

31 January 2024

## PRESS SUMMARY

**The Secretary of State for the Home Department and the Secretary of State for Levelling Up, Housing and Communities (Appellants) v IAB & Others (Respondents) and JUSTICE (Intervener) EWCA Civ [...]**

*On appeal from [2023] EWHC 2930 (ADMIN)*

**LORD JUSTICES:** Lord Justice Bean, Lord Justice Males, Lord Justice Lewis

### BACKGROUND TO THE APPEAL

This appeal concerns the question of whether it was permissible for the Secretaries of State to redact the names of civil servants in grades below the Senior Civil Service from documents disclosed to the Respondents to comply with their duty of candour in underlying proceedings for judicial review.

By a claim commenced on 13 June 2023, the Respondents brought a challenge to the lawfulness of regulations removing the requirement for houses in multiple occupation to be licensed if asylum seekers are to be placed there. The claim is due to be heard in the Administrative Court on 7 February 2024. For the purposes of those proceedings, the Secretaries of State disclosed three tranches of documents running to more than 500 pages. Each of the tranches of disclosure included redacted documents. Disclosure was given without explanation (either generally, or document by document) of why the passages had been redacted. Most of the names of civil servants in grades below the Senior Civil Service are redacted. The Respondents say that the Government Departments are not entitled to make such redactions.

Mr Justice Swift, sitting in the High Court of Justice, the Administrative Court, upheld the Respondents' objections and ruled in a judgment of 17 November 2023, that they are entitled to disclosure of the documents without such redactions.

### JUDGMENT

The Court of Appeal unanimously dismisses the appeal. Lord Justice Bean gives a judgment with which Lord Justice Males and Lord Justice Lewis agree.

### REASONS FOR THE JUDGMENT

The duty of candour is an obligation of explanation. The respondent to a judicial review claim has a duty to explain the reasoning process underlying the decision under challenge. If the respondent chooses to discharge the duty of candour by disclosure of documents it is to be assumed that this is because they are relevant to the issues in the claim [22].

Decisions from ordinary civil cases relied upon by the Appellants do not provide any basis for saying that documents in judicial review cases may be routinely redacted to remove names, or indeed any other detail not directly relevant to the outcome of the dispute. There is no duty of candour in ordinary civil litigation equivalent to that imposed on public bodies defending judicial review claims [24].

The redaction of the names of everyone taking part in discussions at meetings or sending or receiving emails, even if excluding ministers and members of the Senior Civil Service, would result in disclosed documents which were covered in black spaces. Such documents are far more difficult to understand than documents which give the names of those involved. Without ciphers the documents, especially email chains, might be barely intelligible; but the process of replacing the names with ciphers would often be extremely laborious [27].

It is well established both in ordinary civil litigation and in judicial review, that parts of a document (for example a note of a meeting) concerned with wholly different subject matter from that in issue may properly be redacted. It may also be justifiable to redact names, for example, for reasons of national security or where there is evidence of a real risk to the personal safety of the individual concerned. The extent of such risks, however, does not justify redaction of names as a matter of routine [29].

Defendants in judicial review proceedings do not fulfil their duty of candour if (save for good and specific reasons) they disclose documents with redactions of the names of civil servants [36]. The practice of routine redactions of names is inimical to open government and unsupported by authority [34-36]. If Parliament takes the view that members of the Civil Service should have a general right to anonymity in judicial review litigation then it should enact a primary statute to that effect [36].

*References in square brackets are to paragraphs in the judgment.*

#### **NOTE**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [\[https://www.judiciary.uk/judgments/\]](https://www.judiciary.uk/judgments/)**