

IN THE HIGH COURT OF JUSTICE

Claim Numbers: HQ08X01180,

QUEEN'S BENCH DIVISION

HQ08X01413

HQ08X01416

HQ08X03220

HQ08X01686

BETWEEN:

- (1) BISHAR AL RAWI
- (2) JAMIL EL BANNA
- (3) RICHARD BELMAR
- (4) OMAR DEGHAYES
- (5) BINYAM MOHAMMED
- (6) MARTIN MUBANGA

Claimants

and

- (1) THE SECURITY SERVICE
- (2) THE SECRET INTELLIGENCE SERVICE
- (3) THE ATTORNEY GENERAL
- (4) THE FOREIGN AND COMMONWEALTH OFFICE
- (5) THE HOME OFFICE

Defendants

EXHIBIT LC6

Birnberg Peirce
DX57059 Camden Town

Christian Khan
DX 35737 Bloomsbury

Leigh Day & Co
DX 53326 Clerkenwell

8 February 2010

Dear Sirs

Bisher al Rawi and others v Security Service and others
Martin Mubanga v Security Service and others
Binyam Mohamed v Security Service and others


I write with reference to the 8th witness statement of David Mackie, in particular paragraph number 44.

Please confirm whether you accept this is the appropriate test that the Defendant should be applying for the public interest review process when conducting disclosure.

Alternatively, please indicate whether the PIR will be the subject of legal argument at the next Case Management Conference.

I look forward to receiving your reply.

Yours faithfully


Darren Samuels
For the Treasury Solicitor

**Litigation and Employment
Group**

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Please Quote: LT91601F/DSS/1F

Your Reference:

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24 February 2010

Dear Sirs

Bisher al Rawi and others v Security Service and others
Martin Mubanga v Security Service and others
Binyam Mohamed v Security Service and others

I write further to the e-mails from Louise Christian and Irene Nembhard dated 19th February 2010 requesting a time extension for service of the Replies to the Defences.

I note that the Defendants filed and served their Defences on 27th July 2009. On 29th September 2009 revised Defences were filed and served

The CMC Order dated 28th July provided that the Claimants were to file Replies by 27th November. By e-mail on 30th November 2009, Louise Christian sought a time extension to serve Mr Mubanga's Reply by 31 January. On 1st December, Sapna Malik requested a time extension for the remaining Claimants to serve Replies by 29th of January. Neither request mentioned any concerns about the Defences.

At the CMC on 14th of December and at the Claimants' request Mr Justice Silber extended the time for service of the Replies until 4pm on 15th February 2010. From the transcript of the hearing, it appears that there was no suggestion made that there was any difficulty pleading to the Defences. What was sought was more time to do so.

You have now informed me that the Claimants intend to serve a Request for Further Information by Friday 26th February. You propose my clients reply to this Request within 28 days. You then suggest that the Replies would be served 21 days thereafter.

The net effect of this proposal is that, some 6.5 months after the service of the Defences and after the extended date for service of the Replies you seek a further extension of no less than 9 weeks.

David Dunleavy -- Head of Division
David Mackie -- Team Leader

The explanation or justification which you advance for this suggestion is that as currently pleaded the Defences are inadequate to plead to the Claimants' case.

In the long procedural history which I have summarised above, this point has at no stage been raised on your clients' behalf.

If your proposal were to be accepted, the effect would be, of course, to delay the close of pleadings and the crystallisation of issues between the parties, which in turn will create delay in finalising the draft List of Issues and prolong the uncertainty in relation to the proper ambit of disclosure.

In the circumstances and to assist my clients in their consideration of your request, I should be grateful if you would provide, as soon as possible, a detailed explanation of (a) why your clients are unable to plead to the revised Defences; and (b) why this point is being taken for the first time 4.5 months after service of those pleadings.

Yours faithfully



Darren Samuels
For the Treasury Solicitor

26 February 2010

LT91601F/DSS/1F

LC.SK.J0215006

Joanna Bateman/Darren Samuels/David Mackie
Litigation and Employment Group
Treasury Solicitor
DX 123242 KINGSWAY

By e-mail and DX

Dear Sirs

Re: Martin Mubanga v Security Services and Others

We acknowledge receipt of your letter of the 24th February regarding service of our Reply to the Defence. We now enclose by way of service on behalf of the Seventh Claimant a Request for Further Information to which we request a reply within twenty eight days. As you know we are asking for an extension of time for service of our Reply to Defence to fourteen days after that. The reason for this is principally the question raised in paragraph 7 of the Request for Further Information served by the First to Fifth Claimants and adopted in our Request. For the avoidance of doubt in case you have not yet received this Request it reads as follows:-

“Do the Defendants contend that the Claimant’s rendition and detention was lawful under any of the alternative allegedly applicable laws identified in the Defendants Defences (cf. paragraphs 109 to 112). If so, please give full particulars of such laws as are relied upon so that the Claimants can plead to them in Reply”.

It is unlikely that our client will be seeking to raise any new issue in any Reply which is served and therefore your clients will not be prejudiced by consenting to the extension of time sought for service of the Reply particularly since it should be possible to deal with this before the next case management conference. We cannot therefore understand why you are making such an issue of our request.

We await hearing from you as to whether you are now prepared to consent to the extension sought.

Yours faithfully

CHRISTIAN KHAN
Ext 519

FAO: David Mackie
Treasury Solicitors
One Kemble Street
DX: 123242 Kingsway
By email also

26th February 2010

Dear Madam

Bisher Al Rawi and Others v The Security Service and Others
Binyam Mohamed and the Security Service and Others

We write further to the forthcoming CMC in these proceedings which, we understand, is now to be listed for 22-23 April 2010.

1. Our clients do not intend to serve Replies at this stage. We do not consider that these would serve any useful purpose at present. We will review this as your clients complete disclosure;
2. We do not consider that your clients' approach to the Statement of Issues was constructive. Your revised draft is in substance largely a complete re-draft although they were very clearly directed to use our draft as a starting point to be annotated. In these circumstances we invite your reconsideration of the original draft and suggest that you either accept the same or, where you have alternative formulations or additional issues you explain in each case why the changes you are suggesting are necessary in order to accurately reflect the core issues between the parties;
3. In an attempt to achieve some substantial progress in relation to certain core issues we serve herewith a Request for Further Information. Please confirm that your clients will provide the answers sought within 28 days. You will see from the Request that we are also seeking specific disclosure of certain categories of documentation at this stage (re Security Service guidance and Witness B's conduct). If your clients do not agree to answer the Request and provide the disclosure sought we shall seek an Order from the Court at the CMC;
4. We have noted in the recent Foreign Office disclosure that an odd and inconsistent approach to redaction appears to be being taken. On occasion the same documents are redacted in different places. On other occasions our clients' names appear to be redacted. Please set out in detail what policy is being followed by your clients in the redaction process. Again if necessary we will seek an Order from the Court at the CMC;

5. We remain very concerned at the pace and substance of the disclosure process being adopted by your clients and note that there is still no application to extend time for completion of standard disclosure. This too is a matter which will of course have to be addressed at the CMC.

Yours faithfully

Irène Nembhard
Birnberg Peirce & Partners

cc: Jennie Cornelius, Clerk to Mr Justice Silber
Joanna Bateman, Treasury Solicitors;
Darren Samuels, Treasury Solicitors;

3 March 2010

LT91601F/DSS/1F

LC.SK.J0215006

Joanna Bateman/Darren Samuels/David Mackie
Litigation and Employment Group
Treasury Solicitor
DX 123242 KINGSWAY

By e-mail & DX

2nd letter

Dear Sirs

Martin Mubanga v Security Services and others

We write further to our letter of the 26th February enclosing a Request for Further Information. We confirm that depending on your response to paragraph 7 of the Request for Further Information adopted in our Request we may need to serve a Reply before the next Case Management Conference. We therefore maintain our application for an extension of time.

Subject to this we wish to adopt the same position as set out in the letter of the 26th February from Birnberg Peirce & Partners and will also seek an Order should there not be a satisfactory response and disclosure within 28 days after service of our Request for Further Information. We also adopt the other points made regarding the pace and substance of the disclosure process, the lack of an application to extend time for completion of standard disclosure and the extensive nature of the redactions made to the documents which have been disclosed. We believe it is apparent on the face of the redactions that they have been made for reasons other than the protection of national security.

We await hearing from you.

Yours faithfully

CHRISTIAN KHAN
Ext 519

c.c. Birnberg Peirce, Leigh Day & Co



Leigh Day & Co
Only by e-mail

Birnberg Pierce
Only by e-mail

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Please Quote: LT91601F/DSS/1F

Your Reference:

08 March 2010

Dear Sirs

**Bisher al Rawi and others v Security Service and others. HQ08X01180/ HQ08X01416/
HQ08X01413/ HQ08X01686/ HQ08X03220.**

I refer to your letter of the 26th February 2010 in which you indicate that you do not intend to serve Replies at this stage. I note that the letter was copied to the Clerk to Mr. Justice Silber. I will revert in detail but wish to deal with this aspect first. I do not think it helpful or constructive to copy letters of this kind to the Judges clerk and, unless informed otherwise on his behalf, apart this letter I do not propose to trouble the Judge with my client's substantive response.

Yours faithfully

Darren Samuels
For the Treasury Solicitor

CC Jennie Cornelius

David Dunleavy – Head of Division
David Mackie – Team Leader



Sheila Keddle

From: Louise Christian
Sent: 10 March 2010 14:21
To: Darren Samuels; Joanna Bateman; David Mackie
Cc: Sheila Keddle; 'Sapna Malik'; Irene Nembhard
Subject: RE: Al Rawi PIR test CMC 22 April

Dear Sirs

We confirm that the Claimants agree the test set out in Mr Mackie's eighth witness statement subject to your expressly confirming that it is the serious harm public interest immunity test.

We look forward to hearing from you on this.

This letter is sent on behalf of all the Claimants solicitors

Yours faithfully

Christian Khan

Louise Christian
CHRISTIAN KHAN
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Birnberg Peirce
DX57059 Camden Town

Leigh Day & Co
DX 53326 Clerkenwell

Only by e-mail

18 March 2010

Dear Sirs

**Bisher al Rawl and others v Security Service and others
Binyam Mohamed v Security Service and others**

I write further to the letter of 26th February from Birnberg Peirce. I am assuming from the header that letter was sent on behalf of Binyam Mohamed as well as Bisher Al Rawi and Others and I have therefore addressed this letter to Leigh Day and Co as well. Please do let me know if I am wrong about that. I have also copied this letter to Christian Khan Solicitors as they have indicated by letter dated 3rd March that they adopt the position set out in your letter.

1) Replies

I note that you state your clients do not intend to serve Replies at this stage. I further note that you have not replied to my letter of 24th February, which requested a detailed explanation of (a) why your clients are unable to plead to the revised Defences; and (b) why this point is being taken for the first time 4.5 months after service of those pleadings

The service of Replies has been part of the orders made at CMCs since the end of July last year. At no point until now have any Claimants told the Court that they did not intend to serve one. Indeed, you sought further time to do so at, for example, the CMC on the 14th of December 2009. In a case of this complexity, where the Particulars and Defences cover such a huge range of allegations, it would be unusual as well as unhelpful for you to fail to set out the Claimants' responses to the positive contentions contained in the Defences. The Defendants and the Court are entitled to know where the real disputes between the parties lie.

Further, as you are aware, the representatives for Mr Mubanga have indicated that they will be able to plead to and serve Replies to the Defences, save that they have requested a short delay whilst they await a response regarding one discrete issue.

David Dunleavy – Head of Division
David Mackie – Team Leader

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Please Quote: LT91601F/DSS/1F

Your Reference:

In the circumstances my clients consider that the Replies should be served within a short period. If you do not file the Replies my clients will seek an order from the court at the CMC.

2) Statement of Issues

I do not accept that our comments represent a complete re-draft of the statement of issues. The task undertaken by our Counsel was hugely time-consuming. They have endeavored to weave in your drafting, whilst filling in the very large number of gaps and addressing what appeared to be a rather one-sided and contentious approach which characterised your clients' document.

By refusing to put in Replies and refusing to engage with the List of Issues, your clients seem determined not to help the Court or the Defendants to know what is really in issue in the case.

Once you have filed your Replies I propose you then make the consequential comments on our version of the List as Issues as was originally proposed in our letter of the 23rd December 2009. If you do not agree this approach my clients will seek an order from the court at the CMC.

3) RFI

My clients will respond to your RFI within 56 days of this letter.

4) Inconsistent redactions

You state recent Foreign Office disclosure appears to be odd or inconsistent in the approach taken to redactions. I appreciate that this would be a cause for concern and it is no less a concern for my clients. Please provide details of all or any such examples you have identified so that my clients may review and resolve any inconsistencies.

Yours faithfully



Darren Samuels
For the Treasury Solicitor

CC Christian Khan

Christian Khan

Only by e-mail

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Your Reference:

18 March 2010

Dear Sirs

Martin Mubanga v Security Services and others

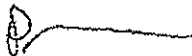
I write further to your letters of 26th February and 3rd March. I note that you adopt the position of Bimberg Pierce and I have sent you my response to that letter.

Turning to your request for a further time extension to serve your Reply until after my client has served a response to your RFI, my clients do not consent to a further extension for service of your Reply. Your client has failed to address the issues raised in my letter of the 24th February. It appears clear that you are in a position to file a Reply save that you state there remains an issue over paragraph seven of the RFI.

My clients will respond to your RFI within 56 day of this letter. However, they do not accept that it is necessary for you to await this response before serving your Reply and, if necessary, we will seek an order for service at the forthcoming CMC.

You indicate that it "is apparent on the face of the redactions that they have been made for reasons other than the protection of national security". Please provide details of these redactions.

Yours faithfully



Darren Samuels
For the Treasury Solicitor

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Please Quote: LT91601/A6

Your Reference:

29 March 2010

Bimberg Peirce
Leigh Day and Co
Christian Khan
Only by e-mail.

Dear Sirs,

Bisher al Rawi and others v Security Service and others

I refer to my correspondence of the 18th of March and should be grateful to receive your replies. Specifically:

- 1) I should be grateful if you would confirm when you will serve replies?
- 2) Please provide any detail of the inconsistent redaction that you have referred to.

Please note that our fax number has changed as above and that our reference number has altered slightly.

Yours faithfully

Darren Samuels
For the Treasury Solicitor

Birnberg Peirce

Christian Khan

Leigh Day & Co

Only by e-mail

30 March 2010

Dear Sirs

Al Rawi and others v The Security Service & Others

I refer to the PIR correspondence to date. These being my letters dated the 8th February and 11th March as well as the e-mail from Louise Christian of 10 March and the letter from Leigh Day of the 15th March.

I note that the e-mail of the 10th March from Louise Christian stated that it was sent on behalf of the Claimants. The letter from Leigh Day of the 15th March does not state it is sent on behalf of all of the claimants and thus I take it that it was not.

In the e-mail from Louise Christian she indicated the Claimants "agree the test set out in Mr. Mackie's eighth witness statement subject to your expressly confirming that it is the *serious harm public interest immunity test*" (My italics)

The letter from Leigh Day states "we confirm our agreement that the relevant PIR test to be used is the *serious harm public interest test* set out in paragraph 44 of the 8th witness statement of David Mackie." (My Italics)

Paragraph 44 of the 8th Witness statement of David Mackie states:

David Dunleavy – Head of Division
David Mackie – Team Leader

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Your Reference:



"I confirm that the test which the Defendants have adopted (and will continue to adopt) in conducting the PIR is the PII test of "substantial harm" or "real damage" as adopted by the House of Lords in *R v. Chief Constable of West Midlands Police, ex parte Wiley* [1995] 1 AC 274"

Thus the paragraph does not use the phrases "serious harm public interest test" or "serious public immunity test". To avoid this becoming an issue late in the day I would once again ask whether all of the Claimants agree the test as set out in paragraph 44 of DM8?

Yours sincerely

Darren Samuels
For the Treasury Solicitor

31 March 2010

LT91601F/DSS/1F

LC.SK.J0215006

Darren Samuels
Litigation and Employment Group
Treasury Solicitor
DX 123242 KINGSWAY

By e-mail & DX

Dear Sirs

Martin Mubanga, Al Rawi and Others v Security Services and others

We are writing on behalf of all the Claimants solicitors in response to recent letters received from yourselves.

We are preparing a witness statement in support of an application for a split trial with liability being determined as a preliminary issue and an application for directions to be made by the Court at the forthcoming hearing on the 22nd April. This will be served as soon as possible.

Replies to Defences are not required under the Civil Procedure Rules. The Claimants are all agreed they will not be serving Replies in these proceedings.

We do not consider it proportionate or sensible to deal with issues of quantum at this stage. In light of our application for a split trial, we do not propose to answer your Requests for Further Information regarding the Schedules of Loss.

In relation to our objections to the redactions we confirm that we will prepare comprehensive documents setting out the inconsistencies and inaccuracies and will serve these on you by the 15th April.

In relation to the Public Interest Review Test we are puzzled as to why you continue to insist on a formulation of "substantive" harm as opposed to "serious" harm. We note that "substantive" harm was the language used by two of their Lordships in *R v Chief Constable ex parte Wiley* [1995] 1 AC 274 (see Lord Templeman at 261 and Lord Lloyd of Berwick at 308). However, we note that the "serious" harm test has been endorsed in *R (Binyam Mohamed) v SSFCA* [2009] EWHC 152 at paragraph 34(ii), and subsequently by Mr Justice Silber in *R (Al-Sweady) v SSD* [2009] EWHC 1687 at paragraph 34(iii). Moreover, Mr Mackie has himself stated that your clients consider that:

"in the context of national security and international relations, the test that is being used, namely harm to the public interest, produces the same result as the test of serious harm or real damage to the public interest, which is the first part of the test applied in conventional PII" (Sixth Witness Statement of David Mackie, paragraph 4).

We invite you therefore to confirm that you will be adopting the serious harm test.

We look forward to hearing from you in relation to the Public Interest Test as soon as possible in light of paragraph 13 of the Order of 14 December 2009.

Yours faithfully

CHRISTIAN KHAN
Ext 519

c.c. Joanna Bateman/David Mackie
Sapna Malik, Irene Nembhard