

IN THE HIGH COURT OF JUSTICE

AC-2026-LON-001694

KING'S BENCH DIVISION

ADMINISTRATIVE COURT

B E T W E E N : -

**THE KING (on the application of
(1) MR STEVEN STEWART
(2) MR MARK SHEPHARD)**

Claimants

-and-

SECRETARY OF STATE FOR DEFENCE

Defendant

-and-

**(1) FIGHTING WITH PRIDE
(2) ROYAL BRITISH LEGION**

Interested Parties

**FIRST INTERESTED PARTY'S SKELETON ARGUMENT
For hearing on 28 October 2026**

References to the hearing bundle are in the form [HB/page].

INTRODUCTION

1. The First Interested Party, Fighting with Pride ("**FWP**"), is a charity supporting LGBT+ veterans, including those affected by the historic ban on LGBT personnel serving in HM Armed Forces ("**the Ban**") and by the terms of the Defendant's LGBT Financial Recognition Scheme ("**the Scheme**"). FWP has campaigned both for the Scheme itself and in respect of its terms. It supports the Claimants' application for permission to apply for judicial review.
2. This skeleton addresses:
 - 2.1. Permission to apply for judicial review;
 - 2.2. Directions; and
 - 2.3. FWP's status in these proceedings.

PERMISSION

3. FWP submits that the claim is arguable and raises an important question concerning the rationality of the distinction drawn by the Scheme between veterans who were formally dismissed or discharged as a consequence of the Ban and those who were compelled to resign in circumstances where dismissal or discharge would likely otherwise have followed.
4. FWP adopts the Claimants' submissions in respect of permission. FWP however highlights the following five points:
 - 4.1. **First**, while a public authority charged with designing an *ex gratia* scheme enjoys a broad discretion in determining its eligibility criteria, that discretion is subject to the ordinary requirements of rationality: *R (Gurung) v Ministry of Defence* [2002] EWHC 2463 (Admin).
 - 4.2. **Second**, the principle that like cases should be treated alike is an aspect of rational decision-making: *R (Gallagher Group Ltd) v CMA* [2018] UKSC 25 at [24]-[26].
 - 4.3. **Third**, the law has long recognised the substantive equivalence of actual and constructive dismissal and the authorities recognise that the concept of constructive dismissal is so linked with that of dismissal that differences in treatment between them "*would need the clearest basis*": *Kent County Council v Green* [2004] EWCA Civ 11 at [22]. While constructive dismissal does not apply directly to service personnel, who do not serve under contracts of employment, the analogy is plainly relevant to the rationality of distinguishing between the two forms of departure in practice.
 - 4.4. **Fourth**, in assessing the rationality of the aspect of the Scheme under challenge, it is important to distinguish between those who were investigated on account of their sexuality and/or compelled to resign under an express or implicit threat of dismissal or discharge and those who resigned as a consequence of the Ban more generally. While FWP supports

more generous provision under the Scheme for both groups, this claim is about the former group, not the latter.

- 4.5. **Fifth**, the Government Actuary's Department recognised that "*in practice, there was likely little difference between being asked to resign after investigation and being dismissed*" and accordingly identified a case for similar award values [HB/93]. That assessment is significant because it identifies the very similarity on which the Claimants rely. The Defendant has not identified any rational justification for nevertheless excluding veterans compelled to resign following investigation from eligibility for the Dismissed or Discharged Payment.
5. FWP would note, further, that, at §25.5 of his Summary Grounds of Defence, the Defendant relies upon FWP's own proposals for a financial recognition scheme as supporting the distinction under challenge. FWP considers that the Defendant's reliance on its proposal gives a materially incomplete account of FWP's position. The SGD asserts that FWP placed those dismissed or discharged in Group 1 and the majority of those "*constructively dismissed*" in Group 2. However, this proposal did not draw the line between dismissal and resignation. Rather, it expressly included within Group 1: "*those who resigned, where there is evidence of a background investigation relating to sexual orientation or gender identity*" [HB/121]. The accompanying footnote explained that "[m]any veterans were pressured to resign following investigation, to expedite their dismissal, or avoid the threat of further actions[...]" [HB/121] and the proposal distinguished that group from those who left because of the general pressures of the Ban. FWP accordingly does not consider that the proposal relied on properly supports the Defendant's (different) distinction.
6. In the circumstances, permission should be granted.

DIRECTIONS

Expedition

7. The Scheme closes to applications on 12 December 2026. FWP supports expedition if permission is granted. The Court's Order of 14 October 2026 recognised the importance of determination before closure **[HB/152]**.
8. The need for an exceptionally compressed substantive timetable could be reduced if the Defendant undertook that, should the claim succeed, persons whose entitlement may be affected by the judgment will be allowed to apply after 12 December 2026 notwithstanding the present deadline. The protection should extend to persons who have not yet applied, and to the reconsideration of existing applications, including applications determined by an Impact Payment alone.
9. The Defendant has not given such an assurance. His letter of 15 September 2026 acknowledged that the closure date would not necessarily bar relief, but also identified possible funding constraints and the April 2027 deadline for payments **[HB/209]**. Unless an adequate undertaking is given, FWP asks the Court to direct an expedited substantive hearing and timetable capable, so far as practicable, of securing effective relief before closure.

Evidence and confidentiality

10. If permission is granted, FWP wishes to adduce evidence, including as to veterans who underwent investigation, were compelled to resign and as to the practical effects of the Ban and Scheme. This evidence will assist the Court in understanding the unreality of the distinction under challenge.
11. FWP asks for a direction allowing it to file and serve its evidence not earlier than 12 days from the date of the order granting permission, with permission to file concise written submissions in advance of the substantive hearing.

12. FWP also asks for permission to identify veterans who do not wish to be publicly named by ciphers in the public versions of their statements and exhibits, with their identities set out in a confidential annex. As was explained in FWP's letter of 15 September 2026 [HB/211-212], for many veterans the events with which this claim is concerned are deeply distressing. The annex would be available to the Court and to the other parties.

FWP'S STATUS IN THIS CLAIM

13. FWP was served as an interested party in this claim and has to date participated in that capacity. However, its proposed role is limited: it is a charity that supports the claim, does not pursue independent grounds and seeks to assist with evidence and submissions from the veterans it supports. In substance, FWP's proposed role is more akin to that of an intervener.
14. FWP's solicitors wrote to the parties on 22 October 2026 proposing that rather than troubling the Court with an application to change FWP's status in the proceedings from interested party to intervener, reciprocal costs protection similar to that applicable to interveners under section 87 of the Criminal Justice and Courts Act 2015 be agreed (i.e. that in the absence of unreasonable conduct, no party would seek its costs from FWP, and FWP would not seek its costs from any other party).
15. No response has yet been received to the above letter. If such agreement is reached, FWP is content to remain an interested party. If not, FWP anticipates that it will apply to be an intervener in this claim rather than an interested party. In circumstances where it has never been suggested that FWP should not participate in the claim in the way proposed, FWP anticipates that this can be resolved by consent.

CONCLUSION

16. For the reasons set out above, FWP invites the Court to:

- 16.1. Grant the Claimants permission to apply for judicial review;
- 16.2. In the absence of an adequate undertaking by the Defendant preserving effective relief after the application deadline, direct expedition;
- 16.3. Direct that FWP may file evidence on a timetable not earlier than 12 days from the date of the order granting permission and written submissions in the lead up to the final hearing;
- 16.4. Permit the use of ciphers and a confidential annex on the terms described above; and
- 16.5. To the extent that agreement has not been reached in relation to costs, amend FWP's role in the proceedings from interested party to intervener.

PAUL SKINNER
MATRIX CHAMBERS
22 October 2026