



Neutral Citation Number: [2026] EWHC 2157 (Admin)

Case No: AC-2026-LON-002601
AC-2026-LON-002666

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/08/2026

Before :

THE HON. MRS JUSTICE STEYN DBE

Between :

THE KING
on the application of
(1) SHAHIRA SADAT
(2) ROKHSAR RAHIMI
(3) ALAA KHALIFA
(4) LINDA LEOGAH FORKWA

Claimants

- and -

**THE SECRETARY OF STATE FOR THE HOME
DEPARTMENT**

Defendant

And between:

THE KING
on the application of
(1) RAZAN AWAD FAGEER FARAH
(2) RAWAN SIDDIG BABIKER ALI
(3) RAWAN RAAD HASSAN ELRUFAl

Claimants

- and -

**THE SECRETARY OF STATE FOR THE HOME
DEPARTMENT**

Defendant

Raza Husain KC, Raj Desai, Darryl Hutcheon and Aislinn Kelly-Lyth (instructed by
Deighton Pierce Glynn) for the **Claimants in Sadat & others**
Tim Buley KC, Grant Kynaston and Sophie Lucas (instructed by **Duncan Lewis**) for the
Claimants in Farah & others
Deok Joo Rhee KC, Anna Dannreuther and Jessica Jeffries (instructed by **Government**
Legal Department) for the **Defendant**

Hearing dates: 27, 28 & 29 July 2026

Approved Judgment

This judgment was handed down remotely at 10.30am on 12 August 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HON. MRS JUSTICE STEYN DBE

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Mrs Justice Steyn :

A. Introduction

1. The claimants challenge a change to the Immigration Rules which rendered nationals of four countries, Afghanistan, Cameroon, Myanmar and Sudan, ineligible to obtain a student visa permitting entry to the United Kingdom. This has been called the “Student Visa Brake”. Nationals of Afghanistan were, simultaneously, made ineligible for a skilled worker visa (the “Skilled Worker Brake”) but that is not challenged in this claim. Together, these measures are the “Visa Brake”.
2. The change was made by the *Statement of Changes in Immigration Rules* (HC 1691) laid by the Secretary of State for the Home Department before Parliament on 5 March 2026 (‘the Statement of Changes’). The Student Visa Brake is found in the Immigration Rules in Appendix Student, ST 3.3. It came into effect on 26 March 2026.
3. The Secretary of State estimates that over the 18 month period from 26 March 2026 the Student Visa Brake will prevent about 4,300 student visas being issued to nationals of Afghanistan, Cameroon, Myanmar and Sudan. She estimates that in the same period this will reduce the number of asylum claims from those arriving on student visas by about 1,300.
4. I heard these claims on a ‘rolled up’ basis on 27-29 July 2026, that is to say by considering the question whether to grant permission to apply for judicial review at the same time as considering the merits of the claims should permission be granted.
5. The claimants are seven of the affected students. This is not a challenge to any individual decisions made in respect of any of the claimants. The facts of their claims are relied on as illustrative of the individuals precluded from taking up offers to study at universities in the United Kingdom by the Student Visa Brake and of its impact.

The Farah claimants

6. Dr Farah, Ms Ali and Dr Raad (together, ‘the Farah claimants’) are Sudanese nationals, living in, respectively, Saudi Arabia, Egypt and the United Arab Emirates (with visas), each having been displaced by the armed conflict that broke out in Sudan on 15 April 2023. They are medical students who hold (or held) offers for postgraduate university courses commencing in September or October 2026.
7. Both Dr Farah and Dr Raad were awarded first class honours in their bachelor’s degrees in medicine and they hold offers from the University of Oxford to undertake master’s degrees in, respectively, Applied Digital Health and International Health and Tropical Medicine. The university has agreed to hold their offers open until 31 August 2026, pending determination of this claim, and, in the meantime, Dr Raad’s offer of the Africa Oxford Initiative for the Mastercard Scholarship is on hold.
8. Ms Ali’s bachelor’s degree is in pharmacy and her master’s degree is in international public health. She held an offer to undertake a master’s degree in Women’s Health at University College London in the forthcoming academic year, but this has been deferred to 2027/28 due to the Student Visa Brake.

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The Farah grounds

9. The focus of the Farah claim is the decision which led to the making of the Statement of Changes ('the Decision'). They challenge the process by which the four nationalities, particularly Sudan, were chosen, contending the Secretary of State's reliance on the "Conversion Rate" was irrational ('Farah ground 1'); and the Secretary of State failed to consider and/or undertake reasonable inquiries into whether there was evidence of "visa abuse" ('Farah ground 2') and as to available alternative options ('Farah ground 3').
10. The Farah claimants also contend the Secretary of State wrongly fettered her discretion to grant leave outside the rules ('LOTR') in respect of affected nationals ('Farah ground 4'). Under this ground they seek to challenge the *Student and Child Student* guidance (version 13.0, published on 26 March 2026) ('the Student Guidance'). There is a dispute as to whether their pleaded claim encompasses a challenge to this guidance.

The Sadat claimants

11. Ms Sadat, Ms Rahimi, Ms Khalifa and Ms Forkwa ('the Sadat claimants') are women students who hold (or held) offers to study at universities in the UK. Ms Sadat is a national of Afghanistan, where she lives. She holds offers to undertake a master's degree in Artificial Intelligence and Adaptive Systems at the University of Sussex or in Artificial Intelligence and Machine Learning at the University of Bradford. Both offers were for the forthcoming academic year but the universities have deferred her place to 2027/28. Ms Sadat had been invited for an interview for a Chevening scholarship but following the introduction of the Student Visa Brake she was informed her application could not proceed.
12. Ms Rahimi is also a national of Afghanistan. She is a refugee living in Pakistan and the only school-leaver among the cohort of claimants. Ms Rahimi's offer from the University of Manchester to undertake a bachelor's degree in civil engineering, with an integrated foundation year, has been withdrawn but the university has confirmed that if the claim succeeds she will be given an offer for 2027/28.
13. Ms Khalifa is a national of Sudan, living in Qatar where she was born and raised. She secured offers to study for a master's degree from the University of Bristol, the University of Glasgow and London School of Hygiene and Tropical Medicine. At the date of the hearing, the offer from Bristol for an MSc in Artificial Intelligence for Medicine and Health remained open, and Ms Khalifa had been granted a Think Big scholarship; while the other offers had been withdrawn as the requirement to pay a deposit had not been met.
14. Ms Forkwa is a national of Cameroon where she ordinarily lives, although she is currently studying in Indonesia. She has a bachelor's and two master's degrees from the University of Buea and the Pan African University Institute of Governance, Humanities and Social Sciences in Cameroon. She has offers to undertake a doctorate of philosophy (DPhil or PhD) from the University of Oxford in Geography and the Environment and from King's College London in Leadership Studies with reference to security and development. She has applied for the Commonwealth PhD Scholarship.

The Sadat grounds

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15. The focus of the Sadat claim is the relevant part of the Statement of Changes, namely Appendix Student 3.3 of the Immigration Rules. The first two grounds concern the decision-making process: the Sadat claimants allege a failure to have regard to obvious material considerations relating to the discriminatory impact of the Student Visa Brake on women ('Sadat ground 1'); and breach of the *Tameside* duty of inquiry into the differential impact of the Student Visa Brake and/or the different position of women in the affected countries ('Sadat ground 2'). By their third ground, the Sadat claimants allege the decision to introduce the Student Visa Brake is irrational, in that the Secretary of State decided to treat different situations (namely, those of men and women in the affected countries) in the same way, without any objective justification for doing so ('Sadat ground 3').
16. Like the Farah claimants, the Sadat claimants rely on the non-fettering principle. The Sadat claimants allege that the Secretary of State has fettered her discretion to grant individuals affected by the Student Visa Brake student visas and LOTR ('Sadat ground 4') and she has adopted an irrational mechanism for allowing any discretion to grant visas and LOTR to be exercised ('Sadat ground 5').
17. The Secretary of State accepts the Sadat claimants' fettering challenge extends to relevant guidance issued to her caseworkers governing the implementation of the Student Visa Brake, that is, the Student Guidance. She also accepts the court can have regard to the wider picture, including the *Leave outside the Rules (LOTR) on compelling compassionate grounds* guidance (version 6.0, published on 24 November 2025) ('the Compelling Compassionate Grounds Policy') and the Student Sponsor Guidance (version 04/26) ('the Sponsor guidance'). But she does not accept that such guidance is itself the subject of challenge in this claim. By an application notice dated 14 July 2026, the Sadat claimants had sought permission to amend the claim form to challenge the Sponsor guidance. However, during the hearing leading counsel for the Sadat claimants, Mr Raza Husain KC, stated that the Sadat claimants do not press the amendment application.

B. The Immigration Rules and the Statement of Changes*The nature of the Immigration Rules*

18. Section 3(2) of the Immigration Act 1971 ('the 1971 Act') requires the Secretary of State to "lay before Parliament statements of the rules, or any changes in the rules, laid down by him as to the practice to be followed" in relation to "regulating the entry into and stay in the United Kingdom of persons required by this Act to have leave to enter". Section 1(4) provides, so far as material, that the rules laid down by the Secretary of State "shall include provisions for admitting ... persons coming for the purpose of taking employment, or for purposes of study".
19. This "statement" has come to be known as the Immigration Rules or the Rules: *R (Hippolyte) v Secretary of State for the Home Department* [2025] EWCA Civ 1493, [35] (Singh LJ). They set out "criteria which are or may be determinative of an application for leave to enter or remain": *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33, [2012] 1 WLR 2208, [97] (Lord Dyson JSC). As Lord Dyson put it in *Alvi* at [94], Parliament "wanted to have a say in the rules which set out the basis on which these applications were to be determined".

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20. The Immigration Rules are “not law but a statement of the Secretary of State’s administrative practice”: *R (AB) v Secretary of State for the Home Department* [2018] EWCA Civ 383, [2018] Imm AR 1015, [45] (Leggatt LJ), citing *Ali v Secretary of State for the Home Department* [2016] UKSC 60, [17] (Lord Reed JSC). As they are not law, the Rules do not “possess the same degree of democratic legitimacy as legislation made by Parliament”: *Ali*, [17], citing *Huang v Secretary of State for the Home Department* [2007] UKHL 11, [2007] 2 AC 167, [17] (Lord Bingham).
21. Although they are an expression of the Secretary of State’s policy, the Immigration Rules are “unusual in having a statutory basis, in requiring the approbation of Parliament, and in being published as House of Commons papers”: *Ali*, [16]. As Lord Reed observed in *Ali* at [17]:
- “... they give effect to the policy of the Secretary of State, who has been entrusted by Parliament with responsibility for immigration control and is accountable to Parliament for her discharge of her responsibilities in this vital area. Furthermore, they are laid before Parliament, may be the subject of debate, and can be disapproved under the negative resolution procedure. They are therefore made in the exercise of powers which have been democratically conferred, and are subject, albeit to a limited extent, to democratic procedures of accountability.”
22. I reject Mr Husain’s submission that the above observation of Lord Reed was *per incuriam* by reason of being inconsistent with the statement of Lord Brown in *Odelola v Secretary of State for the Home Department* [2009] UKHL 25, [2009] 1 WLR 1230 at [33] that “if Parliament disapproves of them they are not thereby abrogated: the Secretary of State merely has to devise such fresh rules as appear to her to be required in the circumstances”.
23. Lord Reed cited *Odelola*, the case which Mr Husain suggests he overlooked, immediately before the passage quoted, in the very same paragraph (albeit using the alternative name for the case, *MO (Nigeria) v Secretary of State for the Home Department*). In any event, there is no inconsistency. Lord Reed used the language of s.3(2) of the 1971 Act which makes clear that a statement may be “disapproved by a resolution” of either House. He did not assert that such disapproval immediately or automatically abrogates the statement. Nonetheless, Parliament’s disapproval imposes a duty on the Secretary of State to make such (further) changes as appear to her to be required “as soon as may be” and “at latest by the end of the period of forty days beginning with the date of the resolution” (s.3(2) of the 1971 Act). The recognition that the Immigration Rules are subject to democratic procedures of accountability, albeit to a limited extent, is plainly accurate.

Appendix Student

24. Appendix Student to the Immigration Rules states that it is the route for, among others, “a person aged 16 or over who wants to study with a sponsor on a course of further or higher education”. It is “not a route to settlement”. “Validity requirements” are set out at ST 1.1 to 1.6. These include that a person applying outside the UK for entry clearance as a student must apply on the form “Student visa” (ST1.1(a)) and “the applicant must

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provide a Confirmation of Acceptance for Studies [‘CAS’] reference number that was issued to them no more than 6 months before the date of application”.

25. “Suitability requirements” are set out at ST 2.1 to 2.2. Under the heading “Eligibility requirements for a Student” and the sub-heading “Entry requirements for a Student” ST 3.1 to 3.2 provide:

“ST 3.1. A person seeking to come to the UK as a Student must apply for and obtain entry clearance as a Student before they arrive in the UK.

ST 3.2. A person applying for entry clearance as a Student must, if Appendix Tuberculosis applies, provide a valid medical certificate confirming that they have undergone screening for active pulmonary tuberculosis and that this tuberculosis is not present in them.”

The Statement of Changes: Appendix Student, ST 3.3.

26. Among other changes to the Rules introduced by the Statement of Changes was the insertion after ST 3.2 of the Student Visa Brake, in the following terms:

“ST 3.3. A person must not be applying for entry clearance as a Student as a national or citizen of the following countries:

- (a) Afghanistan; or
- (b) Cameroon; or
- (c) Myanmar; or
- (d) Sudan”.

27. It is this paragraph of the eligibility requirements which makes each of the claimants ineligible for a student visa.

The Explanatory Memorandum

28. The Explanatory Memorandum that accompanied the Statement of Changes explains the purpose of introducing the Visa Brake in the following terms:

“5.1 The number of asylum claims from people who arrived in the UK on a visa or other leave have nearly tripled since the year ending September 2022. In the year ending September 2025, 38% (41,100) of asylum seekers had previously entered the UK on a visa or other leave with relevant documentation. ...

5.2 As set out in the Asylum Policy Statement, around 106,000 asylum seekers are currently receiving state-funded support, with the vast majority living in asylum accommodation. Nationals of Afghanistan, Cameroon, Myanmar and Sudan present some of the highest proportions of asylum claims to visas issued, and the number of claims is consistently high, leading to significant impacts on the asylum system. In total, as of

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September 2025, 15,906 of these nationals are in receipt of Home Office support, including 6,412 individuals in hotels. ...

5.3 For these nationalities, the highest proportion and number of claims come from the Student visa route. For Afghanistan a high proportion and number of claims also come from the Skilled Worker route. In order to protect UK border security from these unsustainable levels of visa-linked asylum claims, we will refuse Student visa applications from main applicants who are nationals of Afghanistan, Cameroon, Myanmar, and Sudan. Additionally, we will refuse Skilled Worker visa applications from main applicants who are nationals of Afghanistan. This will come into effect from 26 March but will not affect applications made before 26 March.

5.4 The key aim of the change will be to reduce the number of individuals entering the asylum system, therefore reducing the strain on the asylum system. It will also allow time for the Home Office to understand the underlying issues/trends driving these behaviours, and what further nuanced interventions could be put in place in the longer term to address these. It will also meet the stated intents of the Immigration White Paper and the Asylum Policy Statement to drive down asylum and support, particularly where it is preventable, and to strengthen public confidence in the immigration system. This confidence risks being undermined where purpose-bound visa routes (like Study) are, or are perceived to be, used as a route to claim asylum in the UK. The brake is not intended to be permanent and will be regularly reviewed, with the aim that it can be released as soon as it is considered appropriate to do so.” (Emphasis added; footnotes omitted.)

The Impact Assessment

29. An Impact Assessment dated 3 March 2026 accompanied the Statement of Changes. It noted that the mean average time, in years, between issue of a student visa and applying for asylum, for nationals of the four affected countries who made student visa-linked asylum claims, was as follows:

	Afghanistan	Cameroon	Myanmar	Sudan
Student	0.29	1.08	0.86	1.14

C. The development of the policy

30. The decision-making process has been addressed in the witness statement given by Mr John Brocklehurst, who has been Deputy Director for Visa Policy, Youth Mobility Policy and International Trade Policy at the Home Office since 2022, and has led the work on the Visa Brake. Mr Brocklehurst states:

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“Tackling the growing strain that the UK’s asylum system is under has been a major and pressing policy imperative of the Government and the Home Secretary.”

The White Paper

31. In May 2025, the Government published a White Paper entitled “Restoring Control over the Immigration System”. This is the document referred to as “the Immigration White Paper” in paragraph 5.4 of the Explanatory Memorandum. Its overarching message was that “net migration must come down”.

32. Chapter 3 addressed the position of “Skilled Students”. While noting the importance to the UK of international students, the White Paper stated:

“94. In recent years, we have seen an increase in students staying in the UK following their studies. Alongside this, we have also seen an increase in sponsored study visas for lower-ranking education institutions.

95. We have also seen a series of problems involving misuse and exploitation of student visas, where visas are used as an entry point for living and working in the UK without any intention to complete the course, and increasing numbers of asylum claims from students at the end of their course, even though nothing substantive has changed in their home country while they have been in the UK.” (Emphasis added; footnotes omitted.)

33. The White Paper noted that between 2011 and 2016, the number of student visas granted was relatively stable at around 200,000 p.a., rising steadily to 269,000 in 2019. Following a fall during the COVID-19 pandemic, “the number of visas issued increased sharply from 2021, reaching a peak of 498,000 in the year ending June 2023”. The White Paper stated:

“104. The number of asylum claims matched to a visa has increased relatively steadily since mid-2021. Around 30% of asylum claims are from visa holders. Of this, students account for the largest proportion, at almost half (47%) of all asylum claims from visa holders.

105. The majority of students claiming asylum do so as they approach their visa expiry date. This indicates that some people might therefore be using the student route to make claims for humanitarian protection when circumstances in their country have not changed.

...

115. With the numbers of students claiming asylum increasing at pace, and the majority claiming as their visas approach expiry, including where circumstances in their home country have not

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changed, we must take action against those who seek to abuse and misuse the system.” (Footnotes omitted.)

34. The White Paper specified various measures that would be implemented to “prevent the misuse of student visas”. The Visa Brake was not one of them. The first mention of what was then called an “Emergency Brake” appeared in the 7 April 2025 minutes of the Home Office’s System Integrity Standing Group. It was one of a number of ideas being explored and was then “in the early stages of consideration”.
35. The White Paper built on work that had been undertaken in 2023 and 2024 by the Migration & Systems Board, a “senior civil servant cross-system decision-making forum”, which had been tasked with looking into “abuse of legitimate routes” with a view to identifying ways of tackling it. In May 2024 “abuse” in this context was defined as the “misuse or exploitation of authorised pathways or methods for harmful or illegal pathways”.

The July 2025 Paper

36. In July 2025, Home Office officials produced a paper commissioned by No.10 addressing the issue of visa-linked asylum claims. The paper described various measures that were already being taken and “three more radical options”, namely an “Emergency Brake, Immigration Bonds and Nationality Differentiation”. Annex A set out the “top 20 visa-linked asylum claim nationalities”, analysing the numbers and percentages by reference to Work, Study, Visit and Family and other visas. Above the table in Annex A, the paper stated in bold:

“When looking at this data it is important to caveat that visa-linked asylum claims typically occur near visa expiry and therefore those claiming may not have been issued in the same year. This data does not definitively demonstrate that a certain proportion of visa recipients claim asylum. Nonetheless, the figures illustrate significant patterns with certain nationalities, particularly when expressed as a percentage of visa-linked claims relative to the number of visas issued between Jan 2024 and Mar 2025.” (Original emphasis.)

37. The highest volume countries for visa-linked asylum claims were Pakistan, Bangladesh, India, Nigeria and Sri Lanka, while the “top 5 nationalities in hotels with visa-linked asylum claims” were the same countries save that Afghanistan replaced India. Afghanistan, Cameroon, Myanmar and Sudan were all among the “top 20”, but it was suggested the “most likely options for suspension would be countries where the ratio between visas issued and visa-linked claims are very high, particularly where overall volumes are high”. By that measure, it was suggested that Bangladesh and Pakistan stood out. At the same time, officials advised that “Lower volume, high proportion countries like Iran and Afghanistan should also be considered”.

September Ministerial Submission

38. Mr Brocklehurst states:

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“46. Policy development in August to September 2025 explored several models: a simple nationality-wide restriction, more targeted, cohort-based approaches, and different operational mechanisms (for example, sponsor controls versus application-stage restrictions). The blanket ‘brake’ model offered speed and simplicity but raised proportionality and litigation risks, whereas more targeted approaches (i.e. interventions based on courses and occupation codes) better aligned with evidence but were operationally complex and susceptible to circumvention.”

39. On 15 September 2025, officials put a submission to ministers recommending, among other matters, that they agree to further development of operational measures for implementing an “Emergency Brake”. The Ministers for Border Security & Asylum and for Migration & Citizenship (‘the Home Office Ministers’) agreed the recommendations. At this point, the main focus was still on the top five countries by volume of visa-linked asylum claims. Mr Brocklehurst states this was “before we undertook the more detailed work on proportionality and proportional asylum risk. It triggered us to consider more data in greater detail”.
40. Annex B to the September Ministerial Submission contains the same table of the top 20 visa-linked asylum claim nationalities as the July 2025 Paper, with the same caveat regarding the data, again emphasised in bold (see paragraph 36 above).

October Ministerial Submission

41. On 1 October 2025, Mr Brocklehurst presented a further Ministerial Submission, describing how an “Emergency Brake” would sit alongside other visa interventions, namely the introduction of visa requirements for certain non-visa nationals, and of visa penalties. The Secretary of State agreed the recommendation to proceed by a “staged approach, with an initial burst of simultaneous action on countries where we think the case for action is strongest and collective agreement easiest”.
42. With respect to the proposed “Emergency Brake”, the October Ministerial Submission stated:

“We are still refining the underpinning ‘trigger’ for consideration of a suspension. ... Provisionally, we are looking at a trigger based on the percentage of visa-linked claims relative to visas issued, by route, in 2024 of 20% or over (excluding those with <50 claims), or a total number of claims of over 500 in any specific route.

This methodology would suggest:

Work (%)	Afghanistan, Cameroon, Bangladesh, Myanmar, Syria
Work (absolute volume)	Bangladesh, Pakistan, Sri Lanka, Nigeria, India, Cameroon
Study (%)	Afghanistan, Syria, Cameroon, Sudan, Iran, Bangladesh

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Study (absolute volume)	Pakistan, Bangladesh, India, Nigeria, Iran, Sri Lanka, Nepal, Afghanistan
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In the round, our provisional assessment is the most credible options initially are Afghanistan (Study and Work), Syria (Study and Work), Cameroon (Study and Work), Sudan (Study), Iran (Study) and Myanmar (Work). Bangladesh is also a possibility. Pakistan is harder to make a case for, but not impossible. India is very challenging in that the ratio for Indian Work and Study visa holders is 1% and 3%. We are also working to see if we can refine this trigger further by targeting specific university courses and/or occupation codes, to make the intervention more surgical and potentially make the stakeholder and diplomatic handling easier.”

43. The October Ministerial Submission advised that most asylum claims linked to work or study visas “occur close to expiry – mostly between 12 and 18 months”.

Visa Interventions Board

44. During November and December 2025, further detailed policy work was undertaken to assess nationalities and cohorts. This was predominantly done through the Visa Interventions Board. By December 2025, the Board “had settled on a 15% initial threshold (and excluding *de minimis* countries with <100 claims) (the ‘**Proportion Threshold**’). The countries identified for assessment that passed the Proportion Threshold were Afghanistan, Cameroon, Iran, Myanmar and Sudan. Mr Brocklehurst has explained:

“We also considered a volume threshold of at least 500 asylum claims per year (the ‘Volume Threshold’) was an appropriate threshold for the Visa Brake, but one which should not be applied until later phases, ideally when we were able to target specific university courses or provide a more nuanced approach.”

D. The Decision

45. The Ministerial Submission which was the basis of the Decision was put to the Secretary of State and the Home Office Ministers on 26 January 2026 (with a small amendment made the following day) (‘the Ministerial Submission’), and the recommendations were agreed by the Secretary of State and the Home Office Ministers on 29 January 2026. In particular, the Secretary of State agreed, as part of the Spring Immigration Rules changes, to impose:

“an 18-month emergency brake on the following countries and routes ...:

- i. Afghanistan (skilled work & sponsored study)
- ii. Cameroon (sponsored study)
- iii. Iran (sponsored study)

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- iv. Myanmar (sponsored study)
- v. Sudan (sponsored study)”).

46. The Ministerial Submission explained:

“The emergency brake is designed to close the Skilled Worker and/or sponsored study routes for certain nationalities where we are seeing a high proportion of visa-linked asylum claims compared to visas issued. Once in place, an emergency brake will result in the refusal of relevant out-of-country applications...

The rationale for the emergency brake is to protect the immigration system in the short-term from unsustainable levels of visa linked asylum claims. While the measure is agnostic around individuals’ motivations, which may include genuine claims, ceasing the pipeline of new asylum claims (including associated costs) through the brake allows us sufficient time to consider the underlying issues behind why these nationalities disproportionately go on to claim asylum, and to potentially put in place more nuanced policy solutions to manage risks in the longer term.” (Original emphasis.)

47. In the body of the Ministerial Submission officials explained:

“7. Stage one of the emergency brake prioritises nationalities and routes which are subject to the highest proportion of asylum claims. To be most effective, we are aiming to target cohorts where we assess the case for intervention is strongest, whilst excluding nationalities where the absolute number of claims constitutes a minor proportion of overall visa volumes issued to that nationality, or where the number of asylum claims is negligible. We have therefore set the trigger for each route and nationality at a threshold where visa-linked asylum claims reach at least 15% of visas issued over the same period and an absolute volume threshold of at least 100 asylum claims (based on year-ending September 2025 data). In each case, the trend of asylum claims is consistent over time.” (Bold in the original; underlining added.)

48. Applying this methodology, Syria no longer met the threshold. A breakdown of the data underlying the assessment that Afghanistan, Cameroon, Iran, Myanmar and Sudan met the threshold was provided in Annex B. Omitting Iran (which the Secretary of State subsequently decided to exclude from the Visa Brake for reasons that are not relevant to these claims), in respect of study visas, the table at Annex B provided the following data:

Afghanistan	2021	2022	2023	2024	YESEP25
Visa issued (Entry Clearance)	330	820	1,860	470	360

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Asylum claims linked to visa (Entry Clearance & Extension)	120	490	2,000	550	470
Mismatched Conversion Rate	36%	60%	108%	117%	131%
Cameroon					
Visa issued (Entry Clearance)	420	540	570	390	570
Asylum claims linked to visa (Entry Clearance & Extension)	60	150	130	150	180
Mismatched Conversion Rate	14%	28%	23%	38%	32%
Myanmar					
Visa issued (Entry Clearance)	490	1,130	1,580	1,780	2,080
Asylum claims linked to visa (Entry Clearance & Extension)	20	40	70	250	330
Mismatched Conversion Rate	4%	4%	4%	14%	16%
Sudan					
Visa issued (Entry Clearance)	360	350	290	260	260
Asylum claims linked to visa (Entry Clearance & Extension)	30	40	90	100	120
Mismatched Conversion Rate	9%	11%	31%	38%	46%
Syria					
Visa issued (Entry Clearance)	360	470	480	270	260
Asylum claims linked to visa (Entry Clearance & Extension)	100	240	260	160	80
Mismatched Conversion Rate	28%	51%	54%	59%	31%

49. The first note under the table at Annex B stated:
- “The Mismatched Conversion Rate simply divides the number of asylum claims linked to the relevant visa in, eg 2024, to [sic] the number of Entry Clearance visas issued in 2024. This is to give an indication of the number of visa issuances that go on to claim Asylum, rather than calculate it exactly, as in most cases these are not the same people being compared.”
50. The Ministerial Submission noted that Bangladesh also met the threshold for consideration for both work and study, but the Secretary of State had agreed in October “to defer its assessment to stage two of this process”. This was because “the UK has deeper bilateral equities with Bangladesh, such that any action on Bangladesh would likely incur a far more pronounced impact on relations, as well as jeopardise other priorities such as maintaining and enhancing our returns cooperation”. Delaying assessment to stage two would allow time for a more comprehensive analysis of the “economic, diplomatic and migration considerations”.
51. Annex C addressed the Foreign Commonwealth and Development Office’s (‘FCDO’) argument that an exception should be made for Chevening Scholars, a programme which “only applies to a small number of the brightest and best students”. The

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Ministerial Submission recommended not providing an exception at this stage, but “to offer a review of this position, once extra safeguards have been put in place”. The reasons given were:

“Currently, despite the low numbers of Chevening scholars from these nationalities, we are nevertheless seeing asylum claims emanate from this route as shown in the table below (Jan ’23-Dec ’24). The top five countries with the highest proportion of visa-linked asylum claims on a Chevening scholarship are Yemen, Afghanistan, Sudan, Syria and Iran, three of which are proposed for stage one of the emergency brake. Asylum claims on Chevening scholarships contravene the understanding that a Chevening scholar will study in the UK and then return to their country or region as a future leader, and also leaves HMG vulnerable to criticism that, through funding these scholarships, it is incentivising individuals from high asylum risk nationalities to claim asylum in the UK. Additionally, it may be difficult to justify providing an exception to emergency brakes for Chevening scholars, but not for other government sponsored scholarship programmes, such as the Commonwealth scholarship.

Nationality	Chevening scholarship applications	Asylum matches	Harm %
AFGHANISTAN	35	27	77%
CAMEROON	33	1	3%
IRAN	8	2	25%
MYANMAR	20	2	10%
SUDAN	33	20	61%
SYRIA	38	16	42%”

52. Annex E contained detailed country assessments for Afghanistan, Cameroon, Iran, Myanmar, Sudan and Syria. The assessment for Afghanistan noted that the “Mismatched Conversion Rate” for the year ending 2025, was 131% for study visas and explained:

“Note: Conversion rates may be higher than 100% because the mismatched methodology matches claims not only to visas issued that year but also to visas issued in previous years.”

53. Annex D addressed delivery and implementation; Annex F contained an Equality Impact Assessment; and Annex G comprised the October Ministerial Submission.

E. Intensity of review

54. It is common ground that the Decision is susceptible to review on conventional public law grounds. The irrationality test is not applied rigidly. The intensity of review varies, across a sliding scale, according to the subject matter and gravity of the issue. “The courts do not maintain any rigid classification or taxonomy of rights which is then used to govern the intensity of the scrutiny”: *R (Hoareau) v Secretary of State for Foreign*

OFFICIAL

and Commonwealth Affairs [2020] EWCA Civ 1010, [153] (Sir Terence Etherton MR, Green and Dingemans LJ).

55. In *R (KP) v Secretary of State for Foreign and Commonwealth Affairs* [2025] EWHC 370 (Admin), a challenge to a decision refusing the claimant (who was imprisoned on Diego Garcia) LOTR, Chamberlain J addressed the standard of review for rationality:

“76. First, the court’s approach to assessing the rationality of a decision varies depending on the importance of the interests affected by it or, to put the point another way, the gravity of its potential consequences. In this connection, it is not necessary to identify a ‘right’ impacted by the challenged decision. ... The interests in question *may* be such as to ground a right properly so-called (as in *ex p. Smith and Pham*), but not necessarily. In many of the situations in which the heightened standard of review applies, the claimant will have no prior right, whether under statute or at common law, to the benefit which the decision denies him.

77. Second, where it applies, the heightened standard of review has implications for the way the court evaluates complaints of both process and outcome irrationality. In the former case, the court will subject the decision to ‘more rigorous examination, to ensure that it is in no way flawed’ (*Bugdaycay*, 531). In this connection, the court will expect the decision-maker ‘to show by their reasoning that every factor which might tell in favour of an applicant has been properly taken into account’ (*Y (Iraq)*, [24]). Where the complaint is of outcome irrationality, more will be required by way of justification (*ex p. Smith*, 554); and the importance of the interests affected may, in principle, narrow the range of decisions open to the decision-maker, potentially to just one (*Pham*, [107]).

78. Third, however, the importance of the claimant’s interests is not the only factor relevant to the court’s approach to a complaint of outcome irrationality. The nature and importance of the public interests on the other side of the balance may also be important. In some fields, institutional considerations may require the court to recognise that it is less well-placed than a democratically accountable decision-maker to evaluate the impact that a particular decision may have on a particular public interest, or the weight to be accorded to that impact. Equally, constitutional considerations may dictate that the court should pay particular respect to the views of a democratically accountable decision-maker about how to balance the public and private interests. In such cases, even where a decision will have grave consequences for the individual, the court may have to afford the decision-maker a wide margin when considering whether the outcome is irrational: *Hoareau*, [155].”

OFFICIAL

56. The claimants do not have any right or legitimate expectation that they will be permitted to enter the UK to study here. Nonetheless, the Student Visa Brake has potentially serious consequences for them and, no doubt, for many others who are affected by it. It has dashed the hopes and expectations of some exemplary, public-spirited students who had succeeded in securing places at prestigious universities, many of whom had secured or been short-listed for scholarships. Being prevented from taking up a place in higher education may have profound and lasting consequences for an individual's life chances. The importance of the interests affected and the nature of the potential consequences call for heightened scrutiny.
57. Against that, the challenge is to a policy-laden measure of general application, involving macro-political and predictive judgements as to the public interest, made by the Secretary of State in a field for which she bears constitutional responsibility, subject to Parliamentary oversight (see *Ali*, [17]: paragraph 21 above). These considerations pull in the opposite direction, towards a lighter touch review.
58. The question, then, is how the court should reconcile these countervailing considerations. In my judgement, the court should examine the decision-making process rigorously, applying heightened scrutiny to any *process* irrationality challenge. But it should be slow to impugn the rationality of the *outcome*, recognising both that the evaluative judgement is a matter for the decision-maker and that, in this field, she should be afforded a wide margin: see *KP*, [76]-[77]; *Hoareau*, [155]; and *Judicial Review Principles and Procedure*, Moffett, Auburn and Sharland (2nd ed., 2026), 18.32. However, my decision does not turn on the intensity of review.

F. Farah ground 1: the Conversion Rate

59. The Farah claimants challenge the process by which the four countries affected by the Student Visa Brake were selected. The determining factor was that for each country the "Conversion Rate" for the year ending September 2025 was above 15%. This was subject to a minimum threshold of 100 student visa-linked asylum claims in that year (a threshold which resulted in the omission of Syria) and broader policy considerations (which led to deferral of consideration of Iran and Bangladesh to a later stage). Nonetheless, there is no dispute that the inclusion of Afghanistan, Cameroon, Myanmar and Sudan was based on the Conversion Rate: that metric was central to the Decision.
60. As Chamberlain J observed in *KP* at [55],
- "rationality is the standard by which the common law measures the conduct of a public decision-maker where there has been no infringement of a legal right, no misdirection of law and no procedural unfairness. It encompasses both the process of reasoning by which a decision is reached (sometimes referred to as 'process rationality') and the outcome ('outcome rationality')".
61. Farah ground 1 is a process rationality challenge. A decision may be vitiated if, for example, there is a serious logical flaw or methodological error in the underlying reasoning, a critical gap in the evidence to support an important step in the reasoning, or a lack of rational connection between the evidence and the public body's conclusions: see *R (Law Society) v Lord Chancellor* [2018] EWHC 2094 (Admin),

OFFICIAL

[2019] 1 WLR 1649 (Leggatt LJ and Carr J), [98] (cited with approval in *R (Finch) v Surrey County Council* [2024] UKSC 20, [2024] PTSR 988, [56] (Lord Leggatt JSC)); *KP*, [56] (Chamberlain J); *R (Wells) v Parole Board* [2019] EWHC 2710 (Admin), [32]-[33] (Saini J); and *R v Parliamentary Commissioner for Administration, ex p. Balchin* [1998] 1 PLR 1, p.13 (Sedley J).

62. The Farah claimants contend the Secretary of State's reliance on the Conversion Rate is incapable of rational justification. It is, therefore, important to understand the nature of the Conversion Rate. It is a fraction converted into a percentage. The denominator (i.e. bottom number) is the number of student visas issued to nationals of a particular country in a fixed period. The numerator (i.e. top number) is the number of asylum claims made *in the same period* by nationals of that same country who had been granted student visas.
63. So, for example, in the year ending September 2025, 260 Sudanese nationals were granted student visas and, in the same year, 120 Sudanese nationals made student visa-linked claims for asylum. In the same period, 360 nationals of Afghanistan were granted student visas and 470 such nationals made student visa-linked claims for asylum. These figures result in a Conversion Rate of 46% for Sudan ($\frac{120}{260} \times 100$) and 131% for Afghanistan ($\frac{470}{360} \times 100$) for the year ending September 2025 (see paragraph 48 above).
64. Importantly, for any given year, the cohorts represented by the numerator and denominator will comprise different people. The advice to the Secretary of State prior to the Decision was that the time between grant of a visa and a student visa-linked asylum claim was "mostly between 12 and 18 months" (paragraph 43 above). That being so, many, probably most, of the 120 Sudanese nationals who made student visa-linked asylum claims in the year ending September 2025 will have been granted a student visa *after* April 2023.
65. The submission that there may be "no overlap" between the two cohorts pushes the point too far. Given that the time-lag is an average, and some students may claim asylum at the end of three or four-year courses, there are likely also to be some who claim asylum more swiftly and so fall within both cohorts. Indeed, the Impact Assessment indicates that the average time-lag for Afghanistan is only about 3½ months (see paragraph 29 above), making it likely that many would fall within both the visa grant and asylum claimant cohorts within a single year. However, I note the detailed information as to the time-lag for each affected country was not before the Secretary of State when she made the Decision.
66. Nevertheless, there is no *necessary* overlap as the Conversion Rate was not designed to show the percentage of those granted a student visa in a given year who had *themselves* made a claim for asylum in the same period. The numerator is itself based on data biometrically linking asylum claims to the earlier grant of visas. But the Conversion Rate does not match visas to asylum claims. This is precisely why it was labelled the "Mismatched Conversion Rate" in the Ministerial Submission. The fact that the Conversion Rate was based on "mismatched" data is acknowledged throughout the contemporaneous records.
67. The Farah claimants submit that the purpose of the Visa Brake was to tackle what the Secretary of State regarded as "abuse" and "misuse" of visas. There was some debate

OFFICIAL

on the pleadings and in the parties' submissions as to the breadth of those terms, as used by the Secretary of State. Ultimately, I understood there to be agreement between the parties - and in any event I find - that the Secretary of State encompassed within the broader term "misuse" not only false, spurious or unmeritorious asylum claims, but also asylum claims (which may be genuine and meritorious) where the applicant sought a visa with the intention of claiming asylum or claimed asylum having entered the UK on a visa in circumstances where there had been no relevant change in conditions in their country of nationality since their arrival in the UK. On the other hand, the Secretary of State did not regard it as a misuse of an authorised entry route, or abusive, for a person to make a genuine asylum claim while in the UK on a visa as a consequence of a change in conditions in their country of nationality occurring after their entry into the UK.

68. While not endorsing the Secretary of State's definitions of abuse or misuse, leading Counsel for the Farah claimants, Mr Tim Buley KC, did not dispute that it was open to her to adopt such broad meanings.
69. In my judgement, the aim was not only to tackle perceived abuse and misuse. The Secretary of State's objective was also to restore public confidence in the immigration system, confidence which could be undermined by perceived, as well as actual, misuse. As of November 2025, 400,000 people had applied for asylum since 2021, while the corresponding figure for 2011 to 2015 had been 150,000. In 2024, around 30% of asylum claims (40,000) were from visa holders, a higher number than the 35,000 small boat arrivals that year. Students accounted for the largest proportion (47%) of visa-linked asylum claims. As of November 2025, around 37% (41,000) of asylum claims in 2025 were from those who had arrived on a visa, while 39% (43,600) were from small boat arrivals. Visa-linked asylum claims were at a similar level to the higher profile phenomenon of asylum claims made by those arriving on small boats.
70. A central aim of the Visa Brake was to stem the flow of potential asylum claimants with a view to relieving pressure on the asylum system in the UK, giving the Home Office time to review and recalibrate visa processes, and to devise and assess more nuanced methods of tackling perceived misuse of visas. The aim was not simply to reduce the number of asylum claims. As Ms Deok Joo Rhee KC acknowledged, the objective of reducing the flow remained connected to the aim of tackling abuse or misuse of visas, in the broad sense that the Secretary of State used those terms (paragraph 67 above). But as Ms Rhee emphasised, the aim was to prevent *future* misuse of visa routes. The Secretary of State's objective was not to predict, in relation to particular countries, whether future events might lead to spikes in asylum claims and to impose a visa brake on that basis.
71. The Farah claimants submit that the Conversion Rate is arbitrary. First, Mr Buley contends that it was impossible for the Secretary of State to divine from the Conversion Rate that there was a high incidence of abuse or misuse of visas by nationals of the affected countries. It is not a metric that is capable of detecting abuse or misuse. Secondly, it compares "apples and oranges", and says nothing useful about the rate at which student visa holders of the affected nationalities claimed asylum historically or do so currently. It does not measure whether student visa-linked asylum claims from a particular nationality were *in fact* a high proportion of student visas issued.

OFFICIAL

72. Mr Brocklehurst has explained that in developing the Visa Brake the Home Office considered whether to focus on the volume or proportion of visa-linked asylum claims. The Secretary of State decided to defer consideration based on volume to a later stage. The claimants do not challenge that approach and, in my view, it cannot sensibly be criticised. A pure volume-based approach would have brought in countries such as India where the percentage of visa-linked asylum claims is low (about 1-3%) but the number is substantial given the very high number of visas granted each year (see paragraph 42 above). The Home Office understandably wished to have further time to consider the costs and benefits, including diplomatic costs, of imposing a visa brake on nationals of countries to whom the UK grants a high volume of visas, and to assess whether more refined measures could be devised.
73. Having decided to focus on proportion rather than volume, the Home Office considered how to calculate it. Mr Brocklehurst states:

“There are two ways to calculate proportion. The first way is to identify how many of those issued a student visa in a particular time period have gone on to make an asylum claim. This is what we refer to as matched data. The second way is to adopt the approach that we applied, which is to compare the number of asylum claims made in a given year by a given cohort and contrast that as a proportion of the number of student visas issued to that cohort in that year. This is what we call the Mismatched Conversion Rate. We call it ‘mismatched’ because we recognise that the identity of the individuals claiming asylum does not always align with those to whom visas are issued in the same time period.”

I agree with Mr Buley that to say the identity “does not always align” is an understatement. But it is of no consequence as the contemporaneous documents were more forthright (see e.g. paragraph 49 above: “in most cases these are not the same people being compared”).

74. The Secretary of State has used matched data to a limited extent. First, the data regarding Chevening Scholars is matched data (paragraph 51 above) which was used as a ‘sense-check’ when the Decision was made. While the numbers involved are small, the Secretary of State considered that the proportion of asylum claims even among this elite cohort was of concern. Secondly, the data that first alerted the Secretary of State to the growing incidence of visa-linked asylum claims in 2024 was “targeted matched data”, that is, where an asylum claim was linked to a visa issued to an individual within the previous 12 months. The Home Office assumes those who apply for a visa with the intention of claiming asylum are more likely to claim within 12 months, and so regards this metric as a useful indicator of that form of visa abuse. However, that data was not used to select the four countries whose nationals are affected by the Student Visa Brake.
75. Mr Brocklehurst has explained that the Home Office considered the matched data to be “less reliable, as the figures will always be out of date upon every quarterly immigration statistics release”. The mismatched data for any given year is static, and so can be compared across time, whereas matched data is not static: it will continually rise. The number of asylum claims made by, for example, nationals of Myanmar who were granted student visas in 2024 will continue to increase as time passes. Even once all the

OFFICIAL

varying visa expiry dates have passed it is impossible to know whether the number has peaked as some people may overstay their leave and claim asylum later.

76. The time lag between the grant of visas and the making of asylum claims, and the shifting nature of matched data, mean that the more recent the matched data, the more likely it is to be deficient and unreliable. Matched data would “consistently and inaccurately present a downward trend in visa-linked asylum claims across all nationalities compared to previous years”. While recognising that mismatched data can only be an *indicative* measure of the scale of visa-linked asylum claims relative to visas issued by nationality and route, Mr Brocklehurst’s evidence is, nonetheless, that mismatched data is broader, enabling comparison year-by-year, more up-to-date, and a more useful measure for assessing future risk than matched data.
77. Mr Buley took a neutral stance on whether the matched data is problematic. He does not accept Mr Brocklehurst’s evidence that there were only two ways to calculate proportion, suggesting that the Secretary of State failed to consider alternatives or possible corrections to the matched data to alleviate the issues. In any event, he submits that the Secretary of State cannot justify the use of a defective metric (the Conversion Rate) on the basis that it was considered better than a metric she considered to be even more defective (matched data).
78. In my judgement, use of the Conversion Rate was within the range of reasonable methodologies open to the Secretary of State. First, an important feature is that the Home Office recognised, and ensured the Secretary of State was aware of, the limitations of the Conversion Rate. The preference for mismatched data was a considered choice made for rational reasons. No clearly better metric has been proposed.
79. Secondly, while the metric adopted was not a means of measuring the mathematical proportion of student visa-linked asylum claims made by nationals of any particular country, it was not unreasonable for the Secretary of State to regard it as indicative of the balance between student visas granted to, and student visa-linked asylum claims made by, nationals of each of the affected countries. That is particularly so given that the Secretary of State considered the figures over a period of five years. For some countries, the balance revealed that the numbers of visa-linked asylum claims were slight in comparison to the high volume of visas granted, providing a sound indication that suspending the grant of visas to such nationals may be an excessive measure. That was not the case for Afghanistan, Cameroon, Myanmar or Sudan: the weighing pans are more evenly balanced, or at least more acutely angled.
80. Thirdly, I reject the contention that the Secretary of State could not rationally derive any indication of misuse of the student visa route, in the broad sense adopted by the Secretary of State, from the data. The Secretary of State was told that most student visa-linked asylum claims were made between 12 and 18 months after the visa was issued. And she is bound to have been aware of major changes in country conditions, such as the Taliban coming to power in Afghanistan in August 2021 and the conflict in Sudan that broke out in April 2023. Against that backdrop, the fact that visa-linked asylum claims by nationals of Afghanistan exceeded the number of visas issued in 2023, 2024 and 2025 shows the likelihood that claims were being made in circumstances where conditions had not materially changed since the visas were granted. For Cameroon and Myanmar, in the absence of any suggestion that relevant changes in country conditions

OFFICIAL

occurred 12-18 months prior to each of the years in which significant numbers of student visa-matched asylum claims were made, the data is indicative of applicants making claims although conditions had not changed since their arrival.

81. The contention that the data is incapable of revealing visa misuse focused on Sudan where the dramatic rise in asylum claims in 2023 is highly likely to have been caused by the conflict. That is, as Mr Buley put it, “blindingly obvious”. The FCDO was engaged in the process of developing the policy and advised regarding matters such as “1000 days of the war” in January 2025 and the conflict anniversary in April. It would be unrealistic to suppose the Secretary of State did not appreciate that the initial rise in claims would likely have been made by those for whom conditions had changed, and so was not indicative of misuse of the student visa route. However, the number of student visa-linked asylum claims continued to rise in 2025, long after the conflict began and the visa application centre in Sudan had closed. Some of those claiming asylum in 2025 may well have entered the UK before April 2023 but, on the understanding that most claims were made between 12-18 months from visa issue, it is obvious that this will not invariably be the case.
82. I accept that the contemporaneous documents do not draw the threads together in this way. But it would be implausible to treat the Decision as if it were based on an isolated figure (the Conversion Rate) held in a vacuum. It was not. The relevant context was before the Secretary of State, and her Decision must be assessed in light of the material which informed her understanding.
83. Fourthly, the Secretary of State’s principal concern was forward-looking. She wished to stem the future flow of visa-linked asylum claims. Insofar as the challenge is directed to the Secretary of State’s predictive assessment of future risk, she was making an evaluative judgement in an area for which she has constitutional responsibility. In that respect, consistently with the approach set out above, the court should be slow to interfere unless clear irrationality is shown. I am not persuaded that it was not reasonably open to the Secretary of State to regard the consistently rising Conversion Rates for Afghanistan, Cameroon, Myanmar and Sudan as indicating that the number of student visa-linked asylum claims from nationals of those countries who, but for the Visa Brake, would be granted student visas over the next 18 months, was likely to remain relatively high.
84. Finally, it is possible to construct hypothetical scenarios, as Counsel for the Farah claimants have done, in which the Conversion Rate is anomalously high or there is no connection between a high Conversion Rate and future risk of visa abuse or misuse. But to produce such anomalous results the scenarios inevitably have to be far-fetched. The rationality of using the Conversion Rate has to be judged in the real world.
85. I grant permission to apply for judicial review on Farah ground 1, but for the reasons I have given, I reject the contention that use of the Conversion Rate was arbitrary or irrational and dismiss this ground.

G. Farah ground 2: Visa abuse

86. The Farah claimants’ second ground is closely related to their first. Again, the target is the choice of countries to whom the Student Visa Brake would be applied, and in particular the inclusion of Sudan. They contend that whether there was visa abuse (or

OFFICIAL

misuse) by nationals of the countries selected by the Conversion Rate was an obviously material consideration, and that the Secretary of State could not reasonably have been satisfied she possessed the information necessary to determine that there was visa abuse.

87. A decision-maker must take into account matters which the law requires them to consider, whether because they are expressly or impliedly required by legislation or because it would be irrational not to do so. They must likewise disregard matters which the law forbids them to take into account. Between those two categories lie matters which the decision-maker may, but is not obliged to, consider. Subject to any legal requirement, materiality is for the decision-maker: if a matter is capable of being relevant but is not taken into account, the decision can only be challenged on the basis that it was “so obviously material” that it was irrational not to consider it: see *R (Friends of the Earth) v Secretary of State for Transport* [2020] UKSC 52, [2021] All ER 976, [116]-[119].
88. In *R (Balajigari) v Secretary of State for the Home Department* [2019] EWCA Civ 673, [2019] 1 WLR 4647, the Court of Appeal endorsed the guidance on the *Tameside* duty (i.e. the common law duty of inquiry) given by the Divisional Court in *R (Plantagenet Alliance Ltd) v Secretary of State for Justice* [2014] EWHC 1662 (Admin), [2015] 3 All ER 261, [99]-[100]. Underhill LJ observed in *Balajigari* at [70]:

“First, the obligation on the decision-maker is only to take such steps to inform himself as are reasonable. Secondly, subject to a *Wednesbury* challenge ..., it is for the public body and not the court to decide upon the manner and intensity of inquiry to be undertaken... Thirdly, the court should not intervene merely because it considers that further inquiries would have been sensible or desirable. It should intervene only if no reasonable authority could have been satisfied on the basis of the inquiries made that it possessed the information necessary for its decision. Fourthly, the court should establish what material was before the authority and should only strike down a decision not to make further inquiries if no reasonable authority possessed of that material could suppose that the inquiries they had made were sufficient. Fifthly, the principle that the decision-maker must call his own attention to considerations relevant to his decision, a duty which in practice may require him to consult outside bodies with a particular knowledge or involvement in the case, does not spring from a duty of procedural fairness to the applicant but rather from the Secretary of State’s duty so to inform himself as to arrive at a rational conclusion. Sixthly, the wider the discretion conferred on the Secretary of State, the more important it must be that he has all the relevant material to enable him properly to exercise it.”

89. As I have explained when addressing Farah ground 1, the Secretary of State’s aims were not only to tackle abuse and misuse of visas, but also to restore public confidence in the immigration system, to take pressure off the asylum system by stemming the flow of visa-linked asylum claims, and to give the Home Office time to devise alternative, more nuanced measures. I have rejected the contention that the data before her was

OFFICIAL

incapable of providing any indication of misuse of student visas (applying her broad definition of that term). The premise that she had no such information therefore falls away. It is obvious that at least some of the visa-linked claims for each of the affected countries would have met the Secretary of State's definition of misuse, and I am not persuaded that is a factor she ignored.

90. In any event, the focus was on tackling future misuse. My conclusion that it was not irrational for her to predict, based on the data before her, continuing high levels of student visa-linked asylum claims by nationals of the four affected countries relative to the numbers of such visas issued to such nationals, fatally undermines the contention that there was no rational connection between the Decision and the objectives sought to be achieved. Irrespective of the extent to which past claims by such nationals were indicative of visa abuse or misuse, such future claims based on future visa grants would fall within the Secretary of State's definition of misuse, at least in the absence of any future (inevitably unpredictable) material change in country conditions.
91. In all the circumstances, and bearing in mind that the Student Visa Brake is a temporary measure for which the "exit strategy" has been under consideration from the outset, I reject the submission that no reasonable Secretary of State could have been satisfied, on the basis of the material before her, that she possessed the information necessary to make the Decision. I grant permission to pursue Farah ground 2, but dismiss it.

H. Farah ground 3: available alternatives

92. The Farah claimants contend that in opting for a 'blanket ban' which affected all student visa applicants from the targeted countries, the Secretary of State unreasonably failed to consider and/or conduct reasonable inquiries into alternative means of addressing "visa abuse".
93. The alternative the Farah claimants rely on is one that was identified in the minutes of the Board meeting on 5 November 2025 and in the Ministerial Submission, namely, targeting specific study courses. In the minutes, it was suggested that tailoring the Visa Brake "to occupation codes and courses would be ideal". The Ministerial Submission advised the Secretary of State that her department's "ambition" was "to enhance the emergency brake mechanism to be able to target specific occupations and study courses associated with high numbers of asylum claims".
94. The Farah claimants contend that the Secretary of State failed to consider the option of targeting study courses, in circumstances where the only options put to her in the Ministerial Submission were to impose the Visa Brake or do nothing.
95. In my judgment, this ground is unarguable. First, the evidence shows that the Visa Brake was one among many complementary measures pursued or considered by the Home Office to address visa-linked asylum claims. These included (i) implementing a range of measures designed to strengthen decision-making by UK Visas and Immigration; (ii) the work undertaken by the Home Office's International Migration Unit, in cooperation with key partner countries (India, Pakistan, Bangladesh and Nigeria) to address the drivers of visa abuse (e.g. by disrupting the activities of unscrupulous visa agents); (iii) adopting a new methodology to assess asylum risk posed by a nationality or cohort using qualitative data and data science; and (iv) making

OFFICIAL

changes to the Basic Compliance Assessment framework with a view to improving recruitment practices by sponsors.

96. The range of other measures considered and in some cases recommended also included “visa requirements (or impositions)” and “visa penalties” (see paragraph 41 above); nationality-based differential evidence requirements (‘country conditions’); and visa bonds (requiring grantees to pay a deposit which would be repayable after the end of their leave, on leaving the UK). In light of the evidence, it cannot sensibly be suggested that the Secretary of State unreasonably failed to consider or make reasonable inquiries into alternative measures to address visa abuse.
97. Secondly, the Secretary of State took a targeted approach where she considered it possible to do so. In the October 2025 Ministerial Submission it had been proposed that the Visa Brake should apply to work visas for Cameroon and Myanmar. That recommendation was not maintained in January 2026 and the Visa Brake did not extend to those routes. For Cameroon, almost all work visa-linked asylum claims were from adult social care occupations, which the Secretary of State addressed by stopping applications for visas from those in adult social care. For Myanmar, most work visa-linked asylum claims were on the “Graduate Route” and the Secretary of State assessed that it was sufficient to impose the Student Visa Brake which, in the longer term, would prevent asylum claims from the Graduate Route. Moreover, the staged approach was designed to enable the Visa Brake to be tested and refined.
98. Thirdly, the possibility of targeting particular study courses was regarded as “complex”. Mr Brocklehurst has explained that whereas there are “dedicated occupation codes” for Skilled Worker visas, there are no equivalent “study codes” and there is a lack of standardisation between universities on the naming of courses. This makes it difficult to assess whether particular courses have a higher rate of asylum claims than others, because it involves manually scraping data from (for example) university websites and the quality of the data is questionable. Even if this problem could be overcome, ultimately this option was not considered appropriate because of the concern that targeting particular courses would be easy to circumvent by applicants choosing alternative courses and universities changing the names of their courses.
99. It was not irrational for the Secretary of State to impose the Student Visa Brake temporarily, to ease the pressure on the asylum system, without waiting for detailed consideration of that complex option, and so potentially missing the Parliamentary window (which generally allows for changes to the Rules twice a year) for including the Student Visa Brake in the March 2026 Statement of Changes.
100. For the reasons I have given, I refuse permission and dismiss Farah ground 3.

I. Farah ground 4/Sadat grounds 4 and 5: fettering of discretion

The legal principles

101. The non-fettering principle was described by Leggatt LJ in *AB v Secretary of State for the Home Department* [2018] EWCA Civ 383 at [44]:

“A public authority which has a discretionary power may adopt a policy or rule to regulate the exercise of the power and indeed,

OFFICIAL

if it fails to act consistently with its rule or policy, its decision may be open to public law challenge by a person adversely affected. At the same time the principle against fettering discretion requires decision-makers not to shut their ears to claims falling outside the policies they have adopted: see *Ali* ..., para 15. The leading authority is *British Oxygen Co Ltd v Minister of Technology* [1971] AC 610. ... Lord Reid identified the general rule as being that “anyone who has to exercise a statutory discretion must not ‘shut his ears to an application’” and “refuse to listen at all” but must be “always willing to listen to anyone with something new to say”.”

102. The Secretary of State is given a “wide discretion” under sections 3, 3A, 3B and 3C of the 1971 Act to control the grant and refusal of leave to enter or to remain: *Hippolyte*, [37] (Singh LJ). As Lord Dyson JSC said in *R (Munir) v Secretary of State for the Home Department* [2012] UKSC 32, [2012] 1 WLR 2192 at [44]:

“The language of these provisions, especially section 3(1)(b), could not be wider. They provide clearly and without qualification that, where a person is not a British citizen, he may be given leave to enter or limited or indefinite leave to remain in the United Kingdom. They authorise the Secretary of State to grant leave to enter or remain even when leave would not be given under the Immigration Rules.”

The “source of the Secretary of State’s power to grant leave to enter or remain outside the Immigration Rules” is the 1971 Act itself: *Hippolyte*, [37] (citing *Munir*, [44]); *R (Agyarko) v Secretary of State for the Home Department* [2017] UKSC 11, [2017] 1 WLR 823, [4].

103. I have addressed the nature of the Immigration Rules above (see paragraphs 18-21 above). In light of the features identified by Lord Reed in *Ali* at [17] (paragraph 21 above), the Court of Appeal has “held that the Immigration Rules are not themselves subject to the ‘non-fettering’ principle and that, where the Rules are expressed in mandatory terms, they are not, for that reason, *ultra vires* nor to be read as operating other than in a mandatory manner”: *AB*, [45] (Leggatt LJ), citing *R (Sayaniya) v Upper Tribunal* [2016] EWCA Civ 85, [2016] 4 WLR 58, [21]-[35]; *Hippolyte*, [46] (Singh LJ).
104. However, “the Rules do not restrict the exercise of the Secretary of State’s discretionary powers in that she always has a residual discretion to consider an application made outside the Rules by someone who does not qualify under them”. And “the exercise of this residual discretion is subject to the ‘non-fettering’ principle”: *AB*, [45]; *Hippolyte*, [46].
105. It is common ground both that Appendix Student ST 3.3 is *intra vires* and that, notwithstanding its unqualified terms, the Secretary of State retains a broad residual discretion to grant LOTR. The exercise of that discretion must necessarily be informed by the nature and purpose of the Visa Brake (see *Alvi*, [31]), but as Singh LJ said in *Hippolyte* at [59]:

OFFICIAL

“Under the non-fettering principle, there can be no factors that the Secretary of State can close her ears to. That principle requires that she must at least be willing to consider whatever it is that an applicant wishes to say to her.”

The Compelling Compassionate Grounds Policy guides the grant of LOTR in certain circumstances, but the Secretary of State’s residual discretion to grant LOTR is not confined to cases falling within that policy.

106. When the non-fettering principle applies, “it does not require that a policy cannot be expressed in unqualified terms”. The question whether the Secretary of State has shut her ears, and failed to exercise her discretion, is one of substance rather than form. What matters is “whether in reality the decision-maker is prepared to consider making an exception to what otherwise appears to be an unqualified policy”: *Hippolyte*, [44] (citing *R (West Berkshire District Council) v Secretary of State for Communities and Local Government* [2016] EWCA Civ 441, [2016] 1 WLR 3923).

The target of the claimants’ non-fettering grounds

107. In section 3.1 of the claim form, claimants are required to give details of the decision (or policy, omission etc) which they seek to have judicially reviewed. None of the claim forms filed by the claimants identified the Student Guidance in section 3.1. The Sadat claimants each identified the Statement of Changes as the measure challenged. However, citing *R (A) v Secretary of State for the Home Department* [2021] UKSC 37, [2021] 1 WLR 3931 (‘the *A case*’, in which “the court construed the relevant rules and the policy as a complete set of instructions to officials of the Secretary of State”: [74]), the Secretary of State accepts that, by challenging the relevant part of the Statement of Changes, the Sadat claim extends to the Student Guidance, since that was guidance to caseworkers governing the implementation of the Visa Brake.

108. Section 3.1 of the Farah claim form identified the decision challenged as:

“The Home Secretary’s decision to amend Appendix Student of the Immigration Rules to preclude all nationals of Afghanistan, Sudan, Myanmar, and Cameroon from applying for entry clearance as a Student, implemented by way of the Statement of Changes to the Immigration Rules HC 1691.”

109. In the Statement of Facts and Grounds (which is section 5 of the claim form), the Farah claimants identified, when addressing Farah ground 4, the relevant part of the Student Guidance that they seek to challenge (§79.2). And in section 8 of the claim form the Farah claimants identified that they seek:

“A declaration that the Defendant’s relevant guidance is unlawful, insofar as it mandates that applications made under Appendix Student by individuals affected by the Decision be refused.”

110. It is important that the decision sought to be challenged is clearly identified in section 3.1 of the claim form. Nevertheless, it does not seem to me that the distinction the Secretary of State seeks to draw between what is encompassed in the Sadat claim

OFFICIAL

compared to the Farah claim is justified, not least given the way the challenge was described in section 3.1 (specifically referencing the implementation) and that the part of the Student Guidance sought to be challenged, and the relief sought, was identified in the Farah claim. Accordingly, I accept the Farah claimants' contention that they are entitled to challenge the Student Guidance. In any event, that challenge falls to be determined in the context of the Sadat claim.

111. However, I agree with the Secretary of State that neither the Compelling Compassionate Grounds policy nor the Sponsor guidance is challenged. The Sponsor guidance is not guidance to caseworkers and the Compelling Compassionate Grounds policy, although it is addressed to caseworkers, is a long-standing policy that was not published in the context of the implementation of the Visa Brake. I will consider each of those documents in the context of the claimants' fettering challenge, but if the Sadat claimants wished to bring a self-standing challenge to them, they should have been identified in section 3.1 of the claim form. As I have said, there was an application to amend to add the Sponsor guidance, but Mr Husain ultimately chose not to pursue it, being content that it is part of the wider picture that the court will consider.
112. For the purposes of their grounds 4 and 5, the Sadat claimants do not challenge the Statement of Changes itself. Such a challenge would be bound to fail. The Rules are not subject to the non-fettering principle (paragraph 103 above) and, in any event, Appendix ST 3.3 does not purport to extinguish the Secretary of State's residual discretion to grant LOTR.
113. In considering that which is targeted by the fettering challenge, it is important to note the absence of any challenge to any decision to refuse LOTR. As Leggatt LJ said in *AB* at [48]:

“The principle against fettering discretion requires a decision-maker to be willing to listen to and consider arguments for not acting in accordance with a rule or other established policy. But it does not require the decision-maker to cast around for possible reasons to do so. That is clear from the nature of the principle which, as the *British Oxygen* case shows, is a requirement founded in procedural fairness that the decision-maker must not ‘shut his ears’ to an application or refuse to ‘listen to anyone with something new to say’. It is also confirmed by *R (Behary and Ullah) v Secretary of State for the Home Department* [2016] EWCA Civ 702, para 39, where the Court of Appeal held there was no obligation on the Home Office to consider whether to grant leave to remain outside the Immigration Rules in the absence of an express request to do so or, possibly, of facts which were so striking that it would be irrational not to consider the grant of leave outside the Rules even in the absence of any request.”

114. As of the date of the hearing, none of the claimants had made an application to the Secretary of State to exercise her residual discretion in their favour (or otherwise for a visa). I was informed that the Farah claimants had written to her on 16 July 2026, asking her to grant them LOTR, but they had not made a formal application or paid the

OFFICIAL

requisite fee, and in any event there was no challenge in this claim to any response that may have been given by the Secretary of State to those letters.

The Secretary of State's guidance to her caseworkers

115. In the *A case* Lord Sales and Lord Burnett identified, at [46], “three types of case where a policy may be found to be unlawful by reason of what it says or omits to say about the law when giving guidance for others”. Mr Buley relies on type (i) to challenge the Student Guidance:

“(i) where the policy includes a positive statement of law which is wrong and which will induce a person who follows the policy to breach their legal duty in some way (i.e. the type of case under consideration in *Gillick* [1986] AC 112)”.

116. The Student Guidance explains at the outset, under the heading “About this guidance” that:

“This guidance tells caseworkers how to consider applications from people who wish to enter or remain in the UK to study under the Student or Child Student routes of the Points-based system.” (Emphasis added.)

117. Under the heading “Eligibility for entry clearance and permission to stay”, the Student Guidance states (giving hyperlinks to the Rules):

“This page tells caseworkers the requirements an applicant must meet to be granted either entry clearance or permission to stay as a Student or Child Student.

The requirements for granting entry clearance or permission to stay can be found in:

- the eligibility requirements for the Student route, contained in Appendix Student ST 3.1 to 23.1
- ...

Student: Visa Brake

Afghanistan, Cameroon, Myanmar and Sudan will be subject to a visa brake with effect from 26 March 2026. You must refuse any out-of-country Student entry clearance applications submitted on or after this date where the main applicant is a national or citizen of one of these countries, in accordance with paragraph ST 3.3. You should assess an applicant's suitability in full, but no further consideration of the applicant's wider eligibility should be undertaken.

The visa brake only affects out-of-country applications where the main applicant has made their application using a passport or travel document which confirms that they are a national of one of the affected countries. Any application made by dual nationals

OFFICIAL

in a different nationality should be considered as normal in line with that nationality.” (Emphasis added.)

118. I do not accept Mr Buley’s submission that the underlined passage contains a (positive) misstatement of the law. The Student Guidance advises Home Office caseworkers as to the approach to take to applications *under the Rules* for entry clearance or permission to stay as a student. This is clear from the explanation of what the guidance is about; the passage above the heading “Student: Visa Brake”; the hyperlinks to the Rules; and the references to “suitability” and “eligibility” which caseworkers would understand refer back to ST 2.1 to 2.2 (“Suitability requirements for a Student”) and ST 3.1 to 23 (“Eligibility Requirements for a Student”). The Student Guidance says nothing about the existence of the residual discretion, or how to approach an application for LOTR. The type (i) challenge has no foundation.
119. Mr Husain relies on type (iii), which was described in the *A case* at [46] in the following terms:
- “(iii) where the authority, even though not under a duty to issue a policy, decides to promulgate one and in doing so purports in the policy to provide a full account of the legal position but fails to achieve that, either because of a specific misstatement of the law or because of an omission which has the effect that, read as a whole, the policy presents a misleading picture of the true legal position. In a case of the type described by Rose LJ, where a Secretary of State issues guidance to his or her own staff explaining the legal framework in which they perform their functions, the context is likely to be such as to bring it within category (iii). The audience for the policy would be expected to take direction about the performance of their functions on behalf of their department from the Secretary of State at the head of the department, rather than seeking independent advice of their own. So, read objectively, and depending on the content and form of the policy, it may more readily be interpreted as a comprehensive statement of the legal position and its lawfulness will be assessed on that basis.”
120. At [47], Lord Sales and Lord Burnett observed that in a category (iii) case, “it will not usually be incumbent on the person promulgating the policy to go into full detail about how exactly a discretion should be exercised in every case”.
121. Mr Husain relies on the Student Guidance together with the Compelling Compassionate Grounds policy in support of the submission that the guidance to caseworkers is defective. In essence, the Sadat claimants submit that the guidance leaves caseworkers with the incorrect understanding that the *only* circumstances in which they can grant LOTR is where the consequences of refusal for the applicant or their family would be “unjustifiably harsh” by reason of “compelling compassionate grounds raised in an individual case”. They contend the Secretary of State would not *even in theory* consider exercising her discretion where, for example:

OFFICIAL

- i) a prospective student wishes to come to the UK to undertake doctoral research which their institutions consider will have a significant positive effect on a particular area of academia for a UK university;
- ii) a prospective student wishes to come to the UK to undertake specialist study which is not available in their home country, in order to bring the benefit of that learning back to their home country (e.g. for the benefit of a public sector body); or
- iii) it can be shown the applicant will not apply for asylum (e.g. because they have secured a much sought after and prestigious job in New York which is due to begin at the conclusion of their studies or they can show they have travelled to the UK before, at times when conditions in their country of nationality were such that they would have had grounds for claiming asylum, and made no claim).

122. Under the heading “About this guidance” the Compelling Compassionate Grounds policy states:

“This guidance tells you about the [sic] when it may be appropriate to exercise discretion to grant leave outside the Immigration Rules (LOTR) on the basis of compelling compassionate grounds (other than family and private life, medical, asylum or protection grounds). ...

The circumstances in which someone may be granted LOTR are covered either by this guidance, or separate guidance relating to European Convention on Human Rights (ECHR) Article 3 medical, Discretionary Leave, or where there is an existing published concession.

Applications relating to LOTR on Article 8 family and private life grounds must instead refer to the 5-year or 10-year partner, parent and private life guidance.

Applications relating to Article 3 medical grounds must instead refer to the discretionary leave guidance.” (Emphasis added.)

123. The Introduction includes the following:

“The Immigration Rules are designed to provide for the vast majority of those wishing to enter or remain in the UK however, the Secretary of State has the power to grant leave on a discretionary basis outside the Immigration Rules from the residual discretion under the Immigration Act 1971.

...

Not all LOTR is granted for the same reason and discretion is applied in different ways depending on the circumstances of the claim and the applicant’s circumstances. This guidance helps

OFFICIAL

decision-makers specifically with considering LOTR on compelling compassionate grounds.

LOTR on compelling compassionate grounds may be granted where the decision maker decides that there are specific circumstances which mean that a refusal would result in unjustifiably harsh consequences for the applicant or their family, but which do not render refusal a breach of ECHR Article 8 or Article 3 medical and do not otherwise undermine other discretionary leave policies or bespoke LOTR policies.” (Emphasis added.)

124. The Compelling Compassionate Grounds policy informs caseworkers that a “grant of LOTR on compelling compassionate grounds should be rare” and considerations of whether to grant LOTR “should not undermine the objectives of the rules”. The policy states:

“For permission to be granted on compelling compassionate grounds, unjustifiably harsh consequences for the applicant or their family must be identified. This could mean that the applicant or their family would face exceptional hardship if refused. Or it could be that the circumstances that prevent them from meeting the rules are exceptional, out of their control and it would be unreasonable to refuse, so discretion may be required. The consequences for the individual should also be determined to be exceptional and considerably worse than most others in similar circumstances who do not meet the rules to justify a grant of LOTR.”

125. In my judgement, this is, in reality, an attempt to seek judicial review of the Compelling Compassionate Grounds policy which, as I have said, is not the subject of challenge. Nevertheless, given the claimants rely on it as part of their wider fettering case, it is necessary to consider its terms.
126. The policy makes clear that compelling compassionate grounds are not the only reasons LOTR can be granted. The high point of Mr Husain’s submission is that caseworkers are informed that the circumstances in which LOTR may be granted are “covered by” the identified guidance documents and any published concession. I do not consider that can fairly be read as telling caseworkers that the Secretary of State has no discretion in circumstances falling outside the identified documents and concessions, given the accurate description of the residual discretion and clear indication that it may be applied in different ways depending on the circumstances.

Other statements relied on

127. The claimants also rely on the above guidance to caseworkers, together with other material, as demonstrating that the Secretary of State has pre-emptively announced that she will refuse all applications made under Appendix Student by affected individuals, and so fettered her discretion.
128. The Ministerial Submission stated:

OFFICIAL

“Visa applications put in after 24 March¹ will be refused. There will not be an exception within the immigration rules on compelling and compassionate grounds given we do not anticipate there being many (if any) such applications for work and study routes. Caseworkers will continue to be able to exercise ‘leave outside the rules’ discretion.” (Emphasis added.)

129. The Equality Impact Assessment (‘the EIA’) repeatedly states, in the assessment for each country, that the proposal would mean that the applicants would see their applications refused “unless they are deemed to have compelling or compassionate grounds for their application, which could see the UK grant leave outside the rules”.

130. The Impact Assessment stated, “the Home Office will refuse Study visa applications from main applicants who are nationals of Afghanistan, Cameroon, Myanmar, and Sudan”; and when addressing “Economic Impact Assumptions” at paragraph 30:

“Illegitimate applications. The planned mechanism for ‘blocking’ visas is an automatic refusal should applicants from the in-scope nationalities and routes still apply. In this case, some labour cost would still be required to refuse the application, however the visa fee would be retained. This analysis assumes that none of these applications would be submitted. This means that the figure for lost fee revenue may be an underestimate.”

131. The March 2026 “Comms Package” for the Visa Brake states (under the heading “Core Brief (public use)”):

“Once in place, applications from the specified nationalities on the affected routes will be refused.

...

People should not apply under affected routes once the visa brake takes effect. **Applications submitted online on or after 26 March will be refused and the application fee will not be refunded.**”

132. There are similar statements in the Comms Package, in the additional briefs for Posts, Applicants, Sponsors and Visa Application Centres. Visa Application Centres were advised: “While people who are nationals of the specified countries will still be able to make applications, these applications will be refused, and their visa application fees will not be refunded.”

133. The Comms Package told Sponsors that any new visa applications submitted online from 26 March 2026 “will be refused” regardless of whether a CAS “has previously been issued”. The Sponsor Guidance advised:

“Any applications for Entry Clearance on the Student route made whilst the brake is in place, where the main applicant is a national

¹ The Ministerial Submission anticipated that the Statement of Changes would be laid on 3 March and come into force on 24 March. In the event, those steps each took place two days later.

OFFICIAL

or citizen of one of these countries, will be refused. You should not issue any CAS to nationals or citizens of these countries whilst the brake is in place.”

134. The guidance on the gov.uk website “Visa brake: changes to the UK visa system”, published on 5 March and updated on 26 March 2026, stated: “applications made from outside the UK for the affected visa routes will be refused if the main applicant is a national of one of the listed countries”.
135. Ruth Sweeney, the Head of Visa & International Student Advice at King’s College London has given evidence that when King’s sought clarification as to whether any exceptional circumstances or concessions would apply, the “Home Office confirmed that there would be no exceptions whatsoever and that applications would be refused in all cases”.
136. These are strong statements as to the effect of the Student Visa Brake on applications *under the Rules* for student visas made by nationals of the affected countries. But none of them, whether considered individually or cumulatively, together with the guidance to caseworkers, establishes that, if an individual affected by the Student Visa Brake makes an application for LOTR, the Secretary of State will not be prepared to hear what they have to say or consider whether to exercise her discretion.
137. When considering whether to incorporate an exception *within the rules* governing the Visa Brake, and when anticipating (in the EIA) the grounds on which LOTR might be granted, the Home Office focused on compelling and compassionate grounds. Nonetheless, the statement in the Ministerial Submission that “Caseworkers will continue to be able to exercise ‘leave outside the rules’ discretion” was categorical and unqualified. The evidence does not show that the Secretary of State has pre-determined that LOTR can only be granted in accordance with the Compelling and Compassionate Grounds policy, still less that any application for LOTR by an individual affected by the Student Visa Brake will be refused irrespective of the grounds relied on.
138. The circumstances in which the Secretary of State will be prepared to exercise her residual discretion are likely to be rare, and will be informed by the nature and purpose of the Student Visa Brake. But her willingness to consider exercising her residual discretion, the existence of which she readily acknowledges, has not been tested and the claimants have not demonstrated that she will shut her ears to what an applicant for LOTR may wish to say.
139. I grant permission on Farah ground 4 and Sadat ground 4, but dismiss both grounds for the reasons I have given.

Sadat ground 5

140. The Sadat claimants contend that if the Secretary State intended that her caseworkers should be able to exercise the residual discretion, then the mechanism she adopted is irrational as it makes it practically impossible for them to do so.
141. It is common ground that the Secretary of State expects those applying for LOTR from outside the UK to “apply on the application form for the route which most closely matches their circumstances and pay the relevant fees and charges” (as stated in the

OFFICIAL

Compelling Compassionate Grounds policy). The application fee is £558 and there is an additional Immigration Health Surcharge of £776 (although Mr Husain informed me, correcting evidence submitted in support of the claim, that the latter charge is refunded if the visa application is unsuccessful).

142. The guidance on the Home Office’s website indicates that a CAS must be provided with an application for a student visa. Annex D to the Ministerial Submission recorded that the Home Office planned to “proactively communicate with employers and institutions to make them aware of the existence of the Emergency Brake, so they can halt issuing documents to the countries impacted at the relevant point. This will prevent applications for skilled work and sponsored study being made in the first place.” In accordance with the Sponsor Guidance, institutions such as the universities which have offered the claimants places are required not to issue any CAS to a national of one of the affected countries whilst the Student Visa Brake is in place. It follows that the requirement to submit a CAS is one that an applicant affected by the Student Visa Brake cannot meet.
143. On behalf of the Sadat claimants, their solicitor, Ahmed Aydeed, has stated that when completing the online application without a CAS, it is possible to proceed (at least initially) by selecting ‘no’ to the relevant question, but this generates the following warning:
- “This application requires a valid Confirmation of Acceptance for Studies (CAS) number. If you do not provide one, your application is likely to be refused.”
144. A sponsor licence number is required to be provided. This is a detail that would be contained within a CAS, but Mr Aydeed was able to find the relevant sponsor licence number online, which was accepted, and it was possible to continue with the application. He did not complete and submit the application as it was not possible to do so without paying the fees and charges.
145. Mr Husain submits that the high fee, requirement to submit a CAS, and the indications that an application will be refused have the effect of shutting people out and preventing them from having their applications heard.
146. The Secretary of State’s evidence is that the online system does not prevent applications being submitted without a CAS. Moreover, while the Secretary of State expects an application to be made via the online portal, that does not preclude an applicant for LOTR from submitting further evidence in support of their application outside the online system. Ms Rhee submits that the payment of a fee is a routine requirement, and there are not, in fact, any barriers to making an application.
147. In my judgement, in light of the evidence, this ground is unarguable. It is clear that it is possible to make an application without submitting a CAS. The sponsor’s licence number is required but that will be available online and it is not necessary to obtain a CAS to input that number. The payment of a fee is an ordinary incident of making such an application. It is not irrational for the Secretary of State to require fees to be paid by foreign nationals who wish to have their applications to enter this country processed. I agree with Ms Rhee that the lack of sign-posting of the possibility of making an application for LOTR is not a process flaw. On the contrary, it might well be considered unfair if the Secretary of State were positively to invite and encourage applications, and

OFFICIAL

the payment of non-refundable fees, in circumstances where, for the most part, by their nature, such applications are likely to be refused. Such lack of sign-posting may make the route less obvious to affected applicants, but it does not make it practically impossible to apply, nor mean that any application duly made will not be conscientiously considered.

148. For the reasons I have given, I refuse permission and dismiss Sadat ground 5.

J. Sadat grounds 1, 2 and 3: discrimination

The parties' submissions

149. The Sadat claimants' case is that women and girls in Afghanistan, Cameroon, Myanmar and Sudan face serious gender-related barriers to education, including higher education. Afghanistan is the most extreme example, because women and girls are prohibited from undertaking secondary and higher education, but the claimants also rely on evidence of gender-based disadvantage in the other affected countries, including family prioritisation of boys' education, sexual harassment and stigma, risk of gender-based violence and child marriage.
150. They submit that those matters were so obviously material to the decision to bar nationals of those countries from studying in the UK that they could not rationally be left out of account. In particular, they contend the Secretary of State was required to consider: (i) the significantly different position of women of the affected nationalities as compared with men, insofar as access to education is concerned; (ii) the resulting particularly harsh impact of the Student Visa Brake on women; (iii) the extent to which applying the same rule to men and women would involve treating different situations alike; and (iv) the need to minimise the disadvantage caused to women by the Student Visa Brake.
151. The Sadat claimants acknowledge that the Equality Act 2010, including the public sector equality duty (PSED) in s.149, do not apply extraterritorially. But, they submit, this does not displace ordinary public law principles. They rely on *R (Marouf) v Secretary of State for the Home Department* [2023] UKSC 23, [2025] AC 130 for the proposition that even where the PSED does not apply, the equality impacts and the need to minimise disadvantage may constitute obviously material considerations that cannot lawfully be left out of account.
152. They contend that an aspect of rationality is that "comparable situations are not to be treated differently, or different situations comparably, without objective justification": *R (Rotherham Metropolitan Borough Council) v Secretary of State for Business, Innovation and Skills* [2015] UKSC 6, [2015] PTSR 322, [26] (Lord Sumption JSC); *Matadeen v Pointu* [1999] 1 AC 98, [109] (Lord Hoffmann); *R (SC) v Secretary of State for Work and Pensions* [2021] UKSC 26, [2022] AC 223, [146] (Lord Reed); and *Bank Mellat v HM Treasury (No.2)* [2013] UKSC 39, [2014] AC 700, [25] (Lord Sumption JSC). Common law rationality and equal treatment principles continue to operate outside the Equality Act framework.
153. On the facts, they submit that the Secretary of State did not consider the relevant impact at all. The EIA shows that other equality impacts were considered, in respect of age, disability, race and religion, but there was no engagement with sex discrimination.

OFFICIAL

References to Afghan women were framed as “reputational risks”, not as a substantive assessment of disadvantage. There was no consideration of women in Cameroon, Myanmar or Sudan. Nor, they say, can the Secretary of State rely on *ex post facto* evidence that the reason for identifying no discrimination (direct or indirect) on grounds of sex was that women could study elsewhere; as that reasoning was not placed before the Secretary of State.

154. If the gendered impact of the Student Visa Brake on women of the affected nationalities was an obviously material consideration, then the claimants submit the Secretary of State was under a corresponding *Tameside* duty to take reasonable steps to inform herself about it before making the Decision which she failed to fulfil.
155. On ground 3, the Sadat claimants submit that the Student Visa Brake is substantively irrational because it treats women and men of the affected nationalities alike, notwithstanding their materially different positions in relation to access to education. They rely on the common law equal treatment principle that different situations should not be treated comparably without objective justification, and submit that what required justification was not merely the Student Visa Brake in general, but its uniform application without any exception, carve-out or differentiated treatment for women. They contend that no such justification was considered contemporaneously or advanced in evidence: the Secretary of State’s position was that she was not required to justify the absence of differential treatment at all, and the decision-making documents did not grapple with the particular disadvantage faced by women or the rationality of treating women and men in the same way.
156. The Secretary of State does not accept she was obliged to consider the matters relied on. Parliament has deliberately chosen not to impose a duty on the Secretary of State to assess or mitigate equality impacts on non-nationals abroad when exercising immigration control powers, and the court should be slow to reintroduce such duties through common law rationality. Ms Rhee emphasises that the Visa Brake is an inward-facing immigration and border control measure, designed to protect the UK asylum system from unsustainable levels of visa-linked asylum claims. Unlike the examples given in *Marouf* (concerning the Pergau Dam and the Chagos Islands) the Visa Brake is not a measure implemented overseas, nor a policy designed to regulate or advance equality of opportunity abroad.
157. The Secretary of State acknowledges that women in Afghanistan have been prohibited from secondary or higher education since shortly after the Taliban took over in 2021. Ms Rhee submits the Secretary of State was aware of their unequal access to education when making her decision and she was entitled to attach such weight to it as she considered appropriate.
158. In considering whether the gender inequalities relied on by the Sadat claimants are mandatory considerations, Ms Rhee submits it is significant that the Student Visa Brake does not create such gender inequalities. At most, it may serve to highlight disadvantages already existing in other countries. It is not the responsibility of UK immigration policy to address those inequalities. Action to advance women’s rights abroad is more appropriately taken through diplomatic, development or FCDO channels. The Comms Package referred to the Government’s commitment that at least 50% of the Government’s £151 million aid programme for Afghanistan was to reach women and girls. The evidence shows that the EU, Germany and Qatar have provided

OFFICIAL

scholarship programmes for Afghan women to study at universities in, for example, Kazakhstan and Uzbekistan, and multiple initiatives have been launched in the United States.

159. On the facts, the Secretary of State disputes the breadth of the claimants' case in respect of other nationalities. She acknowledges that there are gender-related inequalities in Cameroon, Sudan and Myanmar but submits that the impact of those inequities on women's access to education is less clear. She points out that in Myanmar, as at October 2025, 29.3% of young women attained higher education compared to 24.2% of their male peers. In Cameroon, in 2022 the secondary completion rate was 35.6% of girls and 35.2% of boys, with 43% of girls enrolling compared to 48% of boys. Gross enrolment in tertiary education was 13% for women in 2018 compared to 15% for men. Separatist fighting in anglophone regions of Cameroon has presented significant barriers to education for boys and girls in the affected regions. In Sudan, access to education for boys and girls has been severely impaired as a result of the conflict, with an estimated 19 million children out of school in October 2023 and at least 10,400 schools closed. The Secretary of State points out that the claimants have provided no data on the comparative rate of women and men entering higher education in Sudan, whether prior to the conflict or since it began.
160. The Secretary of State submits that if the differential position of women and any gendered impact of the Student Visa Brake were not mandatory relevant considerations, then she was not required to investigate them and the absence of differential treatment cannot render the outcome irrational.

Discussion

161. In *Marouf*, the Supreme Court held that the PSED does not have extraterritorial effect. At [52]-[53], Lady Rose agreed with Simler LJ's analysis (at [102]) where she said:

"I find it difficult to see why or how Parliament could have expected public authorities to take these steps in relation to people outside the United Kingdom in a place where the authority is unlikely to have any real sphere of operation, or in a place or country where different views may be taken on questions of equality and non-discrimination as reflected in local laws, customs and traditions. Certain characteristics that are protected characteristics in Great Britain are far from protected elsewhere and there may be great sensitivity in this regard. It cannot be for a public authority in this country to determine how best to advance equality of opportunity between people subject to foreign law, traditions and customs. These points reinforce the force of the normal presumption in this case."

162. Lady Rose observed that it was one thing to expect public bodies to bring about societal change within the community, quite another to expect them to do so as regards people overseas ([54]). In this context, Lady Rose went on to make the observations at [57] on which the claimants rely:

"There may be circumstances where the kinds of factors listed in section 149 are so germane to the lawfulness of a decision or

OFFICIAL

policy to be implemented overseas that they become relevant factors that the public body must take into account in accordance with ordinary judicial review principles. Well-known examples of where the courts have examined in detail the Government's assessment of the effect of decisions overseas are the quashing of the decision to use public money to finance the Pergau Dam in Malaysia (*R v Secretary of State for Foreign and Commonwealth Affairs, Ex p World Development Movement Ltd* [1995] 1 WLR 386) or 'the whole sad story' of the removal of the Chagossians from BIOT: see per Lord Hoffmann, *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No 2)* [2009] AC 453, para 9. If in respect of a particular decision, the Minister ought to have taken into account the need to minimise disadvantages suffered by persons who share a relevant protected characteristic in a foreign country where the decision will be implemented, then that decision is open to challenge for failure to take that into account. That is true regardless of the application or not of the PSSED."

163. The fact that Parliament has chosen not to enable a person with a protected characteristic but no connection to the UK to challenge a decision of a public body on the grounds that a policy adopted failed to have due regard to the need to improve their position within that overseas community (*Marouf*, [54]), and that s.29(9) of the Equality Act is carefully calibrated to extend the territorial effect of s.29 to things done outside the UK only in "specified, limited circumstances" (*Marouf*, [19]), is not a complete answer. I readily accept the force of the common law principle of equality. As Lord Reed observed in *R (SC) v Secretary of State for Work and Pensions* [2021] UKSC 26, [2022] AC 223, at [146], "unjustifiable discrimination by public authorities is likely to be irrational and therefore unlawful at common law".
164. Nonetheless, the considerations underlying that fine-tuned legislative scheme are an important part of the context in deciding whether the matters relied on by the claimants were so germane to the Decision that it was irrational for the Secretary of State not to take them into account. The examples given of funding of the Pergau Dam and removal of the Chagossians concern decisions implemented abroad. The decision at issue here is of a quite different kind. Although it has consequences for foreign nationals living overseas, I accept Ms Rhee's submission that it is an inward-facing measure.
165. The Sadat claimants' case on ground 1 is strongest in respect of Afghanistan. While I do not doubt the existence of gender-related inequality in Cameroon, Myanmar and Sudan, it is far less clear that there is substantial inequality of access to higher education in those countries, or that the Secretary of State should have been on notice that was the case. By contrast, the appalling systemic eradication of the rights of girls and women to access secondary and higher education in Afghanistan is well known; the Government has itself described it as an "extreme example of restrictions on women's rights".
166. It would have been open to the Secretary of State to consider whether to make some form of exception to minimise that disadvantage, so far as it lay within her power. But in my view, she was not rationally obliged to regard rules concerned with immigration and border control as an appropriate vehicle for addressing the consequences of

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discrimination abroad. That being so, she did not need to consider or investigate the different position of women of the affected nationalities compared to men.

167. Changes to immigration rules can have harsh consequences: see e.g. *Odelola*. But there was no reason for the Secretary of State to believe that the UK was the best or only option for women of the affected nationalities to access further or higher education.
168. If, contrary to my view, the Secretary of State was obliged to consider the lack of access to secondary and higher education of women in Afghanistan, and the potential impact on them of removing educational opportunities by imposing the Student Visa Brake, she did so. It is unfortunate, but no more than that, that it was addressed in the context of addressing “Reputational risk” to the Home Office and “Parliamentary handling”. Having adverted to the consideration, the weight (if any) to be given to it is a matter that can only be challenged on rationality grounds: *Friends of the Earth* [120]-[121].
169. I accept the Secretary of State’s submission that, against the backdrop that I have described, and having found that she was not obliged to consider or investigate the considerations relied on by the claimants, it necessarily follows that the allegation of outcome irrationality must fail. The Decision is not one that falls outside the reasonable range open to the Secretary of State.
170. For the reasons I have given, although I will grant permission on these grounds, I dismiss Sadat grounds 1, 2 and 3.

K. Conclusion

171. I grant permission to apply for judicial review on all grounds save for Farah ground 3 and Sadat ground 5. For the reasons given above, the claims are dismissed.