Neutral Citation Number: [2026] EWHC 2143 (Admin)

Case No: AC-2025-LON-002497

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/08/2026

Before :

MRS JUSTICE FARBEY

- -

Between :

THE KING ON THE APPLICATION OF

WITNESS IIA126

Claimant

- and -

CHAIR OF THE INDEPENDENT INQUIRY RELATING TO AFGHANISTAN

Defendant

- and -

(1) SECRETARY OF STATE FOR DEFENCE
(2) THE AFGHAN FAMILIES
(3) THE GREEN HEARING RESTRICTION ORDER APPLICANT(S)

Interested Parties

- -
- -

Ms Kate Grange KC, Ms Caroline Stone and **Mr Max Mills** (instructed by the **Government Legal Department**) for the **Claimant**
Mr Jonathan Glasson KC, Mr Jonathan Polnay KC and **Mr Paul Skinner** (instructed by the **Solicitor for the Independent Inquiry Relating to Afghanistan**) for the **Defendant**
Mr Steven Gray KC (instructed by the **Government Legal Department**) for the **First Interested Party**

Mr Edward Craven KC and **Ms Jessica Jones** (instructed by **Leigh Day**) for the **Second Interested Party**
Mr Matthew Butt KC (instructed by **Kingsley Napley LLP**) for the **Third Interested Party**
Mr Zubair Ahmad KC, Mr Bilal Rawat KC and **Mr Paul Mertens** (instructed by the **Special Advocates' Support Office**) as **Special Advocates for the Claimant**
Ms Jennifer Carter Manning KC and **Mr Alex Jamieson** (instructed by the **Special Advocates' Support Office**) as **Special Advocates for the Second Interested Party**

Hearing date: 19 May 2026

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Approved Judgment

This judgment was handed down remotely at 10:30am on Tuesday 11 August 2026 by circulation to the parties or their representatives by email and by release to the National Archives.

REPORTING RESTRICTIONS ARE IN PLACE
ANY BREACH OF WHICH MAY LEAD TO PROCEEDINGS FOR CONTEMPT OF COURT PUNISHABLE BY IMPRISONMENT OR A FINE

MRS JUSTICE FARBEY :

Introduction

1. This is my judgment about disclosure in an ongoing claim for judicial review ("the Claim") against the Chair of the Independent Inquiry relating to Afghanistan ("the IIA" or "the Inquiry"). The Inquiry was established by the Secretary of State for Defence ("the Secretary of State") under the Inquiries Act 2005 ("the 2005 Act").

2. The claimant occupied a senior military position in theatre in Afghanistan. His identity is the subject of reporting restrictions. He must for all purposes in these proceedings be referred to as "Witness IIA126."

3. The claimant has received and responded to a "Rule 9 request", meaning that he has responded to a request under rule 9 of the Inquiry Rules 2006 ("the 2006 Rules") for a written statement as a person from whom the defendant proposes to take evidence. He has at all material times been represented in the Inquiry by members of what has come to be known as the "Witness Legal Team" ("WLT"). The WLT has been superseded by other arrangements but, at all material times, it has comprised solicitors within the Government Legal Department ("GLD") and independent counsel. At the time that the present claim was commenced, the WLT represented the vast majority of former and serving military personnel who had received a request for evidence under rule 9 (about 150 people). However, the claimant does not have any representative function. He does not speak in the Claim for anyone other than himself.

4. There are three interested parties. The first interested party is the Secretary of State. He is a Core Participant in the Inquiry under rule 5 of the Rules. Those known as "the Afghan Families" are the second interested party. They too are a Core Participant in the Inquiry.

5. The identity of the third interested party is protected by an anonymity order. The third interested party must be referred to in these proceedings as "the Green Hearing Restriction Order Applicant(s)." It is grammatically simpler for me to refer to the third interested party as "they" – but nothing should be implied from this convenience as to number or gender. I shall describe their role in the Inquiry later in this judgment.

6. In the Claim, the claimant challenges two linked decisions that are set out in rulings given by the defendant. The rulings are each dated 21 June 2025 and were published on the Inquiry website on 24 June 2025. They are:

   i. The "Open Ruling on Approach to 'Green' Hearing Restriction Orders" ("the Approach Ruling"); and

   ii. The "Open Ruling on Application for 'Green' Hearing Restriction Orders" ("the Application Ruling").

7. I shall describe the grounds of challenge below. For the moment, it suffices to note that the claimant is aggrieved that the defendant has excluded him and his WLT lawyers from having access to so-called "Green" evidence and from attending "Green Hearings." The use of the word "Green" has not been explained to me but that does not matter: it is a useful shorthand. The key feature of Green evidence and hearings is that they are not only CLOSED in their nature (i.e. there is restricted access to sensitive material) but access is subject to wider restrictions than in other CLOSED material procedures ("CMPs") deployed in the Inquiry.

8. At this interim stage of proceedings, a ruling is required on three Issues:

   i. **Issue 1:** The claimant's application for disclosure of further specific information and documents;

   ii. **Issue 2:** The broader question of how this court should approach the claimant's Special Advocates' requests for certain CLOSED material to move to the OPEN case, and the test to be applied for opening up material; and

   iii. **Issue 3:** The claimant's application for a "confidentiality ring", meaning permission from the court for the claimant and/or specified members of the WLT to see CLOSED material and attend CLOSED court sessions in the Claim under conditions set by the court.

9. In deciding these Issues I have considered OPEN and CLOSED material. I heard submissions in OPEN and CLOSED session. The claimant and the Afghan Families, together with their respective instructed solicitors and barristers, have not been permitted to see the CLOSED material in the Claim and were excluded from the CLOSED hearing before me. Special Advocates have been appointed by the Attorney General to represent their respective interests in CLOSED.

10. In the CLOSED session, the claimant's Special Advocates (Mr Zubair Ahmad KC and Mr Bilal Rawat KC with Mr Paul Mertens) supported the claimant's position on Issues 1-3. They made a number of additional applications for documents to move from the CLOSED to the OPEN part of the case, as well as for disclosure of other documents to them in

CLOSED. I shall deal with the claimant's Special Advocates' submissions on all these matters in a separate CLOSED judgment.

11. The Special Advocates for the Afghan Families, Ms Jennifer Carter Manning KC and Mr Alex Jamieson, had reached agreement with the defendant on all interim issues, so that I did not need to hear from them. The agreement reflects their diligence and careful work. As a result, some of the CLOSED material has now been gisted in OPEN form so that the claimant may deploy it in advancing the Claim as he thinks fit.

12. This judgment is concerned with the disclosure of the remaining CLOSED material to the claimant and his lawyers. I should state immediately that the public interest in retaining the secrecy of that material is extremely high. I do not say this lightly. Open justice is a fundamental common law principle (*Al Rawi v Security Service* [2011] UKSC 34, [2012] 1 AC 531, para 11 per Lord Dyson JSC). As a means of holding public authorities to account, it supports the rule of law itself (*R (Mohamed) v Secretary of State for Foreign and Commonwealth Affairs (No 2) (Guardian News and Media Ltd intervening*) [2010] EWCA Civ 158, [2011] QB 218, para 39 per Lord Judge CJ). It must "prevail to the maximum extent possible" and any derogation must be "essential in the particular case" (*R (Haralambous) v Crown Court at St Albans* [2018] UKSC 1, [2018] AC 236, para 61 per Lord Mance DPSC). Any posited justification for derogation from the open justice principle will be intensely scrutinised by the courts.

13. In this case, the court has undertaken intense scrutiny in the following ways (in no particular order). First, it has assured itself that the defendant and his lawyers have complied with the duty of candour. Secondly, it has assured itself that the justification for secrecy advanced in the CLOSED session is specific and cogent. Thirdly, it has considered the helpful written and oral submissions of the Special Advocates. Fourthly, it has given independent consideration as to whether any further material of any sort may travel from CLOSED to OPEN without damage to the public interest, whether by gist, redaction or some other method.

14. Having undertaken these tasks, I have concluded that the sensitivity of the remaining CLOSED material is sufficiently high that the open justice principle must yield to the pressing and prevailing public interest in keeping the information secret from the claimant, his lawyers and the public.

Disclosure of sensitive material: the law

15. The duty of a party to provide disclosure of documents to another party in litigation is the subject of rules of court, primarily CPR Part 31. The duty "helps ensure that neither party is unfairly taken by surprise, and that the court reaches the right result, as neither party is able to rely on a selection of documents which presents the court with a misleading picture" (*Al Rawi* [2010] EWCA Civ 482, [2012] 1 AC 531, para 18 per Lord Neuberger of Abbotsbury MR as he then was).

16. It is long-established at common law that some documents, while relevant to the issues between the parties, may be immune from disclosure on public interest grounds (formerly, Crown privilege; now known as public interest immunity ("PII")). In proceedings in which PII is claimed as a reason for non-disclosure of material that would otherwise fall to be disclosed, the court's ultimate task "is to decide where the public interest lies" (*Conway v Rimmer* [1968] AC 910, 987 per Lord Pearce; cited in *In re Secretary of State for Northern Ireland*, [2025] UKSC 47, [2026] 2 WLR 109, para 126 per Lord Sales and Lord Stephens JJSC with whom the other members of the court agreed). There is a "single public interest, albeit composed of various aspects" and the court's task on a PII application is to identify what the public interest is (*In re Secretary of State for Northern Ireland*, para 126). In order

to determine the overall public interest, the court will balance any part of the public interest which points against disclosure against the aspect of the public interest concerned with the due administration of justice in order to decide whether the evidence should be ordered to be admitted or should be excluded (*In re Secretary of State for Northern Ireland*, para 29). Even where material cannot be fully disclosed, it may be possible to provide partial disclosure by means of a gist of the material or by providing it in redacted form.

17. The law governing PII is concerned mainly with sensitive material held by public authorities, typically the Secretary of State. If a public authority holding the material contends that the public interest requires that the material should not be disclosed or admitted in evidence, the court will accept the authority's assessment as to the existence and extent of the risk posed to the public interest (subject to public law error). It is, however, for the court to determine whether the aspect of the public interest on which the public authority relies outweighs the competing aspect of the public interest involved with the due administration of justice (*In re Secretary of State for Northern Ireland*, para 35). In doing so, the court is determining whether particular evidence which is otherwise admissible in legal proceedings should be treated as inadmissible (*In re Secretary of State for Northern Ireland*, para 123). The court does not exercise a discretion but applies a substantive part of the law of evidence (*In re Secretary of State for Northern Ireland*, para 124).

18. An appellate or reviewing court, determining a challenge to a first instance decision as to where the public interest lies, has to determine whether the first instance decision-maker has identified the relevant rule of substantive law and applied it correctly (*In re Secretary of State for Northern Ireland*, para 124). The appellate or reviewing court will carry out its own assessment. However, on conventional public law principles, some factors to be taken into account for that purpose will require the court to accord a "significant degree of respect" to an assessment made by others, such as the Secretary of State who is vested with democratic authority and has the institutional competence to make an assessment of aspects of the public interest within the scope of his or her departmental authority (*In re Secretary of State for Northern Ireland*, paras 38, 126 and 129).

19. In recent decades, Parliament has modified the common law doctrine of PII in certain contexts by the introduction of CMPs in primary legislation accompanied by detailed procedural provisions in (for example) rules of court. In the sphere of national security, Parliament has enacted the Justice and Security Act 2013 ("JSA") which is accompanied by CPR Part 82 ("Part 82"). At an earlier stage in the present case, Steyn J made a declaration under section 6(1) of the JSA that the proceedings are proceedings to which a closed material application may be made to the court. She made the declaration of her own motion pursuant to section 6(2)(b). The closed material application covered by section 6(1) relates to material that is sensitive in the specific sense that its disclosure would be damaging to the interests of national security (section 6(11)). It does not concern sensitivity on any wider public interest ground.

20. Pursuant to Steyn J's declaration, the defendant has applied under section 8 of the JSA and Part 82 to rely on CLOSED material. By virtue of section 8(1)(c), the court is required to give permission for material not to be disclosed if it considers that disclosure would be damaging to the interests of national security. There is no balancing exercise of competing interests: national security must prevail. Special Advocates have been appointed under section 9 of the JSA to represent the interests of the claimant and the Afghan Families in any parts of the proceedings from which they are excluded. They are "not responsible to the party to the proceedings whose interests [they are] appointed to represent" (section 9(4) of the JSA). Part 82 makes detailed provision for the deployment of Special Advocates and for the way in which CMPs should be conducted.

21. In *Al Rawi*, the Supreme Court held that (subject to narrow exceptions which do not apply in this case) a CMP without statutory foundation is impermissible in judicial review proceedings, as it is in any ordinary civil claim. In *Haralambous*, the Supreme Court was concerned with the position in judicial review proceedings relating to challenges to decisions by a magistrates' court and the Crown Court in relation to police search and seizure powers. The Supreme Court considered the applicability of the principle in *Al Rawi* where the respective lower courts had considered sensitive material that had not been disclosed to one party in the proceedings pursuant to statutory powers. Lord Mance DPSC (with whom the other members of the court agreed) concluded that judicial review must accommodate a CMP where that is the procedure which Parliament has authorised in the lower court or tribunal whose decision is under review (para 59). The essential passage of the judgment in which the court explains that conclusion is as follows:

> "59…I consider that the scheme authorised by Parliament for use in the magistrates' court and Crown Court, combined with Parliament's evident understanding and intention as to the basis on which judicial review should operate, lead to a conclusion that the High Court can conduct a closed material procedure on judicial review of a magistrate's order for a warrant… or a magistrates' order for disclosure, or a Crown Court judge's order… [T]he present situation falls outside the scope of the principle of the *Al Rawi* case…"

22. In summary, *Haralambous* holds that where Parliament has established a statutory scheme whereby a decision-maker is authorised to follow a form of CMP, it is a necessary inference that Parliament must have intended that a court hearing a judicial review of a decision adopting such a procedure also itself has the power to do so. I shall call this the "*Haralambous* jurisdiction."

23. As I shall set out in more detail, Steyn J concluded in an earlier judgment that the *Haralambous* jurisdiction arises in the present case in so far as the defendant exercised a power under the 2005 Act to follow a form of CMP that excluded the claimant from Green material and hearings. She ordered a CMP to take place under *Haralambous* along with the CMP under the JSA and Part 82.

24. A key issue in the present case is how the court should test whether CLOSED material filed in opposition to the Claim is lawfully and properly withheld from the claimant and his lawyers under a *Haralambous* CMP. The point is not whether the *Haralambous* jurisdiction should be exercised in the determination of the Claim: the court hearing the Claim will consider CLOSED material under *Haralambous* in accordance with Steyn J's decision. The question now is how the court should assess and impose the divide between OPEN and CLOSED material in the Claim so that the claimant has as much material as legally possible from which to advance his claim and meet the arguments that will be mounted against him.

25. In addressing this question, both the claimant and the defendant (the latter being supported by the third interested party) rely on the procedural provisions for dealing with sensitive material under the 2005 Act which were applied by, and bound, the defendant. Both the claimant and the defendant contend that this court should mirror them. They do so in different ways to which I shall return.

26. The defendant has operated the OPEN/CLOSED divide by means of "restriction orders" ("ROs") under section 19 of the 2005 Act. Section 19(1) provides that restrictions may be imposed on (a) attendance at an inquiry, or any particular part of an inquiry; and (b) disclosure or publication of any evidence or documents produced to an inquiry. Section 19(2) provides (in so far as relevant) that restrictions may be imposed by being specified in

an RO made by the chairman of the inquiry. By virtue of section 19(3), other than restrictions that must be imposed by operation of law, an RO must specify only such restrictions as the chairman "considers to be conducive to the inquiry fulfilling its terms of reference or to be necessary in the public interest, having regard in particular to the matters mentioned in subsection (4)."

27. Section 19(4) lays down the matters to which the chair of an inquiry must in particular have regard when determining the terms of an RO. They are as follows:

> "(4) (a) the extent to which any restriction on attendance, disclosure or publication might inhibit the allaying of public concern;
>
> (b) any risk of harm or damage that could be avoided or reduced by any such restriction;
>
> (c) any conditions as to confidentiality subject to which a person acquired information that he is to give, or has given, to the inquiry;
>
> (d) the extent to which not imposing any particular restriction would be likely –
>
> (i) to cause delay or to impair the efficiency or effectiveness of the inquiry, or
>
> (ii) otherwise to result in additional costs (whether to public funds or to witnesses or to others."

28. Section 19(5) provides that, in subsection 4(b) "harm or damage" includes in particular:

> "(a) death or injury;
>
> (b) damage to national security or international relations;
>
> (c) damage to the economic interests of the United Kingdom or of any part of the United Kingdom;
>
> (d) damage caused by disclosure of commercially sensitive information."

29. Section 17 of the 2005 Act has the heading "Evidence and procedure" and provides in so far as relevant:

> "(1) Subject to any provision of this Act or of rules under section 41, the procedure and conduct of an inquiry are to be such as the chairman of the inquiry may direct.
>
> …
>
> (3) In making any decision as to the procedure or conduct of an inquiry, the chairman must act with fairness…".

30. The application of section 17 will play a key part at the hearing of the Claim and so is relevant, by way of overall context, to the disclosure issues before me.

The Inquiry

31. As announced in a ministerial statement made on 15 December 2022, the Secretary of State has commissioned an independent statutory inquiry to investigate and report on allegations of unlawful activity by British armed forces during "deliberate detention operations" ("DDOs") in Afghanistan and the adequacy of subsequent investigations into such allegations. Sir Charles Haddon-Cave, a Court of Appeal judge, was appointed as the Inquiry's Chair. Revised Terms of Reference ("RTOR") were issued in September 2023. Under the RTOR, the period under consideration by the Inquiry is mid-2010 to mid-2013.

32. The RTOR set out the "Purpose and Scope" of the Inquiry. Among other things, the defendant will consider DDOs carried out on 16 February 2011 and 18 October 2012 in which four Afghan nationals were killed on each occasion. He will determine whether there is credible information that any of those killed in those and other DDOs were killed unlawfully.

33. The RTOR state at paragraph 7 that, as a statutory inquiry, the IIA will operate within the legal framework provided by the 2005 Act and that the "procedure and conduct of the Inquiry are to be directed by the Inquiry Chair." Paragraph 7 makes clear that there will be closed hearings and that "all necessary steps" will be taken "to protect sensitive material and the security of witnesses."

34. As set out in paragraph 11 of the RTOR, it "is not part of the Inquiry's function to determine civil or criminal liability of named individuals or organisations" but this "should not, however, inhibit the Inquiry from reaching findings of fact relevant to its terms of reference." In a Final Ruling on Undertakings dated 26 October 2023, the defendant said that he did not propose to seek a "blanket" undertaking from the Attorney General that any evidence from witnesses of their participation in wrongdoing would not be used against them in any future criminal proceedings. He indicated only that he did not rule out seeking from the Attorney General an individual undertaking ("AGIU") in relation to a specific case on a fact-sensitive basis. The claimant does not have the benefit of an AGIU.

35. The defendant has made a number of ROs under section 19 of the 2005 Act. Those orders have imposed restrictions on who is permitted to attend particular parts of the Inquiry and have restricted the disclosure and publication of certain elements of the evidence and documents that are before the Inquiry.

36. On 17 June 2024, Counsel to the Inquiry ("CTI"), led by Oliver Glasgow KC, issued a Note regarding ROs for hearings in Autumn 2024 that would consider allegations that UK Special Forces ("UKSF") carried out extrajudicial killings. The Note set out CTI's provisional view of (among other things) any application that CTI might make for an RO to restrict the disclosure of material and attendance at hearings to Inquiry personnel, the witness giving evidence, and the witness' legal representatives. The term "Restricted CLOSED hearing" ("RCH") was used in the Note to describe this sort of hearing, i.e. a hearing which had the usual prohibitions on attendance at CLOSED hearings but at which attendance was to be further restricted by order of the defendant. This term was used by counsel before me. I shall adopt it for convenience.

37. The CTI Note stressed that CTI would make an application for an RCH only where necessary and where no lesser measure would suffice. The application would then (in the usual way) be scrutinised separately by the defendant.

38. On 2 July 2024, the WLT made written submissions opposing the proposals in the CTI Note. The WLT submitted that it was feasible for members of the WLT with appropriate

security clearance to view the witness statement and exhibits, and attend the oral evidence, of any witness whose evidence had the potential to affect the interests of WLT clients.

39. On 23 September 2024, the defendant announced that, as indicated in the CTI Note, it might be necessary to hold RCHs, namely CLOSED hearings in which the only people present would be the defendant and "a limited number of appropriately cleared members of the Inquiry team and no-one else." The defendant went on to say that the Inquiry had received submissions on this proposal from all Core Participants. He had considered those submissions and was satisfied that RCHs were an option that he might direct.

40. On 22 May 2025, CTI produced a Note on potential ROs for Green Hearings. The Note stated that witnesses at such hearings would give evidence relevant to the presence or absence of misconduct by UKSF in Afghanistan that fell within the RTOR. The Note stated:

> "4. In particular, the Inquiry Legal Team anticipate that there will be evidence regarding an occasion during a Deliberate Detention Operation where an individual was shot in the head whilst they slept...
>
> 5. The Inquiry anticipates an application will be made by each of those individuals for a Green Hearing restriction order that entirely restricts attendance at any hearing or disclosure of their evidence (save for what could be gisted without revealing a witness' identity to any person) save to:
>
> a. Essential Inquiry staff and
>
> b. Approximately 10 individuals all of whom are non-military, who are senior decision-makers within the Ministry of Defence, and their legal advisors. That number includes the Secretary of State for Defence and the Permanent Under-Secretary."

41. In response to the CTI Note, the WLT made further written submissions on 2 June 2025 reiterating its opposition to RCHs and opposing the proposals in the Note for Green Hearing ROs.

42. In the Approach Ruling, given entirely in OPEN, the defendant considered the submissions that had been made to him on behalf of media organisations, the Afghan Families, the Royal Military Police, the WLT and what has become known as the Ministry of Defence Corporate Team (i.e. the officials and lawyers dealing with the Inquiry for the Ministry of Defence as a government department, as opposed to individual military personnel represented by the WLT). The defendant noted in the ruling that the only party to raise significant objection to the grant of a Green Hearing RO was the WLT. He rejected the WLT submissions and went on to set out the general approach that he would take to applications for such orders. I do not need to set out the details here. They will be considered by the court when it hears the Claim.

43. In the Application Ruling of the same date, the defendant granted an application for a Green Hearing RO. The Ruling states that the witnesses who were the subject of the application had "provided witness statements relevant to the presence or absence of misconduct by UKSF in Afghanistan that falls within the Inquiry's Terms of Reference" (para 4 of the Application Ruling). In particular, there was "evidence regarding an occasion during a Deliberate Detention Operation when an individual was shot in the head whilst they slept" (para 5).

44. The Ruling goes on to state:

> "9. The evidence which it is proposed to call is important and has the potential to assist me in making findings that are relevant to the Terms of Reference.
>
> 10. Having carefully considered the evidence filed in support of the application, I am satisfied that there is a risk of serious harm to the witnesses and to National Security that could be avoided by making the Restriction Order sought.
>
> …
>
> 12. I am satisfied that the restrictions sought are necessary both (a) in order to protect the identity of these individuals and (b) to ensure they give their evidence to the Inquiry.
>
> …
>
> 16. … I am satisfied that in all the circumstances it is necessary and in the public interest to strictly limit those who may have access to the Green Hearing."

45. At the same time, the defendant refused the WLT's alternative application for a lawyer-only confidentiality ring that would enable one King's Counsel, one junior barrister and a GLD solicitor to have access to Green material and to attend Green Hearings. The defendant rejected the WLT submissions and made an RO that prohibits the claimant and the WLT from having sight of the Green evidence and from attending Green Hearings which were to be conducted as RCHs.

46. The defendant was asked, but refused, to adjourn the Green Hearings until after the expiry of the fourteen-day time period for commencing judicial review proceedings (stipulated in section 38(1) of the 2005 Act) had passed. He indicated in an OPEN document dated 11 August 2025 that the Green Hearings had concluded at some point before 4 August 2025.

47. In a further ruling dated 17 March 2026, the defendant determined that the Inquiry may, in principle, restrict evidence (including evidence given at hearings) from all Core Participants including the Ministry of Defence Corporate Team and the Secretary of State for Defence. That ruling, which post-dates the commencement of these proceedings, is not challenged.

<u>The Claim</u>

48. The Claim was commenced on around 7 July 2025. The Claim documents indicate that the claimant brings the Claim out of concern that his evidence to the Inquiry may make him vulnerable to criticism by the defendant. As I have said, he has not been provided with an AGIU. He has not provided a witness statement for these proceedings but his Statement of Facts and Grounds says that he is concerned that if he is criticised, he may be subject to criminal investigation at the Inquiry's conclusion with the possibility thereafter of prosecution and conviction for a criminal offence.

49. There are five grounds of challenge which may be summarised as follows:

    i. **Ground 1:** The Approach Ruling and the Application Ruling breached the defendant's duty under section 17(3) of the 2005 Act to conduct the Inquiry with fairness. The defendant failed to give adequate consideration to measures less restrictive than excluding the WLT from RCHs.

ii. **Ground 2:** There was no sufficient evidential basis justifying the exclusion of the WLT. It is said under this Ground that the Green Witnesses had "simply dictated to the Inquiry that the WLT must be excluded, and the Inquiry has yielded."

iii. **Ground 3:** The decision to exclude the WLT was unlawful and in breach of section 17(3) because the defendant took into account an irrelevant consideration in drawing a comparison between the WLT and the Afghan Families (who have been excluded from CLOSED hearings).

iv. **Ground 4:** The Rulings under challenge were procedurally improper because the defendant did not provide the WLT with a fair opportunity to make submissions on the Green Hearings or the arrangements for such hearings, in breach of section 17(3).

v. **Ground 5:** The Application Ruling was procedurally improper and in breach of section 17(3) because the defendant failed to give adequate reasons.

50. In a nutshell, the claimant contends that the defendant has acted unfairly and unlawfully in excluding him, or at least the WLT, from Green Hearings. As a consequence, he would be unable to respond to, and meet, any criticism that the defendant may make as a result of Green evidence of which he and his lawyers are unaware.

Procedural history

51. On 21 August 2025, the defendant filed an acknowledgment of service and summary grounds of defence. The Secretary of State, who was at that time the only interested party, had already filed an acknowledgement of service confirming that he did not propose to contest the claim.

52. The claimant then sought permission to amend his grounds of challenge to add a new Ground 6. By that proposed Ground, he emphasised that all the Green Hearings had taken place between 23 June 2025 and 4 August 2025. He observed that the timing of the Green Hearings overlapped with the fourteen-day period in which a judicial review challenge could be brought against the Rulings under challenge. He contended that the holding of the Green Hearings before the time limit for a challenge had expired was procedurally improper and in breach of the defendant's duty to act fairly under section 17(3) of the 2005 Act.

53. By an Order dated 3 October 2025, Steyn J refused permission to add Ground 6. Her reasons are set out in a judgment of the same date: [2025] EWHC 3514 (Admin). In the same Order, the Afghan Families and the third interested party were joined to the claim (the reasons for joinder being set out in Steyn J's second judgment, with the neutral citation number [2025] EWHC 3515 (Admin)).

54. On 7 November 2025, the Afghan Families filed summary grounds of defence in which they contend that the claim is untenable. An acknowledgement of service was filed on 8 July 2026 following a prompt from the court.

55. On 14 November 2025, the third interested party filed an acknowledgement of service and summary grounds of defence which seek to support the defendant's case.

Steyn J's judgment of 3 November 2025

56. On 3 November 2025, Steyn J handed down a third judgment, following a hearing in which all the parties who appear before me took part but before the appointment of Special Advocates: see [2025] EWHC 2842 (Admin). As recorded at paragraph 2 of that judgment, the hearing was listed to consider among other matters:

> "OPEN and CLOSED submissions in relation to:
>
> (a) The jurisdictional basis for any closed material procedure;
>
> … [and]
>
> (b) any further directions necessary (including as to the appointment of any special advocates)."

57. Steyn J noted, at paragraph 3, that the first of those matters raised an issue regarding the interplay between the statutory power to order a CMP pursuant to the JSA and the separate jurisdiction to do so identified by the Supreme Court in *Haralambous*. She accepted the claimant's submissions that the basis for a *Haralambous* CMP is the High Court's inherent jurisdiction at common law (para 41). She held that a CMP relating to material deemed sensitive on national security grounds had to be considered within the confines of the statutory procedures within the JSA. Non-national security sensitive material should be considered in a *Haralambous* CMP (paras 51-52). She concluded that it is permissible for the court to adopt a CMP pursuant to both its JSA jurisdiction and its *Haralambous* jurisdiction (paras 53-55).

58. At that stage, there had been no application for a CMP under the JSA. As I have already indicated, Steyn J declared of her own motion that the present claim for judicial review is a proceeding in which an application for a CMP may be made to the court under the JSA. She ordered that any sensitive material outside the scope of the JSA should be subject to a *Haralambous* CMP. She invited the Attorney General to appoint Special Advocates for the claimant and for the Afghan Families who have been excluded from the Green Hearings and from all CLOSED hearings in the Inquiry.

59. Steyn J considered how the *Haralambous* CMP was to be approached in this case. She held at paragraph 63 of the judgment:

> "In my judgment, the sensible course is to give directions, subject to further order, for the procedure to be followed in the CMP held pursuant to the inherent jurisdiction **to replicate the statutory procedure**" (emphasis added).

60. In her order, Steyn J gave case management directions intended to lead to the resolution of any outstanding preliminary matters (whether OPEN or CLOSED) that required judicial decisions before the permission stage of the claim. The potential remaining preliminary issues were listed in the order as follows:

> "(i) Any further CLOSED submissions (as appropriate) regarding the jurisdictional basis of any CMP;
>
> (ii) Any outstanding aspects of the Claimant's application for disclosure which he has confirmed he continues to pursue;
>
> (iii) The format/procedure and scope of any CMP (including the s.8 process under the JSA 2013), i.e. how to determine the CLOSED/OPEN divide and testing the boundaries of the same.

> (iv) Any further such directions relating to the CLOSED material as are appropriate to enable the issue of whether to grant permission to apply for judicial review to be determined."

61. Following disagreement between counsel as to the appropriate wording of certain parts of the order, Steyn J set out her further views on certain issues in a "Reasons" section of the order. Among other things, she dealt with the relationship between the procedure to be followed under the JSA and Part 82 and the procedure to be followed under the *Haralambous* jurisdiction. She held:

> "…it seems to me that **with a view to the CMP under both jurisdictions being as streamlined as possible**, the [Third Interested Party's] proposal for CPR Part 82 to be deemed to apply mutatis mutandis to the *Haralambous* material is preferable, and better reflects my judgment. It is expressly subject to further order… so it does not prejudice the ability of the Claimant, the special advocates or any other party to contend that aspects of Part 82 should not be deemed to apply" (emphasis added).

Events post-dating Steyn J's judgment

62. By application notice dated 26 January 2026 and pursuant to Steyn J's judgment and order, the defendant applied for an order to rely on CLOSED material that would not be disclosed to any person other than the court, the defendant, the first and third interested parties and the Special Advocates. The application invoked the court's jurisdiction under section 8 of the JSA and the *Haralambous* jurisdiction.

63. By application notice dated 27 January 2026, the third interested party applied for permission to disclose material only to the court, the defendant, the first interested party and the Special Advocates. The application invoked the *Haralambous* jurisdiction.

64. On 29 January 2026, a hearing took place before Bourne J for the consideration of the preliminary issues identified in Steyn J's order but the issues were essentially adjourned: see [2026] EWHC 525 (Admin). On 26 March 2026, Bourne J made the following further case management directions (among others):

> "8. There is to be an OPEN hearing in the week commencing 18 May 2026… to determine:
>
> a. The Claimant's (and if relevant their Special Advocates') extant applications for disclosure.
>
> b. Any remaining dispute as to the scope of the CMP, including its jurisdictional basis and its format/procedure.
>
> c. The s.8/*Haralambous* applications made by the Defendant and Third Interested Party, to the extent that these can be addressed in OPEN."

65. The reference to hearing submissions from the Special Advocates at an OPEN hearing appears to have been a drafting error as this would be very unusual. Bourne J's OPEN order made provision for a CLOSED hearing to consider any CLOSED aspects of the Issues, for which a CLOSED case management order was also made.

66. By this route, the three Issues that I have listed above came before me for determination. The Claim will be heard at a future rolled-up hearing as ordered by Bourne J. As a

consequence, the question of permission to apply for judicial review has not yet been considered.

67. Against this background, I turn to the Issues.

<u>Issue 1: Claimant's application for disclosure</u>

68. Although Issues 2 and 3 concern the court's approach to disclosure, Issue 1 was argued as the first issue before me. It may be fairly and fully determined without reference to the other two Issues and I am content to consider it first.

69. In a written document dated 19 September 2025, the claimant made nineteen disclosure applications under CPR Part 31. I shall follow the claimant's numbering and refer to these applications as DA1 to DA19. Before me, the claimant pursued: DA2, DA4-5, DA9 and DA11-19.

70. The defendant's most recent OPEN response to the applications is annexed to written submissions dated 18 May 2026. The first and second interested parties made no submissions on the claimant's applications. The third interested party supported the defendant's position.

71. There was no dispute about the legal principles to be applied. As set out in the claimant's written submissions, the test in judicial review proceedings for ordering disclosure of specific documents or categories of document under CPR 31.12(1) is the necessity of such disclosure to resolve the matter fairly and justly (*Tweed v Parades Commissioner for Northern Ireland* [2006] UKHL 53, [2007] 1 AC 650, para 3).

72. The claimant's written submissions refer to the defendant's duty of candour. They do not go quite so far as to allege any breach of the duty: they skirt around the question to some degree. The defendant has not breached his duty. Any suggestion to the contrary is unsustainable.

73. I turn to the individual requests for disclosure.

DA2: All details of the measures that have been agreed between the Inquiry and the MOD Counsel Team in respect of the MOD Counsel Team's receipt of the Green Witness evidence

74. Under DA2, Ms Kate Grange KC, who appeared with Ms Caroline Stone and Mr Max Mills on behalf of the claimant, submitted that it is necessary for the WLT to be informed of the measures that have been used to enable the MOD Counsel Team (i.e. the group of lawyers representing the Secretary of State at Green Hearings) to receive the Green Witness evidence. She submitted that this information would enable the WLT to ascertain whether those measures could have been applied equally to the WLT without damage to the public interest.

75. Ms Grange submitted that a response to DA2 would be relevant to Ground 1, under which it is argued that the defendant failed to give adequate consideration to less restrictive measures than the exclusion of the WLT from Green Hearings. She submitted that the WLT would be able to operate in materially identical conditions to the MOD Counsel Team, so that measures imposed on MOD lawyers would inform how the defendant ought to have treated the WLT lawyers. She made the point that WLT Counsel and solicitors are already appropriately vetted. They deal habitually with national security material in the context of Inquiries and other cases. They can be trusted to comply with confidentiality requirements. Ms Grange submitted that, in these circumstances, the response to DA2

would or could support the submission in the Claim that a small group from within the WLT could and should have been permitted to attend and probe evidence in Green Hearings under the same measures that were imposed on the MOD lawyers.

76. On behalf of the defendant, Mr Jonathan Glasson KC with Mr Jonathan Polnay KC and Mr Paul Skinner submitted that the claimant already knows the answer to DA2. By letter dated 29 November 2024, the Secretary of State had proposed to the defendant that the MOD Corporate Team be permitted to attend RCHs but limited to the Secretary of State personally together with "a second nominated Minister…, the PUS [i.e. Permanent Under-Secretary], a small number of Private Office officials and a limited number of AIRU officials [i.e. members of the Afghan Inquiry Response Unit Team within MOD] and legal representatives (solicitors and counsel)." The letter made plain that there would be no military personnel on this list and that stringent information barriers would be put in place to protect the information in issue.

77. In a further letter dated 13 December 2024, the Secretary of State enclosed a proposed "Compartment" document to cover Green Hearings. The document dealt with individuals to be permitted access to sensitive information as well as the process and procedures for handling sensitive information.

78. By letter dated 20 January 2025, the Solicitor to the Inquiry responded and conveyed the defendant's view that "the Framework that you have provided for managing [sensitive information] provides a potentially workable solution" but made clear that the defendant did not intend to provide a generic ruling on RCHs which would be addressed on a case-by-case basis in respect of each application made by an RCH witness. Mr Glasson also confirmed that an OPEN version of a Green Hearing RO would be provided to the claimant.

79. In these circumstances, I agree with Mr Glasson that DA2 has been adequately and appropriately answered. The claimant is not in the dark about measures that were sought by the MOD Corporate Team or the defendant's response to the MOD proposals. The WLT are readily able to ascertain the arrangements that were ventilated in relation to counterparts within the MOD Corporate Team and its lawyers.

80. It is right to note that the exact arrangements are not described in exact detail in the documents before me. It is, however, unlikely that the court hearing the Claim will concern itself with anything more detailed or granular than is set out in the Compartment document. It is not the function of judicial review proceedings to micro-manage practical arrangements at a public inquiry or the handling of sensitive documents. The court hearing the Claim will expect arguments of principle within a public law framework, which the claimant is able to advance on the evidence provided to him. There is no reason to suppose that any further disclosure on this topic is necessary to resolve Ground 1 fairly and justly. For these reasons, DA2 is refused.

DA4: All correspondence, notes of conversations and any other communications that have taken place between the Inquiry Team and (i) the Green Witnesses directly and (ii) the Green Witnesses' representatives

81. I have noted Ms Grange's reasons for advancing this broad and wide request but, as she anticipated, it relates to CLOSED issues and is not suitable for OPEN judgment. It was at best faintly pursued in CLOSED. For the very brief reasons set out in my CLOSED judgment, DA4 is dismissed.

DA5: All records of the Inquiry Team's communications and internal discussions about the possibility of holding RCHs, or any other hearing which has excluded Core Participants

other than the Afghan Families, from the inception of the Inquiry on 15 December 2022 to the date of the decisions under challenge (21 June 2025).

82. This is another broad and wide request. Ms Grange accepted that it raises CLOSED issues. The claimant's Special Advocates made no submissions on it. In the absence of any meaningful submissions, it fails.

DA9: The factors which lead to the RCHs being brought forward so as to fall within the fourteen-day time frame during which a judicial review challenge could be brought against the Decisions, having regard to the fact that CTI's Note of 22 May 2025 indicated that the hearings were "provisionally scheduled to take place later this year."

83. Mr Glasson confirmed that this request was based on a misunderstanding: Green Hearings were not brought forward. Even setting aside this misunderstanding, DA9 is relevant only to the proposed Ground 6 which has fallen out of the picture since the disclosure requests were made. Ms Grange's resort to the scheduling of the Green Hearings as providing "essential context" for the court's consideration of the defendant's compliance with section 17 of the 2005 Act is too broad and unfocused to be persuasive. DA9 is refused.

DA11: Any evidence or reasons advanced, either in writing or orally, on behalf of the Green Witnesses as to why they had to give evidence on the days the RCHs were listed, including the evidence the Inquiry received in respect of their vulnerability, and an identification or which of these reasons were accepted by CTI and the defendant.

84. This request raises questions that relate to Ground 6 which the claimant does not have permission to argue. It is not necessary for the claimant to receive this information for the purposes of any of the pursued grounds of challenge. DA11 is refused.

DA12: All records of the Inquiry Team's communications and internal discussions about its response to the MOD Corporate Team's application to adjourn the RCHs.

85. In the same way as DA11, this request raises questions that relate to Ground 6 which has fallen out of the picture. DA11 is refused.

DA13-DA19

86. DA13-DA19 are each concerned with other so-called "Other RCHs" ("ORHs"). They are as follows:

> **DA13:** The dates on which any ORHs have taken place.
>
> **DA14:** The number of witnesses who have given evidence at ORHs.
>
> **DA15:** Any decisions made by the Defendant in respect of the approval, in principle, of holding ORHs.
>
> **DA16:** Any RO applications made, including supporting evidence, by or on behalf of witnesses who gave evidence at ORHs.
>
> **DA17:** Any decisions made by the defendant granting applications for ROs in relation to ORHs.
> **DA18:** All correspondence, notes of conversations and any other communications that have taken place between the Inquiry Team and (i) the witnesses who gave evidence at ORHs directly and (ii) those witnesses' representatives.

DA19: All records of the Inquiry Team's communications and internal discussions about the possibility of holding ORHs from the inception of the Inquiry on 15 December 2022 to date.

87. Ms Grange confirmed before me that DA13-19 are intended to elicit information about hearings that (a) exclude the WLT and their clients and (b) concern matters that are relevant to the WLT client witnesses such as the claimant. She submitted that this series of requests raised similar questions to the issues in the Claim, such that the duty of candour required them to be answered. She submitted that the grounds of challenge in the present claim have identified a series of procedural failings and a pattern of unfair decision-making such that it is relevant for the court to know whether the Inquiry has held other Green-style Hearings which the WLT have not been told about. If other Green-style Hearings have been held, that would give rise to further evidence of procedural unfairness.

88. In objecting to these requests, Mr Glasson referred me to the defendant's March 2026 ruling, mentioned above, which provides some information about the defendant's approach to post-Green Hearing RCHs. I was told that disclosure about whether or not any ORHs have taken place is a matter that is currently under review by the defendant. Mr Glasson submitted that any challenge relating to disclosure was premature and should await the outcome of that review. He submitted that if this court were to order disclosure at this stage, the judicial review claim would subvert the defendant's review.

89. Mr Glasson's submissions on the subversion of the defendant's review go too far. If I were minded to order the defendant to respond to DA13-DA19, I would do so on the basis that the information was necessary for the fair and just resolution of one or more issues in the present claim. If that were the case, it would be unsatisfactory for the defendant to put off his disclosure obligations on the basis that the court should await some further process in the Inquiry.

90. However, I am not persuaded that DA13-19 are relevant to any of the grounds of challenge or necessary for the fair and just resolution of the Claim. The requests relate to decisions about ROs or RCHs that are not the subject of the present challenge. Ms Grange referred to her concerns about a pattern of decision-making but the court hearing the Claim will be bound to consider the decisions under challenge in the Claim and not others.

91. I note, too, the breadth of DA18 and DA19 which are onerous and would lead to absurd results. For example, if a witness' representative happened to mention to a member of the Inquiry Team that a hearing be put back for an hour for the witness to attend the dentist, the defendant would be under a duty to disclose that fact, which is not (I anticipate) what anyone would be interested in. For these reasons, DA13-19 are refused.

Issue 2: Scope of CMP

92. The existence of two separate CMPs running in parallel in the same case raises a number of questions about how this court should approach the claimant's Special Advocates' requests for certain CLOSED material to move to the OPEN case, and the test to be applied. The parties have sensibly brought together these questions under the umbrella of Issue 2, which has three constituent parts:

    i. **Issue 2A:** What should the court's approach be to "overlapping" material, meaning material that may be the subject of an application to withhold disclosure from the claimant and his lawyers on the basis of both the JSA and *Haralambous*?

ii. **Issue 2B:** To what extent can or should the provisions of CPR Part 82 be carried over to the procedure for a *Haralambous* CMP?

iii. **Issue 2C:** In what order should the court decide the two different CMPs?

93. The parties made submissions as to which parts of Steyn J's and Bourne J's judgments and orders had already determined at least some elements of these three sub-issues, such that they should not be re-opened before me. I have reached the conclusion that the approach of the previous judges left sufficient flexibility for the particular questions under Issue 2 to be determined by me without fetter. Given what Steyn J said in the "Reasons" section of the relevant order, I regard her as having ultimately taken the view that procedural matters were not set in stone and that the court might need to look at them again in light of the progress of the Claim. Bourne J's judgment is limited to case management issues such as timetabling and should be read with that in mind. Both judges have left sufficient leeway for the court now to determine for itself the questions raised in Issue 2.

Issue 2A

94. The question which arises under Issue 2A may be framed in the following terms: In the absence of a statutory scheme for the disclosure of non-national security material in judicial review proceedings, how should the court proceed under *Haralambous* to formulate and apply a disclosure process that is fair to all parties?

The parties' positions

95. Ms Grange relied on the scope of the CMP in the Inquiry which she submitted should be transposed to the High Court. Her position is encapsulated in her written submissions as follows:

> "Given that the purpose of the *Haralambous* jurisdiction is to accommodate a CMP where such a procedure has been authorised by Parliament as being available in the lower jurisdiction where the decision under review was made, … as a matter of principle, **the scope of the *Haralambous* CMP must be shaped by the scope of the CMP in the proceedings below**" (emphasis added).

96. Mr Glasson agreed that this court's task under *Haralambous* must be "shaped by" the way in which the defendant carried out the process of classifying some material as CLOSED in the Inquiry. On behalf of the third interested party, Mr Matthew Butt KC also agreed with this formulation.

97. I hesitate before departing from the approach agreed by such distinguished counsel. However, as I raised in discussion with counsel, it is easier for the Bar to conceive of the term "shaped by" than it is for the Bench to apply it. The term "shaped by" is not a legal term. It is ambiguous and does not provide a clear, precise test. The court needs to apply an unambiguous test before excluding material from a party and from the public gaze; otherwise, the open justice principle is harmed.

98. Moreover, Ms Grange and Mr Glasson (the latter supported by Mr Butt) each relied on the "shaped by" test for their own different purposes. Ms Grange submitted that the guiding principle for the withholding of material in the Inquiry had been section 19 of the 2005 Act which governs the imposition of ROs. She drew my attention to the factors set out in section 19(4). She submitted that the court should engage in a de novo consideration of the section 19(4) factors which involved a balancing exercise that this court should itself undertake. She submitted that the de novo approach to the balancing of different factors flowed from paragraph 59 of *Haralambous* which was directed to enabling the court of

review to exercise the same approach as, and no lesser jurisdiction than, the decision-maker whose decision was the subject of review.

99. Mr Glasson and Mr Butt opposed a de novo approach. They submitted that the "shape" of the procedure below was the responsibility of the defendant. They submitted that the 2005 Act had allocated decision-making responsibility to him and emphasised that the defendant, who has full oversight of the Inquiry as a whole, was best placed to assess the public interests at play. Consequently, they submitted that this court should take its lead from the defendant in respect of his conclusions about the damage that would ensue from opening up any parts of the CLOSED material. They submitted that there was no good reason for this court to depart from the defendant's conclusions as to the OPEN/CLOSED divide, which should be accorded considerable respect.

Discussion

100. I do not understand the Supreme Court's judgment in *Haralambous* to mean that a reviewing court is bound to assume a jurisdiction co-extensive with the statutory jurisdiction of the decision-maker whose decision falls to be reviewed. In judicial review proceedings, the High Court does not cloak itself in the statutory powers of the decision-maker but exercises its own powers according to established public law principles. As Steyn J made plain, the *Haralambous* jurisdiction is an element of the inherent jurisdiction. There are no persuasive grounds to treat the inherent jurisdiction as cut down by the statutory provisions and Rules that permitted the defendant to restrict or, conversely, to order the disclosure of evidence. To the extent that Ms Grange's submissions seemed to suggest that I should assume the function of an inquiry chairman, and apply the same statutory framework as governs an inquiry, I would reject them.

101. It does not follow, however, that the section 19(4) factors must be treated as irrelevant to the task of this court. The various factors to be weighed under section 19(4) in relation to ROs encapsulate sound public policy considerations in relation to when open justice should be restricted in a statutory inquiry. Of those factors, costs and delay (section 19(4)(d)) have not played a part in the argument before me, so that I need not say more about them. The other three factors (public concern, harm, and conditions of confidentiality) were mandatory considerations for the IIA. They are not mandatory considerations in this court, in the strict public law sense. They do not set a jurisdictional boundary within which this court must operate. However, they are in my judgment useful and pragmatic considerations that will assist the court in weighing all relevant considerations and in reaching a fair balance when exercising its own jurisdiction. I am prepared to take up Ms Grange's invitation to take them into account.

102. Parliament has made plain that the factors listed in section 19(4) are not exhaustive in the context of ROs. As Ms Grange emphasised, the overriding test for withholding disclosure in an inquiry is the broad public interest test (section 19(3)), albeit that an inquiry chairman must have regard "in particular" to the section 19(4) factors. In a similar way, there is and can be no legal or jurisdictional bar to this court applying the full breadth of a public interest test in considering disclosure in these proceedings.

103. In order to consider the section 19(4) factors as part of a broader public interest test, the court does not need to assume the role of the chair of an inquiry or to adopt other parts of the 2005 Act or the 2006 Rules (such as rule 12 which Ms Grange asked me to apply and to which I return below). The High Court will consider them in the exercise of its own jurisdiction to ensure for itself a fair review of the decisions under challenge.

104. In contending that the court should avoid any de novo assessment of where the public interest lies, Mr Butt drew attention to *R (E) v Chairman of the Inquiry into the Death of*

Azelle Rodney [2012] EWHC 563 (Admin) DC, para 24, where Laws LJ said that where the defendant falls to be treated as a "judicial or other public body, charged under statute with deciding the merits of a controversial issue," this court should show appropriate respect as to where the balance should be struck in relation to disclosure. In my judgment, the position is more nuanced in the present case, for the following reasons.

105. First, I am not at this juncture considering whether to interfere with any decision of the defendant – which will be the task of the court hearing the Claim. Although there may be an overlap in that the grounds of challenge are themselves concerned with disclosure, I am not presently exercising a review function in relation to the defendant's primary decision-making but exercising my own jurisdiction to ensure that the claimant and his lawyers have sufficient disclosure so that the determination of the Claim will in due course be fair. I cannot delegate the fairness of the proceedings to the defendant, which militates strongly against a simple affirmation of the defendant's OPEN/CLOSED divide.

106. Mr Glasson submitted that, in determining the OPEN/CLOSED divide, the court should avoid injustice or absurdity. He submitted that, in circumstances where the claimant's objective in bringing the Claim was to obtain sight of CLOSED information, it would be absurd if he could achieve by the side wind of the *Haralambous* jurisdiction what he may be unable to achieve unless successful in the Claim. He submitted that it would be unjust for the claimant to receive disclosure at an interim stage where to do so would defeat the defendant's defence of the Claim.

107. I do not regard Mr Glasson's submissions as detracting from the conclusion that the particular process on which the court is presently embarked engages its own conception of fairness. The court is unlikely to order disclosure where such disclosure "would defeat the whole object of the exercise" (*Al Rawi*, para 63 citing *Secretary of State for the Home Department v MB* [2007] UKHL 46, [2008] 1 AC 440, para 58). The court is however able to avoid injustice and absurdity without being limited to the parameters of the jurisdiction exercised, or the conclusions reached, by the defendant. The avoidance of injustice and absurdity will point away from disclosure.

108. Secondly, the grounds of challenge in the Claim concern the fairness of procedures in the Inquiry. They do not engage the sort of social, economic or political preferences for which constitutional responsibility lies outside the courts. They engage questions of due process which fall within the province of the courts. If matters arise in which the defendant has particular knowledge and experience (whether evidential or practical), the court is able to pay appropriate respect to the defendant's assessment without departing from the exercise of its own evaluation and judgment (*In re Secretary of State for Northern Ireland*, para 129 referring to *Shvidler v Secretary of State for Foreign, Commonwealth and Development Affairs* [2025] UKSC, [2025] 3 WLR 346; see also *E*, above, para 25).

109. I conclude, therefore, on Issue 2A that the section 19(4) factors are (at least in this case) relevant as part of the public interest test applicable in the determination of PII issues and that the court will assess for itself where the public interest lies (whether in disclosure or non-disclosure). The court will show such respect to the defendant as is appropriate according to the nature of the particular material withheld but will not defer across the piece to the defendant about matters that engage the fairness of procedures in this court.

Issue 2B

110. Issue 2B arises in the following way. As regards national security, Parliament has stipulated in the JSA that the court must (i) follow a particular procedure for disclosure (now to be found in Part 82); (ii) refuse to order the disclosure of material into the OPEN case if it considers that the disclosure of the material would be damaging to the interests of

national security (JSA, section 8(1)(c)); and (iii) put the Secretary of State (or other relevant person) to his or her election as to whether to rely on material which the court regards as capable of disclosure but which the Secretary of State (or other relevant person) does not want to disclose; i.e. the court does not compel the Secretary of State to disclose sensitive information; rather the Secretary of State must elect either to disclose the material or not to rely on it (JSA, section 8(3)). These hallmarks of a JSA CMP have been applied by the courts on many occasions.

111. The *Haralambous* jurisdiction to hold a CMP is a creature of the common law and so is not within the purview of the JSA or the detailed provisions of Part 82. As I have set out above, Steyn J contemplated that the two different CMPs should be as "streamlined as possible" but she left open the possibility that they might diverge and that further judicial consideration of the parameters of the *Haralambous* procedure would be required. As an Annex to her written submissions, Ms Grange provided a table of key Part 82 provisions which she submitted should not be deemed to apply to a *Haralambous* CMP. Mr Butt in particular submitted that the table was far too expansive; but he accepted that Steyn J had ordered that Part 82 might need to applied to the *Haralambous* CMP with some amendments.

112. As matters stand, any relevant or necessary difference between a statutory and common law CMP has not given rise to any real practical problem or legal issue. Procedurally, the Special Advocates have sought disclosure of material and followed a process for disclosure that mirrors the Part 82 disclosure process (for example, the production of schedules of reasoned requests for material to be opened up). The Afghan Families' Special Advocates are content with the ultimate responses to their requests, and the claimant's Special Advocates made submissions before me for further material to be opened up. It is too late now for a different procedure to be adopted.

113. Ms Grange emphasised those parts of Part 82 that require the court to ensure that no material is provided to the claimant or the WLT the disclosure of which would be damaging to the interests of national security (see CPR 82.2(2) and 82.14(7)(b)). She submitted that it would be inappropriate to give absolute priority to non-disclosure of material to be considered under *Haralambous* where the material in question is not sensitive on grounds of national security. She submitted that the public interest in protecting *Haralambous* material cannot automatically trump the claimant's and the public's interest in open justice and that a balancing exercise under section 19 of the 2005 Act is required. Mr Butt accepted that CPR 82.2 should not be read across to non-national security material. I did not understand either him or Mr Glasson to contend that the *Haralambous* process involved anything other than a balancing of relevant factors in the public interest.

114. The other principal element in Ms Grange's Annex concerns the right of election to which the court would put the defendant in relation to any material which the court considered should be opened up. As I will make no order for disclosure, this question does not arise. The court will keep disclosure under review and will deal with whether the law of evidence permits it to put a party to election under *Haralambous* if and when the issue arises.

Issue 2C

115. The sequencing of the two different CMPs must be addressed in CLOSED. I would, however, record in OPEN that the court does not necessarily need to exhaust one sort of CMP in a discrete way and then start again by undertaking the second sort discretely. The court may prefer to consider matters in the round, with decisions on one aspect of disclosure influencing its decisions on other aspects. In other words, the question of sequencing is not concerned with the chronological sequencing of two processes but with the intellectual

approach that the court will apply to ensuring that the minimum evidence is withheld from the claimant, the WLT and the public.

116. I am not able to be more specific in OPEN save to say that the court is bound to apply the scheme of the JSA and Part 82 to any national security material as stipulated by Parliament. It follows that I regard the *Haralambous* jurisdiction as inapplicable to national security material: Parliament has modified the common law and judges must follow the legislative intention.

Conclusion on Issue 2

117. Applying the principles that I have set out above, I have balanced the public interest in open justice (which includes the interests of the claimant and his lawyers in having sight of all the material in the case) against the public interest in non-disclosure of material that may cause harm if disclosed. Undertaking a balancing exercise of the relevant elements of the public interest, and deciding matters for myself, I am in no doubt that, in relation to all and any *Haralambous* material, including any material that may overlap with national security material falling within the JSA CMP, the public interest weighs heavily against any further disclosure, beyond the disclosure agreed with the Special Advocates. My reasons for this conclusion are contained in my CLOSED judgment.

118. Accordingly, I will not order that any further material should be opened up.

Issue 3: The claimant's application for a confidentiality ring

The claimant's submissions

119. Ms Grange submitted that the court should establish a confidentiality ring for the purposes of enabling the claimant to advance his grounds for judicial review fully and fairly. She submitted that the persons included in the ring could extend to the claimant himself; or they could include only his lawyers or a subset of his lawyers.

120. Ms Grange observed that recent cases had made clear that there was no legal bar to a confidentiality ring (*R (Public and Commercial Services Union) v Secretary of State for the Home Department* [2022] EWHC 823 (Admin), paras 60-64; *R (Hoareau and Bancoult) v Secretary of State for Foreign and Commonwealth Affairs* [2018] EWHC 3825 (Admin), paras 39-45). She submitted that the Inquiry had in effect adopted confidentiality rings because not all Core Participants and not all witnesses had been permitted to view all the CLOSED material. She directed the court to rule 12 of the 2006 Rules which (as I have said) empowers the defendant to disclose potentially restricted evidence to a person who would otherwise not be permitted to see it (rule 12(3)) when disclosure to an individual is necessary for the determination of an application for an RO or public interest immunity application which entails withholding evidence from the public (rule 12((1) and (4)). Any person who is shown potentially restricted evidence "shall owe an obligation of confidence to the person who provided or produced the evidence" (rule 12(5)). She submitted that, in a disclosure process that should be shaped by the procedures for disclosure in the Inquiry, the existence of bespoke and tailored orders for disclosure to specific individuals permitted by rule 12 was akin to a confidentiality ring which is essentially a bespoke and tailored order for disclosure to named individuals. The court should apply rule 12 as part of the *Haralambous* jurisdiction.

121. Ms Grange acknowledged that there are many cases disapproving of confidentiality rings but submitted that the circumstances of this particular case are highly unusual. The claimant himself, as a senior person within the military, was already privy to a great deal of sensitive information which he had obtained as a trustworthy person in a position of

great responsibility. Disclosure of sensitive material to him would not damage national security, subject to suitable undertakings by him to preserve its confidentiality and practical arrangements which could be the subject of further discrete submissions.

122. Ms Grange submitted that, alternatively, all members of the WLT have appropriate security clearance and are aware of their duties to protect sensitive material through long experience in national security cases. A lawyer-only confidentiality ring would meet any concern that the court may have about the disclosure of sensitive information to the claimant personally.

123. Dealing with the risk that members of the WLT in a lawyer-only confidentiality ring might accidentally or inadvertently shine a light for her lay client on something covered by the "neither confirm nor deny" principle ("NCND"), Ms Grange said that some of the issues raised by the claim are questions of law on which instructions from the claimant himself may not be necessary. There could be no conceivable damage to the public interest by including the experienced lawyers from within the WLT who would use their skill to consider and make submissions on the CLOSED material without accidental leakage of sensitive information to their lay client. A lawyer-only confidentiality ring in which instructions are not taken on the sensitive material would be better than the present position, which excludes even the lawyers.

124. As regards the membership of a lawyer-only ring, Ms Grange invited the court to approve four counsel, four solicitors in GLD and two paralegals. She submitted that this small group of people, covering different levels of seniority and expertise, were all required for the purposes of fully representing the claimant. Ms Grange accepted, however, that other permutations were possible and invited the court to keep other permutations in mind, in accordance with the court's own view of fairness and practicality.

125. The claimant's Special Advocates supported the claimant's submission by way of OPEN written submissions in which they contended primarily that all the material withheld from the claimant "can be safely disclosed to the Claimant by utilising a lawyers-only confidentiality ring (specifically a Claimant lawyers-only confidentiality ring)." They submitted that a "tightly circumscribed" ring would "effectively mitigate all of the perceived security risks." Their secondary position was that the court should order that gists of the CLOSED material, as proposed by the Special Advocates in CLOSED session, should be disclosed to the WLT on conditions of confidence (a different form of lawyer-only confidentiality ring) or to the claimant and the WLT on conditions of confidentiality (a still different form of confidentiality ring).

126. Mr Glasson emphasised the strong authority against the principle of confidentiality rings (see, for example, *Somerville v Scottish Ministers* [2007] UKHL 44, [2007] 1 WLR 2734, paras 152-153; *Competition and Markets Authority v Concordia International Rx (UK) Ltd* [2018] EWCA Civ 1881, [2018] Bus LR 2452, para 71). He submitted that disclosure to security-cleared lawyers who represent the claimant's interests is precisely what has taken place, in that Special Advocates have been appointed to consider the CLOSED material on behalf of the claimant. He emphasised that disclosure to a lawyer-only confidentiality ring was considered to be inappropriate in the Application Ruling which is under challenge. He contended that if the court were to order a confidentiality ring at this interim stage, the claimant would have received the material that he seeks to obtain in the Claim. Such an outcome at this stage would unfairly deprive the defendant of his substantive defence of the Claim and undermine the objective of the proceedings.

127. Mr Glasson submitted that the confidentiality rings suggested by Ms Grange and the claimant's Special Advocates were fundamentally inconsistent with the two forms of CMP ordered by Steyn J. In relation to the JSA CMP, he submitted that neither the JSA nor CPR

Part 82 permit confidentiality rings. Under the JSA, the only persons to whom CLOSED material may be disclosed are (i) the court; (ii) the Special Advocates; and (iii) the Secretary of State. As regards *Haralambous*, Mr Glasson submitted that the nature and purpose of the *Haralambous* CMP was to replicate the procedure before the Inquiry. That procedure did not involve confidentiality rings as they were expressly rejected by the defendant in his 2023 Ruling as well as in the Ruling under challenge. The analogy with rule 12 was ill-founded and inapt, as well as pre-empting a ground of challenge in the Claim.

128. Mr Glasson submitted that disclosure to the WLT would amount to disclosure to lawyers representing the approximately 150 other potential military personnel who fell within the WLT remit. This would raise ethical issues as to what the WLT – who were not a party to the claim and whose sole purpose was to represent witnesses – could do with the material disclosed in these proceedings.

129. On behalf of the third interested party, Mr Butt submitted that a lawyer-only confidentiality ring would put the lawyers in the invidious position of knowing something that their client does not know. It would prevent the claimant from having unfettered access to his lawyers and potentially undermine the relationship of trust. It would run the risk of inadvertent disclosure. Mr Butt submitted that a confidentiality ring of any kind would prejudge a critical part of the Claim itself and give the claimant the very material that he would wish to see, or wish his lawyers to see, and for which he seeks relief from the court in the Claim. He submitted that these various difficulties cannot be cured by the fact that the claimant's lawyers have security clearance. Mr Butt also adopted and elaborated on Mr Glasson's submissions.

130. I reject the application for a confidentiality ring, in any of the forms suggested by Ms Grange and Mr Ahmad, for the following reasons.

Disclosure to claimant

131. As regards a confidentiality ring that includes the claimant, the court cannot at this distance in time be satisfied with any degree of confidence as to what he did or did not know about the activities of UK forces in Afghanistan. His assertion of relevant knowledge of sensitive matters is not particularised and is not properly evidenced. I am not persuaded on the evidence before me that his inclusion in a confidentiality ring would simply tell him what he knows already. The submissions about his special knowledge are too ambitious.

132. The claimant is not a neutral observer but a party to litigation that he has himself initiated in order to avoid what he fears is the risk of prosecution at some future stage. Given that he cannot be treated as wholly objective, there is insufficient evidence to assure the court that he will consistently and reliably place the public interest in protecting the information above his own interests in advancing his claim. The assertion that he is trustworthy because of his past employment is too broad and subjective to give confidence to the court.

133. In determining whether to include the claimant in a confidentiality ring, the court is bound to "assess risk and avoid risks, or at least manage them to an acceptable level" (*Hoareau*, para 40). It is, of course, possible that the claimant will make every effort to keep the CLOSED evidence entirely secret other than giving instructions to his lawyers. It is possible that he could be given all the CLOSED evidence and keep it secret such that a decision by the court to order its disclosure to him would turn out to be correct ex post facto. However, the gravity of the damage to the public interest that would ensue if the claimant even accidentally revealed any of the information entitles the court to make a risk-based assessment at this stage. I cannot and do not rule out the risk of inadvertent leakage

of apparently innocuous detail that would enable those beyond the control of the court to patch together information to the detriment of the public interest in its secrecy.

Disclosure to the WLT

134. Even in relation to a lawyer-only confidentiality ring, the question whether to permit the disclosure of sensitive material to a party's solicitors and counsel is acutely fact-specific. The court in *PCSU* referred to the suitability of a confidentiality ring "in this instance" (para 61). The court in *Hoareau* referred to the "particular and highly unusual circumstances of [the] case" (para 40). In an area of judicial decision-making where context matters, I have derived little assistance from other cases which turn on their facts.

135. On the evidence in this case, both OPEN and CLOSED, the risk of serious damage to the public interest is too great for the court to countenance disclosure of sensitive material to any member of the WLT, whether in full or (reflecting the claimant's Special Advocates' secondary position) in gist.

136. The court is not concerned with whether the WLT are trustworthy or skilled at handling CLOSED material. They are. Despite their skill and experience, they are not in my judgment immune from inadvertently disclosing sensitive information to their client or to others.

137. The risk of inadvertent disclosure is high. It is capable of arising from as little as inadvertent body language in reaction to (say) a question from client to lawyer. It may arise from "entirely innocent, and indeed necessary, pregnant silence by a lawyer" (*CF v Security Service and others* [2013] EWHC 3402 (QB), [2014] 1 WLR 1699, para 51). The risk is particularly high in a case where the claimant is put forward to the court as a person with insider knowledge because of his formerly high position within the military. His ability to join together missing pieces of a jigsaw (whether in relation to national security or in relation to other sensitive material) is correspondingly to be assessed as higher. In order to avoid the risk, the relationship between the lawyers inside the confidentiality ring and their client would necessarily be "hobbled" (*CF*, para 51). It could well lead to counsel and solicitors within the confidentiality ring having no further contact after sight of the CLOSED material with the claimant and with any other of their clients in the Inquiry.

138. I accept that, as Ms Grange submitted, the WLT are familiar with the evidence and procedures of the Inquiry in a way that the Special Advocates cannot be expected to match. Ms Grange submits that the WLT's superior knowledge means that the Special Advocates are no substitute for instructed counsel. However, at the hearing of the Claim, the court will not be exercising the powers of an inquiry chair or conducting a mini-inquiry. It will be exercising its own supervisory jurisdiction in judicial proceedings in accordance with its constitutional function. The claimant will be limited to grounds of challenge which have been pleaded under CPR Part 54 and which sound in public law.

139. The grounds of challenge are formulated in a number of ways. But the key point of the pleaded claim is that the claimant and his lawyers want access to evidence that has been withheld from them. The Claim is, therefore, essentially a procedural one, challenging the fairness of the defendant's decisions in excluding him and his lawyers from Green Hearings. The accumulated knowledge and experience of the Inquiry that the WLT have gained has less significance in the context of the legal, public law arguments than it would have carried in a forum that permitted a merits-based review.

140. The court in judicial review proceedings has duties to all parties and also a duty to the public whose interests it will protect. Fairness for the claimant does not require a bespoke

procedure for him or his lawyers at the expense of all other interests. No principle emerges from the case law cited to the court that would compel the court to conclude that the claimant's interest, or the interests of his lawyers, in knowing the arguments that will be advanced against him in CLOSED session should prevail at any cost to the interests of other parties and to the public interest.

141. The Special Advocates are well-placed to deal with the essentially legal concept of fairness, which does not require extensive instructions from the claimant or an extensive excursus by the Special Advocates into the evidence or general procedures adopted by the Inquiry. CTI – who are steeped in the Inquiry – have duties to the court. They will ensure that the court is not misled and that it has a full and proper picture. The combination of the Special Advocates and the duties of CTI provides protection from unfairness for the claimant in the sessions from which he will be excluded.

142. The court is and will remain the guardian of fair procedures. It will keep the OPEN/CLOSED divide under review and will (as anticipated by Steyn J) exercise its flexible case management powers to ensure fairness as the claim progresses.

143. For these reasons, as well as for the reasons given in my CLOSED judgment, I refuse the application for a confidentiality ring.

144. It follows that I do not need to consider Ms Grange's submission that section 8 of the JSA permits a confidentiality ring that would exclude the Afghan Families because its language permits differential disclosure between parties to proceedings. Her submission was not supported by authority and would appear to contradict the tight limitations imposed by Parliament in section 8(1)(a), which specifies the court, the Special Advocates and the Secretary of State as those permitted to receive CLOSED material. However, its resolution is not necessary and should await another case where it is necessary to determine it.

Other matters

145. Ms Grange submitted that the defendant and third interested party had failed to provide an adequate gist of the evidence at the Green Hearings. She contended that the only gist was contained in a limited and generalised document that did not match the detail of other gists of CLOSED hearings published by the IIA.

146. In his order of 26 March 2026, Bourne J directed that the defendant and third interested party should, if appropriate, serve proposed gists in OPEN and CLOSED of "any information that the defendant and the third interested party seek to withhold." This is a curious direction; not least the purpose of a CLOSED gist is not clear and the direction to serve OPEN gists bypasses the Special Advocates. The terms of the direction were unsurprisingly the subject of further correspondence with the court and consideration by the judge. There is no real benefit in analysing the competing positions before Bourne J. It suffices to note that the defendant has provided a gist of evidence heard during the Green Hearings. The document is short but it does not lack meaningful content. For reasons that I cannot state in OPEN, I reject the proposition that more of the Green evidence should be opened up.

147. Ms Grange complained about the delay in security clearing communications between the claimant's Special Advocates and the WLT. I was not asked to make any order or give any directions about the communications mechanism. In these circumstances, I do no more than note her concerns.

Conclusion

148. It follows that the claimant will receive the agreed disclosure but no more because that is what the public interest demands.

149. Some of the issues that I have considered are similar to the issues raised in the Claim. That I have reached certain conclusions in this judgment does not mean that the court will reach the same conclusions when determining the Claim. As I have endeavoured to stress, the function of the court when reviewing the defendant's decision-making in the Claim is not the same as the present, interim function of ensuring that the Claim may and will be fairly heard.

150. I wish to record the disorganised state of the hearing bundles which has added considerably to the time taken to complete this judgment. If either the court or any other party cannot follow the thread of the bundles that will be lodged for the rolled-up hearing, the defect may well sound in costs or other sanction against the claimant's solicitors.