IN THE WESTMINSTER MAGISTRATES' COURT

Before

Senior District Judge Goldspring
(Chief Magistrate)

BETWEEN:

THE INTERNATIONAL CENTRE OF JUSTICE FOR PALESTINIANS
(Applicant/Proposed Prosecutor)

V

'A'
(Respondent/Proposed Defendant)

In the matter of an application to issue a summons for private prosecution

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RULING ON APPLICATION FOR A SUMMONS

Mr Brian O'Neill KC, Mr Tom Wainwright and Mr Paul Clark for the Applicant

Mr Peter Wright KC and Ms Natasha Hausdorff for the Proposed Defendant

Introduction

1.This is an application by the International Centre of Justice for Palestinians ("**the Applicant**" or "**ICJP**") for the issuance of a summons against A ("**the Proposed Defendant**") for an alleged offence under Section 4 of the Foreign Enlistment Act 1870 ("**FEA**").

2. It is alleged that the Proposed Defendant, a dual British Israeli national, unlawfully enlisted in the Israel Defence Forces ("**IDF**") on or about 8 October 2023.

3. The application was made initially on an Ex Parte basis but at a hearing on the 6th of November 2025 I determined that the proposed defendant should be put on notice and given an opportunity to make representations,

4. The application was heard over the course of the 12th of March 2026, with extensive written and oral submissions from both parties. I am grateful to all for the assistance they have provided the court. Having considered the matter with great care, I have reached a firm conclusion. For the reasons set out in detail below, I refuse the application.

Background and Context

5. The Applicant describes itself as 'an independent organisation of lawyers, politicians and academics' concerned with the situation in Palestine, 'who support the rights of Palestinians and aim to protect their rights through the law'. This is the first private prosecution the Applicant has brought. The application has generated significant public attention, as above, not least because it touches upon matters of considerable political sensitivity relating to the conflict in the Middle East.

6. I emphasise that it is no part of this court's function to express views, explicit or implicit, on the merits of strongly held political positions held by any party.

7. Equally, the courts must not be used as a vehicle for political debate or to "expose" individuals for alleged wrongdoing which falls outside the scope of criminal law in order or to cause embarrassment to individuals or highlight a particular cause in a public forum, such as a courtroom. I fear that is close to being the case here.

8. The initial application included a request that the public court lists and the proceedings themselves remain anonymous, which was, in light of subsequent events, surprising.

9. It later emerged that the applicant had briefed the press about the existence of the application, notwithstanding the request for complete secrecy. as the proposed prosecutor posted on its website on 25 October 2024—before the initial hearing date and any judicial determination—details of its ex parte application, including that it sought a summons requiring a dual British Israeli national to attend court to be charged under section 4 of the Foreign Enlistment Act 1870

10. As well as giving rise to the concerns identified in the following paragraphs—namely the uncertainty and potential distress caused to a small cohort of possible subjects—it appears that the approach to anonymity may have been calculated to allow ICJP to control the narrative and enhance its public profile. That possibility only serves to reinforce the concerns expressed later in this ruling.

11. The courts' concerns about the nature of the application and its wider implications are further illustrated by the intervention of UK Lawyers for Israel, who on 31 October 2024 wrote to the private prosecutor asserting that the offence could only be committed by "a British subject" and that, by virtue of section 35 of the British Nationality Act 1981, a British and/or Israeli citizen is not a British subject. UK Lawyers for Israel are neither

party to these proceedings nor have they applied to be added as an interested party, nor could they properly do so.

12. I reiterate: this court will not comment on the merits of strongly held political views, and the courts must not be used to advance political positions or expose individuals for perceived wrongdoing outside the criminal law's scope.

13. This ruling addresses solely whether the legal test for issuing a summons is satisfied—no more, no less

The Legal Framework

14. It is trite law that an individual has the right to issue or apply to issuer a summons to start a private prosecution. It is equally trite law that the JP or DJ (MC) has a discretion whether to issue the summons or not.

15. In order to exercise that discretion, the court must consider the following matters.

i. *Whether the allegation is for an offence known to law.*

ii. *If so whether its essential ingredients are prima facie present.*

iii. *Whether the offence alleged was out of time, that the court has jurisdiction.*

iv. *Whether the informant had the necessary authority to prosecute,*

v. *(See R. v West London Metropolitan Stipendiary Magistrate Ex p. Klahn [1979] 1 W.L.R. 933.) AND*

vi. *In addition, the court must consider whether the allegation is vexatious. Further the court can refuse to issue where the proceedings would be improper or for some other reason an abuse of the process of the court: see for recent statements of the principles R v Belmarsh Magistrates' Court ex p Watts [1999] 2 Cr App R 188 at page 195 and R (Mayor & Burgesses of London Borough of Newham) v Stratford Magistrates' Court [2004] EWHC 2506 (Admin) paras [3], [15][16] .*

16, It is an abuse of the process to issue proceedings with an ulterior motive, for example with a view to the prosecutor clearing his name rather than bringing alleged criminals to justice: see ex p Watts (Supra) at page 1999.

This court, in addition to the power to refuse to issue a summons because the proceedings were vexatious or an abuse of the process, then the court equally has jurisdiction to stay the proceedings at a later stage, after a summons is

granted: (Watts(Supra)at page 196), see also the Dicta in R (on the application of DPP) V Sunderland magistrates Court (2014) EWHC 613 ADMIN.)

In Johnson V Westminster Magistrates Court (2019) EWHC 1709 (Admin), those broad concepts were given some context and meaning, Rafferty LJ giving the judgment of the court held,

The threshold test for the issuance of a summons is NOT a low one.

That is wrong. R (Kay and another) v Leeds Magistrates' Court [2018] 4 WLR 91, [2018] 2 Cr App R 27 ("Kay") read with Sunderland unequivocally explains why

In Kay the court held (at para 22):

> *" The magistrate must ascertain whether the allegation is an offence known to the law, and if so whether the essential ingredients of the offence are prima facie present; that the offence alleged is not time-barred; that the court has jurisdiction; and whether the informant has the necessary authority to prosecute.*
>
> *If so, generally the magistrate ought to issue the summons, unless there are compelling reasons not to do so – most obviously that the application is vexatious (which may involve the presence of an improper ulterior purpose and/or long delay); or is an abuse of process; or is otherwise improper.*

Whether the applicant has previously approached the police may be a relevant circumstance." For example, a refusal by the police to proceed with the matter may demonstrate that it is hopeless.

In Sunderland the court observed (at para 22):

"… [The magistrate] was obliged to come to a judicial conclusion on whether or not to issue either or both summonses, and that required a review of whether there was prima facie evidence of the ingredients of the common law offence. We have set them out. Had he conducted a rigorous analysis of the legal framework, he could not reasonably have concluded that there was such."

In Sunderland (at para 23) the court stated:

"The citizen enjoys the right to bring a private prosecution in England and Wales. It is an important safeguard against improper inaction by a prosecuting authority. It is, however, not unfettered…"

Criminal Procedure Rule 7.2(6) and (14) are directly relevant. Rule 7.2(6) requires a private prosecutor to include a statement that, to the best of the applicant's knowledge, information and belief, the evidence on which the applicant relies will be available at

trial, and the application discloses all the information that is material to what the court must decide.

Rule 7.2(14) provides that the court may decline to issue a summons if, for example:

a. the prosecutor fails to disclose all the information that is material to what the court must decide.

b. the prosecutor has made representations that no prosecution would be brought, on which the defendant has acted to the defendant's detriment.

c. the prosecutor asserts facts incapable of proof in a criminal court as a matter of law.

d. the prosecution would constitute an assertion that the decision of another court or authority was wrong where that decision has been, or could have been, or could be, questioned in other proceedings or by other lawful means; or

e. the prosecutor's dominant motive would render the prosecution an abuse of the process of the court.

12. A private prosecutor acts as a 'Minister for Justice' and owes a high duty of candour to the court. As confirmed in *Kay* at paragraph 23, private prosecutors are subject to the same obligations as public prosecuting authorities, including the duty to ensure that all relevant material is made available both to the Court and to the Defence.

13. At paragraph 24 of *Kay*, Sweeney J noted that "*the withholding of material information is in itself a critical factor in determining whether a summons should be set aside as an abuse of the process of the court*."

14. At paragraph 25, the duty is described as requiring disclosure of "*any material which is potentially averse to the application*" or "*might militate against the grant*" or which "*may be relevant to the judge's decision, including any matters which indicate that the issue… might be inappropriate*."

15. At paragraph 26, Sweeney J explained:

"In effect a prosecutor seeking an ex parte order must put on his defence hat and ask himself what, if he were representing the defendant or third party with a relevant interest, he would be saying to the judge, and, having answered that question, that is what he must tell the judge…"

16. At paragraph 38, Sweeney J observed:

"As this case demonstrates, the grant of summonses, typically conducted ex parte, can have far reaching consequences. Compliance with the duty of candour is the foundation

stone upon which such decisions are taken. In my view, its importance cannot be overstated."

Abuse of Process and Improper Motive

The legal principles governing abuse of process apply equally to private prosecutions. As noted in *R (on the application of McGill) v Newcastle Magistrates' Court [2024] EWHC 1207*, the Court should generally issue a summons unless there are "compelling reasons not to do so."

18. Where the issue is one of ulterior motive, the authorities establish that the ulterior motive (such as a motive to settle civil proceedings or to advance a political agenda) must be either the primary motive for the prosecution or a dominant oblique motive. In either event, the motive must be so unrelated to the criminal proceedings as to render them an abuse. The improper or oblique motive must make the criminal proceedings "truly oppressive": see *R v Taktouk [2022] EWCA Crim 1254*; *Morjaria v Westminster Magistrates' Court [2023] EWHC 2936 (Admin)*; and *R (on the application of G) v S [2017] EWCA Crim 2119*.

19. It is also established that prosecutions initiated to challenge or attack the final decision of another court or other competent decision-making body amount to an abuse of process: *Hunter v Chief Constable of West Midlands Police [1982] A.C. 529*.

The Foreign Enlistment Act 1870

The FEA was enacted in the Victorian era with a specific purpose: to prevent British nationals from being deployed as mercenaries across the globe and to maintain British neutrality. The legislation was passed in the context of the Franco-Prussian war and was driven by concerns about the repercussions of the participation of British citizens in foreign conflicts. This historical context is critical to understanding the Act's intended scope and application.

21. The meaning of key terms in the FEA has evolved significantly since 1870. The British Nationality Act 1981 ("**BNA**") fundamentally altered the landscape of British nationality law. Section 51 of the BNA provides that, in any enactment passed before 1 January 1983, "British subject" and "Commonwealth citizen" have the same meaning. However, Section 51(5) critically provides that the preceding provisions "shall not apply in cases where the context otherwise requires."

22. Section 35 of the BNA provides that:

"A person who under this Act is a British subject otherwise than by virtue of section 31 shall cease to be such a subject if, in whatever circumstances and whether under this Act or otherwise, he acquires any other citizenship or nationality whatever."

23. Section 30 of the FEA itself defines “foreign state” expansively:

“‘Foreign state’ includes any foreign prince, colony, province, or part of any province or people, or any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people…”

The Applicant’s Submissions in Summary

24. The Applicant relies principally on the interpretation of Section 51 of the BNA to argue that the term “British subject” in Section 4 of the FEA should be read as including all Commonwealth citizens, which in turn includes British citizens. On this basis, the Applicant contends that the Proposed Defendant, as a British citizen, falls within the scope of the FEA notwithstanding his dual Israeli nationality.

25. As to the requirement that Israel be “at war” with a state at peace with the UK, the Applicant relies on:

a. The UK Government’s recognition of Palestinian statehood on 21 September 2025.
b. Expert evidence from Dr Mandy Turner, Dr Craig Jones, and Ms Michal Pomeranz regarding Palestinian statehood, the status of the conflict, and Israeli law on military service.
c. Assertions that Israel is “at war” with Palestine, Syria, and Lebanon.

26. The Applicant further contends that the Proposed Defendant “enlisted” on 8 October 2023 when he left the UK to return to Israel and rejoin his unit.

The Proposed Defendant’s submissions in Summary

27. The Proposed Defendant contests each element of this case, both as a matter of law and on the evidence. More fundamentally, the Proposed Defendant submits that this application is an abuse of process, driven by an improper motive, and characterised by serious breaches of the duty of candour owed to this Court.

28. First, the Proposed Defendant submits that the application is misconceived in law:

a. **Dual Nationals and ‘British Subject’:** The FEA does not apply to dual nationals serving in the armed forces of their other state of nationality. The Applicant’s reliance on the BNA creates an absurd overreach that would criminalise, for example, Indian or Pakistani Commonwealth citizens enlisting in their own national armies. The context of the FEA requires that “British subject” means someone who is exclusively British, not someone who also holds the nationality of the state in whose forces they are serving.

b. **Enlistment vs Continuing Service:** The offence under Section 4 is one of enlistment, not continuing service. The evidence shows that the Proposed Defendant was already a reservist, liable for service under Israeli law years before 8 October 2023. He did not "enlist" on that date; he merely reported for duty pursuant to his existing liability under Israeli law.

c. **License of the Crown:** Successive UK Governments have explicitly stated that the FEA does not apply to British dual nationals serving in the IDF. These statements constitute the functional equivalent of a license from Her Majesty.

d. **State of War:** The FEA requires the foreign state to be "at war" with a friendly state. In English law, the existence of a "state of war" is a matter for the Executive, not the Judiciary. There is no evidence that the UK Executive recognises a formal state of war between Israel and any foreign state at peace with His Majesty. UK Government statements confirm that the FEA does not apply to enlistment in the IDF.

29. Second, the Proposed Defendant submits that the Applicant cannot make out any of the elements of the offence evidentially:

a. The Applicant relies solely on open-source material (such as the Proposed Defendant's possession of a British passport) to prove British citizenship but has not established a prima facie case on this element.
b. There is no admissible evidence that Israel was at war with any foreign state when the Proposed Defendant actually enlisted (which, if it occurred at all, was years before October 2023).
c. The recent recognition of Palestinian statehood does not have retrospective effect and does not transform the legal character of the conflict.
d. Israel's status as an occupying power under international humanitarian law does not, as a matter of domestic law, mean that it is "at war" with Palestine for the purposes of the FEA.

30. Third, the Proposed Defendant submits that there have been profound and serious breaches of the duty of candour. The Applicant failed to draw the Court's attention to:

a. Successive statements by the UK Government (in 2014, January 2024, April 2024, June 2025, and December 2023) explicitly stating that the FEA does not apply to British citizens serving in the IDF.
b. CPS prosecution guidance mirroring this position.
c. The Applicant's own prior unsuccessful attempts to have the Metropolitan Police investigate these very issues (a request to SO15 in June 2022).
d. The deep connections between the Applicant and its solicitors, Bindmans LLP (including that Tayab Ali, Deputy Managing Partner at Bindmans, is a director of ICJP, and that the late Sir Geoffrey Bindman was on the Advisory Board of ICJP).

e. The lack of independence of the supposed expert witness, Dr Mandy Turner, who is part of an ICJP WhatsApp group and whose public statements and social media activity reveal her to be a campaigner and activist rather than an objective expert.

31. Fourth, the Proposed Defendant submits that the dominant motive behind this application is not the pursuit of justice for a specific criminal act, but rather the advancement of a political and ideological agenda. The use of the criminal courts as a platform for political posturing is an abuse of the court's process. When combined with the partisan and misleading nature of the expert evidence provided, the vexatious nature of these proceedings is laid bare.

Analysis and Conclusions

Preliminary Observations

32. I have read with great care the entirety of the application bundle, the skeleton arguments filed by both parties. I have also had the benefit of detailed oral submissions from leading counsel on both sides.

33. I do not underestimate the significance of the decision I must make. Private prosecutions are an important safeguard against improper inaction by prosecuting authorities. The right of a citizen to bring a private prosecution is a valuable constitutional protection. However, that right is not unfettered. It must be exercised responsibly, with proper candour, and for proper purposes. I also understand the sensitives on all sides, but as foreshadowed I approach the task objectively, on the evidence before me and in accordance with the law as it stands, I do not intend any of my findings to portray any support or not for either of those sensitivities.

34. Having considered the matter with the utmost care, I have concluded that this application must be refused. There are multiple, independent, and compelling reasons for this conclusion. I shall address them in turn. It will become clear The Applicant contends that the following elements of the offence are satisfied:

a. The Proposed Defendant was a British subject at the date of the alleged offence.
b. The Proposed Defendant enlisted in the military service of a foreign state (Israel) on that date.
c. The Proposed Defendant did so without the license of the Crown.
d. That state (Israel) was at war with another state (Palestine, Syria, and/or Lebanon).
e. That other state was at peace with the United Kingdom (was a friendly state).
6. The Proposed Defendant contests each and every element of this case, both as a matter of law and on the evidence. More fundamentally, the Proposed Defendant submits that this application is an abuse of process, driven by an improper motive, and characterised by serious breaches of the duty of candour owed to this Court.

The Application is Fundamentally Misconceived in Law

35. The first and most fundamental difficulty with this application is that it is misconceived in law. The FEA, properly understood, simply does not apply to the facts alleged by the Applicant.

36. **The Status of Dual Nationals.** The Applicant's case depends upon the proposition that a dual British Israeli national serving in the armed forces of Israel is a "British subject" enlisting in the service of a "foreign state." This interpretation is, in my judgment, fundamentally flawed.

37. The FEA was enacted in 1870 with a clear purpose: to prevent British nationals from acting as mercenaries in foreign conflicts and to safeguard British neutrality. The binary distinction drawn by the Act is between British subjects and foreign subjects. A dual national does not fit neatly into this binary framework. For a dual national, Israel is not a "foreign state" — it is the state of his other nationality.

38. The Applicant's reliance on Section 51 of the BNA is misplaced. While it is true that Section 51(1)(b) provides that "British subject" and "Commonwealth citizen" have the same meaning in enactments passed before 1983, Section 51(5)(a) explicitly states that this provision "shall not apply in cases where the context otherwise requires."

39. The context here *does* otherwise require. If the Applicant's interpretation were correct, extraordinary and absurd consequences would follow. Any citizen of India (whether or not also a British citizen) would commit an offence under English law if he enlisted in the Indian army when India was at war with Pakistan. The same would apply to any citizen of Pakistan enlisting in the Pakistani army, or any citizen of Cyprus enlisting when Cyprus was at war with Turkey. This would constitute an absurd extraterritorial overreach of UK legislation, plainly contrary to the presumption against extraterritorial effect recently reaffirmed by the Supreme Court in *R (on the application of Marouf) v Secretary of State for the Home Department [2023] UKSC 23*.

40. Moreover, Section 35 of the BNA provides that a person who is a British subject "shall cease to be such a subject if… he acquires any other citizenship or nationality whatever." While this provision applies only to the residual category of "British subjects" as defined in Part IV of the BNA (and not to British citizens), it underscores the legislative intent that British subject status and foreign nationality are mutually exclusive categories.

41. The title of the FEA itself — the *Foreign* Enlistment Act — emphasises this focus. For a dual national, service in the armed forces of his other state of nationality is not "foreign enlistment" in any meaningful sense.

42. Had Parliament intended Section 4 of the FEA to impose criminal liability on dual nationals joining the armed forces of their other countries, it could have made explicit amendments to do so, or enacted new legislation to that effect. It did not. In the absence of clear and unambiguous language, and given the serious penal consequences involved, any ambiguity must be resolved in favour of the Proposed Defendant: *Sweet v Parsley [1970] AC 132*.

Enlistment vs Continuing Service.

43. Even if I am wrong about the status of dual nationals, the Applicant faces a further insuperable difficulty. The offence under Section 4 is of *enlistment*, not continuing service. To be precise, the offence is committed when the Defendant "accepts or agrees to accept any commission or engagement" in a foreign military.

44. The Applicant's own case is that the Proposed Defendant was already serving as a reservist in the IDF prior to 8 October 2023. On the Applicant's case, he accepted that engagement years earlier when he joined the IDF following his immigration to Israel and adoption of Israeli nationality. Under Section 27 of Israel's Defence Service Law (as amended in 1986), "a person of military service age found fit for service and not being on regular service shall belong to the reserve forces of the Israel Defence Forces and shall be liable to annual reserve service and monthly reserve service for the periods specified." Such reservists are liable to be "called up" to report for their reserve service.

45. The Proposed Defendant did not, therefore, "enlist" on 8 October 2023. He merely reported for duty pursuant to his existing liability under Israeli law. The Applicant has not, and cannot, establish the element of "enlistment" as required by Section 4 of the FEA.

The Requirement of a 'State of War'.

46. The FEA requires that the foreign state be "at war" with a friendly state. In English law, the existence of a "state of war" is a question reserved to the Executive, not the Judiciary.

47. In *Amin v Brown [2005] EWHC 1670 (Ch)* at paragraphs 25-42, the High Court addressed "The Meaning of War in English Law," acknowledging that "English law knows no technical definition of a state of war" and clarifying that "if there is any doubt as to whether a state of war exists, that is a question which is reserved to the executive." A certificate of the Foreign Secretary given on behalf of the Crown as to the existence of a state of war is conclusive and binding on the court.

48. At paragraph 35 of *Amin*, the Court noted that in 1982, "HMG took the position that there was no state of war between the United Kingdom and Argentina in relation to the Falkland Islands, but that hostilities were being carried out under Article 51 of the United Nations Charter in self-defence following the Argentine invasion and occupation of the

Falkland Islands." This illustrates the critical distinction in English law between an armed conflict and a legal state of war.

49. There is no evidence before this Court that the UK Executive recognises a formal state of war between Israel and any foreign state at peace with His Majesty. The use of "war" in a colloquial or rhetorical sense, even by government representatives, does not denote that a "state of war" in the legal sense is accepted.

50. The Applicant's references to declarations by the Security Cabinet of Israel are irrelevant to the determination of this matter in the English courts. Those declarations relate to Section 40 of Israel's Basic Law: The Government, which concerns the internal Israeli domestic legal framework. They have no bearing on the position of the English courts and the UK Executive.

License of the Crown.

51. The Applicant has also failed to address the requirement that the enlistment be "without the license of Her Majesty." The term "license" should be given its ordinary meaning of any kind of consent or permission. Successive UK Governments have explicitly stated that British dual nationals have the right to serve in the armed forces of their other state of nationality, including the IDF. These statements, which I shall address in detail below, constitute the functional equivalent of a license from Her Majesty. This point alone is a complete answer to the proposed charge.

The Application is Evidentially Hollow

52. Even if the Applicant's legal case were sound (which it is not), the application would still fail for want of admissible evidence.

53. The Applicant relies solely on open-source material to establish British citizenship. While the possession of a British passport is direct evidence of British nationality, there is no proper evidential foundation for the assertion that the Proposed Defendant holds such a passport. The material before me consists of photographs and assertions, but no admissible evidence capable of proof in a criminal court.

54. More fundamentally, even on the Applicant's own case, the Proposed Defendant did not enlist during the "prosecution period" of 6 October 2023 to 14 October 2025. He was already a reservist years before this period. There is no evidence — admissible or otherwise — that he "accepted or agreed to accept" any new commission or engagement on 8 October 2023.

55. As to the alleged "state of war," there is no admissible evidence before this Court to substantiate the Applicant's allegation. The Applicant relies heavily on the UK's recognition of Palestinian statehood on 21 September 2025. However:

a. Recognition of statehood does not automatically establish the existence of a “state of war” in the legal sense required by the FEA.
b. Recognition cannot have retrospective effect. The elements of the offence, including the question of statehood, must all coincide in time. If the Proposed Defendant enlisted years before the recognition of Palestinian statehood, that recognition is irrelevant.
c. The conflict in Gaza and Lebanon is, in reality, with the UK-proscribed terrorist organisations Hamas and Hezbollah. The UK cannot be regarded as being “at peace” with proscribed terrorist organisations (see Schedule 2 to the Terrorism Act 2000).

56. It is also of note that the Royal Air Force participated in coalition efforts to defend Israel from aerial attack. In light of this fact, the Applicant’s suppositions fall embarrassingly short of any evidential threshold.

Profound Breaches of the Duty of Candour

57. I now turn to what is, in my judgment, the most serious aspect of this application: the profound and serious breaches of the duty of candour owed to this Court.

58. As I have already noted, a private prosecutor must act as a ‘Minister for Justice’ and owes a high duty of candour to the court. The prosecutor must disclose all material that might militate against the grant of a summons. The prosecutor must, in effect, “put on his defence hat” and ask what the defence would say, and then tell the Court.

59. In this case, there has been a profound and serious breach of that duty. The Applicant failed to draw this Court’s attention to numerous matters of critical importance. I shall address them in turn.

60. **The UK Government’s Position on British Nationals Serving in the IDF.** The most glaring omission concerns the UK Government’s stated position on whether the FEA applies to British nationals serving in the IDF.

61. In 2014, the UK Government stated publicly:

“The UK government is extremely concerned about the conflict in Gaza… Section 4 of the Foreign Enlistment Act 1870 makes it an offence for a British subject to enlist in the military of a foreign state at war with another foreign state with which the UK is at peace. That prohibition does not extend, however, to enlistment in a foreign government’s forces which are engaged in a civil war or combating terrorism or internal uprisings. The Occupied Palestinian Territories are not currently recognised as a state by the UK. Israel has taken military action against individuals and groups within Gaza but has not made a declaration of war. In these circumstances the 1870 Act would not apply.”

62. This statement was confirmed in January 2024 by Andrew Mitchell MP on behalf of the FCDO:

“Section 4 of the Foreign Enlistment Act 1870 makes it an offence for a British subject to enlist in the military of a foreign state at war with another foreign state with which the UK is at peace. That prohibition does not extend, however, to enlistment in a foreign government’s forces which are engaged in a civil war or combating terrorism or internal uprisings. The Occupied Palestinian Territories are not currently recognised as a state by the UK. It is the UK government’s longstanding position that the Fourth Geneva Convention applies to the Occupied Palestinian Territories, and that Israel is an occupying power under that convention. The 1870 Act therefore does not apply in this instance.”

63. In April 2024, the Government made express reference to the IDF:

“The UK recognises the right of British nationals with more than one nationality to serve in the legitimately recognised armed forces of their additional nationalities. This includes the Israel Defence Force. With respect to the current conflict in Gaza, Section 4 of the Foreign Enlistment Act 1870 makes it an offence for a British subject to enlist in the military of a foreign state at war with another foreign state with which the UK is at peace. That prohibition does not extend, however, to enlistment in a foreign government’s forces which are engaged in a civil war or combating terrorism or internal uprisings. The Occupied Palestinian Territories are not currently recognised as a state by the UK. The 1870 Act therefore does not apply in this instance.”

64. On 24 June 2025, Luke Pollard MP (Parliamentary Under-Secretary of State for the Armed Forces) confirmed:

“The UK recognises the right of British dual nationals to serve in the legitimately recognised armed forces of the country of their other nationality. We do not track the number of dual nationals that choose to take up this right. The Secretary of State for Defence has not discussed the issue of UK-Israeli dual nationals serving in the Israel Defense Forces with the Secretary of State for the Home Department.”

65. On 22 December 2023, Mr Andrew Mitchell MP answered a question on behalf of the FCDO as follows:

“We are aware of reports of UK citizens travelling to fight for the Israel Defence Force (IDF), but the Government does not estimate the numbers of those who have done so. The UK recognises the right of British nationals with additional nationalities to serve in the legitimately recognised armed forces of the country of their other nationalities. The IDF is a recognised armed force, and British nationals are both able to volunteer into the IDF and eligible for national service. For Israel, one does not have to be Israeli to serve in the IDF.”

66. On 12 April 2024, Lord Ahmad of Wimbledon (Minister of State at the FCDO) stated:

“We are aware of reports of UK citizens travelling to fight for the Israel Defence Force (IDF), but the Government does not estimate the numbers of those who have done so. The UK recognises the right of British nationals with more than one nationality to serve in the legitimately recognised armed forces of their additional nationalities.”

67. These statements span multiple governments and multiple years. They are consistent, unequivocal, and directly on point. None of them has been withdrawn. None of them is qualified by any limitation to countries at peace. To the contrary, these statements expressly cover the current conflict in Gaza. They also cover periods when the IDF was engaged in military activity in Syria and Lebanon.

68. The Applicant knew about these statements. In its own Briefing Note entitled “Legal Opportunities post-Recognition of Palestine,” published in October 2025, the Applicant refers to what it describes as ‘the previous government’s position’ and claims that this relied on “non-recognition of Palestine as an erroneous legal argument to dismiss the application of the Foreign Enlistment Act.” The Applicant’s Briefing Note includes a footnote to the statement made on 9 January 2024 by Andrew Mitchell MP.

69. Despite this knowledge, the Applicant did not see fit to inform this Court of any of these statements in its application, its case summary, or its skeleton argument. This is a serious and inexcusable omission.

CPS Prosecution Guidance.

70. The April 2024 government statement is also reflected in prosecution guidance given by the Crown Prosecution Service:

“Under section 4 of the Foreign Enlistment Act 1870, it is an offence for a British subject to enlist in the military of a foreign state at war with another foreign state with which the UK is at peace. That prohibition does not extend, however, to enlistment in a foreign government’s forces which are engaged in a civil war or combatting terrorism or internal uprisings.”

71. This guidance was not disclosed to the Court. There is no credible explanation for this failure.

The Applicant’s Earlier Application to the Metropolitan Police.

72. In June 2022, the Applicant requested the Metropolitan Police’s Counter Terrorism Command (SO15) to open an investigation into British citizens who have joined the IDF. The Applicant’s own public statements confirm this.

73. In 2023, the Applicant’s press release stated:

“On 1 June 2022, the ICJP requested the Metropolitan Police’s Counter Terrorism Command (SO15), which includes the War Crimes Team, to open an investigation into

British citizens who have joined the IDF and are alleged to have participated in international crimes under the UK's counter terrorism legislation. The dossier submitted by the ICJP contains details of war crimes and crimes against humanity, including but not limited to, breaches of the Fourth Geneva Convention allegedly committed at times when Britons were serving in the IDF."

74. This earlier application to SO15 was not candidly disclosed to this Court. Instead, the Applicant's solicitor addressed this earlier activity in broad and less-than-candid terms in her witness statement, stating only that "the ICJP has referred a number of matters to the Police in relation to war crimes" and that "the decision was made to pursue a private prosecution as it was determined that the police have limited resources."

75. This account does not explain directly and candidly that the issue which is the subject of this application (British nationals serving in the IDF) had previously been placed directly before SO15 by the Applicant itself. Nor does it explain the outcome of that referral. Although the applicant submitted in open court that A was not explicitly part of the referral, the overall approach of the police to investigating events in Gaza was potentially undermining of the application, it is at best disingenuous to suggest it was not disclosable at worst misleading.

The Connections Between the Applicant and Its Solicitors.

76. The Applicant also failed to disclose the deep connections between itself and Bindmans LLP. Tayab Ali, who holds a senior role at Bindmans LLP as Deputy Managing Partner, is also a director of ICJP. The late Sir Geoffrey Bindman, founder of Bindmans LLP, held a role on the Advisory Board of ICJP until his recent death.

77. These connections should have been disclosed. The response of Bindmans on 4 December 2025, stating that "It is a matter of public record that the late Sir Geoffrey Bindman was on the Advisory Board of the ICJP. He had no involvement, in any capacity, in this case," is somewhat less than candid. Whether Sir Geoffrey had involvement is not the only relevant issue. The firm of solicitors and the Applicant are deeply connected at the highest levels. This should have been disclosed to the Court. Whether this was a matter of public record is irrelevant where the duty of candour is owed to the Court. It should be remembered that even non qualifies individual applicants are to act and be ministers of justice before the court, for professional lawyers that principle should be primary, failing to disclose these links is a serious breach of the duty owed to the court, the court would and does not undertake research into the connections between applicants and the proceedings and the lawyers, had it not been for the defendant bringing this to the courts attention it would have proceeded in ignorance of this relevant fact.

The Independence of the Expert Evidence.

78. Perhaps most troubling is the revelation that the supposed expert witness, Dr Mandy Turner, is part of an ICJP WhatsApp group. This connection was not disclosed in her expert declaration or in the application.

79. An expert witness must be independent. As Laddie J stated in *Cala Homes (South) Limited v Alfred McAlpine Homes East Limited [1995] F.S.R. 818*:

"Expert evidence presented to the court should be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of litigation. An expert witness should provide independent assistance to the court by way of objective, unbiased opinion in relation to matters within his expertise. An expert witness should state the facts or assumptions upon which his opinion is based. He should not omit to consider material facts which could detract from his concluded opinion."

80. Dr Turner's involvement in an ICJP WhatsApp group, combined with her public statements and social media activity, reveals her to be a campaigner and activist committed to the political agenda pursued by this prosecution, rather than an independent expert.

81. Moreover, Dr Turner's report contains repeated inclusion of unverified information, posited as fact. For example:

a. At paragraph 87 of her report, Dr Turner refers to "Israel's attack on the Al-Ahli Arab hospital in Gaza," quoting Mahmoud Abbas' condemnation. This promotes an entirely false account. The incident involved a Palestinian Islamic Jihad rocket falling short in the hospital car park. This was one of the first major false reports of the conflict, and numerous mainstream media outlets subsequently corrected these reports and issued public apologies. It is simply not feasible that an expert in this field could have missed the corrections.
b. At paragraph 5 of her report, Dr Turner falsely states that "Israel's own military intelligence data, which was leaked to the media in August 2025, confirmed that over 83 percent of Palestinians killed in Gaza were civilians." The Guardian article she cites states only that fighters named in a database accounted for 17% of the total. This is a non-sequitur. Israel's identification of 17% of casualties by name does not provide any basis for the assertion that all of the remaining casualties were civilians.
c. Dr Turner entirely misrepresents the ICJ's provisional measures order, stating that "there was enough evidence of Israel's atrocities for the International Court of Justice to issue interim measures." The Court explicitly did not consider the merits of the case as part of the provisional measures procedure, stating clearly at paragraph 36 of the order: "At this stage of the proceedings, however, the Court is not called upon to determine definitively whether the rights which South Africa wishes to see protected exist."

82. Dr Turner's use of language is far from neutral or independent. She refers to a proscribed terrorist organisation as an "armed group" and refers to the IDF (Israel

Defence Force) incorrectly as the “IOF” (Israel Occupation Force), which is not just inaccurate but displays bias and is pejorative.

83. The partisan and misleading nature of this expert evidence is more akin to propaganda than independent analysis. None of this was disclosed to the Court. The expert is, in my judgment, properly considered a campaigner and activist, not an independent expert.

The Significance of These Omissions.

84. These omissions are not merely procedural oversights. They are the withholding of material information, which is a critical factor in determining an abuse of process.

85. Had the Applicant candidly disclosed the UK Government’s position, the CPS guidance, its own earlier referral to SO15, the connections between the Applicant and its solicitors, and the lack of independence of its expert, this Court would have been in a position to assess the application properly from the outset. Instead, this Court was presented with a misleading and incomplete picture.

86. In *Kay* at paragraph 38, Sweeney J observed that compliance with the duty of candour is “the foundation stone upon which such decisions are taken” and that “its importance cannot be overstated.” In this case, that foundation stone has crumbled.

Issues raised by the court during the hearing.

87. At the hearing on 12th March 2026, I raised the following questions, and granted the parties the opportunity to make further written submissions:

(i) Whether enquiries should be made with the Crown Prosecution Service to determine whether, if a summons was granted, the CPS would take over the proceedings and:
a. Discontinue them, or,
b. Seek the extradition of A.

(ii) Whether determining the prosecutor’s application would involve adjudicating on matters of international law, in a manner which is impermissible in light of the principles identified in the judgment of the Administrative Court in R(Al-Haq) v Secretary of State for Business and Trade [2025] EWHC 1615 (Admin).

88. The parties served supplementary submissions on these issues, they agreed with my initial inclination as expressed in court that referral at this stage to cps is impermissible and that issue now has no utility.

89. In regard to the issue ii the Prosecutor submits that the Court may apply international law in determining the existence of a ‘foreign state’ under s.30 of the 1870 Act, and whether there existed a ‘war’ under s.4. It is said that the statute itself provides

the necessary domestic foothold, and that the question does not intrude impermissibly into the conduct of foreign affairs. The Prosecutor further argues that Palestine constitutes a 'people' under international law and therefore meets the expanded definition of 'state' in s.30, citing ICJ jurisprudence.

90. As to whether Israel was at war with Palestine, Lebanon or Syria, the Prosecutor relies alternatively on (a) declarations and public acts of Israel, and (b) criteria derived from international humanitarian law, including the definition of 'armed conflict'. The Prosecutor submits that 'war' is a question of international law and one which the Court may determine in the absence of Executive declarations.

91. The Respondent relies extensively on R (Al-Haq), R (Campaign for Nuclear Disarmament), Belhaj, Maduro Board, Abbasi and Gentle, submitting that the Court is constitutionally precluded from determining issues of foreign relations, including the existence or non-existence of a state of war, recognition of states, or the position of the United Kingdom on matters of international conflict.

92. The Respondent further submits that the 1870 Act is antiquated, structurally dependent on Executive declarations of war and neutrality, and cannot be applied without them. Reliance is placed on Lord Diplock's 1976 observation: 'The provisions of the Foreign Enlistment Act 1870, which create offences in relation to illegal enlistment and recruitment are out of date and obscure. They are unworkable in practice and should be repealed.'

93. The Respondent argues that, absent any formal statement by HMG recognising a 'war' or asserting a position of British neutrality, no offence under s.4 can lie. The Court would be required to construct, without Executive guidance, a factual and legal determination of war and peace among sovereign states—an exercise forbidden by the constitutional principles reaffirmed in Al-Haq.

94. A proper starting point is settled constitutional first principles. The conduct of foreign affairs is reserved to the Executive. The domestic courts do not adjudicate upon the lawfulness of the acts of foreign states (the Foreign Act of State doctrine), nor do they interpret or apply unincorporated treaties absent a domestic foothold. Even where such a foothold exists, the Court must give very considerable weight to the views of the Executive, particularly in matters involving national security, recognition of states, and international conflict.

95. The Prosecutor submits that the 'domestic foothold' is found in the language of the 1870 Act. However, the Act presupposes a clear and declared Executive position—particularly regarding neutrality. As the Respondent rightly emphasises, the purpose of the Act was to prevent British citizens from ***compromising official neutrality at a time when states formally declared war***. That historical context is now radically altered.

96. The Court accepts the Respondent's submission that applying the 1870 Act in 2026 requires Executive declarations which do not exist. To determine whether Israel was 'at

war' with Palestine, Lebanon or Syria is manifestly an issue on the international plane. It is a quintessential matter of high policy, grounded in diplomatic recognition, engagement, and foreign relations—all matters reserved to the Executive not me.

97. The Prosecutor's alternative reliance on international humanitarian law does not cure the defect. Determining whether an 'armed conflict' existed, for the purposes of assigning the label 'war' under a Victorian statute, is still an adjudication of international relations. It would require the Court to make findings about the conduct of foreign states, the characterisation of cross-border military action, and the mutual recognition (or non-recognition) of sovereignty—all matters expressly held non-justiciable in Al-Haq, Belhaj and related authorities.

98. Likewise, determining whether Palestine was a 'state' under the 1870 Act—whether under s.30 or under general international law—would place the Court in direct conflict with Executive competence. Recognition of states, recognition of governments, and the classification of entities in the international order fall squarely within the Executive's exclusive domain, under the one-voice doctrine recognised in Maduro Board.

99. I note that the Prosecutor's submissions implicitly invite the me to overrule or bypass the Executive's actual positions on Israel, Palestine, Lebanon and Syria. This would contravene the constitutional separation of powers, the comity owed between states, and the consistent line of authority from Buttes Gas to Al-Haq.

Application of Al-Haq

100. Al-Haq is binding authority on this Court. It makes plain that questions involving the UK's international relations, the legality of foreign state conduct, or international conflict classification are non-justiciable. Even where a domestic foothold exists, the Court must defer to the Executive's view. Here, no definitive Executive view exists. The absence of Executive declarations is, in my view, fatal.

101.. Any ruling on war, neutrality, or statehood would require the Court to create policy in a domain constitutionally reserved to Government. As Cranston J observed in Al-Haq (2009), such matters ***'trespass into issues of high policy' and lie beyond the Court's institutional competence.***

102. The words of Lord Diplock's statement in 1976 are apposite, he said

> 'The provisions of the Foreign Enlistment Act 1870, which create offences in relation to illegal enlistment and recruitment are out of date and obscure. They are unworkable in practice and should be repealed.'

103. This was a clear recognition that Parliament has left on the statute book legislation whose operation depended on Executive structures that no longer exist.

Conclusion on Al Haq

104. The Prosecutor has not identified any lawful path by which the I am able to determine the international questions upon which the application depends.

105. The Court would necessarily enter forbidden territory—making determinations of war, statehood and diplomatic relations. This is precisely the scenario prohibited by Al-Haq and the long line of authorities preceding it. I decline to do so.

Abuse of Process and Improper Motive

106. I am also persuaded by the submission that the dominant motive behind this application is not the pursuit of justice for a specific criminal act, but rather the advancement of a political and ideological agenda.

107. The Applicant describes itself as an organisation that 'support[s] the rights of Palestinians and aim[s] to protect their rights through the law.' This is an admirable objective. However, the criminal courts are not a platform for political posturing or the pursuit of ideological grievances. Seeking to feel a void created by sensitive diplomatic language about Statehood and the existence of a state a war via the courts is not a proper motive to invoke this legislation, I understand there has not been a prosecution under the statute in modern history and possibly since WW1, ther is a reason for this as foreshadowed by Lord Diplock.

108. When combined with the partisan and misleading nature of the expert evidence, the breaches of the duty of candour, and the legal and evidential deficiencies already identified, the vexatious nature of these proceedings is laid bare.

109. This application seeks effectively to circumvent the protections the Government and prosecuting authorities have put in place to constrain vexatious proceedings in this context. These include the amendments introduced to require DPP consent for arrest warrants (section 1(4D) of the Magistrates' Courts Act 1980 and section 153 of the Police Reform and Social Responsibility Act 2011), and the CPS's War Crimes/Crimes Against Humanity Referral Guidelines and related guidance.

110. Former Prime Minister David Cameron MP explained the impetus for these amendments in a speech to The Knesset in 2014. The purpose was to prevent vexatious prosecutions of this very kind.

111. I am satisfied that the use of the criminal courts as a vehicle to expose what the Applicant perceives as improper conduct by the Israeli government, or to advance the cause of Palestinian statehood, constitutes an abuse of the court's process. The prosecution would be "truly oppressive" in the circumstances.

112. I am also satisfied that the prosecution would constitute an assertion that the UK Government's decision recognising the right of dual nationals to enlist in the armed forces of their other country was wrong, in circumstances where that decision could be

questioned in Parliament or by other lawful means. This brings the proposed prosecution squarely within the terms of Rule 7.2(14)(e) of the Criminal Procedure Rules.

Procedural Impracticability

113. Finally, although not determinate on its own, taken together with the other matters it is significant that I see no realistic prospect of this prosecution proceeding to trial even if a summons were granted.

114. The Proposed Defendant is in Israel. The cooperation of both the UK government and the Israeli government would be required for service of any summons and for any extradition. The idea that he might want to return voluntarily to "clear his name" is fanciful at best.

115. It is completely unrealistic to consider that the Israeli Government would cooperate with any such process founded on an offence under the FEA said to have been committed by one of its own citizens by complying with their domestic enlistment obligations. As noted in *R (on the application of Bates) v Highbury Corner Magistrates' Court [2025] EWHC 2532 (Admin)* at paragraph 28, where the applicant "could never have seen the proceedings through," the application is an abuse of process.

Conclusion

116. This application is legally flawed, evidentially defecient, and procedurally defective. It constitutes an abuse of the process of this court, driven by an improper motive and facilitated by serious breaches of the duty of candour.

117. The FEA, properly understood, does not apply to dual nationals serving in the armed forces of their other state of nationality. Even if it did, the Applicant cannot establish the element of "enlistment" on the facts alleged.

118. There is no evidence of a "state of war" in the legal sense required by the Act. Successive UK Governments have explicitly stated that the FEA does not apply to British nationals serving in the IDF, and these statements constitute the functional equivalent of a license from Her Majesty.

119.. The Applicant's failure to disclose accurately the UK Government's position, the CPS guidance, its own earlier referral to SO15, the connections between itself and its solicitors, and the lack of independence of its expert witness constitute serious and inexcusable breaches of the duty of candour.

120. I find the **dominant motive** behind this application is the advancement of a political and ideological agenda, not the pursuit of justice for a specific criminal act. The use of the criminal courts as a platform for political posturing is an abuse of process.

121. When combined with the partisan and misleading expert evidence, the vexatious nature of these proceedings is clear.

122. It is entirely improper for these proceedings to have been brought. The application for a summons is **REFUSED**.

Paul Goldspring
Senior District Judge (Chief Magistrate) for England and Wales

8th April 2026