Appeal No. CA-2026-000583

IN THE COURT OF APPEAL (CIVIL DIVISION)

ON APPEAL FROM THE HIGH COURT OF JUSTICE (KBD)

President of the King's Bench Division, Swift J and Steyn J, [2026] EWHC 292 (Admin)

B E T W E E N:

THE KING
on the application of
HUDA AMMORI

Respondent

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

REPLY TO SSHD'S SUPPLEMENTARY SKELETON ARGUMENT ON THE RESPONDENT'S CROSS-APPEAL

References: *in the form* **J/§*** *are to paragraphs of the judgment of the Divisional Court*

in the form **Cross §*** *are to paragraphs of the Respondent's Application for Permission to Cross-Appeal dated 20 March 2026*

in the form **Supp §*** *are to paragraphs of the Supplementary Skeleton Argument of the Secretary of State ("**SSHD**") dated 10 April 2026*

in the form **{CB/tab/page}** *to the Core Appeal Bundle; in the form* **{ASB/tab/page}** *to the Agreed Supplementary Bundle; in the form* **{USB/tab/page}** *to the Unagreed Supplementary Bundle; in the form* **{AnB/tab/page}** *to the Ancillary Bundle, and in the form* **{AB/tab/page}** *to the Authorities Bundle*

1. The Respondent seeks permission to rely on this brief Reply to the SSHD's Supplementary Skeleton Argument dated 10 April 2026 addressing the Respondent's Application for Permission to Cross-Appeal dated 20 March 2026. In circumstances where the Court has ordered a rolled up hearing of both the application for permission and the cross-appeal itself, and in view of the limited time available at the hearing, it is respectfully submitted that the

Court will be assisted by short responsive submissions on the key points of dispute arising on the cross-appeal.

GROUND 1: PROCEDURAL UNFAIRNESS

2. **First**, the lynchpin of SSHD's case (at Supp §§4, 10 **{AnB/B4/84, 86}**) is that the Divisional Court's conclusion that it should be cautious about supplementing the procedure established by Parliament in national security cases properly reflects the Court of Appeal's analysis in *Begum v SSHD (No 2)* [2024] 1 WLR 4269 ("***Begum***") {**AB/29/976-1025**}. That is wrong.

3. The Court in *Begum* correctly identified the relevant question at the first stage as being "*whether Parliament has by necessary implication excluded a right to prior representation*" (§104) {**AB/29/1016**}. The SSHD maintains that the Divisional Court's reasoning was primarily directed at this first stage: Supp §§12-13 **{AnB/B4/87}**. But the Divisional Court failed to apply the test in *Begum*. Instead, the Court asked itself (at J/§§58, 60) whether it should "*supplement*" the procedural requirements of TA 2000, by asking whether consultation was "*an obvious or natural step*". That is the wrong test.

4. Moreover, the SSHD's submissions are premised on a misreading of *Begum*. There, the Court's conclusion that the right of prior consultation was excluded by necessary implication in relation to deprivation decisions under s.40 of the British Nationality Act 1981 was not based exclusively (or even primarily: see §109 **{AB/29/1018}** on the national security context (nor could it have been, in light of the Supreme Court's decision in *Bank Mellat*). Rather, the Court held (at §112) **{AB/29/1019}** that "[t]*he existence and distinctive nature of this right of appeal* [under s.2B of the Special Immigration Appeals Commission Act 1997], ***and*** *the risk of pre-emptive action by the appellant if prior notice is given, remain in our view compelling reasons to construe section 40(5) as* ***excluding*** *the right of prior consultation before a deprivation decision is made*" (emphasis added; see also §§ 109-111 **{AB/29/1018-1019}**). Those (cumulative) conditions for exclusion do not apply in this case.

5. As to the right of appeal, there is no right of appeal for proscription decisions under s.3 TA 2000. The statutory mechanism in ss.4 and 5 TA 2000 applies to refusals to *deproscribe,* not

decisions to proscribe: see Cross §14 **{AnB/B3/72}**; *R(Ammori) v SSHD* [2026] 1 WLR 1000 (at §§51, 57) **{CB/24/179AL-AM}**.

6. Nor does the risk of pre-emption provide a basis for concluding that the duty of prior consultation is excluded by necessary implication under the TA 2000:

   6.1. First, by contrast with deprivation decisions taken under the 1981 Act, a risk of pre-emption is built into (and therefore authorised by) the statutory procedure for proscription under s.3 TA 2000, which contemplates a process of public deliberation in the form of an affirmative resolution procedure. Parliament has made specific provision for an alternative procedure which would eliminate the risk of pre-emption by way of s.123(5) TA 2000, which permits a temporary proscription order to be made without Parliamentary approval where "*necessary by reason of urgency*". Parliament cannot therefore be taken to have excluded the duty of prior consultation by necessary implication on the basis of a risk of pre-emption: it has squarely contemplated such a risk in the standard procedure, and provided for another urgent procedure which eliminates that risk. (The SSHD of course elected not to adopt the urgent procedure in this case.)

   6.2. Second, the risk of pre-emption in the context of proscription is of a different kind than in the context of deprivation. The relevant risk in relation to deprivation is that "[t]*o notify a person abroad of an intention to remove their citizenship could obviously act as an encouragement to that person to return to the UK pre-emptively*", thereby frustrating the deprivation order of its purpose (§107). That is why the Court of Appeal's analogy with freezing injunctions (at §105) was apposite, and its endorsement (**Begum** at §107 **{AB/29/1017}**) of the "*general rule in national security cases"* in the deprivation context understandable, since "*prior notice* [of a freezing injunction application] *would enable the respondent to conceal assets or put them beyond the reach of the court and thus pre-emptively frustrate the purpose of the order*". The same logic does not apply here. Whatever PA did in the intervening period between consultation and proscription, it would thereafter be subject to the very same consequences upon proscription as if it had not been

consulted; it could not take steps to deprive the proscription order of its essential effect. Indeed, the SSHD's decision to use the standard procedure under TA 2000 meant that PA (and the wider public) were informed of the proscription decision almost two weeks before it came into effect. The relevant analogy for a freezing injunction would be a scenario in which a respondent was given notice of the application (e.g. via the court list), and yet was denied the opportunity to address the court in relation to it.

7. **Second**, the contention (at Supp §13 **{AnB/B4/87}**) that the two limbs of Lord Neuberger's analysis in *Bank Mellat* "*are alternatives, not cumulative*" misses the point. They are alternatives only in the sense that, if the duty to consult has not been excluded by statute, then the circumstances of a particular case may nevertheless "*render it impossible, impractical or pointless"* to afford an opportunity to make representations. The Divisional Court did not address the second *Bank Mellat* limb at all. Instead it appears to have used the circumstances not of the particular case, but of hypothetical cases that were a *"long way from"* the particular case (J/§65), to answer the first *Bank Mellat* question: see Cross §16 **{AnB/B3/73}**. Contrary to Supp §13, the conclusion at J/§66 that "*the likely practical difficulties that would be consequent upon any* ***general obligation*** *to give prior notice and invite representations points only to the conclusion that no such obligation arises*" says nothing about the particular circumstances of this case, still less does it suggest that it would have been "*impossible, impractical or pointless"* to consult the Respondent in relation to PA's proscription.

8. **Third**, the contention (at Supp §16 **{AnB/B4/88}**) that "[t]*he crucial issue is not the length of time it took to make the decision to proscribe, but the notice given to those affected by any such decision*" again misses the point. It is obviously relevant to any assessment of the impossibility, impracticability or pointlessness of affording the Respondent an opportunity to make representations that the SSHD deliberately elected not to adopt the urgent procedure, that the decision was widely publicised, but that it did not come into effect until 12 days thereafter: see Cross §§17.3-17.5 **{AnB/B3/74}**.

9. **Fourth**, the SSHD's reliance (at Supp §17 **{AnB/B4/88-89}**) on the Explanatory Memorandum is misplaced. The Explanatory Memorandum forms no part of the Divisional Court's reasoning on this ground. In any event, the assertion in the Explanatory Memorandum that "*significant delay between the laying and coming into force of the Order would alert the organisation to its impending proscription and may result in pre-emptive action by the organisation's members designed to circumvent the provisions of the Act and/or the criminal law"* is entirely generic and unsupported by evidence. There is no (and certainly no adequate) evidential basis for the contention that, in relation to the decision to proscribe PA, it would have been "*impossible, impractical or pointless"* to afford the Respondent an opportunity to make representations in advance of the proscription.

GROUND 2A: DIRECT DISCRIMINATION

10. **First**, the contention (at Supp §§23-24 **{AnB/B4/90-91}**) that the SSHD "*did not conclude that Palestine Action was similarly situated to other direct-action groups"* is without merit.

11. It is well-established that "*unless there are very obvious relevant differences between the* [comparators], *it is better to concentrate on the reasons for the difference in treatment"* and that "*it will usually be convenient to arrive* [at the question of justification] *by the shortest route*": *AL (Serbia) v SSHD* [2008] 1 WLR 1434 (at §25) {**AB/19/561-562**}; *R (AB) v SSHD* [2024] EWCA Civ 369 (at §42) {**AB/36/1302-1303**}.

12. Here, the SSHD's officials contemporaneously recognised (i) that there were other "*single-issue groups employing similar direct action tactics"* to PA, (ii) that those groups "*regularly employ direct-action tactics* ***similar to those for which*** [PA] ***has been brought to proscription consideration****"*, which tactics expressly included "[c]*riminal damage*", and (iii) that it was "***highly likely that a proscription of PA will raise questions about proscribing*** [those other organisations]" (emphasis added) {**ASB/10e/191, 197-198**}. On any view, that amounts to a recognition that PA was at least *prima facie* similarly situated to other organisations in the specific context of proscription. Further, there was uncontested evidence before the Divisional Court tending strongly to show that PA was similarly situated to such other organisations: see Cross §28 **{AnB/B3/77-78}**. The SSHD nevertheless made

no attempt to justify her decision to single out PA for proscription or to identify any relevant differences between PA and those other organisations.

13. Instead, in the decision-making process, the SSHD's officials made a bare assertion, inconsistent with their own preceding analysis, that proscribing PA would "*instil confidence that proscription legislation is being applied consistently across all groups regardless of ideology*" {**ASB/10e/193-195**}.

14. Nor has the SSHD sought in these proceedings to remedy her contemporaneous failure to justify the difference in treatment. At the SSHD's own urgent request very shortly before trial, Chamberlain J directed on 20 November 2025 that he would hear any application by the SSHD to rely on further evidence in relation to discrimination received by 24 November 2025. The SSHD elected not to avail herself of that opportunity. She must live with the consequences of that decision, the result of which is that there has never been <u>any evidence</u> from the SSHD, either before the Divisional Court or now before this Court, which even <u>attempts</u> to justify the discriminatory treatment. The SSHD instead seeks to demand (at Supp §§25-26 **{AnB/B4/91}**) that the Respondent demonstrate a *prima facie* similarity her own officials had already acknowledged in March 2025, and which the Respondent's extensive and uncontested evidence tended powerfully to show: see Cross §28 **{AnB/B3/77-78}**.

15. **Second**, the SSHD's reliance (at Supp §§25-26 **{AnB/B4/91}**) on the "*multi-faceted and nuanced"* nature of proscription decisions goes nowhere. The SSHD made no attempt to conduct <u>any</u> analysis, still less a "*multi-faceted and nuanced*" analysis, of the case for proscription in relation to the organisations which she herself recognised to be *prima facie* similarly situated to PA. The fact that it would be "*necessary to consider also the application of the discretionary factors and any other relevant matters to each organisation*" does not assist the SSHD, since she conducted no such assessment, let alone attempted to justify the non-proscription of those organisations by reference to such discretionary factors. Against that background, the SSHD's references to a "*broad-based assessment*" and a "*wide-ranging assessment of relevant matters through the applicable policy framework*" are devoid of content.

16. **Third**, the contention (at Supp §28 **{AnB/B4/92}**) that the Respondent "*fail*[s] *to grapple with the fact the Court rejected her characterisation of Palestine Action as a non-violent organisation falling within the well-established tradition of peaceful protest"* is wrong. The Respondent addresses the Divisional Court's reasoning on this issue in her Skeleton Argument (e.g. at §51). Its observations have no bearing on the direct discrimination claim. Even if (*quod non*) the Divisional Court were right to distinguish PA from other direct action groups in the way that it did (including on the basis that its tactics involve "*damage to property"* and a corresponding "*real risk of injury*"), the same would be true of the relevant comparator organisations which the SSHD herself identified as "*employ*[ing] *direct-action tactics similar to those for which* [PA] *has been brought to proscription consideration*", including "[c]*riminal damage*". The SSHD has adduced no evidence to distinguish PA from those organisations. As noted above, the uncontested evidence before the Divisional Court included accounts of both historic and contemporary direct action campaigns demonstrating that PA's forms of activism "*are not new and are equivalent to and in some respects less in terms of severity, than forms of activism that have not been treated as terrorism in the past*": see the evidence cited at Cross §28 **{AnB/B3/77-78}**.

GROUND 2B: INDIRECT DISCRIMINATION

17. The contention that the Respondent's case as to the disproportionate impact of proscription on the Palestinian community is "*no more than an assertion"* is wrong. It fails even to acknowledge, still less deal with, the extensive evidence cited at Cross §§32 and §38 **{AnB/B3/79-81}**.

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16 April 2026