

B E T W E E N:

THE KING (on the application of)

(1) Mr STEVEN STEWART

(2) Mr MARK SHEPHARD

Claimants

- and -

THE SECRETARY OF STATE FOR DEFENCE

Defendant

(1) FIGHTING WITH PRIDE

(2) ROYAL BRITISH LEGION

Interested Parties

**CLAIMANTS' SKELETON FOR PERMISSION HEARING ON 28
OCTOBER 2026**

References to the hearing bundle are in the form [HB/ page], and to the authorities bundle are in the form [AB/tab/page]

Essential reading: Statement of Facts and Grounds [HB/26-49]; Witness Statement of Steven Stewart [HB/216-223]; Witness Statement of Mark Shephard [HB/287-291]; Summary Grounds of Defence [HB/61-73]; Reply [HB/126-130].

Time estimate: pre-reading – 1 hour; hearing listed for 2 hours.

A. INTRODUCTION

1. This is the Claimants' skeleton argument for the hearing on 28 October 2026 to determine their application for permission to apply for judicial review. The application was adjourned to an oral permission hearing by the Order of Mr Justice Sheldon dated 14 October 2026 [HB/151-153].
2. By these proceedings, the Claimants seek to challenge the Defendant's decisions dated 9 January 2026 (the "**Decisions**"), rejecting each of their appeals in relation to their applications under the Defendant's LGBT Financial Recognition Scheme (the

“Scheme”) [HB/154-161]. The Scheme provides financial awards to those affected by the ban on homosexuality in the armed forces which was in place until 2000.

3. Each of the Claimants was forced to resign from the armed forces on account of his actual or perceived sexuality, after intrusive investigation: Mr Stewart was forced to either resign or face court martial (and possible imprisonment), and Mr Shephard was forced to either resign or be dismissed and required to repay a £4,000 bonus which he could not afford. In the circumstances, both resigned. Under the terms of the Scheme, each is eligible for an award that is around £50,000 lower than that he would have received if he had been discharged or dismissed. The Claimants challenge the Decisions on the basis that the Scheme is in this way irrational and unfair.
4. The purpose of the requirement for permission is to “*eliminate at an early stage claims which are hopeless, frivolous or vexatious and to ensure that a claim only proceeds to a substantive hearing if the court is satisfied that there is a case fit for further consideration.*”: White Book (vol. 1) §54.4.2 [AB/15/377]. As Lady Simler put it in Ramdass v Minister of Finance [2025] UKPC 4 at [5] [AB/14/360]:

“The threshold for the grant of leave to apply for judicial review is low. Leave will be granted where there is an arguable ground for judicial review with a realistic prospect of success that is not subject to a discretionary bar or other knockout blow.”

5. The serious unfairness raised by the Claimants clearly merits further consideration by the Court. The Defendant’s Summary Grounds of Defence (“SGD”) do not come close to dealing any ‘knockout blow’ – if anything, the SGD (and the disclosure provided alongside it) raise further questions about the logic and coherence of the Defendant’s decision-making in relation to the Scheme and the levels of award to be made under it. On a matter of such public interest (and moral significance), the Defendant should be required to give a full account of his decision-making, and to set out a coherent explanation for the disparity highlighted by the Claimants, in circumstances where none has been provided. The Claimants’ claims should accordingly be granted permission on both of the grounds set out below.

B. BACKGROUND

6. The Claimants served in HM Armed Forces during the time of the ban on homosexuality (“**the Ban**”), which was in place until 2000. Under the Ban, no person subject to service law who was lesbian, gay, bisexual, transgender or transitioning (“**LGBT**”) (or perceived to be so) could remain a member of the armed forces.
7. Both Claimants were compelled to leave following intrusive investigation into their sexuality:
 - 7.1. Mr Stewart served in the Army from 1988 to 1995. In February 1995, while on duty as Duty Sargeant, he was approached publicly, stripped of his pistol, and escorted to see his Officer Commanding and a Warrant Officer of the Special Investigation Branch. Mr Stewart was placed under arrest and was informed that “*incriminating letters*” he had written had been discovered following the search of a property in England (Stewart 1/§7 [HB/218]). He was interviewed under caution and his room was searched, leading to a confiscation of further letters, pornographic videos and literature (Stewart 1/§8 [HB/218]). His Officer Commanding stripped him of his warrant card (which gave him authority to act as a member of the Royal Military Police), and expelled him from his unit (Stewart 1/§10 [HB/219]). Mr Stewart was ultimately told that he would face court martial, dishonourable discharge and a possible prison sentence at Colchester Military Prison (Stewart 1/§11 [HB/219]). He was permitted, as an alternative, to purchase his discharge from the Army by way of ‘Premature Voluntary Release’ (“**PVR**”), which he did, considering that “*this was the only choice that [he] had to survive*” (Stewart 1/§12 [HB/220]). A mark was placed on his military records stating that he was “*not recommended for re-entry*” [HB/220].
 - 7.2. Mr Shephard served in the RAF from 1995 to 2001. After persistent bullying on account of his sexuality, he broke down in front of his Sargeant. He was then subjected to questioning about his sexuality by his Commanding Officer. In response to this intrusive questioning, he honestly told her that he was gay and was dismissed from her office in shame (Shephard 1/§5 [HB/288]). Days later, he was called in before his Commanding Officer, Squadron leader and Wing Commander. He was given an ultimatum and told that he could either face

dismissal (which would require him to repay a £4,000 bonus), or give notice for PVR. In circumstances where he could not afford to repay his bonus, he gave notice for PVR (Shephard 1/§6 [HB/288]).

8. In 2022, the Government commissioned Lord Etherton KC to conduct an independent review into the historic treatment of LGBT veterans before 2000. Lord Etherton’s final report (“**the Etherton Report**”), published in May 2023, “*revealed an unflinching picture of shocking treatment of [LGBT] service personnel in an institution with an incomprehensible policy of homophobic bigotry*” [HB/334]. Lord Etherton recommended that an appropriate financial award be made to affected veterans [HB/548-556]. In response to this recommendation, in December 2024, the Defendant announced the launch of the LGBT Financial Recognition Scheme (“**the Scheme**”).
9. The Scheme is intended to “*recognise those who served under and suffered during their service as a consequence of the Ban*”, and “*to provide an acknowledgement of the applicant’s personal experiences during their Service as a result of the Ban*” (Scheme Rules, §§9-10 [HB/335]).
10. Under the Scheme, two types of financial award are available:
 - 10.1. The ‘LGBT Dismissed or Discharged Payment’ (“**DD Payment**”), available to “*those who were dismissed or administratively discharged, including Officers who were ordered or instructed to resign or retire by their respective Service Board, solely on the basis of their actual or perceived sexual orientation or gender identity during the Ban*” (Scheme Rules, §20(a) [HB/337]). A DD Payment is a ‘flat-rate’ payment of £50,000.
 - 10.2. The ‘LGBT Impact Payment’ (“**Impact Payment**”) is available to Veterans who suffered various types of harm as a result of the Ban. Three bands of payment are available: Level One (£1,000-5,000), Level Two (£5,000 - £10,000) and Level Three (£10,000 to 20,000). The eligibility requirements for each level are set out in Annex B to the Scheme Rules [HB/382-383], and depend on whether a person experienced various types of harm, including bullying/harassment, sexual assault, invasive investigation, or forced medical tests.
11. Under the Scheme Rules, those who, like the Claimants, were compelled to resign on account of their sexuality (but were not dismissed or discharged), are eligible for an

Impact Payment, but not the far larger flat-rate DD Payment (see Scheme Rules, §27 [HB/338]). By contrast, someone who was dismissed or discharged would be eligible for the DD Payment, as well as an Impact Payment reflecting the nature of harm they experienced.

12. In response to their respective applications under the Scheme, Mr Stewart was awarded an Impact Payment of £7,000. Mr Shephard was awarded an Impact Payment of £5,000. Each Claimant appealed, and those appeals were refused by way of the Decisions.

C. **GROUND**

C1. **Ground 1: process irrationality**

(a) Legal principles

13. The rationality test in public law has been described as follows by Saini J in *R (Wells) v Parole Board* [2019] EWHC 2710 (Admin), at [31]-[33] [AB/9/203]:

“31. *A modern approach to the Associated Provincial Picture Houses Ltd v Wednesbury Corporation (1948) 1 K.B. 223 (CA) test is not to simply ask the crude and unhelpful question: was the decision irrational?*

32. *A more nuanced approach in modern public law is to test the decision-maker’s ultimate conclusion against the evidence before it and to ask whether the conclusion can [...] be safely justified on the basis of that evidence, particularly in a context where anxious scrutiny needs to be applied.*

33. *I emphasise that this approach is simply another way of applying Lord Greene MR’s famous dictum in Wednesbury (at 230: ‘no reasonable body could have come to [the decision]’) but it is preferable in my view to approach the test in more practical and structured terms on the following lines: does the conclusion follow from the evidence or is there an unexplained evidential gap or leap in reasoning which fails to justify the conclusion?”*

14. As Chamberlain J further explained in *R (KP) v Secretary of State for Foreign, Commonwealth and Development Affairs* [2025] EWHC 370 (Admin) (at [56]) [AB/13/346]:

“[Rationality] encompasses both the process of reasoning by which a decision is reached (sometimes referred to as ‘process rationality’) and the outcome (‘outcome rationality’): see e.g. *R (Law Society) v Lord Chancellor* [2018] EWHC 2094 (Admin), [2019] 1 WLR 1649, [98] (Leggatt LJ and Carr J). Process

rationality includes the requirement that the decision maker must have regard to all mandatorily relevant considerations and no irrelevant ones, but is not limited to that. In addition, the process of reasoning should contain no logical error or critical gap. This is the type of irrationality Sedley J was describing when he spoke of a decision that “does not add up – in which, in other words, there is an error of reasoning which robs the decision of logic”: R v Parliamentary Commissioner for Administration ex p. Balchin [1998] 1 PLR 1, [13].”

15. As part of process rationality, a decision-maker must not only take into account all mandatory considerations but must also act rationally in terms of the weight attached to each: R (Friends of the Earth) v Heathrow Airport Ltd [2021] 2 All ER 967 at [121] [AB/11/280].

(b) Submissions

16. The disclosure provided alongside the SGD provides a limited picture of the Defendant’s decision making. On the evidence provided to date, it is entirely unclear how and why the Defendant arrived at an outcome whereby those who were compelled to resign would be eligible for tens of thousands of pounds less than those with similar experiences, but who were dismissed/discharged. The Defendant appears to have given very little weight, if any, to the harm experienced by those like the Claimants who were forced out after, effectively, an ultimatum.
17. The Etherton Report noted that alongside those who were dismissed or administratively discharged, there were veterans “*of good conduct who felt compelled, as a result of the Ban, to resign or buy out their contract or not extend their contract*” [HB/550], and, indeed, that **44%** of LGBT veterans who responded to the Call for Evidence which formed the basis of the Report’s findings “*indicated that they were forced or compelled to leave the services through unofficial methods or actions or due to general hostility towards LGBT personnel*” [HB/410]. Lord Etherton went on to note that this “*is not a homogenous group*” [HB/550]:

“Some were investigated by the [Special Investigation Branch] and that experience played a significant part in their decision to leave the armed forces. Others, who were not investigated by the SIB, felt that they could no longer bear the homophobia and the need every day to hide their sexuality [...]. Others left voluntarily because they were warned by command or others that, if they did not do so, they would be investigated and face dismissal or discharge. The government will have to decide whether it is practical or fair to make a distinction between

those different categories of veterans in terms of which suffered the most and should be entitled to a financial award.”

18. Notwithstanding the nuanced picture set out in the Etherton report, in a ministerial submission dated 21 June 2023 setting out proposals for the Scheme, the Defendant recorded as follows [HB/78]:

“Three cohorts have been identified: 1. Those who were dismissed/discharged, 2. those who left due to pressure/culture and 3. those who were impacted but remained in service”

19. Those who, like the Claimants, were compelled to leave by way of an ultimatum were thus grouped together with a broader cohort of *“those who left due to pressure/culture”* (which would include, for example, those LGBT service personnel who left as a result of dissatisfaction with the generally homophobic culture in the forces). The 21 June ministerial submission does not grapple with the breadth of experiences in this second cohort, or the substantive similarity between the harm experienced by some in the second cohort, and those in the first cohort.
20. At this stage, the submission proposed three options for the Scheme [HB/79]: (i) providing compensation only to those who were dismissed/discharged; (ii) compensating all three cohorts with an additional amount for those dismissed/discharged, and (iii) a tiered approach with all three cohorts in scope.
21. The Defendant then commissioned the Government Actuary’s Department to produce a report to assist with designing the Scheme (the **“GAD Report”** [HB/81-94], dated 31 August 2023). The GAD Report relied heavily on the ‘Report of the Laydown of MOD Records April 2023’ (**“the Laydown Report”**). In particular, the GAD Report relied on the Laydown Report’s estimate that 10,000 service personnel were dismissed or resigned after being identified by the armed forces as being LGBT [HB/87]. This figure *“would not include people who were not identified but felt compelled to resign anyway”*, in respect of whom there would be *“no official footprint”* [HB/87]. It would therefore appear that the Laydown Report treated those who were dismissed (having been identified as LGBT), and those who resigned (having been identified as LGBT), as a single cohort. It would also appear that this cohort were understood to have an ‘official footprint’ (by contrast with those who were never identified as LGBT, but chose to resign).

22. The GAD report went on to set out the approach under consideration by the Defendant at that time [HB/92-93] which would distinguish between those who were dismissed (who would be the “*first cohort*”, entitled to a flat rate award plus a top-up) and others who were affected by the ban (who would be entitled to awards from residual funds). The GAD report noted that “*in practice, there was likely little difference between being asked to resign after investigation and being dismissed. Therefore there would be a case for offering similar award values to people who resigned after investigation and those who were dismissed*” (emphasis added) [HB/93]. The GAD report suggested that awards for those who were not dismissed, but were affected by the ban could be tiered, and “*the top tier might be for those who resigned after investigation and be a similar value to the first cohort flat rate plus any top-up*” (emphasis added) [HB/93].
23. The Defendant has disclosed two further ministerial submissions, dated 13 and 27 September 2024 respectively ([HB/95-100] and [HB/109-120]). Those submissions offer a number of options for altering the existing Scheme design in view at each time. These ministerial submissions did not grapple with (or even raise) the point that the existing design might result in a significant disparity in the size of award available to those who were dismissed or discharged, and those who were forced to resign, despite the fact that there may have been, in practice, little difference in the treatment of these two groups. Instead, the 13 and 27 September submissions seriously consider restricting the Scheme so that only those who were dismissed/discharged would be eligible at all (13 September Submission, §11 [HB/96], Annex A to 27 September Submission [HB/111-116]).
24. In circumstances where each of the Etherton Report, the Laydown Report and the GAD Report appear to have highlighted the substantive similarities between those who were compelled to resign, and those dismissed or discharged, it is unclear how or why the Defendant proceeded in the way he did, and settled on an approach which gave rise to such a significant discrepancy in the awards available to these two groups.
25. By email of 13 May 2026, the Claimants requested disclosure of: (i) the ministerial responses to each of the ministerial submissions disclosed alongside the SGD, (ii) Lord Etherton’s correspondence with the Defendant (referenced in the 13 September submission), and (iii) the full Laydown Report [HB/192]. By letter dated 28 May 2026, the Defendant declined to provide these documents [HB/198].

26. On the basis of the limited disclosure provided at this stage, it appears that the experiences of those who, like the Claimants, were forced to resign by way of an ultimatum (and the similarity, in substance, of those experiences with being dismissed/discharged), were given astonishingly little weight, if any, by the Defendant. At some point, the Defendant determined that those who were compelled to resign should be eligible for tens of thousands of pounds less than those who were discharged/dissmissed, despite several reports highlighting the practical similarity between the experiences of these groups. The discrepancy in awards which would be available to these groups was not pointed out to the Minister in any of the ministerial submissions disclosed. On the evidence disclosed so far (and in the absence of disclosure of the Minister's responses to those submission), there is no evidence that the Minister took the issue of this discrepancy into account.
27. In this way, the Defendant's conclusion does not "*follow from the evidence*"; instead, there is a "*leap in reasoning which fails to justify the conclusion*" (see the words of Saini J cited at §13 above), and which cries out for explanation. There appears to have been no basis for the Defendant to have arrived at a system where those compelled to resign would be eligible for a fraction of the amount available to those dismissed/discharged. On the limited evidence presently available, it is clearly arguable that the Defendant's decision-making process was irrational.
28. This is clearly a ground which merits consideration by the Court at a full merits hearing, following further disclosure (and the production of witness evidence) by the Defendant. To refuse permission at this stage would be to sanction a decision-making process which appears on its face perverse, on the basis of an incomplete picture of the material on which that decision was based.

C2. Ground 2: outcome irrationality

(a) Legal principles

29. A decision or policy will be outcome irrational when it is outwith the range of reasonable responses open to the decision-maker. A decision may be considered irrational in this way when it features or gives rise to "*inconsistency, unequal treatment, unfairness or arbitrariness in public decision-making*": *R (KBL) v SSHD* [2023] EWHC 87 (Admin) per Lang J at [87] [AB/12/316].

30. The similarity between someone who was forced to resign by way of an ultimatum, and someone in fact dismissed, is well-recognised in other contexts, including employment law. As Sir John Brightman put it in *East Sussex County Council v Walker* (1972) 7 ITR NIRC (cited more recently in *Singh v PK Imperial Retail Ltd* [2014] ET S/4106245/13 at §23 [AB/6/137]):

“Suppose that the employer says to the employee, “Your job is finished. I will give you the opportunity to resign. If you don’t you will be sacked.” How, we would ask, is it possible to reach a conclusion other than that employment is being terminated by the employer even though the employee takes the first and more respectable alternative of signing a letter of resignation rather than being the recipient of a letter of dismissal? We feel that in such circumstances there really can be no other conclusion than that the employer terminated the contract.”

(b) Submissions

31. As set out above, the Scheme gives rise to a disparity in financial award available to those who were compelled to resign by way of an ultimatum and those who were in fact dismissed/discharged, of tens of thousands of pounds. Those who fall into the latter category are eligible for an award of £50,000-70,000 (and most will receive £55,000-60,000): a clearly life-changing sum. Those who, like the Claimants, fall into the first category, are eligible for £1,000-20,000 (and most will receive £5,000-10,000), a far less significant sum. That disparity is entirely incongruent with the practical reality of the similarity of treatment and harm suffered by those groups.
32. The Defendant asserts that the level of award falls “squarely within the Secretary of State’s discretionary area of judgment” and relies on the fact that the Scheme was set up pursuant to common law powers (SGD §§16-17, 35 [HB/65, 66, 73]). On this:
- 32.1. It is clear that there is no bar to an irrationality challenge in the context of a non-statutory ex gratia scheme. See for example *R (Gurung and others) v Ministry of Defence* [2002] EWHC 2463 (Admin), where the Court found that the exclusion of the Gurkhas from eligibility under an ex-gratia compensation scheme for prisoners of war was not rational, and that the Defendant “must be required to think again” (see [53]-[56] [AB/2/34]).
- 32.2. Even when acting pursuant to common law powers (rather than pursuant to a statutory duty or power), it is incumbent on a public authority to act rationally.

The Defendant set out in the Scheme Rules that the intention of the Scheme was “to provide an acknowledgement of the applicant’s personal experiences during their Service as a result of the Ban”. Having set out to deliver a scheme with this intention, the Defendant went on to design and adopt a scheme which fails to meet the stated objective, because, in an important respect, the sums available bear no rational connection to the practical reality of the harm experienced by those affected by the Ban. That was irrational.

33. None of the Defendant’s attempts to justify the disparity set out at §31 above stand up to scrutiny.
34. First, the Defendant points to the fact that the DD Payment “*would be paid to those likely to have been most directly affected by the Ban based on an administrative process and where the MOD could verify the reason for the dismissal*” (SGD §25.2 [HB/69]). It is unclear on what basis the Defendant concludes that those dismissed/discharged were more ‘directly’ affected than those compelled to resign. Being forced out may have had a very similar effect on the lives of those compelled to resign, and they might equally have suffered from bullying, harassment, intrusive investigation or even assault. As to being able to “*verify the reason for dismissal*”, the evidence is in fact clear that the Defendant cannot, in many cases verify the reason for a dismissal:
 - 34.1. The 21 June 2023 ministerial submission notes that the payment of a flat-rate award to those dismissed/discharged could be “*open to abuse/false claims due to the wording on the dismissal form e.g. not clear what the reasons for dismissal was [sic]*” (emphasis added) [HB/79].
 - 34.2. The 21 June 2023 submission also notes that in 2010 “*instructions were given for the destruction of Service Police investigation records relating to homosexual service personnel or those perceived to be such. It will therefore be difficult to verify claims or the evidence presented and the MOD will need to apply a level of trust and bear the burden of false claims*” [HB/78].
 - 34.3. The GAD Report notes, “*Because many records have been destroyed as a matter of policy, records are incomplete and reasons for dismissal are not always clear*” [HB/84]. When estimating the number of those who were dismissed who might apply under the Scheme, the GAD Report notes [HB/90]:

“Not all [dismissal] claims will be well-documented so Fighting with Pride’s estimate of 350 to 700 well-documented claims could be consistent with the estimate of 1,000 dismissal claims in total.”

- 34.4. The 27 September 2024 ministerial submission confirms that *“Due to the lack of record keeping and the targeted destruction of records in 2010, the scheme will operate on the basis of a reverse burden of proof. This does not provide a high level of protection against fraudulent claims, which must be taken into account when considering payment amounts”* [HB/109]. That reverse burden of proof was ultimately provided in the Scheme Rules at §13(a) [HB/335].
35. Further, the Defendant’s reliance on being able to verify a dismissal or the reason for it stands in tension with the fact that the Defendant has made DD Payments available to Officers who were *“ordered or instructed to resign or retire by their respective Service Board as a result of an administrative process, solely on the basis of their actual or perceived sexual orientation or gender identity during the Ban”* (Scheme Rules, §23). In respect of such Officers, the Defendant is unlikely to be able to verify whether the relevant order or instruction was on account of the person’s actual or perceived sexuality or gender identity. Indeed, the documentary evidence available in respect of such Officers might well be comparable to the evidence available in the case of non-officers, like the Claimants, who were compelled to resign by way of an ultimatum.
36. Second, the Defendant relies on the need to avoid delay and thus to rely on a *“bright-line distinction which permits timely distribution of the DD Payment”* (SGD §25.2). There is simply no such ‘bright-line’ distinction. As set out above, in many cases, it might be unclear whether the person was dismissed/discharged, or on what basis (due to the destruction of records and the recording of false reasons, as set out above); hence the application of the reverse burden of proof under the Scheme (Scheme Rules, §13(a) [HB/335]). And again, no such ‘bright-line distinction’ was applied in respect of Officers.
37. As to the *“timely distribution of payments”*, the Scheme could have been delivered in the same time frame were the awards available to those compelled to resign closer in value to those available to those who were dismissed/discharged. The Scheme’s existing structure (a flat-rate payment for those dismissed/discharged and a tiered system for additional payments, including for those compelled to resign) is perfectly compatible

with securing a fair outcome – all that would be needed would be an adjustment to the relevant amounts available, to ensure a broadly comparable award for these two groups. There is no reason why such an adjustment would have meant that either DD Payments or Impact Payments took any longer to deliver: regardless of the amount available for each, eligibility would need to be assessed in each case in exactly the same way.

38. It is noteworthy that a similar ‘bright lines’ justification was advanced by the Secretary of State for Work and Pensions in relation to an aspect of the system for calculating universal credit which produced perverse outcomes, in *R (Johnson and others) v Secretary of State for Work and Pensions* [2020] EWCA Civ 778, [2020] PTSR 1872 (see [68] [AB/10/233-234]). Rose LJ noted that “*in any scheme designed to simplify and reduce the cost of delivering benefits there will need to be bright lines*” and “*it may well be rational to introduce such a requirement on the ground that the benefits outweigh the disadvantages from those bright lines*” ([75] [AB/10/236], emphasis added). However, Rose LJ concluded that, in the case at hand, the disadvantages of the bright lines imposed outweighed their benefits, given that it was perfectly possible “*to draft an exception to cover the particular problem highlighted in this case*”, and the Secretary of State’s refusal to create such an exception was irrational ([75]-[76], [107] [AB/10/236, 245]). Similarly, in this case, there is no good justification for the so-called ‘bright line’ imposed, and the perversity created could be easily avoided.
39. Third, the Defendant relies on the fact that those compelled to resign were not a “*homogenous group*” and therefore there would need to be “*a degree of individual consideration which would not be appropriate to a flat-rate scheme*” (SGD §25.3 [HB/69]). The Scheme already incorporates tiered Impact Payments for different experiences. It is notable that those who were dismissed/discharged are not a homogenous group: some will have been bullied, subject to intrusive investigation, subject to sexual assault. Under the Scheme, they can also access tiered Impact Payments, and their circumstances are assessed on an individual basis. A tiered system is entirely compatible with those who were compelled to resign and those who were dismissed/discharged being given comparable awards.
40. Fourth, the Defendant relies on the need to protect against fraud (SGD §25.4 [HB/70]). As set out above, due to the destruction of records and the recording of false reasons, there are significant evidential difficulties for many applicants under the Scheme,

regardless of whether the person was dismissed/discharged or forced to resign. As it stands, someone whose records were destroyed but who claims to have been dismissed on account of their sexuality would be accepted as eligible for a DD Payment (to the extent that there was no evidence to the contrary). It is unclear why the Defendant is willing to take such an applicant at their word, but not someone whose records show that they resigned, and who says that they were given an ultimatum and thereby forced to resign. In each case, there might be corroborating evidence (such as SIB investigation records, or other contemporary notes) or contradictory evidence, and the risk of fraud would appear to be comparable in each case.

41. Further and in any case, again, there is no reason why an adjustment to the amounts available under the Scheme, so that the awards available are more rational, would make the scheme more or less susceptible to fraud.
42. Fifth, the Defendant points to a number of comparators and ‘bench-marking schemes’ which he took into consideration (SGD §28 [HB/71]). None of those comparators supports the position that those who were forced to resign should be eligible for the award . £50,000 lower than that available to those who were dismissed in similar circumstances.
43. Sixth, the Defendant states that “*those discharged or dismissed were dishonourably discharged, had that fact recorded on their exit papers and would be required to explain it to any future employer*” (SGD §30 [HB/71]). This distinction is not as clear-cut as the Defendant would like to suggest: some who were forced to resign will have had adverse statements on their exit papers (including, for example, Mr Stewart, who was left with papers which stated that he was “*not recommended for re-entry*” into the armed forces [HB/283]), and some of those who were discharged may have records which give a reason for discharge (such as health, or change in requirements of their unit) with no adverse connotations: see for example Scheme Rules §26 [HB/338] which confirms that those who were medically discharged on account of their sexuality or gender identity will be eligible for a DD Payment. In any case, a difference in exit papers alone does not justify a disparity of c.£50,000 in award.
44. Standing back, there is no reason that the Scheme could not have been delivered in exactly the same way, with the same degree of individual consideration (and therefore the same administrative burden), the same evidential requirements, the same degree of

protection against fraud, and the same speed and efficiency, but with comparable awards for those with comparable experiences, rather than an irrationally large discrepancy on the basis of whether someone was forced to resign rather than being dismissed/discharged.

45. The Defendant has advanced no reason which comes close to justifying a situation where those who were dismissed/discharged are eligible for an award in many cases around **ten times greater** that the award available to those, like the Claimants, who were given an ultimatum and forced to resign, and who have suffered very similar harm.
46. That outcome is on the face of it perverse and arbitrary and cries out for an explanation. The Defendant has provided none which withstands logical scrutiny.
47. In the circumstances, this Ground is also clearly arguable, and merits further consideration by this Court.

D. CONCLUSION

48. For the reasons set out above, the Grounds advanced are more than arguable. On a matter of such importance, the Defendant should be required to give a full account of his reasoning, and should be required to justify, at a full merits hearing, his decision-making, given the prima-facie unfairness the Scheme creates. The Claimants respectfully request permission to apply for judicial review.

KATE GALLAFENT KC¹

ISABELLE AGERBAK

Blackstone Chambers

20 October 2026

¹ Unfortunately, Ms Gallafent KC is unavailable for the permission hearing, but in circumstances where the Claimants have long sought an early decision on permission due to the impending closure of the Scheme on 12 December 2026, the Claimants have not sought a different date, but will be represented at the hearing by Ms Agerbak.