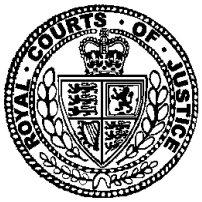

Neutral Citation Number: [2023] EWHC 1579 (Admin)

CO/2005/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27 June 2023

Before:

MR JUSTICE SWIFT

- -

Between:

(1) FMA	**Claimants**
(2) FMB	
(3) FMC	
(a child, by his mother and litigation friend, FMB)	
(4) FMD	
(a child, by her mother and litigation friend, FMB)	

- and -

Secretary of State for the Home Department	**Defendant**

- -

CHRIS BUTTLER KC & ELEANOR MITCHELL (instructed by **Barnes Harrild & Dyer Solicitors**) for the **Claimants**
CATHRYN McGAHEY KC & BEN FULLBROOK (instructed by **GLD**) for the **Defendant**

ZUBAIR AHMAD KC & DOMINIC LEWIS (instructed by **SASO), Special Advocates**

Hearing dates: 14 – 15 and 31 March 2023, and 9 June 2023

- -

Approved Open Judgment

This judgment was handed down remotely at 10.30am on 27 June 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE SWIFT

A. Introduction

1. The First Claimant is an Afghan national who worked as an interpreter in Afghanistan, first for British forces and then for the United States' army. In June 2021 he made an application to enter the United Kingdom together with his wife and children (the other Claimants in these proceedings). That application was made under the auspices of the Afghan Relocation and Assistance Policy ("the ARAP").

2. Application of the ARAP comprises two phases: the first phase addresses the applicant's eligibility to be considered under the policy. The eligibility requirements are now contained in the ARAP Appendix to the Immigration Rules. The First Claimant's work for British armed forces meant that he met the eligibility criteria, and this was confirmed in a letter to him dated 25 June 2021. In this case, the second phase concerned whether the First Claimant met the requirements to obtain a visa to enter the United Kingdom. In this case, that decision was taken by the Home Secretary by reference to the suitability requirements in Part 9 of the Immigration Rules. Paragraph 9.3.1 of the Immigration Rules provides as follows:

> "An application for entry clearance, permission to enter or permission to stay must be refused where the applicant's presence in the UK is not conducive to the public good because of their conduct, character, associations or other reasons (including convictions which do not fall within the criminality ground)."

(1) The decisions taken by the Home Secretary

3. In these proceedings the Claimants challenge the Home Secretary's decisions to refuse their applications for visas on the ground that the First Claimant's presence in the United Kingdom is not conducive to the public good. The Home Secretary has considered this matter on three occasions. The first was in a decision made on 4 August 2021 notified to the Claimant by letter dated 16 August 2021. That letter stated as follows:

> "You have sought entry clearance to the United Kingdom as a relevant Afghan citizen, however your presence in the UK has been assessed as not conducive to the public good on grounds of national security due to your conduct, character and associations. I am therefore satisfied that your presence in the UK would not be conducive to the public good. I therefore refuse you entry clearance to the UK under paragraph 276BC1 and 9.3.1 of Part 9 of the Immigration Rules."

The Claimants issued proceedings challenging that decision. The First Claimant made a witness statement dated 3 November 2021 in support of that claim. On 23 November 2021 the Home Secretary agreed to withdraw the August 2021 decision and reconsider the visa applications. The Home Secretary's second decision was notified to the First Claimant by letter dated 4 March 2022, which included the following:

> "You were previously informed of the decision to refuse your visa in a refusal notice dated 16 August 2021. Following a review of this decision, we agreed to reconsider your visa application and issue a fresh decision by 04 March 2022. We have undertaken a thorough reconsideration of your visa application for Entry clearance to come to the United Kingdom as a relevant Afghan citizen, taking into account all the information available to us, including the representations put forth by your solicitors. Our new decision is outlined below:
>
> You have sought entry to the United Kingdom as a relevant Afghan citizen, however your presence in the UK has been assessed as not conducive to the public good on grounds of national security based on your conduct and character as evidence reveals that you released sensitive information and threatened to kill coalition forces when this was discovered. I therefore refuse you entry clearance to the UK under Paragraph 276BC1 and 9.3.1 of Part 9 of the Immigration Rules."

4. The Home Secretary's open disclosure in these proceedings includes a "consideration minute" dated 4 March 2022 ("the March 2022 consideration minute"). This document, prepared by a case worker in the Home Office, was the premise for the decision in the 4 March 2022 letter. The relevant part is under the heading "Recommendation / Proposal". Although this is lengthy it needs to be set out for the purposes of this judgment (with paragraph numbers added for ease of reference later in this judgment).

> "1. I have considered the information in respect of [FMA], as well as the witness statements and evidence provided in support of [FMA's] application for judicial review, including those given by [FMA], his wife and his friends and the recommendation letter from Sergeant BARNHART.
>
> 2. The information outlines that [FMA] released sensitive information and when discovered that he shared sensitive information he threatened to kill.
>
> 3. [FMA] claims that his employment with the US forces ended on 20 September 2011. This is supported by Sergeant BARNHART's letter of recommendation. [FMA] claims that he was fired because he took unauthorised annual leave to care for his sick mother and this is the only reason he can think of which would lead to his application being refused. The decision depends on the act of disclosing sensitive information and then threatening to kill, behaviour which is serious irrespective of when it occurred.
>
> 4. Although it a single event from 10 years ago, the release of sensitive information is serious and reflects badly on of [FMA's] character. Irrespective of the intended recipients, releasing the information is negligent and reckless as it risks the

information reaching hostile actors. Given that the information was "sensitive", this has the potential for wide-ranging consequences. Due to his work for US Forces, [FMA] could have been exposed to information sensitive to Coalition Forces, including the United Kingdom. Therefore, releasing sensitive information has the potential to negatively impact not only the US and their personnel, but also the UK, and British and Coalition Forces more generally. There is also the possibility [FMA's] actions undermined the Coalition Force's mission in Afghanistan, which the UK were in agreement with. Therefore, whilst [FMA] may have released information when employed by the US and not British Forces, this activity could also have impacted upon the UK and its interests.

5. The threat to kill indicates a confrontational aggressive and reactive attitude which unnecessarily escalated the situation. The fact that [FMA] exacerbated his behaviour through threats to kill reinforces the seriousness of his conduct. It demonstrates that when challenged he chose to react negatively and aggressively, which raises questions about how he will react if he were challenged by the UK authorities or members of the public. Therefore, [FMA's] conduct which has demonstrated a willingness to respond with aggression when confronted, has indicated that if he were permitted entry to the UK, his presence could pose a potential threat to the UK public.

6. The seriousness of the conduct and the potential consequences of it outlined above would apply equally, irrespective of whether [FMA] engaged in this behaviour before or after being fired from the US Forces. Nevertheless, if the conduct occurred after [FMA] was fired it raises the possibility that the release of sensitive information was a deliberate act of retaliation. If taken in conjunction with the fact that he made a threat to kill when discovered it further reinforces the concerns about what [FMA] is willing to do when confronted, how he might react in the future, and the threat he could pose to the UK if granted a visa.

7. I have assessed as indicating that [FMA] could pose a threat to the UK public if granted a visa.

8. In support of his application, [FMA] has emphasised the danger that he was in during his work for British Forces, as well as emphasising that he agreed with the work of the British and American forces, and never had any complaints made against him. [FMA] also highlights the risk that he and his family faces and the impact that the Taliban takeover has had on his life. He also provides a letter of recommendation from Cody J BARNHARD, a retired Sergeant with the US Army who supervised him and supporting witness statements from two fellow interpreters who have been relocated to the UK.

> However, given that [FMA] failed to declare the fact that he had released sensitive information and threatened to kill when discovered, information that [FMA] could reasonably be expected to know. There is the possibility that they do not know about this information. Consequently, these positive representations cannot negate or sufficiently counter-balance the information against him. Neither can the praise that he received from his work for British and American forces, which does not negate the risk posed by the derogatory behaviour outlined in the information.
>
> 9. The factors in [FMA's] favour notwithstanding, the information indicates that, on balance, the refusal of [FMA's] visa is justified given the threat that he poses to the UK public. The seriousness and potential impact of [FMA's] release of information has been outlined. This release of information raises concern about [FMA's] character and conduct, which is reinforced by the threat to kill. The threat to kill raises questions about how he would respond if he came into conflict with UK authorities or members of the public, thus indicating that his presence in the UK could pose a threat to the UK public.
>
> 10. It is for HO to determine whether a person's in the UK is conducive to the public good.
>
> 11. For the reasons outlined above, I therefore assess that [FMA's] presence in the UK would not be conducive to the public good due to his character and conduct. Therefore, I recommend that [FMA's] visa application should be refused on national security grounds due to the threat he would pose if he were to be granted entry to the UK, and that his dependent wife and children's applications should be refused accordingly."

5. When these proceedings were commenced, the 4 March 2022 decision was the one under challenge. The First Claimant made a second witness statement (dated 26 May 2022) in support of this claim. On 23 October 2022 the First Claimant made a third witness statement. That statement was made in response to the Home Secretary's disclosure in this claim. That statement caused the Home Secretary to review her 4 March 2022 decision. On 13 January 2023 the Home Secretary wrote to the First Claimant as follows:

> "In the course of Judicial Review proceedings, FMA served further evidence in support of his case. The SSHD made an application for further time to consider this evidence, which was granted by the Order of [Collins Rice J] on 6 December 2022. The SSHD has considered the evidence submitted and an OPEN version of her supplementary consideration minute is enclosed. The SSHD confirms that her decisions of 4 March 2022 are maintained."

The consideration minute, dated 12 January 2023 ("the January 2023 consideration minute") addressed material provided by the First Claimant since the March 2022 decision. The section of this document headed "Recommendations/Proposal" first summarised matters arising from the First Claimant's second and third witness statements. The concluding part of this section then stated as follows:

> "Although the focus of this decision minute is on the new material and how this affects the decision previously taken, HO has also taken a step back and looked at all the material in the round taken together. HO acknowledges the positive factors in favour of [FMA] including his work for MOD and IMS and courage in his duty (which have been commended). HO has also considered the various possibilities of any mitigating circumstances that might explain [FMA's] behaviour. This includes, if [FMA] leaked the information innocently, whether he would still pose a national security threat, and the explanations provided in his evidence which has been considered in this decision minute. However, the significance of the release of the sensitive information cannot be overlooked as sensitive information in the wrong hands could have risked the lives of US and British troops and have undermined HMG's efforts. It is also assessed to be unlikely that sensitive information was leaked by accident. If that were the case, we would have expected [FMA] to have provided and explanation to this effect.
>
> On the basis of the consideration outlined above, and in the absence of any new evidence submitted by [FMA] that materially impacts the HO's previous decision to refuse [FMA's] visa, the conclusion remains the same.
>
> Overall it is HO's assessment that on balance, the refusal of [FMA's] visa is justified given the threat he poses to the UK public. [FMA's] release of sensitive information raises concern about his character and conduct, which is reinforced by his threat to kill. The threat to kill raises questions about how he would respond if he came into conflict with UK authorities or members of the public, thus indicating that his presence in the UK could pose a threat to the UK public and have serious consequences for UK national security. [FMA] has not provided any evidence that sufficiently mitigates our concerns and therefore we maintain our previous decision to refuse [FMA] and his dependent wife and children's applications."

(2) The Claimants' challenge

6. While the challenge is formally directed to the Home Secretary's March 2022 decision, her decision on reconsideration made in January 2023 was also at the forefront of the parties' submissions during the hearing. In the course of the hearing Mr Buttler KC, for the Claimants, reformulated the submissions in his written skeleton argument to focus

on the following matters. First, a submission made by reference to the judgment of Court of Appeal in *R(YH) v Secretary of State for the Home Department* [2010] 4 All ER 448 to the effect that in cases such as the present, where the court is required to apply a standard of anxious scrutiny, it is for the court to decide which matters are relevant to the decision in hand, and the decision-maker must show that there has been reasonable enquiry into each such matter identified by the court to be a relevant consideration. The second and third grounds are that the Home Secretary's decision in this case was made in breach of her policy: (a) because it did not assess the risk the Claimants now face in Afghanistan arising from the First Claimant's earlier work with UK armed forces; and (b) because what it is alleged the First Claimant did is insufficiently serious to support a conclusion that his presence in the United Kingdom is not conducive to the public good. In the alternative, these two grounds are put on the basis that in these respects the Home Secretary failed to comply with her *Tameside* obligation of reasonable enquiry. The fourth ground of challenge also relates to the *Tameside* obligation and is that the Home Secretary failed to take reasonable steps to satisfy herself that the information against the First Claimant was reliable; and failed properly to consider whether the allegations against the First Claimant rested on mistaken identity; and failed to make proper enquiries as to the nature of the allegations against the First Claimant. The fifth ground is that the Home Secretary should have, but did not, consider why a number of other decisions on visa applications made under ARAP, taken in August 2021, were later withdrawn in the face of legal challenge or the threat of legal challenge. Lastly, sixthly, the Claimants contend that the issues in this case should be decided on the basis of the full article 6-compliant disclosure required to meet the standard identified by the House of Lords in *AF v Secretary of State for the Home Department (No.3)* [2010] 2 AC 269.

7. As the final ground of challenge suggests, and as can be inferred from the Home Secretary's decisions letters, the decisions challenged have relied on intelligence information. These proceedings have been conducted using the closed material procedure provided for under the Justice and Security Act 2013. Special Advocates have been appointed to represent the Claimant's interests so far as concerns the intelligence ("closed") material that the Home Secretary relies on. The hearing has been conducted in open session when the Claimant's lawyers have been present, and closed session attended only by those representing the Home Secretary, and the Special Advocates. The part of this judgment which concerns matters based on or arising from the closed evidence will be marked as "closed" and will not be publicly available.

B. Decision

(1) Ground 1. The consequences of the judgment in R(YH) v Secretary of State for the Home Department

8. Mr Buttler's submission relies on passages in the judgment of Carnwath LJ in *R (YH) v Secretary of State for the Home Department* [2010] 4 All ER 448. On that occasion the Court of Appeal considered the approach the court should take to decisions by the Home Secretary taken in exercise of the power at section 94 of the Nationality Immigration and Asylum Act 2002, the power to withdraw the right of appeal against a decision on an asylum or human rights claim by certifying the claim to be "clearly unfounded". The primary issue in that case concerned the court's role on judicial review of a section 94 certification decision. Carnwath LJ, on review of the authorities, reached the conclusion that when a certification decision was considered by the court

on an application for judicial review, the court was entitled to exercise its own judgment on whether the claim was clearly unfounded, albeit that it must decide the issue only by reference to the material that had been available to the Home Secretary (see the judgment at paragraphs 17 – 21). Thus, although the claim was for judicial review, Carnwath LJ's conclusion was that the court should take an approach that was unorthodox by reference to ordinary principles of judicial review, and stand in the shoes of the Home Secretary.

9. Having reached that conclusion, Carnwath LJ then continued under the heading "anxious scrutiny".

> "22. The expression "anxious scrutiny" derives from the speech of Lord Bridge in *Bugdaycay v Secretary of State* [1987] AC 514, 531, where he said:
>
> > "The most fundamental of all human rights is the individual's right to life and when an administrative decision under challenge is said to be one which may put the applicant's life at risk, the basis of the decision must surely call for the most anxious scrutiny."
>
> 23. It has since gained a formulaic significance, extending generally to asylum and article 3 claims (see e.g. *MacDonald* para 8.6). Thus, in *WM (Democratic Republic of Congo) v Secretary of State* [2006] EWCA Civ 1495, Buxton LJ explained that where asylum was in issue –
>
> > "… the consideration of all the decision-makers, the Secretary of State, the adjudicator and the court, must be informed by the anxious scrutiny of the material that is axiomatic in decisions that if made incorrectly may lead to the applicant's exposure to persecution."
>
> It has now become an accepted part of the canon, but there has been little discussion of its practical significance as a legal test.
>
> 24. As I suggested in *AS(Sri Lanka)* (para 39), the expression in itself is uninformative. Read literally, the words are descriptive not of a legal principle but of a state of mind: indeed, one which might be thought an "axiomatic" part of any judicial process, whether or not involving asylum or human rights. However, it has by usage acquired special significance as underlining the very special human context in which such cases are brought, and the need for decisions to show by their reasoning that every factor which might tell in favour of an applicant has been properly taken into account. I would add, however, echoing Lord Hope, that there is a balance to be struck. Anxious scrutiny may work both ways. The cause of genuine asylum seekers will not be helped by undue credulity towards those advancing stories which are manifestly contrived or riddled with inconsistencies."

10. Mr Buttler's submission is that the present case is one where the court should apply the anxious scrutiny standard, and the consequence of that is that it is for the court to decide for itself which matters are relevant and which are not, rather than apply the ordinary *Wednesbury*-based approach explained by Cooke J in *CREEDNZ Inc v Governor General* [1981] 1 NZLR 172, approved by the House of Lords in *R v Findlay* [1985] AC 318 per Lord Scarman at pages 333F - 334D. Mr Buttler further submits that, having decided for itself which matters were relevant, the court should then ask, in relation to each, whether the Home Secretary had complied with the *Tameside* obligation of reasonable enquiry.

11. I do not accept this submission. I do not (and would not want to) disagree with Carnwath LJ's general observations on the nature of anxious scrutiny. It is, as he explains, a judicial state of mind applied in situations where it is apparent that the decision under challenge affects a vital interest of the claimant and, that being so, the legality of the decision is a matter of particular concern. Rather, Mr Buttler's submission does not recognise the distinction between that general concern and the context for paragraph 24 of Carnwath LJ's judgment. In *YH*, Carnwath LJ had already decided that the correct approach to the Home Secretary's decision under section 94 of the 2002 Act was that the court should decide "the clearly unfounded" question for itself, subject only to the limitation that the court could only consider material available to the Home Secretary. That was the context for the observation that the Home Secretary's reasoning should "show" "that every factor which might tell in favour of an applicant has been properly taken into account". Put another way, Carnwath LJ was not saying anxious scrutiny of itself changes the principles that apply to determine the legality of a decision, he was only making the point that it described a particular approach to the application of such principles in some cases. To the extent that Carnwath LJ re-moulded judicial review principles in that case it was only to the extent necessary to address a challenge to a decision made under section 94 of the 2002 Act.

12. The present context is materially different. The Home Secretary's decision in this case, on whether the First Claimant's presence in the United Kingdom was conducive to the public good, is not a decision a court may second-guess. The proper approach for the court in a case like this cannot be the same as the approach that Carnwath LJ concluded was correct when the challenge was to a decision made under section 94 of the 2002 Act. In this case the court should not decide for itself what matters are relevant; the legality of the Home Secretary's decision must depend on the principle explained in *CREEDNZ Inc*, applied in the context of paragraph 9.3.1 of the Immigration Rules and the Home Secretary's own policy on not conducive grounds for refusal. That is the proper context for application of the *Tameside* obligation of reasonable enquiry.

(2) Grounds 2 and 3. The decision was taken in breach of the Home Secretary's policy.

13. The relevant policy is in the 10 November 2021 document "*Suitability: non-conducive grounds for refusal or cancellation for entry clearance for permission*" ("the policy"). Two submissions are made on the Home Secretary's application of that policy on this case.

14. The first submission is that although the policy required the Home Secretary when determining the not conducive to the public good question, to take account of the nature

and extent of the risk the First Claimant faced in Afghanistan, the Home Secretary failed to follow her policy by not considering that risk in this case. The Claimants rely on two passages in the policy. In the introduction to the policy the following appears:

> "Non-conducive to the public good means that it is undesirable to admit the person to the UK, based on their character, conduct, or associations because they pose a threat to UK society. This applies to conduct both in the UK and overseas.
>
> The test is intentionally broad in nature so that it can be applied proportionately on a case-by-case basis, depending on the nature of the behaviour of the behaviour and the circumstances of the individual. What may be appropriate action in one scenario may not be appropriate in another. All decisions must be reasonable, proportionate and evidence-based.
>
> You must be able to show on a balance of probabilities that a decision to refuse is based on sufficiently reliable information. You must consider each case on its individual merits."

Particular reliance is placed on the reference to the "circumstances of the individual" and on the requirement that decisions are reasonable and proportionate. The second passage relied on appears under the heading "*When is a person's presence in the UK not conducive to the public good?*". This part of the policy lists matters relevant to the not conducive to the public good decision. At the end of the list the following is stated:

> "This list is not exhaustive. In all cases, you must consider what threat the person poses to the UK public. You should balance factors in the individual's favour against negative factors to reach a reasonable and proportionate decision."

The Claimants' submission is that factors in an individual's favour should include any risk he faces if not granted a visa to enter the United Kingdom.

15. I do not consider the policy requires the Home Secretary, when deciding the not conducive to the public good issue, to have regard to the risk the First Claimant now faces in Afghanistan were the visa application to be refused. The policy only concerns the application of paragraph 9.3.1 of the Immigration Rules. That paragraph requires the Home Secretary to refuse an application "… where the applicant's presence in the UK is not conducive to the public good" because of conduct, character, association or other reason, and the parts of the policy the Claimants rely on are to be understood in that context. Paragraph 9.3.1 does not require the Home Secretary to balance harm to the public good against other matters such as harm the applicant might face if not permitted to enter the United Kingdom. Rather, the only matter for the Home Secretary is to decide whether the applicant's presence in the United Kingdom is not conducive etc. Logically, the answer to that question is independent of any risk the applicant would fact if not permitted to enter the United Kingdom.

16. The passages in the policy the Claimants rely on do not suggest otherwise. In the first passage, the "circumstances of the individual" more naturally point to circumstances relevant to the not conducive question and not to matters that might weigh in favour of

admission to the United Kingdom even though the applicant's presence in the United Kingdom would, by reason of other matters, not be conducive to the public good. Similarly, the reference in the second passage to "factors in the individual's favour" is better and more naturally read as referring to matters tending to show the not conducive standard is not met in the case in hand, not to matters logically distinct from that enquiry.

17. I accept, as the Claimants have submitted, that whether an applicant is at risk from harm is relevant to whether he meets the eligibility requirements under the ARAP Appendix to the Immigration Rules. The eligibility requirements are at paragraphs ARAP 3.1-3.7. Paragraph ARAP 3.3 requires each applicant to meet any of the requirements at ARAP 3.4 or 3.5 or 3.6. Each of those paragraphs includes reference to whether the applicant's safety is at risk. Thus, eligibility under ARAP does require consideration of personal risk an applicant faces. However, this does not affect the proper reading of the suitability policy. Under the Immigration Rules, the issue of eligibility ARAP is separate from the decision whether to issue a visa to enter the United Kingdom. An application that does not meet the conditions in the ARAP Appendix will fail. But when the requirement in the ARAP Appendix is met, the only consequence is that the applicant may then make an application for entry clearance: see ARAP 5.1. The entry clearance application is distinct from the ARAP eligibility question. Even though whether the applicant is at risk is relevant to the latter application, that says nothing as to the relevance of that matter for the purposes of the former application.

18. For sake of completeness, the March 2022 consideration minute did include reference to the risk the First Claimant now faces, referring to it as one of the matters in the First Claimant's favour (see paragraphs 8-9 of the passage set out above at paragraph 4 of this judgment). The Claimants submit that there is no assessment of the risk faced. I do not consider that is a valid criticism. As written, the consideration minute accepts the First Claimant's evidence of the risk and takes that into account. For the reasons already given, I do not consider the policy required the Home Secretary to take this matter into account. Nevertheless, this part of the March 2022 consideration minute shows that the matter was considered and, on that basis, I cannot see that the reasoning in this part of the minute reveals any legal error. Since the First Claimant's evidence on this matter appears to have been accepted no further assessment or analysis of it was required.

19. The Claimant's second submission by reference to the policy is that the conclusion on the not conducive to the public good issue was contrary to the policy because there was no evidence that anything the First Claimant had done was sufficiently serious to meet the standard the policy requires.

20. Part of the evidence relevant to this ground is closed evidence considered only in the closed part of the hearing. The Home Secretary's open case was that the First Claimant had "released sensitive information and threatened to kill coalition forces when this was discovered". This was the reason given in the 4 March 2022 decision letter and it is also the reason stated in the March 2022 consideration minute (see at paragraph 2 of the passage set out above).

21. The First Claimant's evidence on the matter is as follows. In his first witness statement, made on 3 November 2021, the First Claimant said that he started work as an interpreter for British Forces in 2010, but only worked about 4 months. He said he resigned either in November or December 2010 because his family considered the work too dangerous

and persuaded him to leave. The First Claimant then said that "towards the end of 2010" he changed his mind and asked to return to his job. He was told he could not because he had resigned and there was a policy not to re-employ people who had resigned until a period of time had passed. The First Claimant said he then applied to work for American forces and started with them on 24 February 2011. He said that in September 2011 his mother became ill and he took "emergency leave". This leave appears to have been unauthorised; the First Claimant's evidence refers to taking emergency leave only after a request to take annual leave had been refused. He also explained that when he returned, on 20 September 2011, he was paid and required to accept a letter of termination. He said he accepted the termination letter because he needed the termination money to support his sick mother. His evidence is that later he tried to visit British Forces in Kabul but was refused entry and was told he had "issues" with American forces that he needed to resolve before he could be allowed to work with British armed forces again. In this statement the First Claimant said that during his time working with American forces no complaints were made against him.

22. The First Claimant's second statement was made on 26 May 2022 following the 4 March 2022 decision letter. In this statement he described an incident that took place "one day around 2011" when he was working for American forces.

> "11 … I was in Kandahar Airfield and I went to the internet club (MWR). One of my childhood friends contacted me on my phone, he was asking me where I was and asked me why he hadn't seen me in such a long time. I trusted this friend of mine and I told him I was working for the Americans as an interpreter and that I was in Kandahar. He then asked me to add him as a friend on Facebook so that we could remain in contact with each other. That is how I stayed in contact with family and friends through Facebook.
>
> 12. I asked him what name I could find him under in Facebook he told me to search for "Mihrullah Koshan." I searched him up on Facebook. The Facebook algorithm pulled up numerous individuals with that name and similar names so, I sifted through each name so that I could find my friend and add him. I clicked on one of the individuals when one of the Americans who was working in intelligence nudged me. He asked me whether I knew the person I was looking at. I explained to him, that I was looking for a friend of mine and that I was going through everyone's profiles with the same or similar name. He asked me whether I minded him looking at the computer, I allowed him to do so.
>
> 13. He went on the computer I was using for about 5 minutes. After a while he apologised and told me that I could continue using the computer. I thought that that was the end of it. I did not know who this individual was because he was from a different camp than mine.
>
> 14. I then returned to our base camp in Shindand Airbase where one of the team members from ODA1314 pulled me to the

> side and told me someone had filed a complaint against me. Naturally, I was surprised and shocked about this. I asked who the person was and what he complained about. The person told me that while I was in Kandahar Airfield, an individual complained about me having potentially contacted someone who may have been from the Taliban. I then realised that this may have been due to me searching for my friend on Facebook. I told him what happened i.e. that I was searching for my childhood friend on Facebook and going through different profiles with the same or similar names."

The First Claimant stated all this happened just before he took the emergency leave.

23. The First Claimant's third statement was made on 23 October 2022 and includes the following:

> "4. I wish to provide further information during my employment with the British and Americans. Below I am providing various possibilities for why I may be considered a national security risk.
>
> 5. One of my many tasks when I worked with the Americans was to intercept communications between the Taliban and any of their allies. We had to listen in on their conversations between each another to see whether they would release information which would be of value to the Americans e.g. details of when they would plant bombs or who they would target etc. This was a one way communication system in that we could only listen to them, they could not listen to us so it was not possible to speak with them.
>
> 6. Whenever, the Taliban released information which provided insight on their next attack, we had to immediately go to our superiors and report it so that they could prevent the attack. Due to the communication stream being one way, whenever the Taliban used to disclose details of their plan, the interpreters, including myself, would joke around and say, "you won't be able to do anything". I believe the Americans may have interpreted this as meaning I was communicating with them but, I am not entirely sure because, they would know we would not be able to speak with the Taliban, we could only listen to them."

24. The Home Secretary's open evidence does not contain any further detail of the release of sensitive information and threat to kill referred to in the reasons provided with the 4 March 2022 decision letter. Both consideration minutes, of March 2022 and January 2023, consider the significance of these matters but neither contains any further detail of what is said to have happened. The Claimants' submission is that the Home Secretary's

conclusion that the not conducive to the public good standard as explained in the policy was met, was not reasonably opened to her on the evidence available.

25. The policy makes clear that a conclusion that the not conducive to the public good standard is met does not depend on whether or not the applicant has criminal convictions. The policy refers to "reprehensible behaviour falling short of a conviction". However, looking at the policy in the round, a certain level of gravity is required. The policy requires the Home Secretary to consider the nature and seriousness of the behaviour, the frequency of the behaviour, the difficulty that admitting a person who had behaved in that way to the United Kingdom could cause, and any other relevant circumstances concerning the applicant. The policy then lists situations where a person's presence in the United Kingdom may not be conducive to the public good. That list is as follows:

> - The person is a threat to national security, including involvement in terrorism and membership of prescribed organisations.
>
> - The person has engaged in extremism or other unacceptable behaviour.
>
> - The person has committed serious criminality.
>
> - The person is associated with individuals involved in terrorism, extremism, war crimes or criminality.
>
> - Admitting the persons to the UK could unfavourably affect the conduct of foreign policy between the UK and elsewhere.
>
> - There is reliable information that the person has been involved in war crimes or crimes against humanity – it is not necessary for them to them to have been charged or convicted.
>
> - The person is the subject of an international travel ban imposed by the United Nations (UN) Security Council or the European Union (EU), or an immigration designation (travel ban) made under the Sanctions and Anti-Money Laundering Act 2018.
>
> - The person has committed immigration offences.
>
> - If admitted to the UK the person is likely to incite public disorder."

The remainder of the policy provides commentary on each item.

26. The most that can be said in the open part of this judgment is that I am satisfied that it was open to the Home Secretary to conclude on the information available to her in this case that the First Claimant's presence in the United Kingdom was not conductive to the public good. Notwithstanding the need for anxious scrutiny in the sense explained by Carnwath LJ in his judgment in *YH*, the court may not substitute its own assessment for that of the Home Secretary on an issue of this sort. Further, given the nature of the not conductive to the public good criterion, latitude must be afforded to the Home Secretary

to assess for herself where the public interest lies. Further still, when taking her decision on this matter the Home Secretary is also entitled to adopt a precautionary approach. That goes to the extent of the latitude to be allowed. The conclusion that the First Claimant's actions were sufficient to warrant a decision to reject his application to enter the United Kingdom was a reasonable available option. The policy requires any assessment "to be reasonable, proportionate and evidence-based". I am satisfied the conclusion in this case met those requirements.

(3) Ground 4. Did the Home Secretary comply with the Tameside obligation of reasonable enquiry?

27. One aspect of the *Wednesbury* principles, explained by the House of Lords in *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1044, is that a decision-maker must take reasonable steps to acquaint herself with relevant information. In this case, the Claimants submit that various enquires should have been made: had the intelligence relied on been provided by a US soldier acting maliciously; had the "joke" explained by the First Claimant in his third witness statement led to a misunderstanding; had his attempt to contact Misrullah Kashan by Facebook been misinterpreted; was the problem one of mistaken identity, had there been confusion between the First Claimant and someone else with a similar name; had the release of information had been by accident rather than on purpose; what was the context for the alleged threat to kill, was it, for example, only words perhaps spoken in the heat of the moment?

28. Since the *Tameside* obligation is an aspect of *Wednesbury* principles it does not set a requirement to make exhaustive enquiry. The decision-maker must make such enquiries as are reasonable in the circumstances of the case. What is reasonable is, in the first instance, for the decision-maker. The court will intervene only either where a decision-maker acting reasonably would have made the enquiries in issue, or an obligation to make the enquiry arises from some other source (e.g. from the relevant statutory scheme, or a legitimate expectation that the enquiry would be made). In this case, the narrative of how the Home Secretary took her decisions is set out in the closed evidence. For the reasons set out in the closed part of this judgment I am satisfied that the Home Secretary did take reasonable steps to acquaint herself with the information needed to address the not conducive to the public good question.

(4) Ground 5. Was any or any sufficient consideration given to the reasons why other decisions on visa applications under the ARAP scheme were withdrawn?

29. The Claimants' contention is that because a significant number of decisions taken in August 2021 on visa applications made by ARAP applicants were withdrawn and re-taken in the face of actual or threatened legal challenge, there is an inference to be drawn that there was or might have been some generic flaw in the decision-making process for this type of application so that, before taking the March 2022 (or January 2023) decisions, the Home Secretary ought to have investigated what had happened in those other cases.

30. Whichever way this point is put, its substance is whether, when taking the decisions under challenge in this case, the Home Secretary failed to take account of a relevant matter. In the circumstances in which these decisions came to be taken it was for the Home Secretary to decide, subject to *Wednesbury* principles, whether what had

happened when other visa applications were decided was a relevant consideration for the purpose of deciding the Claimants' visa applications. Nothing in the Immigration Rules or the policy suggests any different standard applies.

31. I do not consider the Claimants' submission to be a submission of substance. The Home Secretary was entitled to consider the merits of the Claimants' visa applications on their own terms, without reference to other decisions taken in other cases on different facts. Taking account of the explanation in the closed evidence of the decision-making process, and the matters considered when the decision was taken, it is clear that the Home Secretary was entitled to proceed on the basis that there was no generic problem affecting decisions on visa applications made by ARAP applicants that needed to be considered for the purposes of the applications made by these Claimants. In this regard, it is notable that the Claimants' visa applications were considered on three separate occasions. That sequence of events did not indicate the presence of any generic problem. Rather, the series of decisions was the consequence of the way in which the evidence available developed, as the First Claimant was able, for example, to respond to documents disclosed by the Home Secretary as each of the judicial review claims progressed. The evolution of evidence in this way may not be the usual course in judicial review proceedings but on occasion it does happen. In this case, the first decision in August 2021 was taken without the First Claimant having had an opportunity to make representations. Given the nature of the enquiry required by paragraph 9.3.1 of the Immigration Rules on the not conducive to the public good question there was nothing untoward in that, but it does explain why, in this case, the Home Secretary went on to reconsider her decision in light of the First Claimant's first witness statement. The further reconsideration followed his subsequent witness statements. None of this raises any point of criticism of the First Claimant. Yet it is sufficient to explain the sequence of events in this case when the Home Secretary took her decision in August 2021, then re-took it in March 2022, and revisited it again in January 2023, without need to resort to the possibility that this sequence suggests some underlying problem with the decision making either in this case or in relation to ARAP applications more generally.

32. For these reasons the Home Secretary committed no legal error by confining her consideration of the Claimants' visa applications to the circumstances of their own cases.

(5) Ground 6. Do the decisions taken by the Home Secretary on the visa applications engage the application of ECHR article 6?

33. The Claimants' submission is that these proceedings entail determination of article 6 civil rights and obligations such that there must be disclosure to the Claimants (as opposed only to Special Advocates) to the extent explained by the House of Lords in *Secretary of State for the Home Department v AF (No.3)* [2010] AC 269. The submission here is to the same effect as the submission on article 6 and disclosure I considered and rejected in *R(ALO and others) v Secretary of State for the Home Department* [2022] EWHC 2380 (Admin).

34. On the facts of this case there is a very short answer to the article 6 submission. The Home Secretary submits, and the Special Advocates agree, that even if it were assumed that these proceedings were subject to the principle stated in *AF (No. 3)*, there would be no further documents to disclose. That is sufficient to dispose of this ground of challenge.

Nevertheless, having heard submissions from counsel I will address the merits of their arguments on the law.

35. The issue in *ALO* was whether the court's decision on the legal merits of the Home Secretary's decisions on visa applications made by ARAP applicants was a determination of civil rights and obligations for the purposes of article 6. I concluded it was not. At paragraphs 16 – 19 of my judgment I said this:

> "16. I accept the Secretary of State's submission that article 6 does not apply to these proceedings because they do not entail determination of any civil right or obligation. This conclusion is an inevitable consequence of the judgment of the European Court of Human Rights in *Maaouia v France* (2001) 33 EHRR 42. That case concerned proceedings consequent on a deportation order. The Court concluded (at paragraph 38) that the subject matter of the proceedings did not concern the determination of a civil right within the meaning of article 6(1). The Court recognised that deportation could have major repercussions for a person's family and private life or on other matters – such as employment – that might be the subject of article 6 civil rights. However, that did not bring the challenge to the deportation order within the scope of article 6. At paragraph 40 of its judgment, the Court went on to say this:
>
> > "The Court concludes that decisions regarding the entry, stay and deportation of aliens do not concern the determination of an applicant's civil rights or obligations or a criminal charge against him, within the meaning of Article 6(1) of the Convention."
>
> 17. In its judgment in *MN v Belgium* (Application 3599/18, judgment 5 March 2020), the Court repeated this conclusion: see that judgment at paragraph 137. The Court went on to state that the simple fact that a dispute was before a court did not mean it concerned or required determination of an article 6 civil right. What mattered was the nature of the issue in dispute and the nature of the decision under challenge, not the forum in which the challenge was pursued: see the judgment at paragraph 138 and 139.
>
> 18. The Claimants make four submissions seeking to avoid the application of these conclusions to the present case. The first, third and fourth points made are all to the effect that this case is distinguishable because of the May 2021 ARAP decision. The only reason, it is said, that the First Claimant was eligible to make an application under paragraph 276BA1 of the Immigration Rules was that he was eligible under the ARAP by reason of his former employment as an interpreter for British armed forces. This is not a material matter. It does not change the nature of the decisions made by the Secretary of State in November 2021, decisions on whether to grant the First

> Claimant and his family permission to enter the United Kingdom. The remaining, second, submission made by the Claimants is that the conclusion in *Maaouia* that article 6 did not apply, depended on the conclusion that article 1 of Protocol 7 to the ECHR did not apply. The material part of the Court's reasoning is at paragraphs 36 and 37 of the judgment:
>
> > "36. The Court points out that the provisions of the Convention must be constructed in line with the entire Convention system including the Protocols. In that connection, the Court notes that Article 1 of Protocol No. 7, an instrument that was adopted on 22 November 1984 and which France has ratified, contained procedural guarantees applicable to expulsion of aliens. In addition, the Court observes that the preamble to that instrument refers to the need to take "further steps to ensure the collective enforcement of certain rights and freedoms by means of the Convention …". Taken together, those provisions show that States were aware of Article 6(1) did not apply to procedures for the expulsion of aliens and wished to take special measures in that sphere …
> >
> > 37. The Court therefore considers that by adopting Article 1 of Protocol No. 7 containing guarantees specifically concerning proceedings for the expulsion of aliens the States clearly intimated their intention not to include such proceedings within the scope of Article 6(1) of the Convention."
>
> 19. This does not support the conclusion that Article 6 applies in the present case. In *Maaouia* the Court referred to article 1 of Protocol 7 as an aid to interpretation of article 6 ECHR. However, its conclusion on the scope of article 6 is clear. Decisions of the type identified at paragraph 40 of the judgment (and also referred to at paragraph 35 of the judgment) are not decisions on civil obligations and therefore are not within the scope of article 6. The Court did not conclude that only matters within article 1 of Protocol 7 were outside the reach of article 6."

36. Mr Buttler's submission is that the conclusion in *ALO* is *per incuriam* because it was reached without consideration of the judgment of the Court of Appeal in *R(K) v Secretary of State for Defence* [2017] 1 WLR 1671. He further submits that even if article 6 does not apply, the Claimants still have an equivalent right to disclosure in these proceedings because the Home Secretary's decision to refuse the visa applications was an interference with article 8 rights, and whether that interference is proportionate involves consideration of whether an appropriate procedure applied when the decision was taken.

37. The article 8 submission decision does not assist the Claimants' case. Article 8 procedural rights are not generally interchangeable with article 6 rights. Article 6 has been carefully formulated; it has a particular scope. Article 6 and article 8 procedural rights will usually have different targets: the former focused on court or equivalent

proceedings; the latter, in most instances, concerning the fairness of administrative decision-making where the decision interferes with article 8 rights and fairness is considered relevant to whether that interference is a justified. In situations where article 6 is the *lex specialis* (or at least, the more obviously appropriate standard), general resort to procedural obligations that have been read-in to other Convention rights for situations beyond the reach of article 6, must be undertaken with great caution to guard against the risk of subverting the overall scheme of the Convention rights.

38. Mr Buttler's submission seeks to blur (or even erase) the distinction between article 6 and article 8 procedural rights by contending that here the Home Secretary's decision and the determination in these proceedings of the legality of her decision are parts of a single "process" with which the Claimants have not been sufficiently involved. Thus, he submits, article 8 requires disclosure that is not available under article 6. This submission is clever, but wrong. There is no single "process": on the one hand there was the Home Secretary's decision on the visa applications; and on the other hand, there are these court proceedings in which the legality of her decisions is determined. In this context, the respective reaches of article 6 and article 8 procedural protections are clearly distinct. There is no principled basis for a submission that an appropriate application of Convention rights would permit the Claimants, by resort to article 8, to avoid (alternatively, *de facto* expand) the well-established scope of what count as civil rights and obligations for the purpose of article 6. Mr Buttler's skeleton argument referred to a number of decisions of the European Court of Human Rights. But none of those judgments is authority for the proposition that article 8 and article 6 procedural rights are generally interchangeable.

39. Nor do I consider that the judgment of the Court of Appeal in *K* requires me to alter the conclusions on the reach of article 6 civil rights and obligations stated in my judgment in *ALO*. In *K*, the claimants claimed they had worked for the Ministry of Defence in Afghanistan as covert human intelligence sources. They challenged failures by the Defence Secretary and the Foreign Secretary to relocate them within Afghanistan and meet the cost of that relocation. Among other matters, the claimants contended that the Secretaries of State's failure was in breach of their own policies, and in breach of the claimants' rights under articles 2, 3 and 8 of the Convention. The Court of Appeal's conclusion (so far as relevant for present purposes) was that determination of the legality of the failure to relocate and meet the cost of relocation did entail determination of civil rights and obligations for the purpose of article 6, and that disclosure in the proceedings had to be such as to ensure the proceedings were article 6-compliant.

40. There is no inconsistency between the conclusion in that case and the conclusion in this case that determining the legality of the Home Secretary's decisions on the visa application does not, for article 6 purposes, entail determination of any civil right or obligation. The Claimants' submission to the contrary rests on the contention that a successful challenge to the Home Secretary's visa decisions could mean that they would enjoy the benefit of the relocation package available to all those who, like the First Claimant, have been determined to meet ARAP eligibility requirements. Thus, submit the Claimants, the decision of the court in these proceedings determines their entitlement to that relocation package and therefore entails determination of a civil right within the scope of article 6 – i.e., the right to the relocation package. In further submissions made after the Home Secretary had filed her Re-re-amended Summary Grounds of Defence, the Claimants contended that availability of the relocation

package included a right to be removed from Afghanistan at least as far as the United Kingdom border, and that the court's decision on whether the Home Secretary's refusal to grant the visa applications was lawful was a determination of that right.

41. These submissions are wrong because they seek to merge the decision on eligibility requirements and the decision on the visa applications. The eligibility decision, which included a decision on provision of the relocation package, is a decision on a matter comparable to the matter before the Court Appeal in *Y*'s case. But in this case, that decision has already been made in the First Claimant's favour and is not an issue in these proceedings. Whilst it is correct as a matter of ordinary language that whether the Claimants will enjoy the benefit of the eligibility decision is contingent on whether their visa application succeeds, that does not mean that the determination in these proceedings of the legality of the Home Secretary's decision on the visa applications either entails or is some form of determination by this court of rights relevant to the eligibility decision. The substance of the issue before the court now, concerns only the legality of the decisions on the visa applications and, by reference to the decision in *Maaouia* that issue does not entail determination of an article 6 civil right or obligation.

C. Amendment of the pleadings, and the Home Secretary's second application under section 8 of the Justice and Security Act 2013

42. During the hearing, the Claimants applied to amend their pleading to clarify the basis on which their article 6 submission was put. That application was not opposed. I allowed the Claimants to file and serve a Re-re-amended Statement of Facts and Grounds, and gave the Home Secretary permission to file and serve further amended Summary Grounds of Defence in response, on the article 6 point.

43. The Home Secretary's Re-re-amended Summary Grounds of Defence were filed and served on 3 April 2023. That pleading included the following: (1) prior to the closure of the British embassy premises in Kabul on 29 August 2021 persons who had the benefit of an eligibility decision could provide the biometric information (fingerprints) necessary to make a visa application in Kabul; (2) after the embassy premises in Kabul closed (and the embassy re-located to Qatar) the only option for Afghans who needed to provide biometric data in support of visa applications was to go to British embassies in other countries; (3) in practice, some people were unable to do this; (4) in some instances (in the period from 19 August 2021, just before the embassy in Kabul closed), the government reached agreement with third countries to allow Afghans who needed to provide biometric data to travel to those countries for that purpose; and (5) the government undertook to the third countries that, regardless of the outcome of the visa applications, the Afghans concerned would be permitted to travel on to the United Kingdom. The revised pleading made the point that these arrangements had not affected the Claimants because they had all provided biometric information in support of their visa applications at the embassy in Kabul before 19 August 2021. The pleading stated

> "Accordingly, this new information does not have any bearing on the Claimants' claim under this ground. …"

Thereafter the Claimants filed a Reply to the Re-re-amended Summary Grounds of Defence (on 26 April 2023), and the Home Secretary filed a response to the Reply (on 5 May 2023).

44. In consequence of her revised pleading, on 14 April 2023 the Home Secretary made further disclosure to the Claimants and made an application under section 8 of the Justice and Security Act 2013 for permission to disclose further documents (including unredacted versions of documents disclosed to the Claimants in redacted form) only to the Special Advocates. All the documents either disclosed or covered by the section 8 application related to the new part of the Re-re-amended Summary Grounds of Defence on the article 6 point, described above. The Special Advocates did not oppose the section 8 application on what they described as "pragmatic" grounds, in order to ensure that an extended section 8 process did not delay the judgment on the substantive issues in the case. So far as concerned the substance of any issue in the claim, the Special Advocates made no further submission based on the documents covered by the section 8 application.

45. I have decided it is unnecessary to take any decision on the section 8 application. The premise underlying CPR Part 82, the rules that apply to proceedings to which the 2013 Act applies, is that any document that is the subject of section 8 application will be a document properly disclosable in the judicial review claim – i.e. that it is a document that needs to be disclosed for the fair and just determination of an issue in the proceedings. The documents to which this section 8 application relates are not such documents. This is not a marginal case. There was no plausible basis on which disclosure of documents within the scope of the application is necessary for the just and fair determination of the article 6 issue in this case. The article 6 issue is an issue of law; like any such issue it arises in a particular factual context, but that context had already been sufficiently explained by disclosure already made and, in any event, gave rise to no disputed fact. The disclosure of documents describing other contexts that arose only after the Claimants had made their visa applications, and steps taken in those other contexts was not necessary for the determination of the article 6 issue in this case, not even arguably, not even out of an abundance of caution.

46. In all proceedings, and not least claims for judicial review, the court must, in the first instance, rely on the parties, conscientiously to comply with disclosure obligations, where necessary with the assistance of their professional advisers. In every case that is the first and always the most important stage of the disclosure process, notwithstanding the possibility later, for applications for specific disclosure. Conscientious compliance requires accurate understanding and application of disclosure principles; exorbitant disclosure works against the interests of justice as much as disclosure that errs in the opposite direction. As hard as it may be, the first stage in any disclosure process is that the parties must strive accurately to meet their obligations, no less and no more. This need for prudence is particularly apparent when proceedings are subject to closed material procedures such as those under the 2013 Act. It is essential that when a section 8 application is made in judicial review proceedings, the party making the application is satisfied that each document covered by the application, applying the ordinary principles that apply to disclosure in judicial review claims, is disclosable. Determination of section 8 applications is laborious; the process can be painstaking. The parties' obligation under CPR 1.3 to help the court give effect to the overriding objective, requires that resort is had to section 8 of the 2013 Act only to the extent necessary for the fair and just determination of the issues in a case.

D. Disposal, and one further observation on disclosure.

47. This claim came before me as a rolled-up matter, comprising both the application for permission to apply for judicial review and the application for judicial review itself. The Claimants' grounds of challenge are arguable. I grant permission to apply for judicial review on all grounds. However, for the reasons set out in the open and closed parts of this judgment, the claim for judicial review fails on all grounds, and is dismissed.

48. One further matter needs mention. The Home Secretary's initial open disclosure included documents redacted to remove the names of the civil servants who had written them, including redaction of the names of the officials who had prepared the March 2022 consideration minute and the January 2023 consideration minute. The redactions were said to be on the ground of "relevance". Documents were served in that form without the permission of the court. These redactions should not have been made. It is one thing for a document that genuinely deals with different matters, some relevant to the litigation others irrelevant, to be redacted on grounds of relevance. It is another matter entirely for a document that is relevant to be edited to remove information that goes to explain the document's provenance and context. One example which has recently become common is when emails are redacted to remove details such as the name of the sender, names of recipients, or the names of persons copied into the message. Such information should not be redacted on grounds of relevance. Such redactions, at the least, make the significance of documents more difficult to understand and, in some instances, they may obscure the significance of a document almost completely. If a party wishes to redact such information from disclosable documents, an application to the court should be made and the application should explain the reason for the proposed redaction, and when necessary set out supporting evidence. In this case, the names and job details of the civil servants who had assessed the information relevant to the not conducive to the public good question in the consideration minutes were redacted. That information was not irrelevant and ought not to have been redacted. If, to any extent, a practice is developing by which such information is routinely removed from documents that are disclosable in judicial review proceedings, that practice should cease.
