



Neutral Citation Number: [2025] UKIPTrib 5

**Case No: IPT/21/10/H and
IPT/21/374/H**

IN THE INVESTIGATORY POWERS TRIBUNAL

Date: 23 May 2025

Before:
Lord Justice Singh (President)
Lord Boyd of Duncansby (Vice-President)
Francesca Del Mese

BETWEEN :

(1) Abdelrazik SALAMA
(2) Feraj DBHAH

Claimants

- and -

(1) SECURITY SERVICE
(2) SECRET INTELLIGENCE SERVICE
(3) GOVERNMENT COMMUNICATIONS HEADQUARTERS

Respondents

Ben Silverstone (instructed by Bhatt Murphy Solicitors) appeared for the Claimants
Andrew Deakin and Sian Reeves (instructed by the Government Legal Department)
appeared for the Respondents
Sarah Hannett KC appeared as Counsel to the Tribunal

Hearing date: 12 March 2025

OPEN JUDGMENT

Introduction

1. The Tribunal held a directions hearing on 12 March 2025. The issue in OPEN was whether the respondents are entitled to rely on NCND (neither confirm nor deny). We heard parties in OPEN and, in the absence of the claimants, in CLOSED. At the end of the CLOSED hearing we upheld the respondents' position and found that they were entitled to rely on NCND. We indicated we would give reasons later in OPEN and in CLOSED.

Background to Claims

2. The claimants were both born in Libya. Both fled Libya in 1995 fearing persecution. The first claimant (C1) came to the UK in 1996. In 1998 he was granted asylum. He became a UK citizen in 2001. The second claimant (C2) came to the UK in 2000 and was granted asylum in 2002.
3. Both claimants were politically active in opposition to the Gaddafi regime. While in Libya C1 had been active in a political group known as Islamic Gathering (IG). He continued this activity in the UK. C2, though active in opposition to Gaddafi, was not a member of any political group in Libya but joined IG in 2005, having been encouraged to do so by C1.
4. C1 says that he was interviewed by UK intelligence officers on two occasions in 2008 and 2011. In the course of these interviews he says that he gave the officers information about IG. In particular he told them that IG planned to infiltrate the military in order to stage a coup against Gaddafi. He was also asked about another opposition group, the Libyan Islamic Fighting Group (LIFG). He formed the impression that the UK intelligence services would look after him and that the information he gave them would be kept confidential.
5. C2 says that he was also interviewed by intelligence officers on two occasions in 2006 and 2008. He recalls discussing various Libyan opposition groups.
6. The claimants aver that in about February 2020 they became aware that information about them, their families and friends had been shared by the UK intelligence services (UKIS) and the Libyan intelligence service (LIS). Various documents had been discovered by a friend of C1 who was then working in the Government of National Accord. The documents appear to be an incomplete set of communications between UKIS and LIS. These are dated between 2006 and 2008. They include a record of a meeting between UKIS and LIS in 2007 and what appear to be various intelligence reports (ten in total) sent by UKIS to LIS during this period.
7. The claimants summarise the documents, and allege, that UKIS had confirmed to LIS that IG was an organisation opposed to the Gaddafi regime which aimed to infiltrate the Libyan government and military and remove the regime by means of a coup. UKIS identified the claimants as being members of IG and C1 as head of IG in the UK. It also provided LIS with a picture of C1. UKIS informed LIS that the claimants were targeting

the Talhia region of Libya and included a transcript of a call between the claimants in support of this information. This was taken by LIS as part of a plot to assassinate Colonel Gaddafi as he owned farmland nearby. The claimants say that this interpretation is false.

8. The documents show that the claimants' phone numbers were given to LIS. Phone numbers of family and friends of the claimants were also given to LIS. As yet the claimants have not independently vouched to whom the numbers belonged. UKIS is said to have confirmed that there had been communications between LIFG members and C1. C1 is described as being known for his "extremist beliefs" and C2 as "being known for his extremist ideology". The claimants say that these allegations about their views are incorrect. It is alleged that C2 had previously fought in Bosnia and Chechnya. C2 says this is incorrect. C1 says that some of the information that was shared with LIS could only have come from his interviews with UK intelligence officers.
9. The claimants say that as a consequence of UKIS sharing information with LIS their lives were put at risk. They suffered fear and anxiety. They also aver that their family and friends in Libya were repeatedly harassed and interrogated and as a result a number of them suffered ill health. This in turn had an adverse effect on the claimants' health. The claimants allege violations of articles 3 and 8 ECHR.

The issue in OPEN

10. None of the allegations made by the claimants are admitted by the respondents who rely on NCND. The claimants submit that the respondents should not be permitted to rely on NCND.

Submissions for Claimants

11. Mr Silverstone, counsel for the claimants, submitted that the Tribunal should reject the respondents' reliance on NCND and require the respondents to plead a case in response. The burden was on the respondents to persuade the Tribunal that they are entitled to rely on NCND. The respondents had not given any reason in support of NCND. The NCND pleaded was wide ranging in its nature covering all of the allegations. It meant that the claimants could not participate meaningfully in the determination of the claim. If, for example, there was a dispute about what was said to intelligence officers during the claimants' interviews they would be unable to respond.
12. The issues were of real public concern. The respondents have admitted that the Gaddafi regime was an autocratic dictatorship which was characterised by decades of corruption, sustained repression of political opposition and the perpetration of serious human rights violations, often by the very state agencies with the responsibility to uphold and protect these rights. There must be an element of public scrutiny to secure accountability; *Home Secretary v CC* [2014] 1 WLR 4240, per Maurice Kay LJ at para 13, quoting the ECtHR in *El Masri v Former Yugoslav Republic of Macedonia* (2012) 57 EHRR 783 at paras 191, 192.
13. The respondents were seeking to rely on NCND in circumstances where the claimants had provided documentary evidence demonstrating that information sharing took place. The information is historic and concerned a different Libyan regime. The justification for NCND has materially less force in this case as the fact that UKIS shared intelligence

with LIS during this period is a matter of widespread and existing public knowledge. Mr Silverstone pointed to a statement made to the House of Commons by the then Attorney General on 10 May 2018 following an apology given by the Prime Minister to Mr Abdul Hakim Belhaj and his wife, Mrs Fatima Boudchar. He also drew our attention to a statement by the CPS following an investigation into the Belhaj case and to widespread media reporting. The dam, as Mr Silverstone put it, had broken.

14. The courts have a flexibility of approach to claims of NCND requiring individual judgments to be made given the particular circumstances and legal context; *Al-Fawwaz v SSHD* [2015] EWHC 166 per Burnett LJ (as he then was), at para 79; *Chief Constable of Greater Manchester Police* [2002] EWCA Civ 14, [2002] Crim LR 832, at para 23; *DIL v Metropolitan Police* [2004] EWHC 2184, at para 39(1). The Tribunal should balance the conflicting public interests to do justice in the case. Claims to rely on NCND can therefore give way to important public interests as is the case here.

Submissions for Respondents

15. Mr Deakin, for the respondents, confirmed that it was for the Tribunal to make an assessment of whether it was appropriate for the respondents to rely on NCND. However, the Tribunal must accord considerable weight or great respect to the respondents' assessment of harm to national security; *Beth v The Security Service* [2024] UKIPTrib 3, at para 45. Rule 7(1) of the IPT Rules provides an absolute prohibition on disclosing into OPEN material which it assessed would damage national security or was prejudicial to the continued discharge of the functions of any of the intelligence services; *Beth*, para 54.

Decision

16. The Tribunal is bound by rule 7(1) which is in the following terms.

“The Tribunal must carry out its functions in such a way as to secure that information is not disclosed to an extent or in a manner, that is contrary to the public interest or prejudicial to national security, the prevention or detection of serious crime, the economic well-being of the United Kingdom or the continued discharge of the functions of any of the intelligence services.”
17. The approach to NCND in the context of the Tribunal's jurisdiction was recently considered by the Tribunal in *Beth*. As the Tribunal set out in *Beth*, para 54, rule 7(1) is an absolute prohibition on disclosing material into OPEN if to do so would damage national security or any of the other interests protected by rule 7(1), including the continued discharge of the functions of any of the intelligence services. One of the mechanisms which has long been adopted by government and the intelligence services to protect national security is NCND. The Tribunal has long regarded NCND as an important principle which it must uphold in accordance with its duty in rule 7(1); *Lee & Wilkes v Security Service* [2023] UKIPTrib 8, at para 16. That does not mean that the Tribunal procedures are unfair. As the Tribunal noted in *Beth*:

“The balance between the protection of national security and fair trial rights has been addressed by Parliament in RIPA and the IPT rules, which provide a procedure that protects natural justice, whilst

safeguarding national security. There is no breach of the right to a fair process...because the material which has been the subject of NCND will be fully and fairly considered in the CLOSED part of the proceedings.”
(para 54)

18. It follows from this that once the Tribunal has made an assessment that putting information into OPEN would be a breach of its duty under rule 7(1) it is not permissible for the Tribunal to seek to balance that information against any other rights or interests. That includes an assessment that the respondents are entitled to assert NCND in respect of the information.
19. It is well established that in making such an assessment the Tribunal should give considerable weight or great respect to the respondents’ assessment of harm to national security; *Beth* para 45; *Various Claimants v Security Service (“the Vetting Case”)* [2022] UKIPTrib 3 at para 47. This follows the approach of the Supreme Court in *R (Begum) v Special Immigration Appeals Commission* [2021] AC 765.
20. Applying this approach in this case, and largely for the reasons set out in CLOSED, we are satisfied that the respondents are entitled to rely on NCND.
21. We have considered whether there has been any previous statement by the respondents or the UK Government avowing the existence of an intelligence sharing arrangement between UKIS and LIS. We do not consider that any of the statements referred to, read fairly, acknowledge such an arrangement, whatever interpretation may have been placed on them by others.
22. Nor do we consider that the claimants are materially prejudiced by this decision. The case is unusual in that the claimants have been able to set out facts which, if proved, will enable them to pursue their complaints. The Tribunal is able to use its investigative powers to require the production of relevant material and information. It will be able to peruse any documents and examine any evidence that may be produced by the respondents as a result of such investigations in CLOSED with the assistance of counsel to the Tribunal.