



Neutral Citation Number: [2025] EWHC 1729 (Admin)

Case No: AC-2024-LON-003590

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 08/07/2025

Before :

**LORD JUSTICE DINGEMANS**

**and**

**MRS JUSTICE FARBEY**

Between :

**THE KING on the application of  
TPL1**

**Claimant**

**- and -**

**SECRETARY OF STATE FOR DEFENCE**

**Defendant**

-----  
**Tom de la Mare KC and Emma Foubister** (instructed by **Deighton Pierce Glynn Solicitors**)  
for the **Claimant**

**Martin Goudie KC and Alex Jamieson as Special Advocates** (instructed by the **Special  
Advocates Support Office**)

**Cathryn McGahey KC, John Bethell and Anisa Kassamali** (instructed by **Government  
Legal Department**) for  
the **Defendant**

Hearing dates: 21, 22 & 23 May 2025  
-----

**Approved Judgment**

This judgment was handed down remotely at 14.00 hrs on 08/07/2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

## Lord Justice Dingemans :

### Introduction and issues

1. This is the rolled up hearing of an application for permission to apply and, if permission to apply is granted, an application for judicial review of decisions made by the defendant Secretary of State for Defence (the Secretary of State) relating to what has become known as the “Triples review”.
2. The Triples were part of the Afghan Partner Forces at the time that the UK was carrying out military and other activities in Afghanistan. In anticipation of the UK withdrawal from Afghanistan which occurred in August 2021, the Secretary of State had, in recognition of the support given to the UK mission in Afghanistan by certain Afghan citizens, including members of the Triples, set up a scheme known as the Afghan Relocations and Assistance Policy (ARAP) on 1 April 2021. Members of the Triples have made claims under ARAP. A number of issues were discovered in relation to the decision making in relation to claims made by members of the Triples under ARAP. That led to the Triples review.
3. There were a number of grounds of claim which have been resolved by the parties during the progress of the claim. This included the Secretary of State’s agreement to publish two documents relating to the scope of the Triples Review. The Secretary of State agreed to announce publicly that all persons within the scope of the Triples Review would be notified of the decision in their case and members of the Triples could request clarification about whether they were in scope by writing to the Secretary of State. The Secretary of State agreed to provide notification of negative outcomes, reasons for any negative outcomes, and a right to review.
4. There is a remaining ground of the claim which relates to the publication of information in relation to the Triples Review. It is apparent that there are two issues, namely whether the Secretary of State: (1) unlawfully failed to publish the criteria for determining whether an application falls within the scope of the Triples Review; and (2) unlawfully failed to publish the criteria for determining what factors will be considered in individual review decisions, which was the caseworker guidance.
5. TPL1’s case is that both the scope of the Triples review and the caseworker guidance should be published to permit members of the Triples to make informed and accurate representations about why they are entitled to relocate to the UK under ARAP, particularly given the context of the ARAP decisions which could affect the life or death of members of the Triples. The Secretary of State’s case is that the Triples review was carried out to put right matters that had gone wrong in the decision making, that there was no need to publish who was in scope of the review or the guidance because the review and guidance concerned the application of criteria for entry to the UK under ARAP which had already been published, and anyone receiving a negative decision would have a right of review.
6. Issues have also arisen in relation to the discharge by the Secretary of State of the duty of candour which applies to parties in judicial review proceedings.
7. On 16 May 2025 a written Ministerial statement was made about a further phase of the Triples review (Phase two) and on 20 May 2025, shortly before the hearing on 21 May

2025, updated guidance was published about the details of Phase two of the Triples review.

8. I would grant permission to bring the claim to apply for judicial review. This is because the points raised by the claim are arguable.

### **Procedure and evidence**

9. The court held open and closed hearings on 21, 22 and 23 May 2025. Mr Tom de la Mare KC and Ms Emma Foubister appeared on behalf of TPL1 and Ms Cathryn McGahey KC, Mr John Bethell and Ms Anisa Kassamali appeared on behalf of the Secretary of State in the open hearings. A closed hearing is held where the court has made a declaration pursuant to section 6 of the Justice and Security Act 2013 (the 2013 Act) granting permission to the Government not to disclose information relating to matters of national security otherwise than to the Court and special advocates. The relevant information is then disclosed to the special advocates and to the court in a closed hearing. Declarations had been made pursuant to the 2013 Act in the proceedings by Farbey J, when the claim was being case managed. At the closed hearing Ms McGahey and Mr Bethell appeared on behalf of the Secretary of State and Mr Martin Goudie KC and Mr Alex Jamieson appeared as special advocates to represent the interests of TPL1.
10. In open proceedings there were witness statements on behalf of the claimant including statements from: TPL1, the claimant, a former senior member of the Triples; Daniel Carey, a partner of Deighton Pierce Glynn, solicitors for the claimant; and Catherine Dowle, a trainee solicitor at Deighton Pierce Glynn. There were witness statements on behalf of the defendant including statements from: Natalie Moore, Director of the Defence Afghan Relocation and Resettlement (DARR) Directorate; Dan Samed-Smith, Deputy Director Eligibility of DARR; witness X, a member of United Kingdom Special Forces (UKSF) who acted as the enrichment officer (providing expertise and knowledge to help inform caseworker considerations) for cases that were referred to UKSF between February and November 2024 as part of the Triples review; and Louise Morgan, Deputy Director of the Government Legal Department. There were other witness statements which had been made which related to procedural matters in the proceedings.
11. In closed proceedings the court received witness statements and documents. During the case management of the claim, and at the hearing, relevant information and documents disclosed in the closed proceedings were, with the assistance of the special advocates and counsel for the Secretary of State, made available in the open hearing in the form of gists of the underlying documents or as copies of the documents with redactions. I have had regard to all of the information provided to us in closed sessions, but it is not necessary to refer to that information for the purpose of deciding this claim, and so the court has only produced this open judgment.
12. This has meant that some of the references to the facts below from the open and closed hearings are necessarily cryptic, to ensure that material which has not been disclosed in open hearings on the grounds of national security, is not revealed. It was agreed at the end of the hearing that the judgment in draft would be provided first both to counsel for the Secretary of State and to the Special Advocates to ensure that there had been no inadvertent reference to material which should remain closed, and this process was

adopted before the judgment in draft was sent to the parties in the usual way and handed down.

## **Factual background**

### **The Triples**

13. As already noted, the Triples were part of the Afghan Partner Forces at the time that the UK was carrying out military and other activities in Afghanistan. They are known as the Triples because their unit identification numbers ended in triple numbers. So far as is material to this claim there was Commando Force 333 (CF-333). CF-333 was described by the claimant as an Afghan counter-narcotics unit set up in 2002 by the MOD and Foreign and Commonwealth Office, now Foreign Commonwealth and Development Office (FCDO). CF-333 was based in Logar Province and later conducted counter-terrorism and counterinsurgency operations.
14. There was also Afghan Territorial Force 444 (ATF-444) which was established to operate in Helmand province to provide the interface between conventional Afghan security forces and their UK conventional force operational mentoring and liaison teams. They also provided a bridge between UKSF and Afghan Special Forces commando units.
15. It is apparent that the roles of both CF-333 and ATF-444 evolved over time. Other Triples units were Crisis Response Unit 222 (CRU-222) and other national police units ending with 555, 888 and 999. It appears that there were some 5,000 Afghan citizens who served with UK Partnered Triples units.
16. The work of the Triples has placed members of the Triples at high levels of risk from Taliban reprisals. Some former members of the Triples have been tortured and some have been killed by the Taliban since the departure of UK forces from Afghanistan in August 2021. Members of the Triples who have not relocated to the UK are in Afghanistan, Pakistan and Iran, where the evidence shows that they remain at risk.

### **ARAP and the applications**

17. The claim is made by TPL1, a former senior member of the Triples. TPL1 was relocated to the UK with his wife and children. TPL1 has the benefit of anonymity. TPL1 makes the claim on behalf of other members of the Triples still in Afghanistan, Pakistan and Iran. Those members include the brother of TPL1, who has been tortured by the Taliban.
18. As recorded, the Secretary of State had, in recognition of the support given to the UK mission in Afghanistan by certain Afghan citizens, including members of the Triples, set up a scheme known as ARAP on 1 April 2021. ARAP is a policy adopted by the Secretary of State. ARAP now also forms an appendix to the Immigration Rules. There are four different categories under ARAP. ARAP is administered by the DARR directorate. Applicants under ARAP may be eligible for relocation assistance under either category 1, category 2 or category 4. Category 3 relates to non-relocation assistance. A summary of the categories is as follows:

(a) Category 1: applicants who were “employees of the UK Government in Afghanistan on or after 1 October 2001 and who, because of that employment, are assessed to be at high and imminent risk of threat to life”;

(b) Category 2: applicants who were “directly employed by the UK Government in Afghanistan”, provided that,

“The nature of the applicant’s role must have been such that the UK’s operations in Afghanistan would have been materially less efficient or materially less successful if a role of that nature had not been performed. Furthermore, the applicant’s role must have exposed them to being publicly recognised as having performed that role and, as a result of that public recognition, their safety is now at risk. Examples of such roles are patrol interpreters, cultural advisors, certain embassy corporate services, and development, political and counter-terrorism jobs, among others. This is not an exhaustive list, nor are all those who worked in such roles necessarily eligible by default”

(c) Category 4: applicants offered assistance on a case-by-case basis, subject to satisfying the following “conditions”:

(i) Condition 1: applicants “on or after 1 October 2001 were directly employed in Afghanistan by a UK Government department; provided goods or services in Afghanistan under contract to a UK Government department; or worked in Afghanistan alongside a UK Government department, in partnership with or closely supporting and assisting that department”;

and

(ii) Condition 2: “in the course of that employment or work or provision of services they made a substantive and positive contribution to the UK’s military objectives or national security objectives (which includes counter-terrorism, counter-narcotics and anti-corruption objectives) with respect to Afghanistan”;

and either

(iii) Condition 3: “because of that employment or work or provision of services, the person is or was at an elevated risk of targeted attacks and is or was at a high risk of death or serious injury;

or

(iv) Condition 4: “hold information the disclosure of which would give rise to or aggravate a specific threat to the UK Government or its interests”.

19. As appears above, those eligible under ARAP include Afghan citizens who were directly employed in Afghanistan by a UK Government department and because of that employment there is a high risk of a threat to their life (category 1). It includes Afghan citizens who were either directly employed by a UK Government department or provided linguistic services, where the UK's operations would have been materially less effective or successful without that citizen carrying out that role and where because of that role, the citizen would be publicly recognised and at risk (category 2).
20. It also includes: Afghan citizens who were directly employed by a UK Government department, or worked alongside a UK Government department, in partnership with or closely supporting and assisting that department; who made a substantive and positive contribution towards the achievement of one or more of the UK Government's military objectives with respect to Afghanistan or the UK Government's national security objectives with respect to Afghanistan (including counter-terrorism, counter-narcotics and anti-corruption objectives) (category 4).
21. Applications for resettlement under ARAP are made online. After the application has been made caseworkers contact the applicant for further information, and there is provision on forms sent out by caseworkers to provide details.
22. The UK and other allied troops withdrew from Afghanistan in August 2021. The UK withdrawal from Afghanistan was known as Operation Pitting. Some 15,000 Afghan and British nationals, including TPL1 and his wife and children, were airlifted from Kabul in Afghanistan.
23. There have been over 185,000 applications made under ARAP up to 2 April 2025. Some of those applications were duplicated, meaning that the number of actual applications was lower than 185,000. There were about some 40,000 applications made by Afghan citizens who claimed to be members of the Triples, and although there were a number of duplicated applications, of these there were about 27,000 unique applications by Afghan citizens purporting to be members of the Triples. It is also apparent that while there are genuine applications from members of the Triples, the number of applications made (about 27,000) given the number of members of the Triples who served with UK Partnered Triples units (about 5,000), shows that there are many applications which are not well-founded. It is apparent that the number of applications made under ARAP has created substantial administrative difficulties for the MOD in general and DARR in particular.
24. It appears that many of the applications by members of the Triples were determined under category 4 of ARAP. A process had been devised by which DARR caseworkers would refer applications from individuals claiming to be members of the Triples to UKSF personnel. It seemed that this led to an overuse of UKSF personnel on administrative tasks.
25. Between May and November 2022 a moratorium of processing cases under category 4 of ARAP was put in place at the request of a Minister while new arrangements for liaison with the UKSF were made. Caseworkers were to be assisted by criteria which were intended to help them to determine whether to refer an application to UKSF, so that only applications where there was some evidence of a link to UKSF were provided to UKSF. The effect of the moratorium, and further applications, meant that by May 2023 a backlog of over 5,000 referrals to the UKSF had arisen.

## **The sprints**

26. In an attempt to address the backlog a decision was made to co-locate DARR caseworkers with UKSF personnel, and specifically a UKSF Liaison Officer (UKSF LO), to determine substantial numbers of applications. These determinations were made during what have been described as “co-located sprints”, “sprints” or “backlog sprints”. I will refer to them as sprints. Reliable decision making in such circumstances was always going to be difficult to achieve. It seems that none of the 1,585 cases referred to UKSF in the sprints were found to be eligible. As Ms Moore, Director of DARR, put it in her witness statement “it is now obvious that both DARR and UKSF were overwhelmed with the volume and nature of applications that they were considering”.

## **Concerns about decision making concerning the ARAP applications made by the Triples**

27. By October 2023 Ms Moore had become concerned that there were inconsistencies and other problems with how applications from individuals claiming to be Triples were being dealt with. Ms Moore agreed with the Director of Head Office and Corporate Services that the then Deputy Director of Eligibility at DARR would be commissioned to understand how the UKSF had supported ARAP decision making and who was involved. The review was known as the Gold Review, and details about it were provided in a witness statement from Ms Moore.
28. Concerns were also raised about refusals of ARAP applications made by members of the Triples, and what was said to be a veto or de facto veto, operated by members of the UKSF in relation to ARAP applications made by members of the Triples. These concerns were raised by senior military personnel, charity and NGO representatives, and politicians. There was media coverage about the concerns relating to the refusals. There were suggestions made that UKSF were preventing members of the Triples from entering the UK because they might give evidence to the Independent Inquiry relating to Afghanistan (sometimes referred to as the Haddon-Cave Inquiry). The Right Honourable Johnny Mercer, then Minister of State for Veterans’ Affairs, set out concerns in a letter to the Deputy Prime Minister in January 2024. In that letter Mr Mercer drew attention to UKSF having decision making power relating to the Triples, who he noted were potential witnesses to the Independent Inquiry relating to Afghanistan, meaning that there was a significant conflict of interest. Those concerns were repeated in a meeting with Ms Moore in January 2024.
29. Information was provided by Mr Mercer about payment records held by the MOD, which had not either been considered by or made available to DARR caseworkers and the UKSF LO when determining applications made by members of the Triples. It appears from the terms of his letter that Mr Mercer considered that there were some 800 members of the Triples who had carried out missions alongside UKSF. It did not appear that he was aware of the numbers of applications that had been made by persons claiming to be members of the Triples or the backlogs in decision making that had led to the sprints.

### **Problems with the decision making**

30. It appears that the Gold Review, and some ongoing litigation in relation to cases involving members of the Triples, led to the discovery of a number of issues with the decision making relating to the Triples, in particular during the sprints.
31. It is now apparent that the decision making relating to the Triples suffered from a number of defects. These included, in no particular order, the following. First it was not sufficiently set out how category 4 of ARAP should be interpreted in respect of the Triples and the UK military objectives in Afghanistan. This meant that those objectives were interpreted as applying to the UK Counter Terrorism activities, as opposed to other contributions made by the Triples to the UK military objectives in Afghanistan. It seems that there also developed a misunderstanding that only a few members of the Triples in senior positions would be considered to have made a sufficiently substantive and positive contribution to satisfy category 4 of ARAP.
32. Secondly DARR caseworkers and the UKSF LO, were not given access to relevant records relating to payments which had been made by the UK Government to members of the Triples. It is apparent that the DARR understanding about the issue of payments made to members of the Triples and its possible effects on the ARAP applications made by members of the Triples was very incomplete at the time of the sprints, and has developed. Indeed the increasing recognition of the importance of the payment records is part of the explanation for the fact that there will now be a Phase two of the Triples review, it being said in relation to that further review that “officials have continued to analyse and strengthen their understanding of the payment records that MOD hold relating to Afghan Partner Forces ...”.
33. Thirdly, and in part arising from the first and second matters, it seems that there was no appreciation that applications by members of the Triples might be considered under categories 1 and 2 of ARAP.
34. Fourthly DARR caseworkers were overly reliant on UKSF personnel and placed too much weight on personal knowledge and judgement. This defect in the decision making was exacerbated by the fact that the UKSF LO informed UKSF units that he would take a lack of response from them to his inquiries to indicate that the unit had no relevant information and that this would lead to an application being rejected. Such an approach was consistent with speedy decision making in the sprints, but it has been shown by the results of the Triples review that it led to wrong decisions. Although there was no formal veto given to the UKSF, in practical terms the DARR caseworkers implemented UKSF decisions about the applications. Ms Moore apologised in her witness statement that the original summary grounds of defence and the detailed grounds of defence did not make clear the UKSF role in making decisions. The lack of accuracy about the UKSF’s role was one of the points made in relation to the discharge of the duty of candour.
35. Fifthly there was a lack of adequate record-keeping on decision making, particularly in documenting why decisions had been made and the evidence relied on to inform those decisions.
36. Sixthly there was an emphasis on speed of decision making during the sprints in an attempt to clear the backlog which led to a lack of real consideration of the applications.



37. As a result of information provided by Mr Mercer inquiries and investigations were made. An investigation into the allegations of bias by the UKSF against members of the Triples followed a number of lines of inquiry, including interrogation of records from MOD systems. Those inquiries found that the decision making by the UKSF LO was lax and unprofessional. It is, however, only fair to the UKSF LO who was suggested to have refused applications by members of the Triples to prevent them giving evidence to the Independent Inquiry into Afghanistan, to report that that investigation found no evidence of bias or hidden motives on the part of the UKSF LO.
38. I should also record, in the light of both some of the concerns that have been expressed and a request for further information made on the part of TPL1, that suggestions that a General who commanded UKSF in Afghanistan at relevant times, whose name it is not necessary to give in the judgment, was involved in the recruitment of the UKSF LO to be part of the process of determining ARAP applications, were not correct.

### **The Triples review**

39. The appreciation of some of these failings in relation to the decision making relating to the Triples led to a recommendation to Ministers in January 2024 to re-assess a tranche of Triples cases that had been referred to the UKSF. The decision was taken by the Domestic and Economic Affairs Committee on 22 January 2024 to commence the Triples Review.
40. The Triples Review was launched on 1 February 2024. DARR worked to establish a team and a process which would ensure appropriate decision making for the “about 2,000” cases in scope of the review. The team, which included caseworkers loaned from the Home Office, started reviewing cases on 24 March 2024.

### **Information about the scope of the Triples review**

41. Annex B of the submission to the Domestic and Economic Affairs Committee referred to the design of the review process as being robust and independent to minimise any real or perceived conflict of interest. No further details about eligibility for inclusion in the Triples review was given.
42. An accountability agreement dated March 2024 made between the Home Office and MOD set out the basis by which the Home Office would formally loan or second caseworkers to DARR (the accountability agreement). It was said to contain the terms of reference for the Triples review, which had been set out by the Right Honourable James Heapey, Minister for the Armed Forces.
43. In the accountability agreement Mr Heapey is quoted as saying: “... I can confirm that the Ministry of Defence will undertake a reassessment of all eligibility decisions made for applications with credible claims of links to the Afghan specialist units. The reassessment will be done by a team independent of the one that made the initial eligibility decisions on the applications. The team will review each case thoroughly and individually.”
44. Mr Samedi-Smith addressed the scope of the Triples review in his second witness statement. He recorded that the Minister had said that “the Ministry of Defence will

undertake a reassessment of all eligibility decisions made for applications with credible claims of links to the Afghan specialist units”.

45. Mr Samedi-Smith explained in paragraph 18 of his second witness statement that inconsistent application of the ARAP criteria had arisen in the context of cases where UKSF had been contacted for input in the decision making, and that as a result since the outset of the Triples Review: “MOD’s position has been that applicants are only within scope of the Review if their application was previously referred to UK Special Forces, or if MOD had previously had a referral from certain other government bodies and parties (and that application had been decided to be ineligible under ARAP).”
46. In paragraph 20 of his statement he explained that the scope of the Triples review was most recently explained on 14 October 2024 by the Minister for the Armed Forces who said that the Triples review covers “applications that contain credible evidence of links to former Afghan specialist units and in which Ministry of Defence caseworkers previously referred cases to officers in other parts of MOD, to other Departments and to governmental bodies under category 4 of the ARAP scheme, and which may have been affected by that inconsistent approach”. Mr Samedi-Smith clarified that the reference to other parts of MOD, to other Departments and to governmental bodies was “primarily, but not exclusively” a reference to UKSF.
47. In the course of the submissions at the hearing there was some discussion about whether it was possible to reconcile the various descriptions of the scope of the review which had been set out in the accountability agreement, Mr Samedi-Smith’s witness statement and the statement dated 14 October 2024 by the Minister for Armed Forces. I will return to this when discussing the first issue.

### **Caseworker guidance**

48. On 15 April 2024, guidance was issued to caseworkers undertaking the review. This has not been published by the Secretary of State.
49. The caseworker guidance specific to the Triples had been in development before the launch of the Triples Review and was finalised and put in place to assist case workers. A heavily redacted version of this caseworker guidance has been made available in the open proceedings. The failure to publish the redacted caseworker guidance other than in these proceedings is the second remaining issue in these proceedings.
50. The redacted guidance sets out considerations for caseworkers as to the interpretation of category 4 of ARAP in relation to UKSF partner forces cases. Part of the wording of the paragraph was set out. In relation to condition 1(iii) of category 4 under “other evidence to consider” reference was made to ID cards, and photographs. There was information about other ways that condition 1 might be satisfied. Timeframe parameters were given showing when partnership operations were being undertaken before 2014 and the position after 2014 and information about various locations of UK armed forces. This was because in 2014 Afghan National and Defence Security Forces took on the full responsibility for security across Afghanistan and NATO and the UK remained under NATO’s Resolute Support Mission. UK forces had taken the lead for establishing the Afghan National Army Officer Academy.

51. A gist of part of the redacted caseworker guidance which remained redacted shows that categories of Afghan National Security Forces partnering operations were referred to in the redacted part. Caseworkers were advised to consider longevity of service, role and seniority. It was recorded that showing a substantive and positive contribution to the UK's national security or military objectives was more likely to be met where the force ratio was 50 per cent or greater UK forces and UK led. Caseworkers were directed that examples given were not prescriptive or exhaustive.
52. The redacted caseworker guidance does not set out any guidance in relation to categories 1 and 2 of ARAP. It is apparent from reading the redacted guidance as a whole that some members of the Triples will need to provide considerable detail in order to succeed in their application under ARAP. 2014 is given as a date after which it is assumed that applications will be less likely to succeed. If there was not a majority of UK personnel on an operation it is assumed that it will not satisfy relevant conditions in category 4 of ARAP.

### **Further developments**

53. After the Triples review started, in April 2024 more information about pay records for payments made by the UK Government to members of the Triples became available to the DARR Directorate, and it was then discovered in May 2024 that caseworkers had not in fact been provided with access to the caseworker guidance when they began making decisions. As a result the Triples review was paused so that reference documents could be provided to caseworkers and the secret caseworker guidance was also provided. It is apparent that further work is being undertaken by DARR in relation to records about what were described as Top up payments made by the UK Government to members of the Triples.

### **These proceedings**

54. There was pre-action correspondence between the parties from 21 August 2024.
55. Luke Pollard, the Minister for the Armed Forces, provided a public update on the Triples Review. Mr Pollard confirmed that about 2,000 cases were within scope of the Review, that 75% of cases under the Review had been reviewed, that there was an expected overturn rate of 25%, that if a decision was overturned applicants were notified immediately, and that evidence had been found of direct employment for some of the Triples.
56. This claim for judicial review was issued on 29 October 2024.
57. Following the launch of these proceedings, on 19 November 2024 the Secretary of State made a new requirement for caseworkers to provide individual responses to applicants under the ARAP scheme who had queried whether they are in the scope of the Triples Review.
58. Three requests for further information were made by the Claimant between 29 January 2025 and 10 April 2025. The Defendant has made a number of disclosures including: the redacted caseworker guidance; the accountability agreement; and the instruction of 19 November 2024.

59. On 9 December 2024 Farbey J ordered a rolled up expedited hearing. There were various hearings relating to issues of disclosure.
60. On 16 May 2025, the week before this hearing, the Secretary of State supplied details of a Ministerial Written Statement. The statement was by Mr Pollard, the Minister for the Armed Forces, providing an update on the Triples Review and information about Phase two of the Triples Review. The Minister said:

“The case work within the initial scope of the review has been completed with an overturn rate of approx.. 30%;

Further work is taking place to analyse the payment records that MOD hold;

Top Up Pay will now be sufficient to demonstrate substantive and positive contribution to the UK’s military objectives in Afghanistan; this means there will be some applicants who were not previously, but will now be included in the scope of review;

Further details on Phase Two of the Review are available in the Terms of Reference, to be published online in the coming days alongside the ARAP criteria;

Further documents will be published relating to Phase One of the Review;

All those who have had their application reviewed in Phase One will be contacted in due course; for Phase Two those will be contacted on a rolling basis once decisions are made.

All decisions made in Phases One and Two will have a right to have this decision reviewed.”

61. As appears from that statement the overturn rate is now about 30 per cent. If 30 per cent of some 2,000 cases have been overturned, that comes close to the figure of 800 members of the Triples mentioned by Mr Mercer.

### **The resolution of some issues**

62. The Secretary of State raised issues about the standing of TPL1 to bring this claim on behalf of other members of the Triples. In the final event the issue of standing was not pursued and it is not necessary to say anything more about the issue of standing in this judgment.
63. As already noted, the parties have managed to resolve some of the issues raised by the claim and disclosure requests. There has been an agreement to publish documents relating to the scope of the Triples review. It has been agreed that those whose claims are rejected will be notified and individuals will be entitled to a Right of Review in respect of negative decisions. It has been confirmed that there will be a phase two of the Triples review which will consider payment records that were not previously considered. It has been confirmed that applicants within the scope of the Triples Review will be individually notified of the decision in their cases, and that members of

the Triples who believe they may be in scope of the Triples Review can request clarification of whether they are in scope by writing to the MOD.

### **Relevant provisions of law**

64. There was no material dispute between the parties about the law. In *B v Secretary of State for Work and Pensions* [2005] EWCA Civ 929; [2005] 1 WLR 3796 the appeal concerned the meaning of the words “failed to disclose” in the Social Security (Claims and Payments) Regulations 1987. An issue arose at the end of the appeal about a policy on recoupment of payments and the fact that it was unpublished. Sedley LJ stated that “If - as seems to be the situation here - such a policy has been formulated and is regularly used by officials, it is the antithesis of good government to keep it in a governmental drawer.”
65. *R(Lumba) v SSHD* [2011] UKSC 12; [2012] 1 AC 245 concerned an unpublished detention policy. That policy was held to be unlawful because it was a blanket policy which was inconsistent with published policies. It was held that there was a duty to publish that policy so that a person who was affected by it could make informed and meaningful representations before a decision was made. At paragraph 34 Lord Dyson addressed publication of policies and said that the “the rule of law calls for a transparent statement by the executive of the circumstances in which the broad statutory criteria will be exercised”. Lord Dyson recognised in paragraph 38 that “there might be compelling reasons not to publish some policies, for example, where national security issues are in play”. Lord Walker, at paragraph 190 of *Lumba*, stated in the context of immigration policies that “members of the public, or those of the public liable to be affected, should know where they stand, and so they are entitled to know, at least in general terms, the content of official policies”.
66. In *R(Good Law Project) v Prime Minister and others* [2022] EWCA Civ 1580; [2023] 1 WLR 785 the court held that there was no duty to comply with eight separate policies which related to communications systems such as WhatsApp, Signal and private email, in part because they could not be read as a coherent whole. It was also stated: in paragraph 56 of the judgment that Government policies can take many forms and are made in many different contexts; and in paragraph 59 that there was no public law duty to comply with those duties which governed the internal administration of Government departments.

### **Whether the Secretary of State unlawfully failed to publish the criteria for determining whether an application falls within the scope of the Triples Review – issue one**

67. It is apparent that the description of the scope of the review set out in the accountability agreement is different from the description of the scope of the review set out in Mr Samedi-Smith’s witness statement and the statement made by the Minister for Armed Forces on 14 October 2024. This is because in the accountability agreement the review was said to include “all eligibility decisions made for applications with credible claims of links to the Afghan specialist units”. This would include any member of the Triples.
68. Although Mr Samedi-Smith had said that there would be “a reassessment of all eligibility decisions made for applications with credible claims of links to the Afghan specialist units”, which was consistent with the accountability agreement, Mr Samedi-

Smith went on to say that “MOD’s position has been that applicants are only within scope of the Review if their application was previously referred to UK Special Forces, or if MOD had previously received a referral from certain other government bodies and parties ...”. This was different from the accountability agreement because it was apparent that more than a credible claim of links to the Afghan special units was needed to be in the scope of the review. There had to have been a reference to UK Special Forces or a reference from certain other government bodies and parties.

69. Ms McGahey submitted that it did not matter whether persons knew that they were in the scope of the review or not. This was because, as a result of agreements made by the Secretary of State during the progress of this claim, anyone with a negative decision would be provided with reasons and would be entitled to ask for a review. Further an applicant can confirm whether he or she is in scope of the review by contacting the DARR casework team.
70. Mr de la Mare noted that: decisions under ARAP had the potential to be life and death decisions for members of the Triples; the decision making had been disastrous with, at times, a blanket practice of refusing applications; and it was necessary to restore public trust and confidence in circumstances where there had been a widespread perception of bias. The scope of the review would need to be published so that if persons had fallen outside of the scope of the review, they might be able to challenge the scope of the review.
71. There is a principled distinction in public law between on the one hand taking steps which might seem as being sensible or desirable, which is a matter for the executive only, and on the other hand finding a failure to take those steps as unlawful, which is a matter for the courts. Sedley LJ referred obliquely to this distinction in *B v Secretary of State for Work and Pensions* when he referred to the keeping of a policy in a governmental drawer as being the antithesis of good government. Sedley LJ did not say, because it was not necessary to do so in that case, whether the failure to publish the relevant policy was unlawful.
72. In the particular circumstances of this case there has been published information about the scope of the review, which is inconsistent with other information about the scope of the review. Given the critical importance of the review to those who have made applications under ARAP, and the evidence shows that the Taliban have tortured and killed members of the Triples, it would be unlawful, for the reasons given in paragraph 34 of *Lumba*, not to publish accurate information about the scope of the review. The fact that persons are entitled to contact DARR and find out whether they are in the scope of the review is not a sufficient answer to the requirement to publish accurate information about the scope of the review, because other members of the Triples may have relied on the published information about the scope of the review, and may have been misled by it. This would mean that they might not contact DARR to find out if they are, in fact, in the scope of the review and might not then make further representations.
73. In order to discharge the public law duty in this case it is necessary to publish a transparent and accurate statement about the scope of the (first) Triples review. This will enable those who might be in scope to know what reviews are being undertaken. I note that the scope of Phase two of the Triples review has been published.

**Whether the Secretary of State unlawfully failed to publish the criteria for determining what factors will be considered in individual review decisions, which was the caseworker guidance – issue two**

74. Although the ARAP policy has been published and is available, it is apparent that the redacted caseworker guidance provides a level of detail which any applicant would want to have to make a successful application. The level of detail set out in the redacted caseworker guidance goes beyond the information that appears to be requested on the forms sent out to those who have applied for resettlement under ARAP.
75. I accept the points made on behalf of the Secretary of State that the redacted caseworker guidance is the comprehensive guidance that applies the ARAP policy to the Triples cohort, and that applicants are expected to make honest applications. It is apparent, from the reported results of the Triples review (a 30 per cent overturn rate), that many members of the Triples have made honest applications. It is also apparent, from the numbers of applications that have been made by persons claiming to be members of the Triples (27,000 when there were only 5,000 members of UK Partnered Triples units) that not every application is justified.
76. The redacted caseworker guidance does, however, raise issues about which a person affected by the application of the caseworker guidance to the ARAP policy could make an informed or meaningful representation. First, it is apparent that former members of the Triples who apply under ARAP will need to provide more detail about their activities and operations. The witness evidence shows that they are unlikely to have felt comfortable in sharing detailed information on an application form. This is so that caseworkers can satisfy themselves that the person is a former member of the Triples.
77. Secondly it is apparent that because of evolving roles of both UKSF and Afghan Partner Forces in Afghanistan, those who served only after 2014 will need to provide more detail to be able to satisfy caseworkers that they made a substantive and positive contribution towards the UK Government's military objectives or the UK Government's national security objectives with respect to Afghanistan.
78. Thirdly those members of the Triples who undertook operations where UKSF formed less than 50 per cent of the operation, will need to show why that operation made a substantive and positive contribution towards the UK Government's military objectives or the UK Government's national security objectives with respect to Afghanistan.
79. In these circumstances and as Lord Dyson put it in *Lumba* "the rule of law calls for a transparent statement by the executive of the circumstances in which the broad" terms of the ARAP policy will be exercised.
80. I accept, however, that Ms McGahey is right in submitting that there are compelling reasons of national security not to publish the whole of the caseworker guidance in this case, which has not been disclosed into the open proceedings. This appears in part from the gist referred to in paragraph 51 of the judgment above that the caseworker guidance refers to various military operations. Lord Dyson recognised at paragraph 38 of *Lumba* that there might be compelling reasons not to publish some policies where issues of national security are at play. I would therefore reject the claim for publication of the whole caseworker guidance on the grounds of national security.

81. That is not the end of this part of the claim. This is because submissions were made on both sides about whether the redacted part of the caseworker guidance should be published. Mr de la Mare pointed to the fact that members of the Triples who contacted the legal representatives involved in this case would have the benefit of legal advice about what representations needed to be made and what details needed to be provided to the Secretary of State under ARAP because the legal representatives have seen the redacted caseworker guidance, but other members of the Triples who have applied under ARAP would not have that advantage. I reject the proposition that simply because the Secretary of State has disclosed materials under the duty of candour that they should then be published to the world at large. Such an approach might undermine the proper disclosure of materials in judicial review proceedings. Whether it is desirable to publish the guidance in those circumstances is a matter for the executive.
82. In the particular circumstances of this case however, and where the rule of law calls for a transparent statement by the executive of the circumstances in which the broad terms of the ARAP policy will be exercised, then the Secretary of State, in order to comply with public law duties, will need to publish a summary of the material parts of the disclosed redacted guidance given to the caseworkers. In this case that will include the publication of guidance that: members of the Triples will need to provide details in order to assist their application under ARAP; 2014 is given as a date after which it is assumed that applications will be less likely to succeed; and if there was not a majority of UK personnel on an operation it is assumed that it will not satisfy relevant conditions in category 4 of ARAP.

### **The duty of candour**

83. It is well known that there are duties of full and frank disclosure and candour that apply to parties in judicial review proceedings, and it is not necessary for the purposes of this judgment to give an explanation of the duties. Complaints have been made that the Gold review was not disclosed, and that a summary only has been provided in a witness statement.
84. It is right to record that the Secretary of State took a point on the standing of TPL1 to bring the claim and in the light of that point denied that there was a requirement to provide disclosure in circumstances where the point on standing was unlikely to succeed and was in the event abandoned. It is also proper to record that clarifications were provided about details of the ARAP decision making and an apology was made in later witness statements filed on behalf of the Secretary of State. There was also an agreement (about which Farbey J was informed earlier in the proceedings) to respond in full to a request for information, when it was later contended in the answer that was given that it was not necessary to provide the information. It is clear that if that was the submission to be made about the request for information, the issue should have been raised before Farbey J.
85. It is apparent that these proceedings, which have been heard with expedition and which have involved open and closed proceedings because matters of national security have been engaged, have involved a substantial level of hard work and commitment from both sets of legal representatives. This has been in part because of the requirement for expedition, and in part because grounds have been properly added, and amended and sometimes withdrawn, as materials have emerged and concessions have been made. I am very grateful to all the legal representatives for their hard work and co-operation



with each other and the court in preparing for this hearing. I can record that it has been possible to determine fairly the remaining issues between the parties, even with summaries and not underlying documents. Issues relating to the duty of candour might be relevant to issues on costs.

### **Conclusion**

86. Judicial review is intended to provide a speedy audit of the legality of public decision making. I am conscious that there was no legal obligation to establish ARAP, which was set up the Secretary of State in recognition of the support given the UK mission in Afghanistan by certain Afghan citizens. Once, however, ARAP was established, the legal principles relating to public decision making applied. It is apparent that, during the course of these proceedings, many improvements have been made to the decision making process under ARAP.
87. However, for the detailed reasons given above, I would answer the issues as follows: (1) in order to discharge the public law duty in this case it is necessary for the Secretary of State to publish a transparent and accurate statement about the scope of the Triples review; and (2) in circumstances where the rule of law calls for a transparent statement by the executive of the circumstances in which the broad terms of the ARAP policy will be exercised, then the Secretary of State, to comply with public law duties, will need to publish a summary of the material parts of the disclosed redacted guidance given to the caseworkers. In the particular circumstances of the case that will include guidance that: members of the Triples will need to provide considerable detail in order to succeed in their application under ARAP; 2014 is given as a date after which it is assumed that applications will be less likely to succeed; and if there was not a majority of UK personnel on an operation it is assumed that it will not satisfy relevant conditions in category 4 of ARAP.

### **Mrs Justice Farbey**

88. I agree.