of emails generated in an organisation such as MI5, some system of deletion is necessary. However, it does seem to me that two factors in particular: the automatic deletion of emails after such a short period, and the delegation of assessments of relevance to individual officers, when taken in combination, may present real difficulties in the context of MI5’s disclosure obligations and the duty of candour. Moreover, having such documents on the corporate record could well help resolve future disputes.

Note taking

658. I have been struck during my investigation how few contemporaneous notes were taken and stored at MI5. There were many meetings, some of real importance. They were very rarely noted, even by the MI5 lawyers when meeting their ‘clients.’ There was no MI5 note of the meeting with the BBC on 14 December 2021. There was no note of either meeting on 7 December 2023. In my view, it is not satisfactory for important meetings or events not to be noted and the note stored on the corporate record. The absence of any corporate record of important meetings or events makes more difficult MI5’s compliance with its duty of candour in the event of litigation. Moreover, its absence could well prejudice MI5 in seeking to resolve disputes.

Searches

659. I have identified instances where searches could have been carried out which might have identified potentially relevant material at an earlier stage. These include the decision not to undertake any searches for material which might have supported the responses to the special advocates in February 2022, and the absence of any request to SIS to search their records which might have identified the summary document. I make no criticism of SIS. They were not a party to the litigation.

³⁷⁸ Letter of 15 September 2025 from Sir Ken McCallum to the Rt. Hon. Sir Brian Leveson

660. In addition to these opportunities for more rigorous examination of the available records, the events in this case appear to me to highlight a potential weakness in MI5's search methodology in connection with legal proceedings.
661. This search methodology is well-established, with searches being formally commissioned by MI5 legal advisors and carried out by a specialised team. This commissioning exercise determines the scope of the searches to be carried out. In this case, that formally commissioned disclosure search exercise began in May 2022 in response to the serious substantive allegations made in Beth's IPT claim. The searches conducted earlier, in late 2021 and early 2022, were run only across the files which already formed part of Agent X's CHIS record because, as explained in a later email to the search team from Officer 12 (Legal), "*we had the oral evidence from [Officer 2]*".³⁷⁹
662. Prior to the IPT disclosure searches, on 27 May 2022, a document preservation request was sent to relevant individuals. That request asked recipients to finalise documents, save relevant emails to the corporate record, and search their non-secure devices to identify and transfer relevant material to the corporate record.³⁸⁰ This was the first time such a request had been made, and it was sent to X's handling team, Officer 2 and Officer 3, among others. However, the disclosure search itself excluded personal devices, non-secure communications, and secure and non-secure email accounts from its scope. The rationale provided for this decision is that "no responses were provided following the document preservation request [...] which indicated that this was necessary" and any relevant emails should already have been saved to the corporate record.³⁸¹
663. MI5's disclosure searches are carried out by a dedicated team using specialist software with oversight by commissioning legal advisers. However, it appears that the scope of those searches depends, at least to an extent, on individuals with involvement in or knowledge of the case proactively identifying relevant material and bringing it to the attention of the search teams. Efforts are made to ensure relevant repositories are identified, including material not on the corporate record which would otherwise not be captured, through involving individual

³⁷⁹ Exhibit 18 to MI5's witness statement in response to IPCO's First Request for Information

³⁸⁰ Exhibit 5 to MI5's witness statement in response to IPCO's First Request for Information

³⁸¹ MI5's witness statement in response to IPCO's First Request for Information at [39 - 46]

officers with relevant knowledge of the particular case in the commissioning exercise. As illustrated above, the scope of searches may also be informed by individuals' responses to a document preservation request. I have some concern as to whether this is a sound basis on which to conduct disclosure searches, the purpose of which is to ensure relevant material is made available to the courts and opposing parties in litigation. It is arguably a further instance of reliance being placed on the absolute integrity, good faith and judgement of MI5 officers, rather than on objective analysis of the documentary record.

Annex A

Explanation of the process and procedure undertaken by IPCO

Prime Minister's Direction

664. This investigation was carried out pursuant to a direction from the Prime Minister under section 230 of the Investigatory Powers Act 2016³⁸². The Direction and accompanying Terms of Reference³⁸³ were issued on 15 September 2025.

Legal professional privilege

665. The Director General of MI5 wrote to Sir Brian Leveson on 12 August 2025 in advance of the Terms of Reference being finalised. He noted that, given the matters forming the focus of the investigation arose in the context of (then) ongoing legal proceedings, a waiver of legal privilege would need to be limited to IPCO only at that stage. By letter dated 21 August 2025 Sir Brian accepted the limited waiver for present purposes, noting that further discussion may be needed in due course. On 24 October 2025 the Government Legal Department also confirmed that the investigation team would have access to material that is subject to legal privilege. In a letter of 17 June 2026, the Director General confirmed that, highly unusually, MI5 agreed to extend the waiver of privilege without limitation in relation to the text of this report. This includes quotations within the report but does not extend to any (parts of) documents or interviews which are not quoted.

Preservation of material

666. By letter dated 21 August 2025, Sir Brian Leveson wrote to the Director General of MI5 requesting that all relevant material would be retained until the conclusion of the investigation. The Director General confirmed in a letter of 15 September that, in addition to the corporate record, further steps had been taken to ensure that any material that MI5 held

³⁸² [Investigatory Powers Commissioner \(Directed Oversight Function\) \(Investigation into the provision of false evidence to the High Court and Investigatory Powers Tribunal in relation to Agent X\) Direction 2025](#)

³⁸³ [Terms of Reference for the IPCO Investigation](#)

that was potentially relevant would be retained. The letter noted, as set out in the body of this report, the automatic deletion policy which meant that there would be information generated in the course of (i) handling Agent X as a CHIS; (ii) the High Court or IPT proceedings; or (iii) their engagement with IPCO's inspection, that no longer exists.

667. Retention requests were also sent to the Government Legal Department and the Attorney General (on 17 September 2025). The Government Legal Department explained that steps had already been taken to ensure that all relevant material that still existed would be preserved and that further steps would be taken to ensure automatic deletion or weeding was prevented. It was also explained that there may be some retrieval issues in respect of material that may have been removed under the routine destruction process.

Document requests

668. IPCO was provided with all the material filed in the High Court and the IPT proceedings at an early stage. The investigation team then sent out a series of formal requests for information to appropriate bodies from 17 September 2025.
669. The investigation team also sought witness statements from some individuals, either because they had not previously been spoken to as part of the internal investigation or Sir Jonathan Jones KC's investigation, or because the topic had not previously been explored. A witness statement protocol set out the approach to the taking of statements, including that they must be supported by a statement of truth.

Interviews with relevant witnesses

670. All witnesses who were asked to attend interviews were sent a formal letter inviting them to take part. The letter provided them with a date range, or specific date, on which an interview would take place. It confirmed that the recipient could bring along a friend, colleague or legal representative should they wish, although they should not have been involved in the underlying matters being investigated. Most witnesses chose to bring along a legal representative, in nearly all cases independent counsel.
671. Where witnesses were going to be referred to documents during the interview, they were provided with a bundle of materials to consider in advance. All witnesses were provided with

a list of broad topics that it was anticipated would be addressed at the interview. The invitation letter stated that should there be any additional documents or information that the witness would like to be considered prior to the interview, they should provide it. Two witnesses brought additional materials to the interview which were later formally provided to IPCO. Where witnesses referred to, or thought of, additional documents which might be relevant during the course of their interview, these were also formally provided to IPCO along with any necessary explanation or contextual information from the witness.

672. No witness refused to attend the interview.

Section 235 of the Investigatory Powers Act 2016

673. Section 235 of the Investigatory Powers Act 2016 provides:

“(1) A Judicial Commissioner may carry out such investigations, inspections and audits as the Commissioner considers appropriate for the purposes of the Commissioner’s functions.

(2) Every relevant person must disclose or provide to a Judicial Commissioner all such documents and information as the Commissioner may require for the purposes of the Commissioner’s functions.

(3) Every relevant person must provide a Judicial Commissioner with such assistance as the Commissioner may require in carrying out any investigation, inspection or audit for the purposes of the Commissioner’s functions.

(4) Assistance under subsection (3) may, in particular, include such access to apparatus, systems or other facilities or services as the Judicial Commissioner concerned may require in carrying out any investigation, inspection or audit for the purposes of the Commissioner’s functions.”

674. By subsection 7(a), “relevant person” means:

“any person who holds, or has held, an office, rank or position with a public authority...”

675. In response to a request by the legal team of MI5 in respect of the applicability of s.235 Investigatory Powers Act 2016, by letter dated 27 October 2025 the following form of words was provided:

“I can confirm that, as set out at paragraph 4 of the Terms of Reference, the full ‘Investigation and information powers’ (as so named in the heading to s.235 Investigatory Powers Act 2016) apply”.

Those interviewed

676. The following individuals were interviewed by Sir John Goldring as part of the IPCO investigation:

Interview date (2025)	Name / cypher	Role at relevant time
17 November	Officer 23	Operational Security Advisor for Agent X
18 November	Officer 4	Case Controller for Agent X
19 November	Officer 22 (Legal)	Former MI5 Legal Director
19 November	Officer 1	Authorising Officer for Agent X in June 2020
20 November	Officer 10	Primary Case Officer for Agent X
20 November	Officer 8	Secondary Case Officer for Agent X
24 November	Officer 17	Officer 4’s line manager
24 November	Officer 15	Authorising Officer for Agent X in December 2021
24 November	Officer 24	Head of Counter-Terrorism Investigations
25 November	Officer 16	SIS Officer
25 November	Officer 7 (Legal)	MI5 lawyer (operational)
26 November	Officer 19	Operational Security Advisor (not for Agent X)
26 November	Officer 14	Senior Officer in Agent Running section
27 November	Officer 5 (Legal)	MI5 lawyer (litigation)
27 November	Officer 25	Case Officer for an MI5 asset
28 November	DDS	BBC journalist
1 December	Witness A	Deputy Director for the Regional Network
8/9 December	Officer 2	MI5 Head of Communications in June 2020
8 December	Neil Sheldon KC	Leading counsel representing MI5
8 December	Jennifer Thelen	Counsel representing MI5
8 December	Emmanuel Sheppard	Counsel representing MI5
9 December	Officer 11	Former MI5 Head of Communications

Interview date (2025)	Name / cypher	Role at relevant time
10 December	Alexandra Laskowski	GLD lawyer
10 December	Officer 12 (Legal)	MI5 lawyer (litigation)
10 December	Louise Wallace	GLD lawyer
11 December	Officer 20	Former MI5 Head of Communications
11 December	Officer 6	Case Controller for an MI5 undercover officer
11 December	Officer 3	MI5 Head of Communications in December 2021 Member of Oversight and IPCO Engagement team in 2023 - 2024
15 December	Officer 26 <i>[not mentioned in report]</i>	Various MI5 roles
15 December	Officer 13	Member of Oversight and IPCO Engagement team
15 December	Officer 21	Senior Officer in Oversight and IPCO Engagement team
15 December	Sir Ken McCallum	MI5 Director General
16 December	Officer 9	MI5 Officer
16 December	Officer 27 <i>[not mentioned in report]</i>	Operational Security Advisor
16 December	Officer 18 (Legal)	MI5 lawyer (litigation)
16 December	BBC journalist	BBC journalist

677. Witness statements were also obtained from an MI5 Officer responsible for Security, Compliance and Information Management (03/11/25), a case officer (28/11/25) and Oliver Sanders KC (24/02/26).

The Preliminary Draft Report

678. On 7 April 2026 MI5 was provided with a full electronic copy of the Preliminary Draft Report, which was also shared with the relevant individuals who faced potential criticism. The initial deadline for responses was 8 May 2026. This was ultimately extended by agreement both with MI5 and the relevant individuals to, at the latest, 29 May 2026. Officers 2 and 3 were

separately represented in this process by Kingsley Napley LLP. IPCO agreed that in addition to individual responses, MI5 could submit a corporate response.

679. The individuals who were the subject of potential criticism were provided with a range of materials to assist their consideration of the draft report. Unless already provided, this included:

- IPCO 'Core' Bundles (the interview bundles containing underlying material relating to Agent X and the High Court proceedings referred to in the draft report);
- IPCO 'IPT' Bundles (the interview bundles containing material relevant to the IPT proceedings referred to in the draft report);
- A transcript of the individual's own interview with IPCO; and
- Transcripts of the interviews with any other individuals, to the extent that the evidence of that individual formed the basis of any potential criticism of the recipient.

680. IPCO provided further materials during the process following requests from those who were the subject of proposed criticism. This included excerpts of the transcripts of interviews with DDS and another BBC journalist which were provided to Officers 2 and 3. These were initially not provided as some matters regarding the confidentiality of the information had to be resolved with the BBC. However, as had always been anticipated and following a specific request for the transcripts, IPCO was able to resolve the issues and shared the materials. Both Officers 2 and 3 were provided with additional time to make representations in respect of the BBC transcripts.

Annex B

The ‘fallibility of memory’

681. *Gestmin SGPS S.A. v Credit Suisse (UK) Limited* [2013] EWHC 3560 (Comm) was a commercial case in which Leggatt J made broad observations regarding the unreliability of human memory and the difficulty which affects oral evidence based on recollection of events which had occurred several years before. The case has been drawn to my attention by Officers 2 and 3.
682. Leggatt J’s observations are set out at [15] to [22] of the judgment. He identified what are said to be two common (and related) errors, namely to suppose “(1) *that the stronger and more vivid is our feeling or experience of recollection, the more likely the recollection is to be accurate; and (2) that the more confident another person is in their recollection, the more likely their recollection is to be accurate.*”
683. The judgment states (among other observations) that the process of civil litigation itself subjects the memories of witnesses to powerful biases and that considerable interference with memory is also introduced in civil litigation by the procedure of preparing for trial.
684. At [22] Leggatt J stated:
“In the light of these considerations, the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses’ recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts.”
685. In *Julia Kogan v Nicholas Martin and Others* [2019] EWCA Civ 1645, an appeal from the Intellectual and Property Enterprise Court, the trial judge, in purported reliance on *Gestmin*, ignored the appellant’s evidence contained in her witness statement. The Court of Appeal considered that was “a serious error.” At paragraphs 88 and 89 Floyd LJ, giving the judgment of the Court, said:
“88. ...First, as has very recently been noted by HHJ Gore QC in CBX v North West Anglia NHS Trust [2019] 7 WLUK 57, Gestmin is not to be taken as laying down any general principle for the assessment of evidence. It is one of a line of distinguished judicial

*observations that emphasise the fallibility of human memory and the need to assess witness evidence in its proper place alongside contemporaneous documentary evidence and evidence upon which undoubted or probable reliance can be placed. Earlier statements of this kind are discussed by Lord Bingham in his well-known essay *The Judge as Juror: The Judicial Determination of Factual Issues* (from *The Business of Judging*, Oxford 2000). But a proper awareness of the fallibility of memory does not relieve judges of the task of making findings of fact based upon all of the evidence. Heuristics or mental short cuts are no substitute for this essential judicial function. In particular, where a party's sworn evidence is disbelieved, the court must say why that is; it cannot simply ignore the evidence.*

*89. Secondly, the judge in the present case did not remark that the observations in *Gestmin* were expressly addressed to commercial cases."*

686. This case is unlike *Gestmin* in several respects. It is not a commercial case replete with documentation. I necessarily have to decide whether I believe certain witnesses based on their accounts, assisted insofar as possible by such documentation as there is. The periods of delay in this case are of a different order from those in *Gestmin*. The impact on human memory brought about by adversarial civil litigation and preparation for trial is absent. Officer 4, for example, is not pursuing a case on behalf of his employer. It cannot be suggested that his recollection has been affected by a desire to assist MI5's position. His account has not been provided by way of a witness statement drafted by a lawyer having seen a statement of case or equivalent. The most significant 'false' recollection in this case is not the account of Officer 4, but of Officer 2.
687. Insofar as *Gestmin* is relied upon by Officer 2 to seek to justify his failure to remember the conversations that he had with DDS, I have addressed this in the body of this report. While Officer 2's account was provided to Officer 3 some time after the phone calls with DDS, this is not the kind of period of delay for which *Gestmin* is of any real assistance.
688. In short, it comes to this. I am required to have regard to the whole of the evidence, both oral and written. In assessing the oral evidence, I have to have regard, among other things, to the fact that a person's recollection may be fallible. That is what I have done.

Investigatory Powers Commissioner's Office
PO Box 29105
London
SW1V 1ZU

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