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GB-United Kingdom: The High Court refuses to disclose of cockpit footage of air accident to the media

On 28 January 2019 the High Court of Justice in England ruled that cockpit footage from the Shoreham Airshow crash cannot be released to the press, after it had been played to a jury.

The background to this trial began on 22 August 2015, when a Hawker Hunter fighter jet crashed during a display at the Shoreham Airshow at Shoreham Airport, England, after failing to complete an aerobatic manoeuvre. Eleven people died in the resulting fireball. In 2018 former Royal Air Force pilot Andy Hill was charged with eleven counts of manslaughter by gross negligence and one count of endangering an aircraft. In January 2019 Mr. Hill went on trial at the Old Bailey, which is at the time of writing proceeding.

The British Broadcasting Corporation (BBC) and the Press Association (PA), supported by “a very significant number” of national and local media organisations, requested the release of footage from the cockpit of the ex-military jet aircraft. Mr Justice Edis (Edis J) was required to answer the question of whether the disclosure of the cockpit footage to the media would produce benefits that outweighed the “adverse domestic and international impact” it might have on any future safety investigation. In answering this narrow question, Edis J. was also required to consider the fact that the film was being used in a public court as evidence in support of manslaughter charges and had already been shown to the jury in open court. He was thus required to weigh the additional adverse impact of disclosure to the media against the benefits of disclosure.

In his judgment, Edis J. acknowledged the “strong presumption” in favour of open justice in the English judicial system and accepted that the BBC and the PA were motivated by a genuine interest in reporting fairly and accurately the trial evidence. He also explained that in doing so media organisations are subject to regulatory codes, which should give confidence to the courts that disclosed material will be dealt with properly. However, the judge agreed with the British Airline Pilots’ Association (BALPA) and the Air Accidents Investigation Branch (AAIB), which had expressed concerns over the “adverse domestic and international impact” the release of the footage would have.

The fact that the footage was not “black box” material but had been created voluntarily by Mr Hill and that the risk of “diminution in the standing of the AAIB” among international air accident investigators - with whom effective cross-border cooperation is “obviously vital” - were important aspects in this regard. Edis J. stressed in particular that disclosure could damage what is known as the “just culture” of air investigations, in which pilots are willing to cooperate and which produces a safe system of global air travel. He explained: “It is important to the maintenance of effective air safety investigation that pilots understand that material they supply to the AAIB will remain with the AAIB, and that there is likely to be a strong reaction among pilots to this material being played on television and newspaper websites and thereafter available forever on the Internet. This is an adverse impact which needs to be weighed against the benefit of open justice.” The “wide dissemination potential” of the film online, if released, would add to the pilots’ concerns and would undesirably affect their behaviour in future safety investigations.

Edis J. also accepted that use of the footage would probably make the case somewhat “clearer” to the media organisations’ viewers and was likely to give news reports “more impact” than they would otherwise have. However, substantial footage of this disaster, which created “abundant impact” when viewed, was already available online and was sufficient to effortlessly attract and retain viewers’ and readers’ attention when reporting this trial. Lastly, the judge took particular note of the written statements of the victims’ relatives, who had expressed concern that disclosure of “intrusive footage” to the media would expose them to “continual reminders” of a crash that had caused them such loss and trauma.

For all these reasons, the High Court judge was not satisfied that the benefit of disclosure to the media outweighed the adverse impact on future safety investigation that it would have: “It is a matter of real importance that the international air investigation world accepts that the UK complies with its obligations under [international law] and treats those obligations seriously,” Edis J. emphasised. Accordingly, he refused the BBC’s and PA’s claim for disclosure of the recording.

• BBC and Press Association v Secretary of State for Transport and the British Airline Pilots Association [2019] EWHC 135 (28 January 2019)
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