

IN THE CENTRAL CRIMINAL COURT

Applicant

IN THE MATTER OF AN APPLICATION FOR A PRODUCTION ORDER

WEST MIDLANDS POLICE

- and -

CHRISTOPHER JOHN MULLIN

Respondent

WITNESS STATEMENT OF MICHELLE STANISTREET

I, **MICHELLE STANISTREET**, of the National Union of Journalists, Headland House, 72 Acton Street, London, WC1X 9NB, **WILL SAY:**

1. I am the elected General Secretary of the National Union of Journalists (NUJ) and have been since 2011. Prior to this, I was the Deputy Secretary of the NUJ and I worked as a journalist for ten years at the *Sunday Express* newspaper as a feature writer and books editor. I was the NUJ Mother of the Chapel at Express Newspapers and in 2007-8 I was the union's president.
2. I am making this statement in support of Chris Mullin's resistance to the application by West Midlands Police for a Production Order pursuant to paragraph 5, Schedule 5 of the Terrorism Act 2000 (TACT 2000).
3. I make this statement from my own knowledge or from information given to me by others, which I believe to be true. Where facts are not within my knowledge, I have stated the source of my information and belief.

4. I do not know Chris Mullin other than by reputation as an investigative journalist and author, and the knowledge he is a longstanding NUJ member.
5. I have read the Application and the supporting witness statement of DC Darren Sutton dated 26 November 2021 and wish to make the following comments.
6. The NUJ is a trade union which has its Code of Conduct and its commitment to ethical practice at its heart. The union's Ethics Council is a key part of our democratic structures, and we run an Ethics hotline to enable journalists to access advice and support. Established in 1936, and one of the world's oldest journalistic codes, the NUJ Code of Conduct is embedded in our rule book and it is made clear to journalists that in joining the NUJ they are signing up to abide by the Code.
7. A core principle of the NUJ Code of Conduct is the duty and responsibility of a journalist to protect confidential sources. Whistle-blowers and sources need to be able to come forward and share information they believe the public should know about, in the certain knowledge that their identities will be protected by the journalist to whom they have entrusted information.
8. The NUJ Code of Conduct makes clear that 'a journalist protects the identity of sources who supply information in confidence and material gathered in the course of her/his work' and that a journalist 'resists threats or any other inducements to influence, distort or suppress information'.
9. Indeed all codes of conduct include clauses on the need for journalists to protect confidential sources. The International Federation of Journalists, which represents over 600,000 journalists around the world, states in its Global Charter of Ethics for Journalists: "The journalist shall observe professional secrecy regarding the source of information obtained in confidence."
10. In the UK the newspaper industry's Editor's Code of Practice also affirms this, stating: "Journalists have a moral obligation to protect confidential sources of information."

11. Professor Chris Frost, who chairs the NUJ's Ethics Council, has said of this principle: "Deontologists say that the rightness of an act doesn't depend on its motives or consequences but purely on the nature of the act itself. You are obliged to keep a promise by the very fact that that is what defines a promise: it is a pledge one keeps regardless of circumstance or consequence. Deontologists would say that it is no good promising to keep a contact secret and then telling a court, simply because to refuse to do so would mean a jail sentence. If you promise someone confidentiality, you must stick by that."
12. Throughout our history the NUJ has steadfastly stood by members who refuse to compromise this fundamental principle of source protection. We have also consistently campaigned against and intervened to push back against any legislative change that would serve, directly or indirectly, to undermine the ability of journalists to protect their sources, discharge their responsibilities, and work safely.
13. It was an NUJ-backed case that established the journalists' fundamental "right to protect" their confidential sources in European human rights law. In 1996 Bill Goodwin, a young reporter on a business magazine, *The Engineer*, won a landmark case against the UK government at the European Court of Human Rights. He had been fined for committing a contempt of court when the Judicial Committee of the House of Lords ordered him to identify the confidential source of a story and he refused to do so. In its eventual ruling, the European Court of Human Rights made clear the duty to protect sources had a legal basis as well as being a moral duty: "Protection of journalistic sources is one of the basic conditions for press freedom ... without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest. As a result the vital public watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected." This case has formed part of the training for reporters on journalism training courses ever since.
14. Since then, there have been many other examples where the NUJ has supported journalists refusing to yield to police pressure for them to reveal their sources.

15. In 1999, Ed Moloney, Northern Ireland Editor of the Sunday Tribune, stayed silent as the state tried to get him to hand over notes of an interview with a loyalist paramilitary accused of murder. The case ended up at the High Court in Belfast, where the judge overruled the previous order for Ed to give up his notes to the police.
16. It took a stressful seven year battle before freelance NUJ member Robin Ackroyd won his case against Mersey Care NHS Trust in 2007 – after he had refused all those years to say who gave him information on the mistreatment of Moors Murderer Ian Brady in Ashworth high security hospital that formed part of an article in the Daily Mirror.
17. In 2008 journalist Shiv Malik was ordered to hand the police source materials relating to a book he was writing on terrorism. A judicial review, which was supported financially by the NUJ and Times Newspapers, ruled that the original order was too broad in its scope. Under a revised order, Shiv Malik had to hand over some of his source material, but under far more defined terms and in a way that enabled him to protect confidential sources.
18. The NUJ also supported freelance videographer Jason Parkinson to fight a production order application served on him and several broadcasters by Essex Police in 2011, after his coverage of the Dale Farm eviction, an Irish traveller site at Cray's Hill, Essex that was forcibly evicted in October 2011 by riot police. The decision at Chelmsford Crown Court to make the production order was overturned after the High Court heard that the orders were 'an excessive, unlawful and disproportionate intrusion into the media's freedom of expression under Article 10 of the European Convention on Human Rights'. The case raised broader concerns over the increasing strategy of the police to seize footage of public disorder as a convenient way of accessing evidence for potential legal cases.
19. In 2018, investigative journalists and NUJ members Trevor Birney and Barry McCaffrey were arrested, and their homes and offices searched, for allegedly stealing a confidential report from the office of the Police Ombudsman for Northern Ireland. The document in question had been leaked to them by an anonymous source, and it contained investigative material about a loyalist killing of six innocent catholic men in

Loughinisland, County Down, in 1994 – including proof of an existing connection between the gunmen and the police. Following a case backed by the NUJ, in May 2019, the High Court in Belfast quashed the warrants against them, and the court's judgement in July 2020 made clear that the journalists were only rightfully protecting their sources, stating: "We see no overriding requirement in the public interest which could have justified an interference with the protection of journalistic sources in this case."

20. Such cases are challenging and always personally very stressful and difficult for the journalists involved. However these are not simply individual matters. NUJ members are acutely aware that they have a responsibility towards the broader journalistic community as well as to the sources they have promised confidentiality to. Betraying an individual source would not just be a failure to uphold a principle rightly seen as sacrosanct by journalists, it would serve to deter others from coming forward or trusting journalists in the future. This is what prompts their commitment to protect their sources and the material they have gathered in the course of their work.
21. Journalists are not and cannot be seen as instruments of the state – their work should not be used by police as a short cut in their investigations or exploited as fishing expeditions for information. To do so would undermine press freedom and the integrity of reporting and jeopardise trust in journalists and journalism.
22. It would also risk compromising the safety of journalists, and their ability to do their jobs properly and freely, particularly in public order situations and in the challenging context of investigative reporting where trust and integrity is vital. That risk is particularly significant currently given the context of rising incidents of harassment, abuse and attacks on journalists throughout the UK. It is that backdrop which prompted the UK government to announce the launch of the National Committee for the Safety of Journalists in 2019, which it went on to establish in July 2020. I serve as the NUJ's representative on that committee. In launching the committee, then government ministers John Whittingdale and Victoria Atkins said in a joint statement: "We are committed to making the UK a country in which journalists are kept as safe as possible

to undertake their vital work. This is a critical challenge for the future of this country. We stand ready to meet it.”

23. The cultivation of sources is essential for journalists and for the public. It forms a basic tool of the trade in this vital work. If journalists could not promise anonymity to sources and keep that solemn promise, the diversity of our news and its reliability would be weakened.
24. If successful the case brought by West Midlands Police against NUJ member Chris Mullin would clearly compromise this core principle which is why it is his ethical duty as a journalist and NUJ member to resist any pressure to breach his promise of confidentiality. This is why the NUJ stands four-square behind him in backing this case. It cannot be in the interests of justice for journalistic principles to be betrayed, trust in journalism to be impaired and press freedom to be weakened.

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed.....



MICHELLE STANISTREET

Date 31 January 2022

