



***The King on the application of TLP1
-and-
Secretary of State for Defence***

PRESS SUMMARY:

This press summary does not form part of the Court's judgment. It is provided by the Court for the assistance of the press and the public.

References in square brackets are to paragraphs in the Court of Appeal's Judgment

The claim

1. The Divisional Court (Lord Justice Dingemans and Mrs Justice Farbey) heard a claim for judicial review [1]. The claim was made by TPL1, a former senior member of the Triples who has been granted anonymity [17], against the Secretary of State for Defence. The claim is made on behalf of other members of the Triples who are still in Afghanistan, Pakistan and Iran [17]. The work of the Triples placed members of the Triples at a high level of risk from Taliban reprisals [16]. The Triples were part of the Afghan Partner Forces [13] and included CF-333 and ATF-444 [13-15].
2. The court held open and closed proceedings. A closed hearing is held where the court has made a declaration pursuant to section 6 of the Justice and Security Act 2013 granting permission to the Government not to disclose information relating to matters of national security otherwise than to the court and special advocates [9].

Background

3. The claim for judicial review related to the Afghan Relocations and Assistance Policy (ARAP), which was established on 1 April 2021 by the Secretary of State for Defence in recognition of the support given to the UK mission in Afghanistan [2]. The UK withdrawal from Afghanistan occurred in August 2021 [2], and some 15,000 Afghan and British nationals were airlifted from Kabul as part of Operation Pitting [22].
4. The terms of ARAP are set out in judgment [18]. There had been over 185,000 applications under ARAP, although some of those applications were duplicated [23]. About 27,000 applications purported to be from members of the Triples, but the actual number of members of the UK partnered Triples units were about 5,000 [23]. ARAP is administered in the Ministry of Defence by the Defence Afghan Relocation and Resettlement (DARR) directorate [10]. The number of applications has created substantial administrative difficulties [23].
5. A process was devised by DARR of referring persons who claimed to be members of the Triples to UK special forces [UKSF] [24]. This led to an overuse of UKSF personnel on administrative tasks [24]. Between May and November 2022 a moratorium of processing cases under category 4 of ARAP, the category being used to determine claims by members of the Triples [25]. By May 2023 there was a backlog of 5,000 referrals to UKSF. A process of decision making in "sprints" was devised [26]. It was obvious that "both DARR and UKSF were overwhelmed with the volume and nature of the applications they were considering" [26].

6. There were a number of problems with the decision making process relating to applications from members of the Triples and persons purporting to be members of the Triples. These are summarised from paragraphs 31 to 38. They included: lack of clarity about how ARAP should be interpreted for members of the Triples [31]; absence of pay records relating to members of the Triples [32]; a failure to consider categories 1 and 2 of ARAP [33]; over reliance by DARR caseworkers on UKSF personnel, and a decision by the UKSF Liaison Officer that an absence of response from SF units to inquiries would lead to decisions being rejected [34]; a lack of adequate record-keeping [35]; and an emphasis on speed of decision making [36]. The judgment records that an investigation into allegations of bias on the part of the UKSF Liaison Officer against members of the Triples found no evidence of bias or hidden motives on the part of that Liaison Officer [37].
7. The appreciation of some of the failings in the decision making process led to the establishment of the Triples Review on 1 February 2024 [39]. Since the first Triples Review was established, more information about pay records has become available to members of the DARR Directorate [53]. A Phase two of the Triples Review has been announced by the Minister for the Armed Forces [60].

The grounds of claim

8. A number of grounds of claim had been resolved by the parties during the progress of the claim [3]. The remaining issues before the court related to publication of: (1) the scope of the Triples Review; and (2) the criteria for determining what factors would be considered in individual decisions [4].
9. There was inconsistent information published about the scope of the first Triples Review [41-47]. Caseworker guidance was produced for the Triples Review, and very heavily redacted guidance was disclosed into the open proceedings [48-52]. This guidance showed that members of the Triples would: (a) need to provide detail about their activities and operations [76]; (b) need more to show a substantive and positive contribution to the UK Government's military objectives or national security objectives if they only served after 2014 [77]; and (c) need to show why an operation made a substantive and positive contribution towards the UK Government's military objectives or national security objectives where members of Triples took part in an operation where UKSF formed less than 50 per cent of an operation [78].

The decision

10. The court set out relevant principles of law [67-73].
11. The Court granted the claim for judicial review and held [87] that (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, for the detailed reasons set out in paragraphs 67-73; 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, for the detailed reasons set out in paragraphs 74-82.
12. The court also addressed issues relating to the duty of candour in [83-85].