

B E T W E E N : -

(1) PRIVACY INTERNATIONAL

(2) LIBERTY

(3) IAN HOSEIN

(4) BEN WIZNER

Claimants

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

CLAIMANTS' CASE MANAGEMENT SUBMISSIONS

Pursuant to paragraph 2 of the Order of the Tribunal dated 31 July 2026

A. INTRODUCTION AND SUMMARY

1. The Tribunal has listed a case management hearing on 17 September 2026 to consider the future case management of these claims and the claim brought on 13 July 2026 by Apple Inc (“**Apple No. 2**”). Both sets of proceedings concern technical capability notices (“**TCNs**”) under s.253 of the Investigatory Powers Act 2016.
2. The fact that Apple was issued with a TCN covering the provision of end-to-end encryption was originally reported in 2025. The existence of the original notice was not only publicly reported, but was specifically confirmed in a number of statements by public officials. The original TCN has since been withdrawn, and Apple has discontinued the initial proceedings by which it challenged that measure. Apple has also publicly announced that it no longer provides relevant end-to-end encrypted services to UK users.

3. Subsequently, it has been widely reported that Apple has been issued with a further TCN, the purpose of which remains to permit backdoor access to the encrypted data belonging to the users of Apple's end-to-end encryption service (albeit, in its revised form, only those using the functionality in the UK). That position is confirmed by the existence of the further proceedings now brought by Apple.
4. However, the existence of the revised TCN continues to be neither confirmed nor denied ("NCND") by the Respondent. That is untenable and undermines the principle of open justice. In reality, the NCND position that is maintained by the Respondent is wholly unnecessary where, in light of the extent of the reporting and public commentary on the TCN, any interested person is already aware of its existence, as well as its purpose and the broad thrust of its terms. Whilst the Respondent may prefer that the public not know about interference with end-to-end encryption, that horse has bolted.
5. Both sets of proceedings before the Tribunal concern issues of public importance. They should be resolved (insofar as possible) in OPEN and public proceedings, based on actual facts which are disclosed to the Claimants. Despite the overlap between these claims and the claim in the Apple No. 2 proceedings, the interests of the Claimants are separate and distinct from those of Apple. The Claimants are actual users of Apple's Advanced Data Protection ("ADP") feature: the functionality that is affected by the TCN.
6. The Tribunal is therefore invited to determine the correctness of the NCND claim in respect of the revised TCN that is the subject of the Apple No. 2 proceedings (alternatively, to list a further hearing to determine that issue). If the Tribunal finds that the NCND position is unsustainable, directions should be given to ensure further opening up in the proceedings.
7. If the Tribunal does not determine the NCND issue in the Claimants' favour, it should nonetheless revisit the assumed facts. It is necessary and appropriate to adopt further and additional assumed facts (in the alternative to the existing assumed facts), which take account of the publicly reported position. The further assumed facts should permit the Claimants to challenge a TCN that has territorial limitations of the kind that apply to the notice that is the subject of the Apple No. 2 proceedings and any other significant feature of the revised notice.

8. The Tribunal is also invited to consider the management of the two sets of claims. The Tribunal has ordered that these proceedings are to be case managed, and the claims heard, alongside the Apple No. 2 proceedings, subject to its consideration of any objection from the Claimants. The Claimants do not object. Indeed, they support this sensible approach.
9. The Respondent has also indicated that she considers the trial listing in the present claims (currently December 2026) to be infeasible and that in any event a longer time estimate is needed. If the Tribunal considers it necessary and appropriate to relist the substantive hearing, the Claimants do not oppose that course, providing that it permits these claims to be heard alongside the Apple No. 2 proceedings.

B. THE NCND ISSUE

10. The Tribunal is invited to determine the issue of whether the Respondent's NCND position is sustainable, alternatively to list a further hearing for that purpose.

(1) Relevant legal principles

11. The assertion of NCND must be subjected to careful and rigorous scrutiny. As the Court of Appeal recognised in *Mohamed and CF v Secretary of State for the Home Department* [2014] EWCA Civ 559, NCND is “not a legal principle” and is a “departure from procedural norms relating to pleading and disclosure”: Maurice Kay LJ, at [20]. As the Court went on to explain: “[i]t requires justification similar to the position in relation to public interest immunity (of which it is a form of subject). It is not simply a matter of a governmental party to litigation hoisting the NCND flag and the court automatically saluting it. Where statute does not delineate the boundaries of open justice, it is for the court to do so... a total denial offends justice and propriety”.
12. That passage was cited by the High Court (Bean J, as he was then, at [38]) in *DIL & Ors v Commissioner of Police of the Metropolis* [2014] EWHC 2184 (QB). Summarising the principles relevant to the protection of the identity of informants (at [39]), the Court recognised that it is for the “court to balance the public interest in the NCND policy against any other competing public interests which may be applicable”, citing *Mohammed and CF*. The Court departed from the NCND position asserted by the Government in respect of

two informants, where, in both cases, the State had already itself acknowledged their Covert Human Intelligence Source (“CHIS”) status.

13. Any assessment of NCND must take account of the realism of the Respondent’s position. The Tribunal should not be asked to endorse a pretence at NCND or “*to emulate the 15th-century pope who issued a papal bull against Halley’s comet*”. This is something a Court “*will not*” do: **Attorney-General v Observer Ltd** [1990] 1 AC 109, 223 per Bingham LJ.
14. It is for the “*Court to decide and assess whether the public interest in maintaining NCND is established on the facts of any case in light of the potential harm or damage to national security and whether it is outweighed by any other competing public interests which are applicable*”: **Beth v Security Service** [2024] UKIPTrib 3, per Lieven J and Judge Rupert Jones at [15]. As the Tribunal recognised in **Beth**, the appropriate standard does not involve a rationality review (and the Tribunal has therefore clarified the dicta in **Al-Fawaz v Secretary of State for the Home Department** [2015] EWHC 166, per Burnett LJ at [77]).
15. In **Beth**, the Tribunal listed a preliminary hearing to determine the question of whether the identity of a CHIS should be protected. The Tribunal recognised that the proper approach requires the Tribunal to consider and determine whether lifting NCND would “*cause prejudice to national security*”. Whilst weight will be given to the Respondent’s assessment (see e.g. **R (Begum) v Special Immigration Appeals Commission** [2021] AC 765 and **Various Claimants v Security Service (the “Vetting Case”)** 2022 UKIP Trib3 at [47]), the issue is nonetheless one for the Tribunal, which must consider the extent to which information can already be ascertained or has already been disclosed, including by the Government itself (see, e.g. **DIL** above).
16. The Tribunal is already familiar with how it was gravely misled in **Beth**. It was not told about critical facts and evidence relating to NCND, and as a result initially reached the wrong decision on NCND. **Beth** confirms that it is important that: (1) NCND is actively and openly considered and ruled on by the Tribunal; (2) before it does so, the Tribunal ensures that it has received full disclosure by the Respondent of all material that might tend against a successful claim to NCND, and that material has been tested in OPEN, IN PRIVATE and CLOSED as necessary.

17. Achieving fairness, and the proper hearing and consideration of proceedings, represents one of the core functions of the Tribunal. That function and duty sits “*alongside and is parallel to the need to secure that sensitive information is not disclosed*” (*Beth*, at [47]). The Tribunal is required to ensure that its proceedings are conducted fairly, including in accordance with Article 6 ECHR. These principles are also set out in the Investigatory Powers Tribunal Rules 2018 (“**Rules**”):

- 17.1. The Regulation of Investigatory Powers Act 2000 (“**RIPA**”), s.69(6), requires the Tribunal to have regard to both: (a) the need to secure that matters which are the subject of proceedings, complaints or references, brought before or made to the Tribunal are “*properly heard and considered*”; and (b) the need 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*”.
- 17.2. Rule 7(1) of the Rules enshrines the obligation in RIPA 2000, s.69(6)(b), as a general duty. The Tribunal may not disclose to the complainant or any person other than Counsel to the Tribunal the categories of information listed in Rule 7(2). The Tribunal may nonetheless direct the Respondent, following receipt of submissions, “*(a) to disclose to the complainant documents or information supplied to the Tribunal by the respondent, or (b) to provide to the complainant a gist or summary of such documents or information*”: Rule 7(6). The Tribunal may give appropriate directions to the Respondent in the event that it does not do so, having been put to the election: Rules 7(6) and (7).
- 17.3. Rule 10(1) provides that the Tribunal is not under a duty to hold a hearing, but may do so, including in the absence of a party. Rule 10(2) provides that any such hearing may be held wholly or partly in private. However, Rule 10(4) of the Tribunal’s Rules provides that when exercising its discretion to hold a hearing, the Tribunal “*must endeavour, so far as is consistent with the general duty imposed on the Tribunal by rule 7(1), to conduct proceedings, including any hearing, in public and in the presence of the complainant*”.

(2) The Respondent's ongoing assertion of NCND

18. The Tribunal has previously declined to list an OPEN hearing to determine the issue of NCND but indicated that the issue would be kept under review. For the reasons of principle set out above, and for the reasons set out below, this is an appropriate time for review.
19. The fact that the Respondent has issued a TCN to Apple, and the purpose of the notice, has long been the subject of considerable and widespread reporting.
- 19.1. The existence of the original TCN was widely reported and debated. News of the TCN was first reported by the Washington Post on 7 February 2025. The publication reported that the Home Secretary had served Apple with a TCN under the 2016 Act, s.253, and that the TCN targeted Apple's ADP service. That position was thereafter reported in a range of media outlets including (amongst many others) the BBC, the Financial Times, the Guardian, the Times and Forbes.
- 19.2. The media outlets reported that the original TCN sought to compel Apple to create a secret backdoor to the encrypted ADP data with worldwide effect, which would allow the UK government to access the data of UK and non-UK Apple users that used ADP (with the relevant announcement specifically confirming that Apple has "*never built a backdoor or master key to any of [its] products or services and never will*").¹ Thereafter, Apple itself publicly announced its decision to withdraw its ADP services for UK-based Apple users. The issue was the subject of widespread debate, both in the UK and abroad.
- 19.3. The original TCN was not only widely reported, but its existence was specifically confirmed to the Times newspaper by "*Home Office sources*". It was also the subject of published comment by both the US Director of National Intelligence and the US President,² i.e. two of the most prominent representatives of the UK's leading intelligence partner and a fellow member of the Five Eyes group. See the Tribunal's judgment dated 7 April 2025 (IPT/25/68/CH) ("**April Judgment**").

¹ <https://support.apple.com/en-gb/122234>

² <https://www.ft.com/content/41edae4b-0b04-4c43-8300-ad6ef9de0711>

19.4. The existence of the original TCN was put beyond doubt by the position adopted by other providers of end-to-end encrypted services. By an application dated 10 June 2025, WhatsApp invited the Tribunal to grant it permission to intervene in these proceedings. In its evidence in support of that application,³ WhatsApp confirmed in a witness statement verified by a Statement of Truth that it had “*not received [a TCN] from the UK government to date*”. A similar confirmation was given by Google. The willingness of those organisations to confirm that they had not received a TCN made it all the more clear that Apple (which was clearly entirely unable to give any such confirmation and could only NCND) had received such a notice. Indeed, that was the only and obvious inference.

20. On 19 August 2025, the US Director of National Intelligence (Tulsi Gabbard), posted the following on X (formerly Twitter), confirming the existence of the original TCN:

“Over the past few months, I’ve been working closely with our partners in the UK alongside @POTUS [Trump] and @VP [Vance] to ensure Americans’ private data remains private and our constitutional rights and civil liberties are protected... As a result, the UK has agreed to drop its mandate for Apple to provide a ‘back door’ that would have enabled access to the protected encrypted data of American citizens and encroached on our civil liberties” (emphasis added).

21. Ms Gabbard also spoke to the Financial Times on the record. An article dated 19 February 2025, entitled “*UK has ‘agreed to drop’ demand for access to Apple user data, says US*”, reported that, as part of an agreement made between US and UK officials, the UK had “*retreated on its controversial demand for Apple to provide a “back door” to encrypted customer data after pressure from the Trump administration, ending a diplomatic row between London and Washington*”. Ms Gabbard told the Financial Times that the UK had agreed to drop its demand that Apple enable access to the “*protected encrypted data of American citizens*”.

22. The Financial Times article also reported that the UK had agreed to rescind the TCN, but (at that stage) had yet to formally withdraw it. It noted that it was “*not immediately clear*

³ See further the witness statement of Mr Will Cathcart, the Head of WhatsApp, dated 9 June 2025, ¶17.

whether Britain would issue a new notice to Apple with different terms to try to avoid implicating US citizens' data", albeit that a "person close to the Trump administration argued that would not be faithful to the agreement, saying any back door would weaken protection for US citizens". A report from the Times on the same date (19 August 2025) stated that the newspaper understood that a TCN would "*still apply to British users, and therefore the ADP is unlikely to be reintroduced in the UK*" - where ADP remains unavailable in the UK at the time of writing. The media reporting on the 19 August 2025 therefore made clear that, whilst the original TCN was due to be withdrawn, there was a real possibility that the UK would reissue a further TCN, the scope of which would be revised so that it would apply only to UK users of Apple's ADP service.

23. That is precisely what has now occurred. As Ms Gabbard envisaged, the original TCN was withdrawn (and Apple thus withdrew its first claim). As media outlets predicted, it has also been reissued – albeit in terms that reduce its territorial scope to the UK.
24. Like the original TCN, the existence of the further order, as well as its revised scope, has been widely reported.⁴ To take one example, on 3 August 2026, the Financial Times published an article entitled "*Apple launches legal challenge to the UK attempt to access encrypted user data*".⁵ The article reported that Apple has "*launched a new legal challenge against the UK's latest attempt to create a 'backdoor' to access encrypted customer data, a year after the Home Office agreed to drop a previous order following a row with Washington*". The reporting explained the revised scope of the TCN issued to Apple, noting that "*the UK retreated from its original demand for a backdoor that allowed access to data from UK and US customers last year*" but that the UK authorities "*subsequently issued a new 'technical capability notice' to Apple that did not apply to American users...*".
25. In reality, the NCND position adopted by the Government in respect of the TCN has become farcical. No person who would wish to harm the national security of the United Kingdom can be in any doubt that Apple have received a TCN, nor can they be ignorant of

⁴ For examples of the public reporting on the further TCN and the Apple No. 2 proceedings, see further: <https://www.ft.com/content/2cc9c96a-0e5b-4c33-a95a-3d11072a145c?syn-25a6b1a6=1> (Financial Times); <https://www.bbc.co.uk/news/articles/cvg0kk3ek2vo> (BBC); <https://www.theguardian.com/technology/2026/aug/03/apple-legal-challenge-uk-government-data-access> (The Guardian); <https://www.thetimes.com/uk/technology-uk/article/apple-court-battle-home-office-police-data-x8vcbjnjh> (the Times); and <https://www.telegraph.co.uk/business/2026/08/03/apple-launches-new-legal-battle-home-office-backdoor/> (The Telegraph).

⁵ <https://www.ft.com/content/2cc9c96a-0e5b-4c33-a95a-3d11072a145c?syn-25a6b1a6=1>

its revised (UK-specific) scope. The former is confirmed by the existence of the Apple No. 2 proceedings; the latter has been confirmed by the statements made on the record by senior members of the US Government. Were the Tribunal to endorse the ongoing assertion of NCND in such circumstances, it would undermine the legitimate role of a NCND plea.

26. To the best of the Claimants' knowledge, these proceedings – and the related Apple litigation – remain the first involving a challenge to a TCN under the 2016 Act. Consideration of the Respondent's ongoing assertion of NCND, and whether it remains tenable in light of recent developments, is therefore of particular importance where the case is likely to be treated as a precedent. There is therefore a particularly strong public interest in the issues that are before the proceedings in these claims and the Apple No. 2 proceedings being determined, insofar as possible, in open court.

C. CONCLUSION

27. For the reasons above, the Tribunal is invited to determine the issue of whether the Respondent's ongoing assertion of NCND remains sustainable in light of the recent developments in these proceedings, including the revised TCN that has been issued to Apple and the widespread commentary and reporting on the same. If the Tribunal is not minded to determine that issue in the Claimants' favour, it is nonetheless invited to revisit the assumed facts in these proceedings, to provide additional assumed facts (in the alternative to the existing assumed facts) based on the revised scope of the TCN.
28. The Tribunal is also invited to give case management directions. The Respondent invites the Tribunal to revisit the December 2026 listing, which is said to be infeasible. The Claimants do not oppose that course, if the Tribunal thinks it necessary. Depending on the revised listing proposed, and the decision on NCND, the Tribunal is requested to direct the parties to agree revised directions for: (a) the further amendment of the Claimants' Re-Amended Complaint as necessary; (b) further disclosure and opening-up; (c) the exchange of further evidence; and (d) preparation for any final hearing.
29. The Claimants also request the Tribunal's permission to make their existing Re-Amended Complaint and Amended Reply, as well as the witness statements filed on behalf of the

Claimants in these proceedings, available to the public. The Claimants understand that the Tribunal's permission is required, even if those documents are referred to in open court.⁶

30. Finally, pursuant to paragraph 2 of the Tribunal's reasoned order dated 31 July 2026, the Claimants confirm that they do not object to the service of these submissions on Apple.

BEN JAFFEY KC

CELIA ROONEY

ABE CHAUHAN

LEIGH DAY

11 September 2026

⁶ *Lee and Wilkes v Security Service* [2023] UKIPTrib 10.