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Rt Hon Dame Karen Bradley MP
Chair of Home Affairs Committee

By email: homeaffcom@parliament.uk

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Dear Karen,

RE: PROCESS AND GUIDANCE AROUND PUBLICATION OF PROSECUTION INFORMATION

Thank you for your letter of 4 February and the opportunity to support the Committee's Inquiry into the summer disorder. I am glad to assist the Committee in answering your request for advice on the process by which decisions are made about the removal of reporting restrictions, guidance given by the CPS about publishing other investigation materials, and the basis on which this guidance is made. Before turning to your questions, I want to put on record and reiterate my thanks to all those across the criminal justice system who worked tirelessly during the disorder and on the prosecution of Axel Rudakubana. The successful outcomes in court were only possible because of excellent joint working.

Your letter posed several questions regarding CPS advice and guidance on providing information about Axel Rudakubana. These questions were prompted by media coverage following the conviction and sentencing of Rudakubana. As some of this coverage was critical of the CPS, I am grateful for the opportunity to set out our position in writing and to address some of the misunderstandings about our role and about our actions in this specific case.

It may be helpful if I begin by setting out the legal context in which advice was given by the CPS to Merseyside Police regarding the publication of information about the perpetrator of the Southport murders. For the purposes of this letter I have identified three categories of material:

1. Information about the identity of Axel Rudakubana (category 1)

2. Information about the background of Axel Rudakubana, and information about material found at his home, which was potentially relevant to the eventual trial (category 2).
3. Information about the background of Axel Rudakubana which was not relevant to the eventual trial (category 3).

Category 1 material in this case was governed by reporting restrictions. When Rudakubana appeared in the youth court an automatic reporting restriction under section 49 of the Children and Young Persons Act 1933 (CYPA) applied. Section 49 CYPA absolutely prohibits the publication of the name, address or school or any other matter that is likely to identify a person under 18 concerned in the proceedings. The CPS announced the charging decision against Rudakubana shortly after midnight on the 1 August 2024. The CPS did not name Rudakubana in that announcement as this would have circumvented the reporting restriction which is imposed automatically by the law.

Rudakubana was sent to the Crown Court the same day to face trial. Unlike in the youth court where the reporting restriction applies automatically, in the Crown Court the judge has a discretionary power to impose a reporting restriction under section 45 of the Youth Justice and Criminal Evidence Act 1999 (YJCEA). Section 45 YJCEA enables a criminal court to grant anonymity to a defendant, victim or witness under 18 in adult criminal proceedings. In deciding whether to make an order under section 45, the court must balance the interests of the public in the full reporting of criminal proceedings against the desirability of not causing harm to the welfare of the child. The CPS invited Judge Menary KC to impose a reporting restriction for a period of six days while arrangements for the protection of the family were finalised. After considering these and other representations the Judge used his discretion not to impose a restriction. In doing so he said: "Continuing to prevent the full reporting has the disadvantage of allowing others to spread misinformation, in a vacuum."

Category 2 material in this case covered a significant amount of material. This included Rudakubana's previous conviction and the circumstances surrounding it, the referrals made to Prevent, his previous attempt to visit his former school on 22 July 2024, and the circumstances in which ricin and an Al Qaeda manual were later found in Rudakubana's home. The question that arose in respect of this material was whether, if it was disclosed ahead of the trial, such disclosure would prejudice the trial and therefore affect the integrity of those proceedings.

All of the above material was potentially relevant to the eventual trial, but in the immediate aftermath of the offences it was not known whether the prosecution would be allowed by the trial judge to lead that material as evidence in the trial. The prosecution would need to decide whether to apply to adduce the evidence as "bad character". This would require a judicial decision dealing with whether, as a matter of law, the material was technically admissible as evidence, and also whether the admission of it would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

The law on publication of potentially prejudicial material in criminal proceedings is governed by the Contempt of Court Act 1981. Sections 1 and 2 set out the "strict liability" rule, which is that following certain events, including an arrest, and until the conclusion of proceedings, it is a contempt of court to publish anything to the public which creates a substantial risk that the course of justice in the

proceedings in question will be seriously impeded or prejudiced, even if there is no intent to cause such prejudice. This law is subject to a number of defences which were not relevant in this case.

The CPS has published guidance on our approach generally to contempt of court issues: Contempt of Court. I recognise that there are opportunities for reform and note that the Law Commission launched a consultation on this topic last year. However, there are several critical points on contempt, as it currently stands, to which I would like to draw the Committee's attention:

- The laws on contempt apply to individuals, media organisations, policing, other government departments, and the CPS.
- Whether a publication amounts to a contempt can only be known for certain once a court decides on the issue. But in practice judgments have to be made in real time, by those in possession of information, as to whether release of that information will create a substantial risk of serious prejudice to proceedings.
- The CPS has a strong interest in seeking to prevent the release of prejudicial information, since it has the responsibility of conducting the prosecution and wants to ensure that the trial can safely proceed without being delayed or stopped by the trial judge because prejudicial material has been read or seen by the jury ahead of the trial.
- The CPS and the Police are independent of each other and have different responsibilities. Where the police wish to release information in category 2 we will listen to their views, and where appropriate the views of others, as to the desirability of releasing information. If after such exchanges we conclude that release of the information would create a substantial risk of serious prejudice to the trial, we will expect our view to prevail.
- Outside the trial process itself, the power to enforce the laws on contempt rest with the Attorney General, who will, for example bring contempt proceedings against the media if they publish material which infringes the strict liability rule.

In this instance there were two grounds for taking the view that information about the material described above should not be released because of its potentially prejudicial effect:

1. There was a real risk that the background material of Rudakubana's previous conviction, his Prevent referrals, and his previous attempt to visit his former school would be excluded by the judge at trial on the ground of fairness, as being more prejudicial than probative. Publishing information about these matters ahead of trial was potentially a contempt of court therefore because of the risk that the jury would have read about that material and have remembered it, so that a ruling of the judge to exclude the evidence would be undermined.

2. More generally, putting into the public domain significant material which forms part of the prosecution's case opens the prosecution up to an argument from the defence that it has unfairly prejudiced a potential jury ahead of the trial so that the jury cannot come to all the evidence, including that from the defence, with an open mind. This is the underlying rationale for the strict liability rule in the Contempt of Court Act 1981.

We took a very early view that the background material referred to above should not be released, and then later, when the further charges were authorised, we took the same view in relation to the circumstances in which ricin and an Al Qaeda manual were found in Rudakubana's home. On 22 January 2025, I explained our stance. I put out a statement which said:

"Questions have been raised as to why certain information about the Southport case could not be made public earlier. The position taken by the police and the Government on disclosure of information reflected the advice given by the CPS, which was accepted by them. It is important that it is understood why our advice needed to be given.

"In short, releasing that information earlier would have put the trial at risk. As has now become apparent, until Axel Rudakubana pleaded guilty on Monday to all offences with which he was charged, the CPS had been preparing for a full trial. No defence had been served, and so there was the potential that all evidence would be challenged.

"Public reporting of significant information before the conclusion of the trial, including about the actions of the Axel Rudakubana on the day and some elements of his past history would have posed a serious risk to the integrity of the trial and risked undermining justice for the victims and their families. Delivering justice for the victims and their families was and remains our absolute priority and we could not and would not have been prepared to agree to anything to put that at risk."

Category 3 material in this case covered various facts which were not relevant to the eventual trial, in the sense that they were not of evidential value in proving the case against Rudakubana, and therefore publication of the information could not prejudice the trial. This included his place of birth, his residence, his age, and his religion.

The law governing the release of personal information is governed by the UK General Data Protection Regulation and the Data Protection Act 2018. This legislation controls how information is used by organisations, and is subject to exceptions, the most relevant of which in this context is the ability to release information where this is justified in the public interest.

The police were in possession of the above information in Category 3. The CPS recognises that the decision as to the release of this information was solely a matter for the police, given that publication of the information could not prejudice the trial, though we were asked for our views as to release of some of the information.

On 29 July 2024, the day of the offence, the police decided to release information about the suspect's age, place of birth and residence in Banks, near Southport. As far as I can judge, our views as to the release of this information (age, place of birth and residence) were not sought, but clearly it was in the public interest to release the information.

On 31 July 2024, in the late afternoon, CPS Headquarters was informed by Merseyside Police that the police were considering whether to release information about the suspect's religion – and later that evening police sought CPS' advice on a draft press statement which confirmed the suspect's religion.

Colleagues indicated that there were unlikely to be any concerns about the statement, but they would check. Ahead of the press conference taking place, the CPS confirmed via email to Merseyside Police that we had no objections to releasing this information.

I understand that during simultaneous, fast-moving discussions taking place between Merseyside Police and CPS colleagues at a local level, those colleagues, on being asked for advice, expressed a different view to the police as to whether the information should be released – but it was never suggested that this information risked prejudice to the trial. In the event, Merseyside Police decided not to issue anything concerning religion at that stage.

As far as I am aware, this issue was never raised with the CPS again, and no statement was ever made by Merseyside Police about Rudakubana's religion. Had the issue been raised once more with the CPS, I am sure that we would have been clear that we had no issues with the police releasing this information and that ultimately the decision was a matter for them.

With this context in mind, I now turn to the questions raised by the Committee:

Reporting Restrictions

1. *Where reporting restrictions apply as in the Southport case, does the CPS always have to apply to the court for the removal of reporting restrictions, or are there instances in which, for example, the court can itself remove these restrictions?*
    a) *Where the CPS does apply, does this always or usually follow a police request?*
    b) *What is the process for applying for reporting restrictions to be lifted and how long does this usually take?*

The automatic reporting restrictions relating to Rudakubana's identity under section 49 of the CYPA can only be discharged by the court, prior to conviction, under two conditions. The first is where it is appropriate to discharge them for the purpose of avoiding an injustice to the child appearing in the youth court and the second is where the child is unlawfully at large. Neither applied in this case.

Once the case reached the Crown Court the automatic reporting restrictions no longer applied. However, the Judge considered whether reporting restrictions should be imposed under section 45 YJCEA. Our role in these circumstances will be to assist the court with the relevant legal framework and to outline what factors the court should take into account, invariably having consulted the police. As explained above, the judge considered the representations which were made on the question of whether the reporting restrictions should be imposed and made his decision not to impose reporting restrictions.

If reporting restrictions are imposed an application can be made to the Crown Court by either a party to the case or a person directly affected by the reporting restrictions to vary or remove the restrictions. Rule 6.5 of the Criminal Procedure Rules 2020 sets out the process that should be followed. This includes serving notice on the parties in the case and explaining which restriction should be removed or varied and why. This process can happen quickly.

2. *When considering applying for the removal of reporting restrictions, what consideration does CPS give to the risk of misinformation, including on social media, jeopardising trial proceedings?*

As I have explained above, a reporting restriction in relation to section 49 CYPA can only be discharged before conviction on two conditions. The risk of misinformation is unlikely to be relevant to either condition. When considering whether to impose a restriction under section 45 YJCEA the judge is required to carefully balance the principles of open justice against the welfare of the child. The principle of open justice includes the fair and accurate reporting of the proceedings. Therefore, the risk of misinformation can be relevant to this consideration and was considered by the judge in this case. As noted above, the judge decided not to impose reporting restrictions.

3. *Would CPS consider the risk of public disorder to be a legitimate policing purpose for the police to ask for the removal of reporting restrictions?*

There were no reporting restrictions in place following the first Crown Court hearing. Therefore, concerns that the CPS had in the case were not about specific reporting restrictions as to the identity of the defendant but instead about risks of prejudicing the trial through the release of other information. The category 2 material that I have outlined could have caused prejudice.

If the police take the view that placing information in the public domain will reduce the risk of public disorder then that is certainly a legitimate policing purpose. If there is no question of prejudice to proceedings by doing so, then it is a matter for the police to decide whether to take that action. If potential prejudice might arise – such as was the case with the release of category 2 material as I have explained above – then this is an issue that must be resolved between the police and ourselves, weighing where the greater public interest lies.

It was not thought by the CPS, even in the views expressed at a local level, that any category 3 material created a risk of prejudicing the trial. Therefore, the release of that material was a matter for the police who would consider the policing purpose for the release of the material.

Wider Guidance & Decision-Making around Prosecution Information

1. *Is all police investigation material considered prosecution material from the point of charge?*

All material which is to be used in evidence, and all material which might undermine the prosecution case or assist the defence case, can be regarded as prosecution material. However, this does not determine the question as to whether material should be released, albeit this is a highly relevant consideration.

2. *Does the CPS consider the police to have discretion in publishing information from police investigations for a legitimate policing purpose, or does this require CPS approval in all cases?*

If the material is in category 3 then we regard the police as having that discretion and CPS approval is not required.

If in category 2 then the restriction on the publication of material stems from the Contempt of Court Act. The key consideration is whether the publication of material creates a substantial risk that the course of justice will be seriously impeded or prejudiced. As the prosecutor, with knowledge of the evidence in the case and the likely trial issues, the CPS are best placed to provide an assessment as to the risk of prejudice. We would therefore expect our views on the risk of prejudice to be given very careful consideration by the police and where there is a difference of opinion, we would expect our views to prevail.

3. *Is legal advice taken in respect of decisions to release/refuse to release information? Are the lawyers involved in the trial also involved in the question of whether the release of information could prejudice it?*

In relation to material which falls into category 1 this is a matter for the court. Where the prosecution has a view on the removal of reporting restrictions, lawyers would make representations. If those wishing to publish material are unsure whether publication would breach a reporting restriction, we would expect that they would obtain their own legal advice.

In relation to category 2 material, as I have explained above, the key question is whether the publication of material creates a substantial risk that the course of justice will be seriously impeded or prejudiced. We would therefore expect that lawyers at the CPS would be consulted on the risk of prejudice, including those working on the trial, and would expect their views to carry significant weight. The police can seek their own legal advice on whether a publication will amount to contempt. However, this advice would need to consider the risk of prejudice to the trial and given our role and responsibility for conducting the trial, we would expect our advice on that risk to prevail.

4. *Are there times where information is made public at the CPS's own instigation or is it only if a request for information is made (the media protocol refers to information being released if requested but also to it being provided)? If so, what determines which approach is taken? Is making information available on their own websites enough to meet the demands of open justice?*

The CPS may, in consultation (or together) with policing, make public certain information which is not prejudicial at the point a charging decision is made. It would be unusual for the CPS to proactively and unprompted make a further disclosure of any substance prior to trial. Furthermore, any disclosure would be subject to the legal obligations under the laws on contempt and other legal factors outlined in the media protocol.

5. *What was the impetus for the CPS's revision of the media protocol and supporting user guidance? Is the revision considering issues raised by the Southport case?*

The media protocol is nearly 20 years old and as our consultation makes clear, work began in 2019 alongside police partners, media bodies and other stakeholders, to review and update this. The proposed new protocol and user guidance takes account of legislative change, relevant case law, policy developments and the changing media landscape, while continuing to operate within the existing legal frameworks, including those relating to contempt as described above.

6. *Does the CPS work with the police to ensure there is a shared understanding of what prosecution information may potentially jeopardise a criminal trial if published?*

The CPS works with police partners to consider contempt and the risks of jeopardising a trial. The CPS may also alert the AGO if third parties publish material which appears to breach the laws of contempt.

7. *Where a risk to the integrity of a trial has been identified, how is this kept under review as the prosecution progresses and how is it ensured that as much information as can be safely released is still released?*

Decisions about the release of information are usually made at the outset of a case, bearing in mind the considerations that I have outlined in this letter. Once a substantial risk of prejudice has been identified it is unlikely that the risk will diminish or become less relevant as we move closer to trial. There is no formal procedure for review, though if representations are made these will be considered.

I hope the wider context and the answers that I have provided gives the Committee the information it requires and helps correct some erroneous narratives that have developed in the last few weeks.

Yours sincerely

STEPHEN PARKINSON
DIRECTOR OF PUBLIC PROSECUTIONS