Neutral Citation Number: [2026] EWHC 108 (Admin)

Case No: AC-2024-LON-003068

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23 January 2026

Before :

MRS JUSTICE LANG DBE

- -

Between :

THE KING	**Claimants**
on the application of	
(1) EPX **(2) PGH**	
- and -	
SECRETARY OF STATE FOR DEFENCE	**Defendant**

PRESS SUMMARY

NOTE: This summary is provided to help in understanding the Court's decision. It does not form part of the judgment. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: www.judiciary.uk, https://caselaw.nationalarchives.gov.uk and www.bailii.org

1. The Claimants (whose identities must not be disclosed), applied for judicial review of three of the Defendant's revised policies governing communications by service personnel with the public, the media and Parliament:

   i) 'The Media DIN 2025': a Defence Instruction Notice ("DIN") titled 'Contact with the media and communicating in public', as amended on 6 February 2025;

ii) 'Raising a Concern': Chapter 14 of Joint Service Publication 492 ('JSP 492'), published in March 2023, as amended in February 2025;

iii) 'The Parliamentarian DIN 2024': a DIN titled 'Contact with Parliamentarians', as amended on 10 December 2024.

2. The First Claimant, EPX, is a serving member of the Armed Forces. The Second Claimant, PGH, is a former serving member. Both Claimants contend that the Defendant's policies impose an unjustified and unlawful restriction on service personnel (particularly women), communicating with the public, media and/or Parliamentarians about their experiences of rape, sexual assault, harassment and bullying, without prior authorisation by the Defendant.

3. The claim proceeded on the basis that the Defendant "would treat the Claimants' accounts of (a) their own experiences/circumstances, and (b) what they wish to communicate in public about, as the "assumed facts" (without any admission as to the same) and to respond to the policy challenge on that basis" (paragraph 11 of the Detailed Grounds for contesting the claim). The Defendant considered that it was not feasible to investigate the specific allegations because disclosure of case details was confined to members of the confidentiality ring. However, the assumed facts "do not extend to wide-ranging propositions/allegations made by [the Claimants] of systemic or cultural failings…" (paragraph 6 of the Defendant's skeleton argument).

4. The Claimants' grounds of challenge and the outcome may be summarised as follows:

i) **Ground 1.** The Judge dismissed the Claimants' submissions that the policies were *ultra vires* the Defendant's legal powers; or an unjustified interference with their common law rights to freedom of expression; or that they were irrational.

ii) **Ground 2.** The Judge dismissed the Claimants' submission that the policies amounted to a breach of Articles 8 and 10 of the European Convention on Human Rights ("ECHR").

iii) **Ground 3**. The Judge dismissed the Claimants' submission that, in breach of Article 14 ECHR, read with Articles 8 and 10 ECHR, the policies constituted an unjustified difference between service personnel and civilians.

iv) **Ground 4**. This was a claim of victimisation which the Claimants did not pursue at the hearing.

v) **Ground 5.** The Judge held that the Defendant failed to comply with the public sector equality duty ("PSED") in section 149 of the Equality Act 2010 ("EA 2010") when making the Media DIN 2025 and the Parliamentarian DIN 2024. The Defendant conceded this ground, and also that the Media DIN 2020 did not comply with the PSED. Judicial review was allowed on this ground alone. The Judge ordered the Defendant to complete the ongoing review of the DINs together with lawful equality impact assessments, and to promulgate replacement DINs by the end of April 2026.

The policies

5. The Judge found that the Claimants misinterpreted the current policies.

6. The Media DIN 2025 provides that communication in public and contact with the media on defence or government matters must be authorised. Unauthorised contact could undermine the Ministry of Defence's ("MOD's) operational capability or endanger lives. However, the Media DIN 2025 has been amended so as expressly to exclude from its ambit circumstances "where personnel wish to raise a concern using the whistleblowing protections provided by legislation or extended through MOD policy". So the obligation to seek prior authorisation before communicating with the public or the media on defence or government matters does not apply in circumstances where, as here, service personnel wish to raise a concern under the Raising a Concern policy.

7. The Raising a Concern policy provides that individuals who report "wrongdoing" will be protected from victimisation and unfair treatment. The Judge considered that the criminal conduct and sexist behaviour which the Claimants wished to publicise fell within the scope of "wrongdoing" under the policy and that the Claimants would have been eligible to raise their concerns under the Raising a Concern policy.

8. The protection afforded in the policy is set out as follows:

> "**Protection**
>
> 44. No-one who raises a genuine concern (one made in good faith that they reasonably and honestly believe to be true) in line with this policy and procedure should suffer a detriment because of raising that concern. This includes where further enquiries or an investigation subsequently finds there has been no wrongdoing.
>
> …..
>
> 47. The Public Interest Disclosure Act 1998 (PIDA) also serves to protect 'workers' who make a 'qualifying disclosure' in one of the permissible ways set out in the Act from detriment or dismissal. In order to be protected, the procedure set out in the Act must be followed.
>
> PIDA is not drafted in a manner which includes Service Personnel within its scope. However as a matter of policy, Defence has decided to extend the principles of PIDA to Service Personnel. Defence has an equal duty to protect all its personnel and as long as you have reasonable belief that your concern is true and have followed the procedures set out in this guidance, you will be protected from any unfair or negative treatment (victimisation) due to raising the concern. If you are victimised for raising a concern, Defence will take appropriate disciplinary action against those responsible in accordance with their terms and conditions of service.
>
> ….."

9. The relevant provisions of the PIDA are set out in Annex 1 to the judgment. PIDA amended the Employment Rights Act 1996 ("ERA") by inserting a new Part IVA. It created the concept of a "protected disclosure". An employer cannot subject a worker to a detriment as a consequence of making such a disclosure. A protected disclosure is a "qualifying disclosure" made by a worker in accordance with sections 43C to 43H ERA. That is to say, it is any disclosure of information which, in the reasonable belief of the worker, is made in the public interest and tends to show a criminal offence, a breach of legal obligations, a miscarriage of justice, health or safety dangers, environmental damage, or deliberate concealment of any of these matters.

10. In the first instance, PIDA applies to several types of disclosure:

    i) to an employer (section 43C ERA);

    ii) to a legal adviser (section 43D ERA);

    iii) to a Minister of the Crown, where the person's employer is "an individual appointed under any enactment …. by a Minister of the Crown, …. or a body any of whose members are so appointed" (section 43E ERA); and

    iv) to a person prescribed for that purpose by the Secretary of State (section 43F ERA).

11. Thereafter section 43G ERA provides that a worker may make a disclosure more widely and still receive protection if:

    i) they make the disclosure in good faith; and

    ii) they reasonably believe that the information disclosed, and any allegation contained in it, are substantially true; and

    iii) they do not make the disclosure for the purposes of personal gain; and

    iv) one of the following conditions is satisfied:

        a) they reasonably believe that they will be subjected to a detriment by their employer if they make a disclosure to their employer, or;

        b) no person is prescribed to receive a disclosure and the worker reasonably believes that it is likely that evidence relating to the relevant failure will be concealed or destroyed if they make a disclosure to their employer, or;

        c) they have previously made a disclosure of substantially the same information to their employer or a prescribed person.

    v) and in all the circumstances of the case, it is reasonable to make the disclosure.

12. It follows that the regime introduced by PIDA usually requires a worker first to speak to their employer, but subsequently permits wider disclosure, subject to conditions.

13. The Media DIN 2025 also states clearly that private communications between service personnel and constituency MPs fall outside its scope.

14. The Parliamentarian DIN 2024, as amended on 10 December 2024, sets out the rules and authorisation procedures governing contact with Parliamentarians, including members of both Houses of Parliament. It states that this DIN "does not preclude those having employment with the MOD or Armed Forces from raising a concern in line with the Department's whistleblowing policy or contacting an appropriate employee support hotline" (paragraph 3). Thus, the PIDA protections and the Raising a Concern policy are applicable to contact with Parliamentarians.

15. Furthermore, the Parliamentarian DIN 2024 recognises the right of all service personnel to communicate with their constituency MP without authorisation on matters that relate to their service or employment.

Ground 1

16. The Judge concluded that the policies were properly made by the Defence Council in the exercise of its powers and duties under the Royal Prerogative and service law. The Court had to consider whether the policies represented a lawful expression of legal rights and obligations, applying the guidance in *R (A) v Secretary of State for the Home Department* [2021] UKSC 37; [2021] 1 WLR 3931. The Claimants failed to establish that the policies, when read correctly, were unlawful at common law, or that they misstated the law. The restrictions on communications by service personnel arose from the obligations under their service agreements and service law, and the duty of confidentiality. They were justified by the legitimate concerns about non-official communications. Furthermore, there was no blanket ban on communications outside the Armed Forces. Service personnel were entitled to seek authorisations for such communications, which will be granted in appropriate cases. The PIDA protections, which have been approved by Parliament, provide a safe route for whistleblowers to disclose matters in the public interest, even without authorisation. The unrestricted access to a service personnel's constituency MP is an added safeguard. Finally, the Defendant and the Defence Council have a wide discretion as to the appropriate formulation of policy in this sphere, and their exercise of judgment as to how best to strike the balance between the competing factors, could not be characterised as irrational.

Ground 2

17. The Judge dismissed this ground for the following reasons.

18. The Claimants' case was based on the false premise that the policies prevent the Claimants communicating publicly, in particular, to the media or Parliamentarians, about their experiences of rape and sexual assault, harassment and bullying in the Armed Forces, without prior authorisation, and that they were excluded from the PIDA protections for whistleblowing afforded by the Raising a Concern policy to service personnel in their circumstances.

19. The issue under Ground 2 was not whether Convention rights were breached by the rapes, sexual assaults, harassment and bullying which the Claimants experienced, nor by the inadequate response of the authorities when the Claimants reported these events.

The focus of the challenge was the lawfulness of the policies on service personnel communicating in public, with the media, and with Parliamentarians.

20. Because of the unusual way in which this claim proceeded, as a challenge to policies which have only recently come into force, no decisions have been made under these new policies in respect of the Claimants' wish to publicise their experiences. Therefore unlike most of the Convention cases cited, there was no specific act or decision which could be said to amount to a violation of Articles 8 and 10 ECHR.

21. The approach in *R (A)* applied, and the Claimants had to demonstrate that the policies are unlawful because they contain a positive statement of the law which is wrong, and they direct persons to act in a way which contradicts the law.

22. The Judge considered that the duty of confidentiality, which is part of the duty to serve and obey that service personnel accept upon enlisting, may interfere with the right to freedom of expression under Article 10 ECHR, and the right to respect for private life under Article 8 ECHR, depending upon the circumstances of the individual case.

23. Any such interference is prescribed by law, namely, the Royal Prerogative, the Armed Forces Act 2006 and service law.

24. The Judge did not accept the Claimants' submission that the policies are not "in accordance with the law" because of a lack of clarity, accessibility and precision. This argument was raised in *R (A)* and rejected by the Supreme Court, at [50] – [52], for reasons which applied in this case too. The policies met the standard of a reasonable degree of predictability, and safeguards against arbitrary or capricious decision-making by public officials, required under Article 8(2) ECHR.

25. The policies engaged legitimate interests under Article 8(2) (namely, national security, the prevention of disorder (within the Armed Forces), the protection of the rights and freedoms of others) and legitimate interests under Article 10(2) (namely, national security, the prevention of disorder (within the Armed Forces), the protection of the reputation or rights of others and preventing the disclosure of confidential information).

26. For an interference to be necessary in a democratic society, it must fulfil a pressing social need and be proportionate to the legitimate aim relied upon.

27. Drafting policy in this area represents a complex balancing act between operational and personal security, organisational effectiveness (including issues such as morale and discipline), and individual Convention rights. Policies must cater for all possible scenarios, not just the Claimants and those in similar circumstances to them. It is neither possible nor desirable for policy to make specific provision for each and every context in which it might fall to be applied. The MOD had legitimate concerns which justified a degree of restriction or control being placed on public communications.

28. The Raising a Concern policy makes provision for service personnel to report wrongdoing, confidentially and anonymously if necessary, with support mechanisms in place. It extends the protection for whistleblowers under PIDA, to service personnel. The PIDA regime and the Strasbourg case law are broadly congruent in their approach to assessing the availability in law of protection to whistleblowers, including members

of the Armed Forces. Accordingly, the PIDA regime is, in principle, compliant with Article 10 (read, as applicable, with Articles 8 and 14 ECHR).

29. The Judge concluded that the potential interference with rights under Article 8 ECHR and Article 10 ECHR, envisaged by the policies, was justified and proportionate to the legitimate aims pursued. The policies strike a fair balance between the rights of service personnel and the interests of the Defendant.

30. Applying the approach in *R (A)*, the policies did not direct service personnel to act in a way which was in breach of Article 8 ECHR or Article 10 ECHR.

Ground 3

31. Under Ground 3, the Claimants submitted that the policies were incompatible with Article 14 ECHR, read with Articles 8 and 10 ECHR.

32. The Claimants submitted that the policies created a difference in treatment:

i) between (1) service personnel, such as the Claimants, who were required to obtain prior authorisation for public communications; and (2) civilians who were not required to obtain prior authorisation for public communications; and

ii) between (1) persons, such as the Claimants, with protected characteristics of sex, race, disability, and sexual orientation, which made them more vulnerable to rape, sexual assault, harassment and bullying, and so more likely to be affected by, and to campaign about, the MOD's treatment of these issues; and (2) persons without those protected characteristics, who were less likely to have the need to speak out about such matters.

33. The Judge dismissed this ground for the following reasons.

34. It was not in dispute that the policies fell within the ambit of Articles 8 and 10 ECHR. Nor was it in dispute that members of the Armed Forces have a protected status under Article 14 ECHR, as do persons with protected characteristics of sex, race, disability and sexual orientation.

35. However, the Claimants failed to establish the difference in treatment which they relied upon to establish a breach of Article 14 ECHR. Ground 3 is based on the premise that the policies prevent the Claimants communicating publicly, in particular, to the media or Parliamentarians, about their experiences of rape and sexual assault, harassment and bullying in the Armed Forces, without prior authorisation, and that they are excluded from the PIDA protections for whistleblowing, afforded by the Raising a Concern policy to service personnel in the circumstances of the Claimants. That is a mistaken reading of the policies.

Ground 5

36. Under Ground 5, the Claimants submitted that the Defendant was in breach of the PSED in section 149 EA 2010. The Defendant has now conceded that the PSED was not complied with in respect of:

i) the Media DIN 2025, as no focused assessment took place, and a proper equality impact assessment was not conducted; and

ii) the Parliamentarian DIN 2024, as no focused assessment took place, and the equality impact assessment did not consider the impact on particular protected characteristics in a structured fashion.

37. Therefore the Defendant has acted in breach of section 149 EA 2010 and Ground 5 succeeds.

38. The Judge rejected the Defendant's submission that no relief should be granted because section 31(2A) of the Senior Courts Act 1981 applies.

39. The Judge, in the exercise of her discretion, did not consider that the Media DIN 2025 or the Parliamentarian DIN 2024 should be quashed because of the breach of section 149 EA 2010. They are important policies which govern a large number of service personnel and civilians in their day to day service, and a quashing order would leave an unfortunate gap in policy provision for months. A declaration that the policies are unlawful would have the same unfortunate effect. The Judge noted that the MOD is already undertaking a review of these policies: see the witness statement of Ms Wallington, at paragraphs 38 to 43. The Judge concluded that the better course would be for the MOD to undertake to review the Media DIN 2025 and the Parliamentarian DIN 2024 within a specified time scale, and to undertake a lawful equality impact assessment as part of the review. The Judge made an order accordingly, requiring replacement policies to be promulgated by the end of April 2026.

40. The King's Regulations do not accurately reflect current policy. The Judge made a declaration identifying the unlawful regulations. The King's Regulations will be updated in due course.

Final conclusion

41. The claim for judicial review was dismissed on Grounds 1, 2 and 3. Ground 4 was not pursued by the Claimants. Judicial review was allowed on Ground 5.