

IN THE INVESTIGATORY POWERS TRIBUNAL

**BEFORE LORD JUSTICE EDIS, LADY CARMICHAEL AND STEPHEN
SHAW KC**

IPT/21/05/CH and Ors

BETWEEN:

- (1) SF**
- (2) DM**
- (3) PB**
- (4) CS**
- (5) KT**
- (6) KSS**
- (7) CP**
- (8) CC**
- (9) ME**
- (10) UB**
- (11) NA**

Claimants/Complainants

-and-

National Crime Agency

Respondent

OPEN ORDER: 11th May 2023

UPON hearing Counsel to the Tribunal and Counsel for the Lead Claimants/Complainants and the Respondent

AND UPON considering the written representations of the Lead Claimants/Complainants and the Respondent

IT IS ORDERED, DIRECTED AND DECLARED THAT:

Definitions

1. In this Order:
 - a. “The Warrant” is the targeted equipment interference warrant approved by the Judicial Commissioner pursuant to Part 5 of the Investigatory Powers Act 2016, on 26th March 2020.
 - b. “The EIO” is the European Investigation Order issued by the Crown Prosecution Service on 11th March 2020.

- c. “The Judicial Commissioner” is Sir Brian Leveson, the Investigatory Powers Commissioner.

Obtaining the Warrant: Candour and information supplied to the Judicial Commissioner

2. The following claims and complaints are dismissed:
 - a. In relation to the claims and complaints brought by the 7th, 8th and 9th Lead Claimants: Grounds 1 and 3 in their Perfected Grounds dated 25th October 2021;
 - b. In relation to the claims and complaints brought by the 6th Lead Claimant: Ground 1 in his Perfected Grounds dated 25th October 2021;
 - c. In relation to the claims and complaints brought by the 1st, 2nd, 3rd, 4th and 5th Lead Claimants: the grounds set out in paragraphs 6.18 – paragraphs 6.24 in t Perfected Grounds dated 25th October 2021; and
 - d. In relation to the claims and complaints brought by the 10th and 11th Lead Claims: the grounds set out in paragraphs 47-53 of their Perfected Grounds dated 25th October 2021.
3. It is declared that that the Respondent did not fail to discharge its duty of candour and did not mislead the Judicial Commissioner when it sought approval of the Warrant from the Judicial Commissioner.

Section 9 of the Investigatory Powers Act 2016

4. In relation to the claims and complaints brought by the 7th, 8th and 9th Lead Claimants, Ground 2 in their Perfected Grounds dated 25th October 2021 is dismissed, save, in relation to the 7th Lead Claimant as provided for by paragraph 11 below.
5. It is declared that the Respondent was not required, by reason of s9 of the Investigatory Powers Act 2016, to obtain a targeted interception warrant or targeted examination warrant in order lawfully to acquire EncroChat data.

Bulk interception or bulk equipment interference

6. The following claims and complaints are dismissed:
 - a. In relation to the claims and complaints brought by the 7th, 8th and 9th Lead Claimants, Grounds 4 and 5 in their Perfected Grounds dated 25th October 2021 are dismissed.
 - b. In relation to the claims and complaints brought by the 6th Lead Claimant, the grounds set out in paragraphs 69(b) and paragraphs 85 – 103 in his Perfected Grounds dated 25th October 2021 are dismissed.
 - c. In relation to the claims and complaints brought by the 1st, 2nd, 3rd, 4th and 5th Lead Claimants the grounds set out in paragraphs 6.1 - 6.26 in their Perfected Grounds dated 25th October 2021 are dismissed; and
 - d. In relation to the claims and complaints brought by the 10th and 11th Lead Claims, the grounds set out in paragraphs 54-77 of their Perfected Grounds dated 25th October 2021 are dismissed.
7. It is declared that the Respondent was not required to obtain a bulk equipment interference warrant in order lawfully to obtain EncroChat data.

Section 10 of the Investigatory Powers Act 2016

8. The following claims and complaints are dismissed:

- a. In relation to the claims and complaints brought by the 7th, 8th and 9th Lead Claimants, Ground 6 in their Perfected Grounds dated 25th October 2021 is dismissed, save, in relation to the 7th Lead Claimant, as provided for by paragraph 11 below.
 - b. In relation to the claims and complaints brought by the 1st, 2nd, 3rd, 4th and 5th Lead Claimants the grounds set out in paragraph 7.1 and following of their Perfected Grounds dated 25th October 2021 are dismissed.
9. It is declared that the Tribunal does not have jurisdiction in relation to the question of whether the EIO was made lawfully.

General

10. It is accordingly declared that the Warrant was lawfully issued.
11. The 7th Lead Claimant's claims on his Grounds 2 and 5, as set out in paragraphs 200 – 216 of his Joint Skeleton Argument dated 31st January 2022, shall be determined as follows:
- a. The 7th Lead Claimant and the Respondent shall, within 14 days of this Order, seek to agree directions for the determination of this claim by the Tribunal.
 - b. If the 7th Lead Claimant and the Respondent cannot agree directions by the time set out in paragraph 11(a) above, then within 21 days of the date of this Order, they shall lodge with the Tribunal submissions setting out the directions they seek and the reasons for them.
 - c. The Tribunal will thereafter determine the issue of directions on the papers.
12. Save insofar as is set out above, the balance of the claims and complaints pursued by the Lead Claimants are stayed, with liberty to the parties to restore them once the Crown Court proceedings (including any further appeals) have resolved all issues concerning the admissibility of EncroChat data.
13. The relevant appellate court for the purposes of an appeal under section 67A of the Regulation of Investigatory Powers Act 2000 is the Court of Appeal of England and Wales.

11th May 2023

Perfected Order – 18th May 2023