



Neutral Citation Number: [2023] EWHC 912 (Admin)

Case No: CO/2931/2021

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/04/2023

Before :

THE HONOURABLE MR JUSTICE DOVE

Between :

World Uyghur Congress (2)	<u>Claimant</u>
- and -	
Secretary of State for the Home Department	<u>Defendant 1</u>
-and-	
Commissioners for His Majesty's Revenue & Customs Service	<u>Defendant 2</u>
-and-	
National Crime Agency	<u>Defendant 3</u>

Jenni Richards KC, Tom Foster KC, Katherine Barnes, Anita Clifford and Russell Hopkins (instructed by **Bindmans LLP**) for the Claimant
Sir James Eadie KC, David Perry KC and Katherine Hardcastle (instructed by Government Legal Department) for the Defendants

Hearing dates: N/A

Approved Judgment

This judgment was handed down remotely at 10.00am on Friday 21st April 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MR JUSTICE DOVE

Mr Justice Dove :

1. This is the second judgment in the above matter, and it arises out of a breach of the embargo under which a draft of the first judgment was sent to the parties. The circumstances in which the breach of the embargo arose are as follows.
2. On 18th January 2023 the draft of the first judgment in this case was circulated to counsel and solicitors subject to the standard embargo on publication imposed on such a draft judgment. It was circulated for the purposes of obtaining editorial changes (spelling mistakes and the like), and also with a view to the parties preparing a draft order to give effect to the terms of the judgment. The embargo made clear that the draft judgment was subject to CPR Practice Direction 40E and was confidential to the parties and their legal representatives. The embargo also made clear that “neither the draft itself nor its substance may be disclosed to any other person or made public in any way”. Reasonable steps had to be taken to ensure confidentiality. In particular reference was made in the embargo to the case of *Counsel General v BEIS (2)* [2022] EWCA Civ 181, a recent authority which explains the purpose for which judgments are circulated in draft, and confirms that breach of the obligations in respect of a draft judgment circulated subject to embargo may be treated as a contempt of court.
3. The defendants in this matter were represented by the Government Legal Department. On 19th January 2023, prior to the handing down of the judgment on 20th January 2023, the Government Legal Department wrote to the court advising that there had been a breach of the terms of the embargo which had been sent to counsel on 17th January 2023. In the letter it was explained that the Government Legal Department had circulated the draft at 9:49am on 18th January 2023 to a limited number of individuals at the Home Office, HMRC and the NCA. The email had made clear that neither the judgment nor its contents should be shared with anyone outside the recipients of the email, and in particular should not be shared with Government Departments who were not a party to the litigation. The letter to the court recorded that the consequences of the breach of the embargo had been set out in the email.
4. The letter to the court went on to advise that at 11:28am it had come to the Government Legal Department’s attention that the result of the case, but not the draft judgment, had been shared more widely than permitted within the Home Office. This was addressed by the Government Legal Department at 11:44am by a reinforcement of the terms of the embargo to the relevant parties within the Home Office. A follow up email to all of the individuals to whom the draft judgment had been sent was provided at 11:48am. The letter to the court went on to record that later that day, at 16:33, the Department for International Trade emailed the Government Legal Department advising that they had been made aware of the existence of the embargo draft judgment, albeit not having been provided with a copy, and wanted to know what information could be shared. They were advised by GLD at 16:41 that they were not a party to the litigation and could not see the draft judgment or be advised of its contents.
5. At 17:12 that day the Government Legal Department emailed all parties at the Home Office, HMRC and the NCA who were either in receipt of the draft judgment, or aware of its results, advising of the possible breach of the embargo and requesting that the Government Legal Department should be told as a matter of urgency with whom the draft judgment or its details had been shared. At 17:22 the Government Legal

Department were informed of, and provided with, a copy of an email from a policy officer at HMRC (to whom the draft judgment had been sent by the Government Legal Department) written to individuals in the Home Office, the Department for International Trade, the Cabinet Office and the Foreign, Commonwealth and Development office and sent at 11:10 that morning. The email advised that the embargoed draft judgment had been received, the result was favourable to the defendants, and it was to be handed down at 10:00 on 20th January 2023. The Government Legal Department emailed everyone in that email at 18:20 to notify them that the email from HMRC constituted a breach of the embargo which would be reported to the court. The seriousness of the breach was pointed out.

6. The letter from the Government Legal Department to the court went on to explain that the individual at HMRC had misunderstood the contents of the embargo and not appreciated that not only could the draft judgment and the details of it not be discussed outside of the parties to the litigation, but that this extended to sharing the result. The individual concerned was recorded as being deeply apologetic for this error.
7. Having reflected upon the contents of the letter from the Government Legal Department I requested to have sight of the email under cover of which the draft judgment had originally been circulated. The Government Legal Department forwarded to the court the email of 9:49 on the 18th January 2023 by which they circulated the embargoed draft judgment. That email is notable for a number of reasons. Firstly, the email could not have been clearer in relation to the strict confidentiality under which it was being received, and the need for the embargoed decision not to be shared outside of the Home Office, the NCA and HMRC. Indeed, the email specifically identified within that exclusion the Cabinet Office and other government departments. Secondly, the email clearly emphasised the responsibility of retaining control over the embargoed decision and making a request to the Government Legal Department lawyers concerned in advance of sending the decision to anyone, even internally. Thirdly, the email stressed the strictness of the embargo, and the potential for breach of the embargo to give rise to proceedings for contempt of court against either departments or individuals. Finally, the email was accompanied by a brief document from the Government Legal Department about embargoes, in particular in relation to embargoed judgments, setting out clearly and succinctly the purpose of circulating judgments in draft, and the importance of abiding by the strict confidentiality pertaining to such a document including the potential consequences of failing to abide by the requirements of confidentiality.
8. Having reviewed the Government Legal Department's email and the accompanying leaflet it appeared to me that the court was entitled to an explanation, against that background, of how it could possibly be that the substance of the decision contained in the draft judgment could have been circulated more widely than those to whom the original email was carefully addressed by the lawyer in the Government Legal Department responsible. I therefore asked the Government Legal Department to prepare a witness statement from the individual at HMRC to whom they had referred in the letter to explain how the breach of the embargo had come about.
9. Subsequent to this request the Government Legal Department provided a witness statement dated 21st February 2023 made by the senior policy advisor in HMRC who was responsible for the breach. In essence, in that witness statement the individual explains that he "had not recognised or understood the full effect of the embargo", and

that upon receipt of the email covering the embargoed judgment he advised a number of colleagues within Government with whom he had been working on the issues pertaining to the case to tell them that “the result of the judgement was favourable”. The witness statement explains that “I did this because I was acting on the mistaken assumption as to the nature of embargo judgments generally, and due to pressure of work.” The deponent expresses his deep regret that at the time of receiving the embargo draft judgment he did not take the time to properly read the instructions which accompanied it. In the witness statement the individual expresses that he is very sorry that he did not take the time to confirm the position in relation to the embargo, and accepts that the responsibility for the breach “rests with me alone”.

10. The witness statement is accompanied by an internal HMRC Practice Note 19/01. Which provides detailed advice and guidance in relation to handling embargoed judgments. Akin with the advice note sent with the draft judgment by the Government Legal Department it points out the strict nature of the confidentiality under which embargo judgments are circulated and the potential consequences if the terms of the embargo are breached. In the witness statement it is explained that the individual has been made aware of this HMRC guidance and that he has read it carefully.
11. There can be no doubt that what occurred in this case was a significant breach of the requirements of confidentiality very clearly specified in the embargo under which the judgment was provided to the parties. As set out in paragraphs 29 and 30 of the judgment of Sir Geoffrey Vos MR in the case of *Counsel General for Wales v Secretary of State for Business, Energy & Industrial Strategy* [2022] EWCA Civ 181 there are good reasons for the imposition of the embargo on a draft judgment given the serious possible consequences which can arise and the importance of ensuring that judgment is placed into the public domain in a planned and coherent manner. The requirements of the embargo are mandatory and strict. A breach of the kind which occurred in the present case is a breach which can lead to the prosecution of proceedings for contempt of court.
12. Having reflected upon the matters which are set out above I have concluded in the present case to take no further action, beyond the recording of what has occurred. The reasons for not taking the matter further are as follows. Firstly, and in so far as the Government Legal Department are concerned, I am entirely satisfied that they took all reasonable steps to ensure that the embargo was properly and accurately communicated and the importance of abiding by it fully explained together with the consequences of failing to do so. My conclusions in that regard are reinforced by the further information which has been furnished in respect of the advice available to those who work within HMRC as to the importance of embargoes on draft judgments and the need for obedience to their provisions. Far from the breach arising from some form of systemic failure or error on behalf of the lawyers instructed it appears to me that, on the contrary, sensible and robust advice and guidance was provided in this instance.
13. Secondly, it is clear from the timings which were set out in the correspondence that the lawyers within the Government Legal Department operated with efficiency and expedition in seeking to detect and close down the breach of the embargo which had occurred. They acted swiftly and properly in response to the problems which had come to their attention and cannot be faulted for the way in which they dealt with the matter.

14. Ultimately, in truth, what occurred arose as a consequence of the failure of a single individual to read and observe the important instructions under which the draft judgment had been provided. That failure has been acknowledged honestly, openly and the person concerned has made a full and appropriate apology given what took place. The breach was short-lived and, as I have already observed, rapidly closed down. I therefore see little purpose, in the circumstances, in taking the matter further forward. This is however a noteworthy and cautionary incident. Recording the events in this judgment serves to demonstrate that the Court will require a full explanation as to how a breach may have occurred. The record of events within this short judgment will also hopefully assist lawyers in reinforcing the importance of these embargoes and the consequences that can ensue if they are breached. But for the comprehensive nature of the advice and guidance provided by the Government Legal Department and their very prompt action, together with the full and frank apology by the individual guilty of breaching the embargo, the outcome in this case may have been very different and particularly serious for the individual concerned.