



Neutral Citation Number: [2026] EWHC 566 (Admin)

Case No: AC-2025-LON-002920

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/03/2026

Before :

THE HONOURABLE MR JUSTICE SAINI

Between :

THE KING (ON THE APPLICATION OF CHD)

Claimant

- and -

SECRETARY OF STATE FOR DEFENCE

Defendant

Adam Straw KC and Miranda Butler (instructed by Bindmans LLP) for the Claimant
Alan Payne KC and Richard Evans (instructed by Government Legal Department) for the
Defendant
Tim Buley KC and Jesse Nicholls, Special Advocates (instructed by the Special Advocates
Support Office)

Hearing date: 4 March 2026

REDACTED JUDGMENT

Mr Justice Saini:

This OPEN judgment is in eight main parts with an annexe as follows:

| | |
|------------------------------------|-------------------------------|
| I. Overview: | paras.[1]-[11]. |
| II. The ARAP Policy: | paras.[12]-[16]. |
| III. Legal Principles: | paras.[17]-[21]. |
| IV. The Facts: | paras.[22]-[45]. |
| V. Ground 1: error of fact | paras.[46]-[82]. |
| VI. Ground 2: unpublished guidance | paras.[83]-[84]. |
| VII. The Withdrawal Note: | para.[85]. |
| VIII. Conclusion: | paras.[86]-[87]. |
| Annexe: | The FCDO's Assessor's reasons |

I. **Overview**

1. This is a case about the relocation of an Afghan citizen, the Claimant, to the UK. On 18 December 2025, Calver J directed an expedited "rolled-up" hearing of the Claimant's claim for judicial review ("the Order"). The Claimant challenges the decision of the Secretary of State for Defence ("the Defendant"), dated 6 June 2025 ("the Decision"), to refuse his application to enter the UK under the Afghan Relocation and Assistance Policy ("ARAP"). As I describe further below, a few days after the conclusion of the hearing before me and while I was waiting on certain information I had requested from the Defendant, the Defendant agreed to withdraw the Decision. The court has a discretion to give judgment even if a case has been compromised.
2. Given the issues raised by this case, and in the interests of transparency, I have decided to do so. In particular, the reasons for the late concession by the Defendant (as described in **Section VII** below) are capable of affecting other ARAP cases. I also consider it appropriate that I record why I was not persuaded by the Defendant's original submissions seeking to defend the Decision. I turn to a broad overview of the issues.
3. For the purposes of these proceedings, it is not in dispute that since the takeover of Afghanistan by the Taliban in 2021, the Claimant and his dependants have been at serious risk of being killed by the Taliban. The Claimant has been personally targeted and tortured by the Taliban. He is currently in hiding within Afghanistan. Calver J's Order granted the Claimant anonymity for the purposes of his claim, and he also made a direction under section 11 of the Contempt of Court Act 1981 prohibiting publication of any matter likely to lead to the identification of the Claimant in any report of these proceedings. During the hearing, Counsel were able to address me without referring to any sensitive matters in open court. However, in this judgment, I will need to refer to a large number of matters which would enable a reader to identify the Claimant by "jigsaw" identification. For that reason, there are redacted versions (published on the National Archives) and unredacted versions of this judgment (provided only to the parties). I have sought to address the various legal issues which arise without reference to any sensitive facts and those sections of my judgment are largely unredacted.
4. Between 2008 and 2021 the Claimant was employed as a Logistics Officer by an organisation known as the [the Employer]. [The Employer] was funded by, amongst others, the United Kingdom. Until the Taliban re-took Afghanistan in 2021, [the Employer]'s work involved advancing the justice system, and the Rule of Law, in Afghanistan. On the evidence it was a [an organisation which

undertook work relating to the rule of law, which included work to] encourage access to justice for underrepresented groups. The Foreign and Commonwealth Development Office ("the FCDO") in grant aid documentation described [the Employer] as a "...core, national justice institution, on a par with judges, prosecutors and police". It operated between 2008 and 2021.

5. As is well-known, His Majesty's Government ("HMG") has put into place a number of schemes to assist Afghan nationals (at risk because of their work for HMG) to relocate to the UK. The Claimant applied for himself and his dependants to be relocated to the UK under ARAP on 22 October 2021. I will describe the material provisions of ARAP below in **Section II** but, by way of summary, the Claimant's application was ultimately rejected on 2 June 2025 on the basis that he did not meet 'Condition 2 of Category 4' of the ARAP policy, because his work for the HMG did *not* make a substantive and positive contribution to the UK's national security objectives in Afghanistan. That is the Decision challenged before me, and that which the Defendant no longer seeks to defend.
6. It was argued by Adam Straw KC and Miranda Butler for the Claimant that the Decision was unlawful (**Ground 1**) on a number of related sub-grounds: (i) the Defendant made material errors of established fact, and/or of the UK's policy (the errors were said to include that the Defendant considered that advancing a functioning justice system and the rule of law in Afghanistan did not form part of the UK's national security objectives in Afghanistan at the relevant time); and (ii) the Defendant failed to show by his reasoning that he took into account evidence demonstrating (a) that advancing a functioning justice system and the rule of law in Afghanistan formed part of (or were directly connected to) the UK's national security objectives in Afghanistan at the relevant time; (b) [the Employer]'s objectives included counter-narcotics and anti-corruption; and (c) the Claimant performed a senior and key role in delivering [the Employer]'s outputs.
7. Following service of the Claimant's Skeleton Argument, the Defendant disclosed a document entitled *Category Four (Cat 4) Operational Guidance- FCDO Sponsorship and Review* ("the Guidance"). This is a document said to have been created to assist caseworkers at the FCDO in dealing with ARAP applications such as that made by the Claimant. It is common ground that the Guidance was not published and that it was applied in the Claimant's case. This late disclosure by the Defendant gave rise to new challenge which Mr Straw KC sought permission to pursue at the hearing. In short, he said that the Guidance should have been published given it raises issues on which a person affected by it could make informed or meaningful representations; and that the decision is unlawful on the basis of this alternative ground. I give the Claimant permission to advance this complaint (which I will call **Ground 2**). This ground was fully addressed on behalf of the Defendant at the hearing and there was no suggestion that further time or evidence was needed to address it. It has also been effectively conceded in the Withdrawal Note.
8. I will briefly refer at this stage to a further ground which has been put off for now given that it raised CLOSED issues. On 15 July 2025, the Claimant was told that his data had been lost in a major data leak. That leak has been described in some detail in the judgment of Chamberlain J in Ministry of Defence v Global Media and Entertainment Limited [2025] EWHC (KB) 180. The Claimant in due course discovered that HMG operated a new policy, named the *Afghan Response Route* ("the ARR") to offer relocation to the UK to eligible Afghans who were affected by the data breach, and that on 5 June 2025 a decision had been made that he was not eligible for relocation under the ARR. Key aspects of the decision and policy are redacted. However, on the basis of the OPEN material, it was submitted for the Claimant that the 5 June 2025 decision was unlawful. At the hearing, it appeared that some CLOSED material was due to be released into OPEN and this ground could not accordingly be pursued. I decided, and the parties agreed, that this was not a reason for me to delay dealing with

Grounds 1 and 2 which do not involve any CLOSED issues. I accordingly decided to proceed, rather than to adjourn the case.

9. Alan Payne KC and Richard Evans for the Defendant submitted in relation to **Ground 1** that the Defendant was correct to conclude that the Claimant's out-reach work as a Logistics Officer for [the Employer] did not make a "*substantive and positive*" contribution to the delivery of the UK's national security objectives in Afghanistan within ARAP. It was the Defendant's pleaded case before me that advancing a functioning justice system and the rule of law in Afghanistan did not form part of the UK's national security objectives in Afghanistan at the relevant time. As to **Ground 2**, they argued that the complaint was unarguable because the Guidance was neither inconsistent with nor did it establish additional criteria to ARAP, and that the Claimant (or indeed any applicant) was not prejudiced by reason of non-publication. It was also argued that the Defendant, to whom the Guidance did not apply, made the Decision and it was not bound by the FCDO's determination.
10. At the end of the hearing on 4 March 2026, and having considered some of the historical material concerning HMG's position as to its national security objectives in Afghanistan at the material time, I sought clarification from Mr Payne KC that it really was the Defendant's case in its application of the ARAP Policy that advancing a functioning justice system and the rule of law in Afghanistan did not form part of the UK's national security objectives. Mr Payne KC was not able to give me an immediate answer (although this was the Defendant's pleaded case and asserted also in his Skeleton Argument). I agreed to give Mr Payne KC some time to consider the position.
11. In due course, on the morning of 6 March 2026, I was sent a note by Mr Payne KC withdrawing the Decision ("the Withdrawal Note"). I will set out the relevant terms of the Withdrawal Note in **Section VII** below but, in broad terms, the Defendant says that whether advancing an effective justice system and the rule of law is a UK National Security objective for the purposes of ARAP Category 4 (Special Cases) is being reviewed. As to the unpublished Guidance that is to be withdrawn (and not applied to outstanding claims), and it is to be published. For the reasons I set out below, I consider the Defendant was right to withdraw the Decision.

II. The ARAP Policy

12. The [ARAP Policy](#) (hyperlinked) was helpfully summarised by Julian Knowles J in R (MP1) v Secretary of State for Defence [2024] EWHC 410 (Admin) ("MP1") at [8]-[19], and the leading authority on the operation of the ARAP is the decision of the Court of Appeal in R (LND1) v Secretary of State for the Home Department [2024] 1 WLR 4433 ("LND1").
13. An application under the ARAP scheme is first considered by the Ministry of Defence ("the MoD") "*Defence Afghan Relocations and Resettlement team*" ("DARR"). This team decides whether the applicant is eligible, by reference to four categories set out in the MoD's published policy on ARAP (the relevant version was dated 20 May 2025). DARR seek input from the relevant UK Government department. In this case, that was the FCDO.
14. An FCDO Assessor decided that the Claimant was not eligible, and the reasoning was sent to DARR. A DARR Caseworker considered that reasoning, and DARR produced a further decision, again that the Claimant was not eligible, relying on the FCDO Assessment. The FCDO Assessor's "notes" are in effect the "reasons" for the decision challenged before me (see [38] below) and I have reproduced the material parts in the Annexe. If the Claimant had been found eligible, the MoD would have made an application on his behalf to the Home Office for entry clearance. That application would be decided

according to Appendix ARAP of the Immigration Rules. So far as eligibility is concerned, Appendix ARAP mirrors the MoD's ARAP policy quoted below.

15. The relevant ARAP category in this case is Category 4, which, so far as material, provides (with my underlining):

“The cohort eligible for assistance on a case-by-case basis are those who:

- on or after 1 October 2001 ... 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
- in the course of that ... 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
- 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 hold information the disclosure of which would give rise to or aggravate a specific threat to the UK Government or its interests.”

16. The underlined words are central to this claim and are sometimes referred to as ‘Condition 2’, while the first bullet point is referred to as ‘Condition 1’. I will adopt that approach. This claim concerns the interpretation and application of the part of the ARAP policy quoted above.

III. Legal Principles

17. Before I turn to the submissions on Ground 1, there are four areas where I need to set out the legal principles I will apply. I did not understand these to be in dispute (and I will avoid citation of detailed authority and can provide a summary).

18. First, as to interpretation of policy. An executive policy such as the ARAP Policy, is to be interpreted objectively by the court, according to the natural and ordinary meaning of the words used, read as a whole and in context, and having regard to the purpose underlying the policy. Interpretation is an objective question of law for the court. The court is not concerned with whether a caseworker's interpretation of a policy was reasonable.

19. Second, as to rationality. Leading Counsel each referred to “process” and “outcome” rationality in their submissions and it is helpful to be clear what each of these terms mean. A claimant may complain that a public body has erred in the process of reasoning by which it reached a decision (sometimes referred to as “process rationality”), or the claimant may complain about the outcome (sometimes referred to as “outcome rationality”). Process rationality includes the well-known requirement that the decision maker must have regard to all mandatorily relevant considerations and no irrelevant ones, but it goes further. So, in addition, the public body's process of reasoning should contain no logical error or critical gap. As sometimes said in the cases, a decision that “does not add up” is one where there is an error of reasoning which robs the decision of logic. Another more practical way of putting this is to ask whether the body's conclusions rationally follow from the evidence, or whether there is an unexplained evidential gap or leap in reasoning which fails to justify the conclusion. Mr Straw KC underlined that his rationality challenge under part of Ground 1 was not to the outcome of the decision but to process. Outcome rationality (a challenge disavowed by Mr Straw KC), on the other hand, is concerned with situations where the process of reasoning is not materially flawed, but the outcome is outside the range of reasonable decisions open to a decision-maker.

20. Third, as to error of fact in judicial review. It is a well-established principle that judicial review will lie to challenge a clear error of uncontentious and verifiable fact. This is not about rationality but a free-standing ground, where the court looks to see whether a factual error played a material role in the decision-making. If it did, that renders the decision itself unlawful in public law.
21. Fourth, as to unpublished policies. It was common ground that the principles to be drawn from R (Lumba) v SSHD [2012] 1 AC 245, at [34]-[39] and [302], and as applied in the context of guidance relating to ARAP were correctly summarised in R (TPL1) v SSD [2025] EWHC 1729 (Admin) (“TPL1”), per Dingemans LJ and Farbey J at [65], [74], [76] and [79]. Where a policy (such as the ARAP Policy) is published, related caseworker guidance which raises issues about which a person affected by the guidance could make an informed or meaningful representation, must also be published. That depends on what the guidance says. A failure to publish in these circumstances makes the guidance itself unlawful and also any decision made pursuant to it.

IV. The Facts

The ARAP application

22. The Claimant’s ARAP application was first submitted on 22 October 2021, and he provided further information in support of it in due course. He submitted evidence to show that he and his family were at serious risk from the Taliban as a result of his work for the UK Government. That he and his family are at risk has not been disputed by the Defendant.

Condition 1

23. The Defendant accepted that the Claimant met Condition 1 of Category 4 of ARAP on the basis that he provided “...goods or services in Afghanistan under contract to a UK Government department (whether as, or on behalf of, a party to the contract)...”.
24. The FCDO Assessor concluded:
“[The Employer] was contracted by the FCO and was issued a grant by the FCO for core funding... The project was funded by the FCO from 2012 to 2013... The FCO supplied an Accountable Grant Agreement to [the Employer] to implement the [the Employer] project.”; and
“I concluded that sufficient information was presented to demonstrate that the applicant [i.e. the Claimant] met condition 1(b) as they were employed by [the Employer] during a period it received core funding from the FCO under an Accountable Grant Agreement. I concluded that the applicant provided goods or services in Afghanistan under contract to a UK government department (whether as, or on behalf of, a party to the contract).”
25. DARR came to the same conclusion. I note however on the evidence before me that the UK Government also in fact provided funding for [the Employer] before 2012 and after 2013. That was not disputed by Mr Payne KC. It was not clear to me why the Assessor confined the relevant period to 2012-2013. I will provide some examples from the evidence which demonstrate that [the Employer] had been engaged by the UK on these tasks for an earlier period. For example, the FCO Accountable Grant Agreement Annex states that during 2010 to 2011 [the Employer] received £108,675 of HMG funding, in part for salaries. The funding was further evidenced in the Claimant’s representations dated 23 July 2024 at §17-24; and 24 January 2022: at §3, 13 and 14. This also included funding from the FCO during 2011-2013, and funding from DfID at other times. The Claimant’s supervisor said (again, without contradiction) that “...Throughout the time [the Claimant] worked with [the Employer], we

received funding and worked in close partnership with ... the Department for International Development” of the UK Government as well as other organisations. Accordingly, the Claimant met Condition 1 by providing services for a much longer period than 2012-2013.

Condition 2

26. The Claimant submitted evidence in a number of witness statements to demonstrate how he personally satisfied Condition 2. I will describe this evidence in more detail below (as well as the role of [the Employer]), but in summary, it was his case that this evidence showed the following. First, that he played a key role in enabling [the Employer] to deliver its aims and projects. Second, that [the Employer] was critical to a functioning justice system and the rule of law in Afghanistan. Third, that an effective justice system and the rule of law were part of (or at least directly connected to) the UK’s national security objectives.
27. I turn to what the Claimant said about his specific role at [the Employer]. The Claimant’s first witness statement, dated 21 January 2022, explained that he was Logistics Officer for [the Employer] from 2008 to 2021, and explained his role. It included the following:
“4... One of my main tasks was to arrange and [description of Claimant’s work] based in Kabul as well as arranging accommodation, transportation and catering for them. Some of [this work] were sponsored or funded by the Independent Development Law Organisation (“IDLO”), an organisation which has strong ties to the United Kingdom.
- 5... I was responsible for liaising with key ministry, civil society, local police and a range of business people to manage attendance, production of press materials and arrangement of all physical needs and equipment for these events, as well as for regular [the Employer] operations.
- 6... The [work] covered key issues such as human rights; freedom and democracy; and female suffrage, all of which contradict the views and beliefs held by members of the Taliban. There was a particular focus in [this work] on combatting the Taliban’s influence and promoting the rule of law, in direct opposition to them.
7. In a general sense, I was tasked with ensuring that everything within [the Employer] ran smoothly. I was the face of many public awareness sessions in mosques and community centres across the provinces to raise recognition for women’s rights, gender equality and human rights among [...] community and religious leaders. I featured on several radio broadcasts on these topics. I travelled frequently to provincial events with [the Employer’s] President, which were often public, well publicised, and always in support of strong governance, rule of law and in collaboration with both donors and partners from the UK, EU and US governments. I was also responsible for carrying out ad-hoc administrative tasks such as: all data entry and [work], updating [the Employer]’s accounting database system and sealing court documents.”
28. In his second statement dated 5 May 2022 the Claimant said:
“§3... I was key to facilitating courses, events and initiatives of [Another Organisation] through [the Employer].”
29. A letter from a Legal Specialist at [Another Organisation] dated 29 April 2012 confirmed “[The Claimant] also proved himself capable of organising [other work]...” .
30. The Claimant’s supervisor at [the Employer] provided a letter of support dated 30 September 2021. This explained:

“In this role, he was responsible for preparing and coordinating logistics needs for official press functions and media events... [The Claimant] was essential in liaising with key ministry, civil society, local police and a range of business people to manage attendance, production of press materials, and arrangement of all physical needs and equipment for events as well as for regular [the Employer] operations... [The Claimant] has also been involved with programming ranging from the US-funded Justice Sector Support Project (JSSP), the International Legal Development Organization (IDLO), and other USAID-funded justice efforts.”

31. The Claimant’s supervisor at [the Employer] provided another letter in support of his application dated 19 January 2022. She explained:

“... he was responsible for all elements of logistics and operations at the [the Employer] including: all data entry and [other work], preparing and coordinating press functions and media events, and providing logistical support and coordination of [work] in Kabul and in provincial offices. [The Claimant] was heavily involved in supporting outreach to and [work]... As part of his outreach responsibilities [the Claimant] was the face of many public awareness sessions... He also featured on several radio broadcasts on the same topics. He travelled frequently to provincial events with [the Employer’s] President, which were often public, well publicised, and always in support of strong governance, rule of law... [The Claimant’s] efforts ensured that he became one of the most identifiable faces and voices of [the Employer] team, as well as the one who was known to handle all of the [the Employer]’s most sensitive information [...].”

32. The President of [the Employer] provided a witness statement in support of the Claimant’s ARAP review request, dated 25 January 2024. He said that the Claimant’s “role in [the Employer] was important” at §9 and the Claimant was “Logistics Manager for [the Employer] which was an important role”: at §11. The Vice President also provided a statement in support, dated 29 January 2024. It included:

“8... As the Logistics Manager, [the Claimant] had a very key role and was involved in all aspects of the work of [the Employer] and had a close working relationship with all the staff members including the leadership team, myself and the President...

9. [The Claimant] would manage the logistics of conferences and events that took place at [the Employer’s] offices. He also managed the logistics of conferences and events that took place away from the offices...

10. [The Claimant] managed the logistics at external events and conferences with international partners. For example, there was [a conference]. [The Claimant] was in charge of logistics at the conference ...

11... He had the password for the [work]... It was [the Claimant’s] responsibility to provide [this] to courts when they wanted to refer someone [to this work]. This [work] was highly confidential and it would cause huge problems if it fell into the hands of the Taliban.

14... The Claimant “was involved in every department of [the Employer]...”

33. The former Director of [Another Organisation] also provided a letter in support, dated 23 July 2024. The creation of [the Employer] was his project, and he assigned FCO funds to [the Employer]. He said: “I recall [the Claimant] as being a valuable member of staff... he was senior and oversaw some of the other staff. He was also heavily involved with outreach into the community.”

[The Employer]

34. I turn to [the Employer] in more detail. [The Employer] provided [description of Employer’s work]. It was not in issue before me that it played an important role in developing a functioning justice system

and the rule of law in Afghanistan. The Claimant's application enclosed the FCO's Accountable Grant Agreement for [the Employer]. This important document governed HMG's funding of [the Employer]. It stated that the "purpose, outputs and activities of the [...] Project are set out in Annex A": Article 1(1). Annex A includes a document from the British Embassy Kabul dated 17.10.10, headed "*Institution Building. Rule of Law. [The Employer]*" (also referred to as "the project document"). This explained in detail the purposes of the [...] Project and I will provide a broad overview:

- a. It noted [the Employer] is an "Afghan-owned [description of Employer] to ensure an equal and professional justice system".
 - b. It stated: "This project supports NSID [the National Security and International Development strategy] strand 2 – Governance & Rule of Law – by developing an increasingly capable and accepted state justice system."
 - c. It set out in some detail the Outputs and Main Activities of the project. The activities included a number of tasks focused on [work] for the Counter Narcotics Justice Centre: §7.1-7.3. Similarly, four of the "Key milestones" at §4.1, concern the Counter Narcotics Justice Centre.
 - d. It explained that since October 2008 "...[description of expansion of Employer's work]." (That number had increased to [...] by 2012, and more thereafter).
 - e. It made clear that [the Employer] will tackle corruption and have an important role in creating an effective justice system: "[Description of work], impacting on corruption in the justice system. [This work] will increase access to justice and trust in the justice system." ... "Longer Term Impact: Effective Justice system with [description of outcome of this work]." ... "[Redacted reference to significance of Employer's work]."
 - f. It again explained the role [the Employer] has in respect of counter-narcotics: "[...] who regularly assist in narcotics cases at the CJTF (Criminal Justice Task Force) will receive [work] for these cases. Cases at CJTF involve high volumes of narcotics and it is of Government interest to ensure [this work] to ensure fair trials."
35. As the DARR Caseworker explained, the funding for [the Employer] came from the "Rule of Law" team within the British Embassy. The FCDO Assessor drew attention to this Accountable Grant Agreement for [the Employer] (but they appear to have used a different version of that document (which Mr Payne KC took me to in his submissions) as I refer to below). The FCDO Assessor explained that the [...] project aimed to meet the objective from the UK's Building Stability Overseas Strategy (BSOS) of "*Strengthen Security and Justice in Afghanistan*". The BSOS stemmed from the UK's National Security Strategy §18-19; and p3 and §1.6.
36. Annex A to the Accountable Grant Agreement also contained evidence about the Claimant's role as Logistics Officer. Two matters are particularly relevant:
- (1) First, it indicated that logistics was a 'key function' of [the Employer]'s work: "Administration and Communication Units – These increase the profile and sustainability of [the Employer]'s work – providing the key functions of HR, logistics, finance and communications."
 - (2) Second, Annex A identified the Outputs and Main Activities of [the Employer]. It is not in issue that the Claimant played a key role in delivering many of them, including effective administrative structures; [work]; communications and media; radio; and liaising with regional or international bodies and NGOs.
37. On 17 February 2026 the Defendant disclosed another version of Annex A. It is undated, but appears to be from Spring 2012. It stated that "[the Employer] is a core justice institution and one of the few institutions that can effectively check the use of government power" and noted "[the Employer]'s critical role in the justice sector". It was partly summarised by the FCDO Assessor. They noted that

the intended outcome of the project was to ensure [the Employer] became a “core, national justice institution on a par with judges, prosecutors and police”. The FCDO Assessor observed: “The theory of change as described in Annex A [of the Grant Agreement], stated that the ‘continued existence of [the Employer] is critical to [aim of Employer’s work]’. [The Employer] was an organisation focussed on [this work]. As such [this work] would have been considered a vital part of a properly functioning legal system and the rule of law.”

The 2 June 2025 ARAP Decision under challenge

38. Having summarised the evidence base before the FCDO Assessor I turn in more detail to the Decision challenged in this claim. On 2 June 2025 the Defendant sent a letter to the Claimant, stating that he was not eligible for relocation under the ARAP scheme. In the material part, the Defendant stated that the Claimant did not meet Condition 2 (a) or (b) of Category 4 of ARAP:

“- It is to the satisfaction of the caseworker that you do not meet condition 2 (a) because you have not demonstrated any evidence to confirm that you personally made a substantive and positive contribution to the UK’s military objectives through your role as a Logistics Officer, including in your outreach work.

- It is to the satisfaction of the caseworker that you do not meet condition 2 (b) because you have not demonstrated any evidence to confirm that you personally made a substantive and positive contribution towards the achievement of the UK’s national security objectives (which includes counter-terrorism, counter-narcotics and anti-corruption objectives) with respect to Afghanistan through your role as a Logistics Officer, including in your outreach work.”

39. These are not “reasons” in any sense for the negative decision but a conclusion which simply recites the language of Condition 2. The decision was however accompanied by the FCDO Assessor’s notes and DARR caseworker notes. It was common ground that I should treat these notes as the effective “reasons” for the decision challenged. Indeed, that approach has been taken in a number of ARAP cases and without these notes it would not be possible for an applicant to know why he had failed in his application. Although the decision formally under challenge here was made by the Defendant (and not the FCDO) it was not contested that the DARR decision substantially adopts the FCDO Assessment. Mr Payne KC, on instructions from the Defendant, was not willing however at the hearing to accept that if the FCDO Assessment was vitiated by a public law error the Defendant’s decision would also fall. He did not make any submissions in support of this position and indeed did not seek to defend the Defendant’s decision separately from seeking to defend the FCDO Assessment (or indeed even make reference to it in submissions). Counsel both focussed only on the FCDO Assessment, to which I now turn. I will proceed on the basis that if there is a public law error in the FCDO Assessment that also fatally undermines the DARR decision.

The FDCO Assessment

40. Mr Straw KC and Mr Payne KC, for understandable forensic reasons, each emphasised different parts of the FCDO’s Assessment. It is important not to seek to construe these reasons as if they were a legal document or product of judicial drafting. One needs to focus on the essential analysis and core findings: STS v Secretary of State for the Home Department [2026] (Admin) EWHC 363 (“STS”), per Sheldon J at [37]. I have set out in full in the Annexe, the FCDO Assessor’s reasons for rejecting the Claimant’s application under Condition 2. I will refer to particular aspects of those reasons when dealing with the submissions.

Promotion of properly function legal system and the rule of law: a UK national security objective?

41. My reading of their decision is that the Assessor appears to have accepted that [the Employer] *itself* played an important role in promotion of a properly functioning legal system and the rule of law. I note that, by reference to the FCO Grant Agreement, they accepted that the [...] project was aimed at the BSOS/National Security Strategy objective of strengthening security and justice; and that it sought to make [the Employer] a core national justice institution.
42. However, my reading of the assessment is that the assessor considered a functioning legal system and the rule of law were not part of, or even directly connected to, the UK's national security objectives. The FCO Grant Agreement explained that [the Employer] played an important part in an effective legal system and the rule of law. The Assessor's observation that "*there is no reference to delivering the UK's national security objectives*" in that Agreement further indicates to me the Assessor considered an effective legal system and the rule of law were not part of the national security objectives. I asked Mr Payne KC during his submissions for the Defendant's interpretation on this point, and if he disagreed with what I have just set out. He frankly said that at best it was "*unclear*" or not "*clear cut*" whether the caseworker had decided that promotion of the rule of law was a UK national security objective.
43. My interpretation above receives some support from the DARR Caseworker notes. I note that this caseworker first considered the FCDO notes (which I have set out above insofar as material). They then referred to the [...] project funded by the FCO, and the Accountable Grant Agreement for [the Employer] (my underlining) stating:
"It is noted that [the FCDO] have confirmed that they provided funding for the applicant's employer, [...], between 2012 and 2013 on the '[the Employer] Core Funding' project. They have confirmed that the project focussed on strengthening the Rule of Law and [description of Employer's work]. There is no evidence provided to confirm that these projects and Grant Agreement had a link to the UK's national security objectives in Afghanistan."
44. The DARR Caseworker went on to say (again with my underlining):
"It is noted that [the Claimant's supervisor] has stated that [the Claimant] 'became one of the most identifiable faces and voices of [the Employer] team' and that they handled 'all of [the Employer]'s most sensitive information [redacted]. This was due to being featured on radio broadcasts to raise recognition for 'women's rights, gender equality, and human rights among [...], community and religious figures', and frequent travel to 'provincial events with the [the Employer's] President, which were often public, well publicised, and always in support of strong governance, rule of law, and collaboration with both donors and partners from the UK, EU and US governments'. There has been no evidence provided to suggest that the applicant's regular duties in their role, or their additional outreach work made a positive and substantive contribution to the delivery of the UK's national security objectives in Afghanistan."
45. My conclusion is that the Defendant decided as a matter of fact, and as a core part of his reasoning, that promotion of a functioning legal system and the rule of law was not part of (nor were they connected with) the UK's national security objectives at the time material to the Claimant's ARAP application. Indeed by now withdrawing the Decision, the Defendant appears to accept this reading of the reasons. I turn to the arguments.

V. Ground 1: error of fact

Submissions in outline

46. Mr Straw KC argued that the FDCO (and DARR) conclusion that a functioning legal system and the rule of law was not part of, or did not have any direct connection to, the UK's national security objectives was unlawful. He said that this conclusion was based on a misunderstanding or ignorance of an established and relevant fact: see Fordham, *Judicial Review Handbook*, 7th ed §49.3.1-49.3.2 and 49.3.5. His secondary (and alternative) submission was that the Defendant had failed to show by his reasons that he took into account the fact that a functioning justice system and the rule of law were part of or directly connected to the UK's national security objectives; and/or that [the Employer]'s objectives included counter-narcotics and anti-corruption. This was his process rationality challenge. Mr Straw KC emphasised that 'anxious scrutiny' was required in this context and he relied on the observations in MP1 at [155]. As a separate complaint under Ground 1, Mr Straw KC argued that, the decision-makers did not show by their reasoning that they recognised the key role the Claimant played in the delivery of [the Employer]'s objectives and the strong witness statements in support. In particular, Mr Straw KC referred to the part of the FCDO Assessor's notes which said: "*there was nothing in any of these statements that showed that the applicant had undertaken duties beyond those normally associated with the work of a logistics officer, and that neither his outreach work nor his other duties involved work related to the UK's national security objectives in Afghanistan. I concluded that his was a supporting role within [the Employer]...*". Mr Straw KC argued that this fails to show that the decision-makers properly took into account the evidence. And it was said to fail to take into account the recognition in Annex A of the FCO Grant Agreement that logistics was a "key function" of [the Employer]'s work.
47. In response, Mr Payne KC argued that the Defendant did not make an error of fact in concluding that general programmes aimed at advancing a functioning justice system and the rule of law in Afghanistan did not form part of the UK's national security objectives at the relevant time. Referring to the Claimant's reliance on what Mr Payne KC described as "high-level" statements made on various occasions as to the UK Government's objectives in Afghanistan, he argued that the Claimant's case must be that *any* work done on a project aimed at state building, protection of human rights, stabilising the economy, building capacity and good governance contribute to national security objectives (since they all contribute to stabilising Afghanistan). But, he argued, such a broad interpretation is clearly not what is provided for by Condition 2 of Category 4. He relied strongly in this regard on the unpublished Guidance which says that there is a "*high threshold for relocation under Category 4*". Mr Payne KC submitted that the Claimant's approach would render this threshold meaningless. He said that in practical terms it would open up Category 4 to a vast group of applicants who were never intended to be eligible for Condition 2 of Category 4.
48. Mr Payne KC argued that what the UK's national security objectives were at the relevant time is not an objective question in relation to which there is one correct answer. He said that whether an objective amounts to a national security objective for the purposes of ARAP is an "evaluative exercise" for the Defendant, and relied on what he accepted was an obiter observation by Garnham J in R (on the application of AFA) v The Secretary of State for the Home Department [2025] EWHC 2143 ("AFA") at [60]:
"...identifying the UK Government's national security "objectives" in a particular context or particular country is also an evaluative question for the executive, subject only to challenge on *Wednesbury* principles (see also in this context [110] in *R (Begum) v SIAC* [2021] UKSC 918)".
49. Mr Payne KC fairly recognised that in AFA Garnham J considered that there was "a powerful case" (see [62]) for a very wide definition of national security for the purposes of ARAP. But he argued that on a proper analysis such a wide definition would be contrary to the limited category of persons who are intended to benefit from Condition 2 of Category 4. In short, he said the fundamental flaw in

the argument for the Claimant is that national security objectives for the purposes of Condition 2 of Category 4 cannot simply be equated with high level references to national security objectives in other contexts.

50. Mr Payne KC and Mr Evans in their Skeleton Argument said in terms at [37] that "...even if (which was denied) advancing a functioning justice system and the rule of law in Afghanistan *was* a national security objective in Afghanistan for the purposes of Condition 2 of Category 4...", the decision that the Claimant's role did not make a substantive and positive contribution to those national security objectives cannot be said to be *Wednesbury* unreasonable.
51. This statement in the Skeleton Argument is why I asked for clarification at the end of the hearing as to whether it was the Defendant's case that advancing a functioning justice system and the rule of law in Afghanistan was not a national security objective in Afghanistan at the material time. That led to the Withdrawal Note.
52. As to the specific facts concerning the Claimant, Mr Payne KC argued that the Defendant did not fail to show by his reasoning that he took into account evidence demonstrating that the Claimant performed a senior key role in delivering [the Employer]'s outputs. The Defendant, he argued, took into account all relevant evidence and came to a conclusion which he emphasised was not challenged by Mr Straw KC on an "outcome" rationality basis. Mr Payne KC said that it was reasonable to conclude that [the Claimant's work] in Afghanistan and undertaking outreach work, whilst beneficial, does not amount to making a substantive and positive contribution to the UK's national security. As to the comments of the various senior legal figures that described the Claimant's essential, important and valuable role, Mr Payne KC submitted that they did not impact on the FCDO Assessor's analysis which was based on the substance of the role undertaken by the Claimant.

Analysis and conclusions

53. In order to address Mr Straw KC's main argument on Ground 1, I need to interpret the ARAP Policy as regards "national security objectives", and to decide how a Court should approach (in judicial review) an executive determination as to whether a particular policy aim (here, promotion of a functioning legal system and the rule of law) was at the material time a national security objective of the UK in Afghanistan. I need to do this because the case of the Defendant was (at least before the Withdrawal Note) that this was not a national security objective and, as I have said above, that is how I have understood the FCDO Assessor approached the role of [the Employer] (although they did go on to consider the case-specific position of the Claimant).
54. I start with the relevant text of the ARAP policy. Condition 2 asks whether "in the course *of that...* provision of services" - i.e. the provision of services found to satisfy Condition 1 - the applicant made the relevant contribution to the national security objectives. For example, if the caseworker decided that the applicant satisfied Condition 1 by providing services in 2012-2013, then the question in Condition 2 is whether that provision of services in 2012-2013 made a substantive and positive contribution to the national security objectives. In consequence, under Condition 2, the caseworker must identify the national security objectives at the time the applicant was providing the services.
55. In my judgment, before they can look to what the applicant did, and on a simple construction of these words, the caseworker is required to make an *historical* inquiry as to what the UK's national security objectives were at the material time. This is a factual issue, to which there should be a binary answer (*yes or no*), based on the evidence. If the answer given by the Defendant is disputed (as was originally the position in the present case), and when matters reach court on that issue, what should normally

happen, as Dingemans LJ explained in CX1 (No. 2) at [85] is that the Defendant should provide evidence indicating his position and why he takes that stance (no doubt based on historical evidence). Unfortunately, in this case I had no such evidence but merely an assertion in the Defendant's skeleton argument that promotion of a functioning legal system and the rule of law was not a national security objective of the UK at the material time.

56. When a court comes to consider the legality of such a decision, there is a risk of confusion if one does not separate out the two different types of national security issue which might arise in a judicial review. The precise nature of the issue defines the court's role on judicial review.

Challenging a choice of national security objectives

57. The first type of issue which might arise would be the UK Government's *choice* in defining or identifying what its national security objectives are to be. If a court were to be asked to review that choice, there would be a high threshold before the court would intervene. That is because the courts, for reasons of expertise and institutional competence (on national security and foreign policy matters), defer to the executive. Such decisions are not factual but matters of assessment. However, HMG's choice as to what its national security objectives in Afghanistan were to be, for example back in 2012-2013 when the Claimant was providing services, is not at issue in this claim. The Claimant does not challenge any such decision. In consequence, the caselaw showing that there is a very high threshold to such a challenge is irrelevant here. That is the situation which cases such as Begum (cited by Garnham J in AFA) were concerned with.

Identifying an historic national security choice

58. A second, entirely different, type of issue is whether a caseworker today applying Condition 2 of Category 4 of the ARAP policy, correctly identified what the UK's national security objectives were at the time the applicant was providing services. In my judgment, this is a question of fact for the court, to be decided primarily by considering evidence of what HMG had determined and stated its national security objectives were, at the time the Claimant was providing services (e.g. 2012-2013). The Divisional Court in CX1 (No.2) accepted at least implicitly that what the UK's national security objectives in Afghanistan had been, was a question of fact, to be determined by the court by reference to evidence before it. Dingemans LJ noted that a "factual dispute arose between the parties at the hearing as to what were the UK's military or national security objectives" [79] and set out the evidence relevant to the court's determination of that question: [80]-[85]. The Divisional Court was, with respect, plainly right that this is a question of fact for the court: Conditions 1 and 2 of the ARAP policy presume that the UK Government had established national security objectives at the relevant time. The question of what they were has a single right answer. The Court may decide, where there is conflicting evidence in the historical record, to give weight to the evidence of the executive who can explain what the historical position was - but it still remains an issue of past fact and the executive does not enjoy any form of discretion to define the past. The executive is also probably not in any better a position than a court (when considering historical records) to identify what the national security objectives of HMG were in the past. There is little room for deference by the court on that issue but the executive may have witness statement evidence from a civil servant at the material time and that may assist it in determining the issue where the historical material is not clear. I now turn to the historic evidence.
59. In my judgment, the evidence overwhelmingly points to a conclusion that having a functioning justice system and the promotion of the rule of law were a national security objective of HMG at the time material to the Claimant's application. I will not set out every piece of evidence but will provide only

an overview (given the concession of this claim in the Withdrawal Note).

60. Before I turn to the evidence, I record my agreement with what was said by Garnham J in AF at [57] (based on the historic evidence presented to him), that:

"It seems to me difficult in the face of those high level ambitions to argue that supporting the rule of law or good governance or promoting internal security and stability in Afghanistan were not UK national security objectives".

61. The ARAP scheme itself (and Immigration Rules) state that the UK's national security objectives in relation to Afghanistan included counter-terrorism, counter-narcotics and anti-corruption. The words "which includes" in the brackets in Condition 2, demonstrate that the UK's national security objectives were not limited to counter-terrorism, counter-narcotics and anti-corruption: see R (CX1) v SSD [2023] EWHC 284 (Admin) ("CX1 (No 1)") at [87].

The historical evidence

62. The FCO produced evidence for the Foreign Affairs Committee Inquiry *Global Security: Afghanistan and Pakistan* in 2009 ("the FCO Memorandum"). This began by explaining: §1 "It is vital to immediate UK national security interests that Afghanistan becomes a stable and secure state that can suppress terrorism and violent extremism within its borders". I consider it obvious that a functioning justice system and the rule of law, which ensure that criminal laws were enforced and criminals convicted and punished, were an important part of counter-terrorism, narcotics and corruption. I respectfully agree with Julian Knowles J that this is 'self-evident': see MP1 [164] and [179]. But if evidence of that is required, there is ample evidence in the historical record (when I cite text below the underlining has been added by me).
63. So, in a section headed '*Justice*' the FCO Memorandum explained that developing the Afghan justice system was a key priority for the purpose of countering corruption and narcotics: §107-110. For example (with my underlining):
- "108. The UK has played a lead role in developing the Criminal Justice Task Force (CJTF) and the Central Narcotics Tribunal (CNT) since their establishment in 2005. The CJTF is an Afghan institution which investigates and prosecutes suspected narcotics traffickers...
110. The Afghan judicial system also needs to expand its capacity and capability to prosecute high value targets in the narcotics trade and corruption cases. Alongside progress in this area, we are encouraging the Afghan Government to take a more pro-active lead on investigating and prosecuting corrupt individuals, especially those in the police and senior government positions as essential to improve public confidence in central government. Key priorities include developing Afghan capacity, in terms of investigative, prosecutorial, and judicial capabilities (especially for the security of judges and prosecutors) and penal facilities, to take on corruption cases..."
64. A separate section entitled '*Corruption*' indicated that the rule of law and the justice sector were among the means of tackling corruption: §114-116. For example:
- "115... On 15 December 2008, the Prime Minister announced to Parliament his offer of a Multi Agency Anti-Corruption Task Force to assist the Afghan Government tackle corruption... 116. Strengthening the rule of law across Afghanistan is a long-term endeavour. It will require... in the justice sector for civilian expertise in particular to help develop linkages between the informal and formal justice sectors to allow a greater proportion of the Afghan population access to appropriate justice system..."

65. On 29 April 2009 the Prime Minister made a “*statement on the Government’s strategy for both Afghanistan and Pakistan*”:

“Our counter-terrorist strategy, published last month, set out how we are working to tackle terrorism around the globe, but one priority—indeed, the greatest international priority—is the border areas of Afghanistan and Pakistan. They are the crucible for global terrorism, the breeding ground for international terrorists, and the source of a chain of terror that links the mountains of Afghanistan and Pakistan to the streets of Britain...”

“In both countries our involvement is focused on the tasks that are necessary to enable them to counter the terrorist threat themselves. For Afghanistan, our strategy is to ensure that the country is strong enough as a democracy to withstand and overcome the terrorist threat, and strengthening Afghan control and resilience will require us to intensify our work in the following key areas. First, we will build up the Afghan police and army and the rule of law...”

66. The UK’s National Security Strategy (Oct 2010) stated:

"British troops are fighting in Afghanistan, alongside our US and other allies, to protect our national security... To achieve this we are supporting an Afghan-led process to develop the Afghan security forces and build a more effective Afghan state that can control its own security and, ultimately, achieve a lasting political settlement."

67. The National Security Strategy was supplemented by the UK’s Building Stability Overseas Strategy (2011): p3 and p5 §1.6. This said: "4.5 From Sierra Leone to Iraq and Afghanistan we are learning that we cannot build stable states without functioning security and justice systems..."

68. In April 2011 the Head of the Rule of Law Team in the FCO said: “A stable Afghanistan is vital for our national security to prevent terrorists returning to use it as a safe haven from which to launch attacks... A functioning and accessible justice sector is fundamental to creating lasting stability.”

69. The Enduring Strategic Partnership Document signed by the Prime Minister and President Karzai, on 28 January 2012, explained they would counter narcotics and corruption through access to justice and law enforcement:

“10. Both governments recognise the right of their people to live in a society governed by the rule of law. In support of this aim, the Afghan and UK Governments will work in partnership to:

- improve the leadership and capability of the Afghan National Police;
- tackle corruption through institutional reform and law enforcement;
- promote access to justice and the development of a professional justice sector in accordance with the Afghan Constitution;
- counter the narcotics trade through cooperation on interdiction and law enforcement, and effective regional approach to counter-narcotics [...]

70. In MP1 the court quashed a decision that an Afghan judge was not eligible under category 4 of ARAP. That was in part because, by working as a judge the applicant “contributed to the rule of law in Afghanistan, which was a key aspect of HMG’s mission there”: [163]. The court had accepted a range of evidence showing that the rule of law and an effective justice system were central to the UK’s national security objectives, including countering terrorism and narcotics. For example, at [51] and [58] the Court accepted the following paragraph from the statement of Naina Patel, then Senior Justice Advisor to the Helmand Provincial Reconstruction Team (HPRT) (now Naina Patel KC), which was the British-led mission in Helmand Province:

“24... The ultimate objective of NATO’s International Security Assistance Force (ISAF) was to prevent Afghanistan from being used as a base by international terrorists. For HPRT, this meant eliminating the Taliban, and with them, their system of governance, justice and security. The HPRT’s method was based on demonstrating that the Afghan state can deliver higher quality, fairer, more efficient and more accessible state services than the Taliban. Justice was a key battleground...”

71. Similarly, in R (S) v SSHD [2022] EWHC 1402 (Admin), [23]-[24] (quoted in MP1 at [160]), the Court accepted evidence that: “The importance of the work of the Afghan justice system to the UK’s mission and operations in Afghanistan was acknowledged by the UK Government in” a Response dated 12 March 2021, which stated: “Since 2001, the UK has provided significant support to the people of Afghanistan; this has in turn helped to protect the UK...The Afghan government has the capability to lawfully investigate and prosecute terrorism, organised crime and corruption.” [24] explained in more detail how a functioning Afghan justice system reduced the risk from terrorism and narco-trafficking, not only in Afghanistan but also in the UK.

72. In 2010 the Prime Minister said:

“Let me address the first question that people are asking. Why are we in Afghanistan? I can answer in two words: national security... That is why we back the strategy developed by General McChrystal, commander of the international security assistance force, and endorsed by President Obama and NATO. That strategy involves protecting the civilian population from the insurgents, supporting more effective government at every level, and building up the Afghan national security forces as rapidly as is feasible.”

73. General McChrystal’s strategy included:

“Stability in Afghanistan is an imperative; if the Afghan government falls to the Taliban - or has insufficient capability to counter transnational terrorists -Afghanistan could again become a base for terrorism ...

The New Strategy: Focus on the Population...2. Prioritize responsive and accountable governance. We must assist in improving governance at all levels through both formal and traditional mechanisms...”

“2. Facilitating Afghan governance and mitigating the effects of malign actors... Rule of Law. Finally, ISAF must work with its civilian and international counterparts to enable justice sector reform and locate resources for formal and informal justice systems that offer swift and fair resolution of disputes, particularly at the local level. The provision of local justice, to include such initiatives as mobile courts, will be a critical enhancement of Afghan capacity in the eyes of the people...”

74. The evidence (only some of which I have set out above) demonstrates that promotion of a functioning justice system and the rule of law were part of the UK’s national security objectives. I have no hesitation in rejecting the Defendant’s original unevicenced assertion to the contrary (and which it no longer seeks to defend in this case and which it is rightly reviewing).

Error of fact

75. In my judgment, Ground 1 is made out. The FCDO and decision makers plainly considered that a functioning legal system and the rule of law were not part of, nor directly connected with, the UK’s national security objectives. On the evidence, they plainly were. This was a simple error of fact which prima facie rendered this part of the decision unlawful in public law under the principles I have set out above. I need however to consider whether this error was material in the decision-making. It was

certainly material in identifying whether [the Employer]'s work had a direct connection with the UK's national security objectives but I note that the FCDO Assessor said:

"Having considered the objectives and intended outcome of the project, I concluded that someone who worked on the project is unlikely to have made a significant contribution to UK national security objectives in Afghanistan (which includes counter terrorism, counter narcotics and anti-corruption) but could have depending on the nature of their individual role on the project. I then considered the applicant's role".

76. In my judgment, this passage shows that the cards were stacked against the Claimant because of the FCDO Assessor's mistake of fact. In short, if [...] (the Claimant's employer) had not made a substantive and positive contribution to the UK's national security objectives, it was "unlikely" that the Claimant would meet this requirement. This mistake was plainly material to the decision, so this error is sufficient for the decision to be quashed. In particular, one cannot be sure how the application would have been determined but for this mistake.
77. For completeness, I should say that I reject the Defendant's submissions that that there is a high threshold for a challenge to this aspect of the ARAP decision, because this is an evaluative exercise. That submission is misplaced. As I have said, this ground of challenge is not an irrationality argument. For the reasons given above, in my judgment, the question of what, in 2010-2013, the UK's national security objectives were, is an objective question for which there is only one correct answer. The FCDO Assessor in 2025 did not have some form of discretion (or undefined room for manoeuvre) to define what the UK's objectives historical objectives had been, nor did they have a discretion to get a material and established fact wrong. The correct answer is a question for the court, and if the decision-maker misunderstands that material fact, the decision falls to be quashed. What I have decided above is sufficient for the Claimant to succeed on Ground 1. I also however saw force in Mr Straw KC's additional sub-grounds which I will briefly address.
78. I found persuasive Mr Straw KC's secondary submission that the Defendant failed to show by his reasons that he took into account the fact that promoting a functioning justice system and the rule of law were part of or directly connected to the UK's national security objectives; and/or that [the Employer]'s objectives included counter-narcotics and anti-corruption. This aspect of the challenge is rightly described as a failure to give reasons, or a challenge to the process of reasoning by which the decision was reached. As explained in LND1 by Lewis LJ at [65]-[67], it is necessary for the Defendant to give adequate reasons for an ARAP decision, which enable the applicant to understand why his case did not satisfy the criteria, and whether he can judicially review the decision. Adequate reasons are required in part due to of the nature and significance of the eligibility decision: an eligible person is at risk because of their work for or alongside the UK in Afghanistan and "...they and their families suffer risks to their personal safety, including risk to life, as a result": LND1 at [66D-E].
79. Similarly, in MP1, Julian Knowles J held that reasons in this context must disclose "how any issue of law or fact was resolved and giving rise to no substantial doubt as to whether the decision-maker erred in law": [150]. He further held that, because an adverse decision may put the Claimant and his family's lives at risk, the court must anxiously scrutinise the reasons given by the Defendant: [151]-[156], referring to a number of other previous authorities. The Defendant must "show by their reasoning that every factor which tells in favour of the applicant has been properly taken into account": MP1 [154] and [167], referring to Court of Appeal authority restating well established principles, including R (MN) v SSHD [2021] 1 WLR 1956 and R (YH) v SSHD [2010] 4 All ER 448. I respectfully agree with these observations of Julian Knowles J.

80. The FCDO and MoD Assessors (the effective decision-makers in this case) fell short of these public law requirements. There are a number of reasons for my conclusion. First, the FCDO and DARR notes do not demonstrate that the decision-makers recognised that promoting a functioning justice system and the rule of law were part of or directly connected to the UK's national security objectives. That is for all the reasons explained above: there is simply no recognition of this in the reasoning because they made an error of fact. Second, the FCDO notes state "there is no reference to delivering the UK's national security objectives in Afghanistan (... counter narcotics and anti-corruption) in either the [undated] project document or Grant Agreement to [the Employer]". But the 17 October 2010 version of the project document, which Mr Payne KC accepted was before the decision-makers, did state that [the Employer] delivered the objectives of counter-narcotics and anti-corruption. It provided in terms that [the Employer]'s main activities included [work] for counter-narcotics: §7.1-7.3; and §4.1 key milestones. It also stated that the [work] will impact on corruption. The Defendant failed to acknowledge that.
81. I also found persuasive Mr Straw KC's arguments that the decision-makers did not show by their reasoning that they recognised the key role the Claimant played in the delivery of [the Employer]'s objectives. In particular, I note that the FCDO Assessor said: "there was nothing in any of these statements that showed that the applicant had undertaken duties beyond those normally associated with the work of a logistics officer, and that neither his outreach work nor his other duties involved work related to the UK's national security objectives in Afghanistan. I concluded that his was a supporting role within [the Employer]...". In my judgment, this fails to show that the decision-makers properly took into account the evidence (which I have set out above) of the Claimant, the Claimant's supervisor, the President and the Vice President of [the Employer], and the former Director of [Another Organisation], that the Claimant's role was "important", "senior" "very key", "essential" and "valuable". It fails to show they took into account the recognition in Annex A of the FCO Grant Agreement that logistics was a "key function" of [the Employer]'s work. It also fails to recognise the Claimant played an important role in many of the 'Outputs' and 'Main Activities' of [the Employer], as defined in the FCO Grant Agreement. The FCDO Assessor was wrong to describe him as merely a "supporting role". [The Employer] could not have undertaken its work without the Claimant's input. He was a senior and key figure within the organisation who was both its "public face" and undertook some of its more sensitive work ([description of that work]).
82. My conclusions on the error of fact ground are sufficient to render the decision unlawful. Had it not been withdrawn, I would have quashed the Decision. Although not pressed in oral argument by Mr Payne KC, this is plainly not a case where one can safely conclude that it is highly likely that the outcome for the Claimant would not have been substantially different within section 31(2A) of the Senior Courts Act 1981. In particular, I cannot be confident that even if one excises the error of fact in relation to the UK's national security objectives in Afghanistan at the material time, the FCDO Assessor's approach to the Claimant's role and the result would be the same.

VI. Ground 2: the unpublished Guidance

83. I will deal with this ground more briefly given what is said in the Withdrawal Note. The material part of the unpublished Guidance concerning Condition 2 provides as follows:
- "Condition 2
- The applicant must have 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".

- Where there is evidence of work for, with or alongside FCDO (or former FCO/DFID) that meets Condition 1 but the applicant's role did not have a clear and specific national security objective (which includes counter-terrorism, counter narcotics or anti-corruption) with respect to Afghanistan, and/or that role was not directly linked to their relationship with the FCDO under Condition 1, then that role is unlikely to give rise to eligibility. An example would be a judge or prosecutor, employed by the government of Afghanistan and who had a close working relationship with the FCDO by reason of their contribution to UK rule of law objectives, but who was concerned with normal criminal matters rather than national security objectives. By way of example, if a specialist judge heard only or primarily national security cases, that might indicate this part of the criteria is fulfilled.
- Where there is evidence of work for an FCDO (or former FCO/DFID) funded programme that meets the criteria of Condition 1 (b), but, for example, HMG programme/project documentation (such as business case or tender documents) does not identify one or more of the UK's national security objectives (which includes counter-terrorism, counter narcotics or anti-corruption), with respect to Afghanistan, as a strategic reason for developing the programme, and does not explicitly name and include those objectives in programme objectives and outputs, then work for that programme/project is unlikely to meet the definition of having made a substantive and positive contribution to those objectives. An example would be FCDO funded humanitarian or human rights programmes, such as the Gender Based Violence Response Service programme.
- Applicants who worked with HMG in sensitive operational roles on national security issues, for example judges, prosecutors, or investigators working on counter-terrorism, counter-narcotics or corruption cases, are likely to meet condition 2. Individuals working on FCDO-funded development, governance or human rights projects are unlikely to meet this condition".

84. Mr Straw KC argued that the Guidance raises issues about which a person affected by it could make informed or meaningful representations. That is clear, he argued, by the heavy reliance Mr Payne KC placed on it in his Skeleton Argument to justify the decision under challenge. I agree that there was substantial reliance which indicates that the FCDO Assessor considered the Guidance to be significant. Had it been necessary to decide this issue, I would have been minded to accept Mr Straw KC's arguments. While the Guidance may not be inconsistent with the ARAP Policy, it seems obvious that it raises issues about which a person affected by it could make informed or meaningful representations: it provides the "target" an applicant must aim for in much clearer and specific terms than the broad descriptions in the ARAP Policy. For example, the Guidance indicates an applicant must demonstrate that the HMG project documentation should identify one of the UK's national security objectives. Unless they have this Guidance, an applicant cannot know they have to meet that particular requirement or make representations about it. This Guidance, like that in TPLI, appears to me to provide a level of detail which rule of law standards generally say demand publication, for the reasons given by Lord Dyson at [34] in Lumba at [34]. The ARAP Policy, particularly in relation to Condition 2, state very broad criteria and the executive must be open about how internally it will go about making decisions and identifying relevant criteria. The Defendant was right to effectively concede Ground 2.

VII. The Withdrawal Note

85. In the interests of transparency, it is important that the terms on which the Defendant has withdrawn the Decision are recorded in a public judgment given that will have an impact on other ARAP cases. I will not seek to summarise what was said, given the risk of misinterpretation, and will reproduce in full the material part of the Withdrawal Note. It said as follows:
 "The Defendant wishes to update the Judge that the decision on the Claimant's ARAP application under challenge will be withdrawn (save insofar as the Court decides to proceed with Judgment and makes an adverse order relating to the decision), and a new decision taken on an expedited basis. The

Defendant notes the Judge's comments in the hearing that there was limited evidence provided by the Defendant on the NS [national security] objectives of HMG at that time. It is accepted that the Court was unfortunately not provided with evidence from the Defendant dealing with the issue of whether advancing an effective justice system and the rule of law was an NS objective at the relevant time, which would have enabled or assisted the Court in making an informed assessment of the matter. At the end of the hearing the Judge requested that the Defendant confirm whether HMG's position is that advancing an effective justice system and the rule of law in Afghanistan was a national security objective at the time in question in this case (around 2012-2013). The position adopted in relation to ARAP applications by the Defendant has been that advancing an effective justice system and the rule of law in Afghanistan were not of themselves UK national security objectives in Afghanistan for the purposes of ARAP Category 4 (Special Cases). The issue of whether advancing an effective justice system and the rule of law is a UK National Security objective for the purposes of ARAP Category 4 (Special Cases) is being reviewed and, if it is decided to maintain that it is not a NS objective (whether in relation to a certain period of time or more widely), then evidence will be provided setting out the evidential basis for this assessment which, insofar as the matter arises in other proceedings, will be made available to the Court so as to assist in its consideration of the issue (if it is in dispute). The unpublished FCDO Cat 4 Op Guidance ('the Guidance') will be: - (i) withdrawn (and not applied to outstanding claims), and (ii) published. In this way those who have received adverse decisions (and not been served with a copy of the Guidance in the course of legal proceedings (noting that the standard practice in cases in which the FCDO has provided enrichment has been to provide a copy of the Guidance at an appropriate stage of proceedings)) will be made aware of the Guidance".

VIII. Conclusion

86. I grant permission to apply for judicial review on Ground 1 and Ground 2. Given the Defendant's concession, I do not need to make an order quashing the Decision, but it is vital that there be urgent reconsideration of the Claimant's ARAP application, which was made as long ago as 22 October 2021. The Claimant and his family are at risk of serious violence or death at the hands of the Taliban and the Claimant remains in hiding. This application needs to be given priority.
87. Finally, there also needs to be thought given to how the ARR (data breach) ground in OPEN and CLOSED is to be addressed, if it remains live following the Defendant's concessions. I ask that Counsel provide draft directions in this regard and, if not agreed, I will make a ruling and directions when this judgment is handed down.

ANNEXE: FCDO'S ASSESSORS REASONS

Condition 2 assessment (briefly set out whether the claim meets/does not meet the criteria for condition 2 and the reasons why)

[The Employer], the project and FCO funding

[Description of Employer, objectives and outputs].

The Applicant was employed as a Logistics Officer for [the Employer]. [The Employer] was issued a grant by the FCO to implement the project entitled '[The Employer] Core Funding'. The duration of the funding for the project was between 2012 and 2013.

Objective

Annex A to the Accountable Grant Agreement, states that the Building Stability Overseas Strategy (BSOS) objective that the project aimed to meet was to 'Strengthen Security and Justice in Afghanistan'.

The BSOS was an FCO, DFID and MOD strategy, published in 2011 to outline the UK's approach to promoting stability and prosperity in countries and regions where its interests were at stake.

Funding

Documents show that 'a maximum of £156,031.00 (approximately \$251,965.10)' would be paid towards the total costs of the Project, within the duration as stipulated.

Outcome

The intended Project outcome was to ensure: '[the Employer] carries out and improves implementation of its core [work] in Afghanistan, while becoming more financially self-reliant, thereby increasing acceptance of [the Employer] as a core, national justice institution on par with judges, prosecutors and police.'

Outcome indicators listed were:

- Steady number or increase [redacted]
- Steady number or increase of pro bono cases referred out
- Improved tracking of assigned pro bono cases
- [redacted outcome indicators]
- Improved core funding planning
- [redacted outcome indicator]

The theory of change as described in Annex A, stated that the 'continued existence of [the Employer] is critical to [aim of Employer].

[The Employer] was an organisation focussed on ensuring [description of Employer's work]. As such access [this work] would have been considered a vital part of a properly functioning legal system and the rule of law. The FCO provided funding to various projects during this period to build capacity in the Afghan state and NGO sector to strengthen the rule of law. The work of [the Employer] funded by the FCO was focussed on ensuring [description of work] more generally, enabling it to [aim of the Employer] and opening regional offices. It did not have a direct connection to the UK's national security objectives in Afghanistan, and there is no reference to delivering the UK's national security objectives in Afghanistan (counter terrorism, counter narcotics and anti-corruption) in either the project document or Grant Agreement to [the Employer]. Having considered the objectives and intended outcome of the project, I concluded that someone who worked on the project is unlikely to have made a significant contribution to UK national security objectives in Afghanistan (which includes counter terrorism, counter narcotics and anti-corruption) but could have depending on the nature of their individual role on the project. I then considered the applicant's role. The applicant's role

I considered the witness statement provided in support of the application.

...

I then considered the generic letter from British Embassy Kabul (BEK) dated 29 July 2021, confirming that the British Embassy Kabul had worked closely with the Kabul Primary and Appeal Tribunals for Crimes Against Internal and External Security for several years in the interest of improving human rights and observance of the Rule of Law. The letter is a generic one issued by BEK to the head of the court and does not mention the applicant by name. I noted the applicant did not work for the court and that the applicant has not claimed to have worked for the court. I concluded that the letter does not provide evidence that the applicant worked for this court or that he personally made a contribution to UK national security objectives through the work of the court. I considered the description of the applicant's role provided in the first witness statement dated 21 January 2022 and a letter of recommendation dated 19 January 2021. The applicant's role on this project is stated as focused on providing logistical support, [description of Claimant's work] in Kabul as well as accommodation, transportation and catering for them. Some of the events involved hosting US military representatives, liaising with key ministry, civil society, local police and a range of business people, production of press material, data entry and coordination of press functions, ensuring everything ran smoothly and other ad hoc tasks. In a letter of recommendation dated 19 January 2021, the legal adviser who recruited the applicant as a logistics officer for [the Employer] stated his role consisted of the following:

- Responsible for all elements of Logistics and operations for [the Employer] including:
 - o All data entry and [work]
 - o Preparing and coordination press functions and media events
 - o Providing logistical support and coordinating [work] in Kabul and provincial offices
 - o Supporting outreach to and [work] including targeted enrolment and support to women, Hazra, Uzbek, Turkman and other majority community members.

As part of his outreach responsibilities, the applicant states that he was the face of many public awareness sessions in mosques and community outreaches and featured in several broadcasts. "I was tasked with ensuring that everything within [the Employer] ran smoothly. I was the face of many public awareness sessions in mosques and community centres across the provinces to raise recognition for women's rights, gender equality and human rights among [...], community and religious leaders. I featured on several radio broadcasts on these topics. I travelled frequently to provincial events with [the Employer's] President, which were often public, well publicised, and always in support of strong governance, rule of law and in collaboration with both donors and partners from the UK, EU and US governments. I was also responsible for carrying out ad-hoc administrative tasks such as: all data entry and [work], updating [the Employer]'s accounting database system and sealing court documents". (Applicant's first witness statement, 21 January 2022)

Following assessment of the applicant's individual contribution to the project, I concluded that other than his outreach work there was nothing in any of these statements that showed that the applicant had undertaken duties beyond those normally associated with the work of a logistics officer, and that neither his outreach work nor his other duties involved work related to the UK's national security objectives in Afghanistan. I concluded that his was a supporting role within [the Employer] and that there was no evidence to indicate that he personally made a positive and substantive contribution to the delivery of the UK's national security objectives in Afghanistan.

I therefore concluded that the applicant, through his work with [the Employer] did not make a substantive and positive contribution to the achievement of the UK's national security objectives in Afghanistan.

I therefore concluded that:

- I was unable to make an assessment as to whether the applicant made a substantive and positive contribution towards the achievement of the UK's military objectives with respect to Afghanistan and meets condition 2a through their work for [the Employer] as a Logistics

Officer. Any evidence relating to whether the applicant meets this condition is for the Ministry of Defence to assess.

- The applicant does not meet condition 2b because through their work for [the Employer] as a Logistics Officer in Afghanistan they did not make a substantive and positive contribution towards the achievement of the UK's national security objectives (which includes counter-terrorism, counter-narcotics and anti-corruption objectives) with respect to Afghanistan.

I therefore concluded that the applicant does not meet condition 2 for the FCDO.