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IN THE HIGH COURT
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

BEFORE LORD JUSTICE LEWIS

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 August 2022

Between:

The Queen (on the application of AAA and others)	**Claimants**
-and-	
Secretary of State for the Home Department	**Defendant**
-and-	
United Nations High Commissioner for Refugees	**Intervener**

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Neil Sheldon Q.C. and Natasha Barnes (instructed by the Treasury Solicitor) for the Applicant**.**
Sam Grodzinski QC, Christopher Knight, Tim Johnson and Jason Poboy instructed by **Duncan Lewis**) for the Claimants in CO/2032/2022
Richard Drabble Q.C., Leonie Hirst and Angelina Nicolaou (instructed by **Wilson Solicitors LLP**) for the Claimant in CO/2080/2022
Sonali Naik QC, Adrian Berry and Ella Gunn (instructed by **Barnes Harrild and Dyer**) for the Claimant in CO/2095/2022
Amanda Weston QC, Mark Symes, Eva Doerr and Isaac Ricca-Richardson (instructed by **Barnes Harrild and Dyer**) for the Claimant in CO/2098/2022
Manjit Gill QC, Ramby de Mello, and Tony Muman by written submissions only (instructed by **Twinwood Law Practice**) for the Claimant in CO/2094/2022
Jude Bunting Q.C. (instructed by direct access) for the **British Broadcasting Corporation, Times Newspapers Ltd. and Guardian News and Media.**
The other claimants, and the intervener, did not **appear and were not represented**

Hearing date: **16 August 2022**

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APPROVED JUDGMENT

LORD JUSTICE LEWIS:

INTRODUCTION

1. This is an application by the Secretary of State for Foreign, Commonwealth and Development Affairs for permission to withhold certain extracts from two documents from disclosure on the grounds of public interest immunity. The application arises in the context of a number of claims by individuals for permission to bring claims for judicial review to challenge decisions to the effect that their claims for asylum would not be processed in the United Kingdom but they would or might be removed to Rwanda and their asylum claims dealt with there. They also seek permission to challenge the lawfulness of the arrangements under which claimants for asylum can be removed to Rwanda. The claimants also include one trade union and three non-governmental organisations.

2. The grounds of claim are set out in the individual claim forms in each case. A draft list of issues has been prepared pursuant to an order of Swift J. dated 16 June 2022. As will be apparent from the claim forms and the list of issues, the claims raise a number of general issues, said to be relevant to all the claims, and specific issues concerning the individual claimants. For present purposes, it is sufficient to note that the grounds include claims that removing the individual claimants to Rwanda would be incompatible with Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and so involve a breach of section 6 of the Human Rights Act 1998 or that the policy of removing asylum-seekers to Rwanda is unlawful as it is alleged that that would result in some decisions which breached individuals' rights under Article 3 of the Convention. That Article provides that "No one shall be subjected to torture or inhuman or degrading treatment".

THE APPLICATION FOR PUBLIC INTEREST IMMUNITY

3. The application for public interest immunity relates to extracts contained in two documents. They include firstly comments on a draft Country Policy Information Notice ("the CPIN") produced by the Home Office containing an assessment of the asylum system in Rwanda and of the position on related human rights issues. During the process of drafting that document, the Permanent Secretary at the Home Office asked the Home Office's Chief Scientific Advisor, Professor Rubin, to undertake a quality assurance process in relation to the CPIN. Professor Rubin was asked to obtain the views of persons who had not previously been involved in the drafting of the CPIN. One of those reviewers was an official in the Foreign, Commonwealth and Development Office with knowledge and expertise of certain countries in Africa including Rwanda. The defendant has disclosed a copy of the draft CPIN, and a number of the reviewer's comments but has not disclosed five of the comments. The application for public interest immunity relates in part to those five comments.

4. The remainder of the application relates to five extracts contained in a second document, namely the accompanying e-mail sent by the reviewer along with the reviewer's comments on the draft CPIN. The defendant has again disclosed a copy of the e-mail but has redacted five extracts. The ten individual redactions (five in each document) comprise at most a couple of sentences and, in one case, a small number of words.

5. By an application notice dated the 1 August 2022, the Secretary of State applied for an order for permission to withhold documents on the grounds of public interest immunity. That application was accompanied by a draft order and a certificate dated 29 July 2022 signed by Mr Graham Stuart MP, Minister of State in the Foreign, Commonwealth and Development Office, in support of the claim for public interest immunity. Those documents, and a skeleton argument and a bundle of documents, were provided to the claimants. In addition, there was a sensitive schedule appended to the certificate which elaborated on the reasons why public interest immunity was claimed for the ten extracts and the extracts themselves were appended to that sensitive schedule. The claimants have not been provided with a copy of the sensitive schedule, nor the appendix to that schedule, and have not been provided with a copy of a second written skeleton argument prepared by the applicant and making submissions on the sensitive schedule.

6. I ordered that there be an oral hearing of the application. I further ordered that the claimants be given the opportunity to make written submissions on the application. The claimants in the first claim and four claimants, in other cases, namely, AS, NA, SAA, and ASM did make written representations and I have taken those representations into account. Furthermore, on 8 August 2022, Maria Polachowska, a senior producer at the BBC Newsnight requested permission to seek a copy of the application for public interest immunity. Having first sought comments from the parties, on 10 August 2022, I granted Ms Polachowska permission to obtain a copy of the application notice, the accompanying draft order, and the certificate of Mr Stuart. I did not grant permission to obtain a copy of the sensitive schedule or the appendix to that schedule.

7. The hearing was held on 16 August 2022. The first part of the hearing was an open hearing at which the applicant and the representatives of the claimants, and the intervener, were entitled to attend and make submissions. Counsel representing the claimants in first claim, case CO/2032/2022, and also AS, NA and ASM did attend and made further oral submissions which I considered together with the written submissions. I granted permission to the BBC, Guardian News and Media, and Times Newspapers Ltd, three media organisations, to make submissions on the application for public interest immunity. The first part of the hearing was also open to representatives of the media and members of the public.

8. I held the second part of the hearing in private pursuant to CPR 39.2(3)(a) and (g). At that private part of the hearing, I considered the second skeleton argument, and the sensitive schedule and the redacted material. I questioned counsel on the redacted material and the reasons why it was said that in each case the public interest in withholding disclosure of the information outweighed the interest of the administration of justice in having access to all material relevant to the claim. I explored whether parts only of each extract should be withheld. I explored alternatives to granting public interest immunity including disclosure within a confidentiality ring and providing a gist or summary of the material.

9. All those claimants who made representations invited the court to appoint a special advocate to assist the court and, in particular, to probe the reasoning of the Secretary of State for considering that disclosure of the material would be harmful to the public interest. I did not consider that this was necessary in the circumstances of this case. Having read and seen the applicant's second skeleton argument, the sensitive schedule

and the redacted material itself, I was satisfied that matters could be dealt with fairly and fully without the appointment of a special advocate.

10. This is a judgment which will be publicly available. I have included as much of my reasoning as I can make public. I will also give a short supplementary private judgment explaining certain aspects of my reasoning further. The order I make will refuse public interest immunity in respect of six of the ten extracts (save for specific words, and in one case a sentence, in some of those extracts) and will grant public interest immunity in respect of the four remaining extracts. Given the need to give judgment quickly, as the substantive hearing is listed for 5 September 2022, I have referred in this judgment and the order to the items in the sensitive schedule. I am conscious that the claimants have not seen that sensitive schedule. The defendant will need to ensure that she gives effect to the terms of this judgment and the order and, in any event, the court hearing the claims will be able to check that appropriate disclosure has been given.

11. Finally, I stress that I express no view on the merits of any of the claims for judicial review and I express no views on whether or not any of the grounds of challenge will be made out. This judgment is concerned solely with the question of whether or not particular parts of the evidence should be withheld on grounds of public interest immunity. It is concerned with the question of what evidence should be available at the hearing of these claims. It does not express a view on that evidence. Ultimately, the court will have to consider the entirety of the evidence, and all the legal submissions, in determining whether any individual decision or any policy is or is not lawful.

THE LEGAL PRINCIPLES

Disclosure of documents in judicial review proceedings

12. Defendants may give disclosure of documents as a matter of good practice or as a means by which they ensure that they satisfy the duty of candour to lay before the court all the relevant facts and reasoning underlying the decision under challenge: see paragraphs 31 and 54 of *Tweed v Parade Commission for Northern Ireland* [2006] UKHL 53, [2007] 1 AC 650.

13. Disclosure is not, however, required in judicial review proceedings unless the court orders otherwise: see paragraph 10.2 of the Practice Direction 54A – Judicial Review. Orders for disclosure should only be made where the disclosure "appears to be necessary in order to resolve the matter fairly and justly": see paragraph 3 in *Tweed*. An application for specific disclosure may be made in judicial review proceedings pursuant to CPR 31.1(1).

14. Documents may be withheld where a defendant establishes that disclosure would damage the public interest, either under the existing common law principles relating to public interest immunity (the basis of the application in this case) or pursuant to CPR 31.19.

Public interest immunity

15. The relevant principles have been summarised by the Divisional Court on a number of occasions including in *R (Hoareau) v Secretary of State for Foreign and Commonwealth Affairs* [2018] EWHC 3825 (Admin) and more recently in *R (Public and Commercial Services Union and others) v Secretary of State for the Home Department* [2022] EWHC 823 (Admin). The principles were expressed by Singh LJ in *Hoareau* in the following way:

> "17. …PII is a ground for refusing to disclose a document which is relevant and material to the determination of the issues. A successful claim for PII renders a document immune from disclosure, depriving both the Court and the parties of relevant material, in contrast to a closed material procedure…A claim to PII can only be justified if the public interest in preserving the confidentiality of the document outweighs the public interest in the fair administration of justice.
>
> 18. The PII process involves three stages: see *Al Rawi v Security Services and Others* [2012] 1 AC 531 at [24]:at [24]:
>
> (a) the relevant minister must decide whether the documentary material in question is relevant to the proceedings in question, i.e. that the material should, in the absence of PII considerations, be disclosed in the normal way: see *R v Chief Constable of the West Midlands, ex p. Wiley* [1995] AC 275, 280F-281C;
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> (b) the minister must consider whether there is a real risk that it would cause serious harm to the public interest if the material were placed in the public domain;
>
> (c) the minister must balance the public interest in non-disclosure against the public interest in disclosure of the material for the purpose of doing justice in the proceedings, and, if appropriate, state in a PII certificate that it is in the public interest that the material be withheld.
>
> 19. However, it is the Court which is the ultimate decision-maker. It will consider whether the risk to the public interest that would be caused if the document were placed in the public domain can be mitigated sufficiently by other steps such that the balance of public interest favours some form of limited disclosure. These steps include all of the case management tools available to the Court, such as hearings in private, summaries, redactions, restricting the number of copies to be taken and the use of a confidentiality ring. The latter can also take various forms; for example, it may be confined to lawyers only and not include their lay client. There is no such thing as a class claim to PII any longer; the balancing exercise is undertaken by reference to the contents of the particular document in question.

> 20. Factors relevant to the balancing exercise include:
>
> (a) the seriousness of the claim in which disclosure is sought;
>
> (b) whether the Government is itself a party or alleged to have acted unconscionably;
>
> (c) the significance and relevance of the evidence to the case;
>
> (d) the importance of the public interest claimed;
>
> (e) the nature and degree of risk that disclosure presents; and
>
> (f) the nature of the litigation (see *Al Rawi at [102]* and *AHK & Others v Secretary of State for the Home Department* [2012] EWHC 117 (Admin) at [34] in the judgment of Ouseley J. "

16. In the present case, the defendant has taken the view that, subject to the question of public interest immunity, she would have disclosed the ten extracts as a means of ensuring that she had complied with the obligation to make full disclosure of the relevant facts and the reasoning underlying the decisions taken and the policy adopted. The real questions in this application, therefore, are whether disclosure of the material would give rise to a real risk of serious harm to the public interest and, if so, to balance that against the public interest in the administration of justice in a court having the fullest range of evidence possible when considering the claim, and to consider, amongst other things whether there is a more proportionate response that may be adopted which adequately protects the public interest short of excluding the material altogether. The balancing exercise was explained by Lord Neuberger of Abbotsbury MR at paragraph 25 of his judgment in the Court of Appeal in *Al Rawi* as follows:

> "As decided in *Conway v Rimmer* [1968] AC 910 explained in *Ex p Wiley* [1995] 1 AC 274 it is then for the Court to weigh, as Lord Simon of Glaisdale put it, "the public interest which demands that the evidence be withheld…against the public interest in the administration of justice that Courts should have the fullest possible access to all relevant material", and if "the former public interest is held to outweigh the latter, the `evidence cannot in any circumstances be admitted…On the other hand, if the Court concludes that the latter public interest prevails, then the document must be disclosed unless the Government concedes the issue to which it relates…As Lord Woolf said in Ex p Wiley …even where material cannot be disclosed, it may be possible and therefore appropriate, to summarise the relevant effect of the material, to produce relevant extracts, or even to produce the material 'on a restricted basis'."

THE PUBLIC INTEREST IMMUNITY CLAIM IN THE PRESENT CASE

17. As indicated, the application for public interest immunity was accompanied by a certificate signed by Mr Stuart MP on 29 July 2022. Under the heading "Serious Harm to the Public Interest", the Minister says this at paragraph 7 of the certificate:

> "7. I consider that the disclosure of the PII material to the Claimants, their legal representatives and the public would cause serious harm to an important public interest. In particular, I consider that disclosure would cause serious harm to the United Kingdom's international relations, primarily (but not exclusively) with the Government of Rwanda. I further consider that damage to the United Kingdom's international relations of the nature and extent that would be caused by disclosure of the PII material would also harm national security in light of Rwanda's status as a valuable strategic partner to the United Kingdom across a range of issues including regional security, the maintenance of a strong coalition in support of Ukraine, and combatting the activities of criminal gangs engage in illegal immigration."

18. The Minister confirms that he has considered whether disclosing a summary or a gist of the material, or disclosing the material into a confidentiality ring would be sufficient to prevent serious harm to the public interest and concludes, in effect, that such steps would not be sufficient to protect the public interest. The Minister then turns to the balancing exercise and says this at paragraphs 10 and 11 of the certificate:

> "10. Having concluded that disclosure of the PII material would cause serious harm to an important public interest that cannot be prevented by other means I have considered as the final stage of my analysis of the material, whether the balancing exercise described in *Wiley* comes down in favour of disclosure or PII. I have weighed the relevance and importance of the PII material to the determination of the issues in the case, which has included consideration of the other evidence that has been disclosed that bears on the issues to which the PII material relates. I have taken careful account of the important public interest in the maintenance of open justice which is a central feature of our democratic system. I have kept in mind that these are proceedings which directly concern the lawfulness of the Government policy relating to an issue of significant public interest and concern. I have balanced these important public interests against the serious harm to the United Kingdom's international relations and/or national security that would be caused if the PII material were to be disclosed.
>
> 11. After careful consideration, and applying the principles outlined above, I am satisfied that the balance of competing public interests comes down in favour of making a claim for PII in respect of the PII material and thus excluding it from the proceedings. I conclude that disclosure of the PII material would cause lasting and serious harm to the United Kingdom's internal relations and, by extension, national security. I

> consider that the nature and extent of that harm is such as to outweigh the public interest in the disclosure of the PII material in these proceedings."

19. Although paragraph 11 refers to the "United Kingdom's internal relations", I think that must be a reference to the United Kingdom's "international relations". At paragraph 12 of the certificate, the Minister very fairly accepts that the court has final responsibility for determining questions of disclosure and in particular "for deciding how the competing public interests engaged by this claim should be balanced".

20. The claimants who have made submissions have emphasised that the court is the ultimate decision-maker on questions of whether disclosure of any or all of the ten extracts would give rise to serious harm to the public interest, whether that is outweighed by the public interest in ensuring that the court has full information in order to deal with the claims and whether other measures, such as providing a gist or summary of the extract or disclosing an extract into a confidentiality ring would be sufficient to protect the public interest. The claimants in cases CO/2032/2022, supported by NA, AS and ASM, point out that a significant amount of material critical of the government of Rwanda has already been disclosed and submit that court should be astute to scrutinise the extent to which the redacted material goes beyond or is different from those criticisms. They submit that the certificate materially overstates the likelihood of serious harm in its reference to the maintenance of a strong coalition in support of Ukraine and fails to explain, and may materially overstate, the serious and lasting harm to the United Kingdom. Written submissions made on behalf of SAA submitted that there is no legal basis in the circumstances of this case for the Secretary of State to argue that international relations with Rwanda were likely to be damaged by disclosure of the redacted material. SAA's written argument submitted that is it not an inimical or unfriendly act for one state to criticise another and that the government of Rwanda ought to have known that its conduct would be reviewed in these proceedings.

21. Mr Bunting Q.C. made submissions on behalf of the media organisations. He emphasised the importance of open justice which enabled media organisations to report on material referred to in court proceedings. If the application for public interest immunity were granted, the extracts would not be available for use in the judicial review proceedings and could not be reported. Furthermore, Mr Bunting submitted that there was a particularly strong public interest in ensuring that the court has the fullest possible access to all relevant material in these proceedings, bearing in mind that they involve a challenge to the lawfulness of a major government policy involving significant public expenditure and public discussion.

DISCUSSION AND CONCLUSION

22. I start by considering the question of whether disclosure could give rise to a real risk of serious harm to the public interest. First, I accept that disclosure of the ten extracts would give rise to a real risk of causing serious harm to the United Kingdom's international relations particularly with Rwanda. I also accept that harming the United Kingdom's relations with Rwanda would undermine the ability of the United Kingdom to work with Rwanda in particular in matters relating to regional security with that area of the African continent and that would cause serious harm to the interests of the United Kingdom. I accept that disclosure of each of the ten extracts for

which public interest immunity is sought would cause serious harm to each of those public interests (subject to the question of whether the information is already in the public domain so that disclosure of these extracts would cause no further harm which I consider below).

23. Secondly, I recognise that the government of the United Kingdom regards a policy whereby those seeking asylum have their claims determined in Rwanda as a significant means of deterring people from seeking to cross the English Channel in boats or by other means. That, in turn, is seen by the government as a significant means of tackling the activities of criminal gangs engaged in bringing people to the United Kingdom. I accept that disclosing the material in issue in this case would undermine the development and implementation of that policy. Assuming that the policy on removing individuals to Rwanda is lawful, the disclosure of the material in this case would cause serious harm to that aspect of the public interest (again subject to the question of whether such material is already in the public domain which I consider below). However, it is right to recognise, too, that one of the principal aspects of these claims is to challenge the lawfulness of the arrangements governing removal of individual asylum-seekers to Rwanda. If the arrangements are unlawful – which is, of course, one of the issues that the court will have to consider and determine in the claims for judicial review - the policy cannot be relied upon as a means of deterring cross-channel entry to the United Kingdom by persons who claim asylum. Ultimately, I am prepared to accept that there is a public interest in not undermining the development and operation of a *lawful* policy providing for claims by asylum-seekers to be processed in Rwanda. I bear in mind, however, that there is also a strong public interest in the court having access to the fullest information possible to consider whether or not the policy is lawful. I will deal with that issue at the next stage when balancing the competing public interests in non-disclosure and the administration of justice.

24. Thirdly, I do not consider that I need to reach a conclusion on whether disclosure of the ten extracts would cause serious public harm to the maintenance of a strong coalition in relation to Ukraine. I recognise as a general proposition that development of relations with other nations is of significant benefit to the United Kingdom as it will assist the United Kingdom to build international alliances on matter of importance to the United Kingdom. However, I also understand the submissions of the claimants that it is not immediately apparent that any disruption in relations between Rwanda and the United Kingdom would have an effect on either country's approach to Ukraine. But it is not necessary to reach a concluded view on that matter as I do not consider that that issue would add any, or any material, weight to the harm to the public interest that I have already identified above.

25. I turn then to consider whether the interest of the administration of justice in the court having the fullest possible access to material considered relevant to the claim outweighs the harm to the public interest that I have found to exist in the present case. That involves careful consideration of each of the ten extracts and an assessment of its evidential significance to the allegations in the present case. I also consider whether the substance of the information contained in a particular extract is already in the public domain as, if so, disclosure of that information is unlikely to cause further serious harm to the public interest. There would need to be something additional or going beyond the existing information, causing serious harm to the public interest, to

justify withholding disclosure of a particular extract where the information in that extract was already in the public domain.

26. I start with the five extracts that constitute comments on the draft CPIN. These have been referred to in the sensitive schedule as items 6 to 10. I deal first with item 6. I consider that the first five words of that extract are already in the public domain. Disclosing those five words of item 6 would not, therefore, cause serious harm to the public interest. Furthermore, those five words have evidential significance in the context of these claims. I would regard the public interest in the court having access to those five words as outweighing any harm to the public interest. The position is different in relation to the remaining five words. I do not regard those words as evidentially significant to the claims in this case. The language used in those five words goes beyond the information already in the public domain. I consider that disclosure of the last five words of item 6 would cause serious harm to the public interest and competing interests do not outweigh that harm. I would therefore refuse to grant public interest immunity in the first five words but would do so in relation to the last five words of the extract in item 6.

27. Similarly, in relation to item 7, I regard the first 14 words of the extract as evidentially significant. Furthermore, the information contained in those 14 words do not go further than information that is already in the public domain. The last three words of the extract are different. They do go further than the information in the public domain. They are not evidentially significant in the context of these claims. I would therefore refuse to grant public interest immunity in the first 14 words but would do so in relation to the last three words of the extract in item 7.

28. In relation to item 9, the information in the extract (bar two words) is already in the public domain and disclosure of that extract (excluding the sixteenth and seventeenth words) would not cause any serious harm. The additional words do not have any evidential significance and go beyond the material in the public domain. Disclosure of those two words would cause serious harm to the public. I would therefore not therefore grant public immunity to the extract in item 9 (save for the sixteenth and seventeenth words).

29. It is not possible in this open judgment to set out in detail why the particular words to which I have referred to in items 6, 7 and 9 do go beyond the material already in the public domain and why they would cause additional harm to the public interest. I have set out those reasons in a brief private supplementary judgment.

30. Item 10 includes information already in the public domain and disclosure would not give rise to further harm. In any event, I regard that extract as having evidential significance. The interest of the court in having full access to that extract would, in any event, outweigh other public interests. I would refuse public interest immunity in relation to item 10

31. I have expressed my reasons broadly, lest there be any appeal against this conclusion (if more were said in this public judgment, that might render any appeal pointless). In short, the four items (items 6, 7, 9 and 10) include specific comments on the way that individuals have been treated and the information is in the public domain (save for certain parts of three of the items). In those circumstances, items 6, 7, 9 and 10 should be available to the court when it comes to consider whether or not the claimants have

established their legal claims. Certain specific words in items 6, 7, and 9 go beyond what is in the public domain and contain information which is not, evidentially, of significance in these claims. Having read the extracts, and having regard to matters referred to in the sensitive schedule, I am satisfied that these extracts are different in kind, content and tone from material that has already been disclosed. Disclosure of those specific words would give rise to a real risk of serious harm to the public interest identified above and those specific words do not need to be disclosed.

32. I have reached that conclusion having read the four extracts, and having considered the content of the extracts and their potential significance to the claims advanced by the claimants, and the other material already in the public domain. My conclusion is, however, reinforced by (but not dependent) upon certain of the factors referred to in paragraph 20 of *Hoareau.* These include the seriousness of the claims at issue (involving claims that individuals' rights under Article 3 of the Convention would be breached if they were removed to Rwanda), and the nature of the litigation and the fact that this is a challenge to the lawfulness of government policy on a matter of significant public interest where it is right that the court has access to information which appears to be relevant to its assessment of the lawfulness of that policy. I recognise that there is a strong public interest in not undermining international relations with a friendly state. Nonetheless, that consideration is outweighed by the public interest in ensuring access to relevant information in this litigation and by the extent to which the information is already in the public domain.

33. By contrast, I consider that the claim for public interest immunity for item 8 should be granted. The harm that would be done to the public interest in disclosing that extract is not outweighed by having that particular extract available to the court assessing the lawfulness of the decisions, and the policy, in issue in these cases. The extract is a generalised comment. It lacks the potential evidential significance of the other four extracts which, as I have said, include specific comments about the treatment of individuals.

34. I turn then to the accompanying e-mail. The five extracts that have been redacted are referred to as items 1 to 5 in the sensitive schedule. Items 1 and 2 involve relatively brief generalised comments, expressed in part in loose and imprecise language. They add little of evidential significance. I have no doubt that the disclosure of comments of this nature, expressed as they are, would harm the public interest in maintaining international relations. Given that the extracts are of no, or little, evidential significance, I consider that the harm to the public interest that would occur as a result of disclosure outweighs any other interest such as the administration of justice or the principle of open justice.

35. Item 3 contains material which is largely in the public domain. There are two parts – the first three words of item 3, and the twelfth to fourteenth words – which go beyond the information in the public domain. The information in those six words do not have evidential significance for the present claims. They would, however, cause serious harm to the public interest if disclosed. I would therefore refuse public interest immunity for item 3 save that I would grant it for the first three words and the twelfth, thirteenth and fourteenth words of that item.

36. Item 4 adds nothing to the material that has already been disclosed in these cases but, for the reasons explained in the private supplementary judgment, would have a

specific, adverse effect on the public interest in this case. The evidential significance of this item, given that the information appears elsewhere (including in the CPIN itself), does not outweigh the harm to the public interest that would be caused by disclosure.

37. The first sentence of item 5 contains information which is already in the public domain. Disclosure of that sentence would not cause further harm to the public interest. The second sentence of item 5 is different. It includes specific information which goes beyond that in the public domain. The information concerns events outside Rwanda. It has little, if any, evidential significance to the claim in this case. Disclosure of that sentence would cause serious and specific harm to the public interest. I would therefore refuse to grant public immunity to the first sentence of item 5 but I would grant it for the second sentence of that extract.

38. Where I have considered that disclosure of an item, or words or a sentence in an item, would cause harm to the public interest, I have also considered whether other methods such as disclosure to a confidentiality ring (even one limited to lawyers only, or to counsel only) or providing a gist or summary could mitigate any harm to the public interest. Providing a gist, or summary, would not be of any assistance in practice in this case. The short extracts simply do not have real evidential significance in light of the grounds of claim in these cases and summarising them or providing a gist is not, in truth, a necessary or a relevant option. Similarly, a confidentiality ring involving disclosure to what would inevitably be a large number of persons, including counsel, solicitors and the claimants would carry the risk of inadvertent disclosure to others. I do not consider that limiting the confidentiality ring to lawyers only, or counsel only, or a limited number of each and excluding claimants would be appropriate or feasible. In that regard, I bear in mind the observations of Ouseley J. in *R (AHK and other) v Secretary of State for the Home Department* [2013] EWHC 1426 (Admin) especially at paragraphs 23 to 27. Given the absence of, or limited, evidential significance of these extracts to the issues in these claims, the serious harm of disclosure to the public interest would not be adequately mitigated by a confidentiality ring. Disclosure within a confidentiality ring would not be an appropriate, or proportionate means of guarding against the real risk of serious harm to the public interest.

THE NEXT STEPS

39. As discussed at the hearing, a draft of the open judgment is to be provided to the defendant's counsel prior to the judgment being handed down to ensure that there has been no inadvertent reference to matters that were not to be disclosed. The claimants preferred that the open judgment then be handed down immediately, subject to editorial corrections, rather than time being taken by the claimants commenting on the draft. The claimants are to suggest any typographical corrections by 4 p.m. on Thursday 18 August 2022. I recognise that both parties may wish to appeal. Any application for permission to appeal must be made to the Court of Appeal by, in the case of the defendant, 4 p.m. on Monday 22 August 2022 and, in the case of the claimants, by 4 p.m. on Tuesday 23 August 2022.

40. I record my gratitude to counsel who appeared at the hearing for the focussed and helpful way in which they made their submissions.

CONCLUSIONS

41. In conclusion, therefore, I would refuse the application that the defendant be permitted to refuse to disclose items 3, 5, 6, 7, 9, and 10 (save for the specific words and the sentence identified above) in the sensitive schedule on grounds of public immunity. I would grant the application in relation to items 1,2, 4 and 8 in the sensitive schedule (and the specific words referred to in respect of items 3,6,7 and 9 and the last sentence of item 5).