

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

ADMINISTRATIVE COURT

BETWEEN:

THE KING

(on the application of BENJAMIN SOPPITT)

Claimant

– and –

THE SECRETARY OF STATE FOR DEFENCE

Defendant

– and –

THE COMMONWEALTH WAR GRAVES COMMISSION

Interested Party

SUMMARY GROUNDS OF RESISTANCE

*References to documents in the Claim Bundle filed on **date are in the form [CB/page]*

A. INTRODUCTION

1. This is an application by the Claimant (“**Mr Soppitt**”) for permission to apply for judicial review of matters relating to the relocation of memorial panels and headstones from a Commonwealth War Graves Commission (“**CWGC**”) cemetery in Basra, Iraq, by UK service personnel, during the period 2003-2009. Mr Soppitt states that his grandfather, Gunner Joseph Soppitt of the Royal Artillery, was buried in the Basra CWGC cemetery in 1941. Mr Soppitt has named the CWGC as an Interested Party to the claim.
2. Mr Soppitt seeks to challenge what is variously characterised as a decision dated 28 March 2026 and as a “*continuing administrative failure*”. The Claim Bundle includes a very short Statement of Facts and Grounds **[CB/20-22]** with accompanying witness

statement **[CB/22-26]** and a skeleton argument **[CB/62-64]**. The proposed grounds of judicial review are most fully articulated in the skeleton argument.

3. The Secretary of State submits that permission should be refused for the reasons set out below. The claim is, in substantial part, a complaint about the provision of information under the Freedom of Information Act 2000 (“**FOIA**”). Parliament has legislated to provide for a statutory appeals mechanism in such matters. In any event, none of the proposed grounds discloses any arguable public law error and a claim for judicial review is long out of time.

B. FACTUAL BACKGROUND

4. Mr Soppitt’s claim is concerned with events which occurred over 20 years ago, in a foreign country, during the course of dynamic military operations. The Secretary of State sets out here the best account of matters that he has been able to establish.
5. The CWGC owns and has responsibility for two sites at Basra – the Basra cemetery, at which some 3,000 UK and Commonwealth personnel are buried and the Basra Memorial, located outside the city, which lists those personnel whose bodies were never found or identified.
6. For many years the UK Foreign Commonwealth and Development Office (“**FCDO**”) has advised against travel to Iraq, for security reasons. Accordingly, it has been difficult or impossible for the CWGC to operate there.
7. Following the 2003 US-UK led invasion of Iraq, it became apparent that the Basra CWGC cemetery was in disrepair, with headstones and memorial plaques damaged. The CWGC was informed of this via the Ministry of Defence (“**MOD**”) and Permanent Joint Headquarters. The Director General of the CWGC visited Iraq briefly in June 2003.
8. Following discussion with the CWGC, a decision was taken to remove all remaining headstones and plaques to secure storage at Basra Palace, then one of the main UK operating bases in Iraq. The removals were carried out by UK service personnel in early September 2003.
9. For operational reasons, and with CWGC knowledge, the headstones and plaques were relocated from Basra Palace to the nearby Shaibah Logistics Base in June 2004. At that time, the security situation was not suitable for a CWGC team visit.

10. Subsequently, it was determined that the headstones and plaques could not be repaired and reinstated. Instead, they would need to be replaced when the security situation allowed the work to be carried out. In or about March 2005, the UK military Commander National Support Element in Iraq and the CWGC had therefore authorised the secure destruction of the existing headstones and plaques. This work was completed by 05 April 2005.
11. UK forces withdrew from Basra in 2007 and from Shaibah in 2009. In view of continuing security issues in Iraq, the CWGC has not yet installed replacement headstones and plaques at the Basra cemetery.

C. LEGAL AND POLICY CONTEXT

The Freedom of Information Act 2000

12. Section 1 of FOIA is headed "*General right of access to information held by public authorities*" and provides in relevant part:
 - "(1) Any person making a request for information to a public authority is entitled—
 - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.
 - (2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14."
13. Section 12 of FOIA is headed "*Exemption where cost of compliance exceeds appropriate limit*" and provides in relevant part:
 - "(1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
 - (2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.
 - (3) In subsections (1) and (2) "the appropriate limit" means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.
 - (4) The Minister for the Cabinet Office may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority—

(a) by one person [...]

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.

(5) The Minister for the Cabinet Office may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are to be estimated.”

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004

14. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“**the 2004 Regulations**”) were made pursuant to the power in s.12(5) of FOIA.

15. Regulation 3 of the 2004 Regulations is headed “*The appropriate limit*” and provides in relevant part:

“(1) This regulation has effect to prescribe the appropriate limit referred to in section 12(1) and (2) of the 2000 Act.

(2) In the case of a public authority which is listed in Part I of Schedule 1 to the 2000 Act, the appropriate limit is £600...”

16. Regulation 4 of the 2004 Regulations is headed “*Estimating the cost of complying with a request – general*” and provides in relevant part:

“(1) This regulation has effect in any case in which a public authority proposes to estimate whether the cost of complying with a relevant request would exceed the appropriate limit.

(2) A relevant request is any request to the extent that it is a request–

[...]

(b) information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply.

(3) In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in–

(a) determining whether it holds the information,

(b) locating the information, or a document which may contain the information,

(c) retrieving the information, or a document which may contain the information, and

(d) extracting the information from a document containing it.

(4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per person per hour.”

D. THE CLAIM

17. In the SFG **[CB/21]** and the skeleton argument **[CB/62-63]**, Mr Soppitt seeks to advance four grounds of challenge:

- (a) Ground 1: an alleged “*failure to act / continuing omission*” by which Mr Soppitt contends that the Secretary of State: (i) exercised operational control over the Basra cemetery; (ii) “*assumed custody of the removed memorial infrastructure*”; and (iii) has not taken steps to “*investigate, account for, or recover the material*” following the withdrawal of UK Armed Forces from Iraq in 2009.
- (b) Ground 2: alleged “*irrationality*” by the Secretary of State in omitting to investigate the removal of memorials and “*total inaction over more than fifteen years*”.
- (c) Ground 3: alleged “*illegality / ultra vires*” in so far as memorials were removed “*without consultation with or authority from*” the CWGC, in circumstances where (the Claimant contends), “[a]ny removal without CWGC authority was unlawful.”
- (d) Ground 4: alleged breach of Mr Soppitt’s rights under Art.8 of European Convention on Human Rights (“**the ECHR**”) as given effect by the Human Rights Act 1998 (“**HRA**”).

18. By way of substantive relief, Mr Soppitt seeks the following orders in section 8 of the Claim Form **[CB/15]**:

- (a) A mandatory order requiring the Secretary of State to conduct a full investigation into the removal and chain of custody of memorial panels and gravestones from Basra War Cemetery;
- (b) An order requiring the Secretary of State to take all reasonable steps to locate and recover those items;

- (c) An order requiring the Secretary of State to secure the return of any recovered memorial panels and gravestones to the cemetery;
- (d) An order requiring the reinstatement of such memorials under the authority of the CWGC;
- (e) In the event that the memorial panels and gravestones cannot be located or recovered, an order requiring the Secretary of State to take reasonable steps to ensure the restoration of the commemorative function of the cemetery, including by funding or facilitating the replacement and reinstallation of equivalent memorial panels and gravestones; and
- (f) Disclosure of all relevant records relating to the removal, custody, and current status of the memorial panels and gravestones.

E. GROUNDS OF RESISTANCE

- 19. In these Summary Grounds, the Secretary of State responds as one of His Majesty's principal secretaries of state with responsibility for the MOD and the UK Armed Forces.
- 20. The Secretary of State is, *ex officio*, Chairman of the CWGC and is closely engaged with its work to care for some 23,000 war memorials and war cemeteries around the world, commemorating 1.7 million Commonwealth casualties of the First and Second World Wars. However, the CWGC is a distinct, international, inter-governmental organisation and not part of the MOD or the UK Government. These Grounds do not respond on behalf of the CWGC.
- 21. The Secretary of State does not doubt Mr Soppitt's sincerity and strength of feeling in relation to these matters. Nonetheless, the proposed claim is misconceived and permission should be refused for procedural and/or substantive reasons.

Procedural issues: justiciability and delay

- 22. At section 3 of the Claim Form, Mr Soppitt seeks to challenge a decision dated 28 March 2026 **[CB/9]**. Mr Soppitt includes a copy of this decision at **[CB/58]** ("**the decision letter**").

23. The decision letter was written by the Head of the MOD Information Rights Team and is headed "*FREEDOM OF INFORMATION ACT 2000 – INTERNAL REVIEW*". It responds to an internal review request from Mr Soppitt, dated 17 February 2026, which in turn relates to a request for information made by Mr Soppitt on 26 January 2026. That information request is quoted in the decision letter at paragraph 3:

"I am writing to make a request for information under the Freedom of Information Act 2000 concerning the removal, storage, disposal, or current whereabouts of memorial panels and gravestones from Basra War Cemetery, Iraq. Specifically, I request copies of any information held by the Ministry of Defence relating to:

1. The removal of memorial wall panels, headstones, or gravestones from Basra War Cemetery, including but not limited to actions taken during or around 2003–2009.
2. Any inventories, asset registers, photographs, condition reports, or catalogues created before, during, or after their removal.
3. Records identifying the authority under which these items were removed, including instructions, operational orders, or correspondence with other UK government departments, coalition partners, contractors, or the Commonwealth War Graves Commission.
4. Documentation relating to the transport, storage, transfer, loss, disposal, or destruction of these items, including locations of storage facilities (whether in Iraq, the UK, or elsewhere).
5. Any internal or external investigations, audits, or assessments concerning the loss, damage, or unaccounted status of these memorial panels or gravestones.
6. Correspondence (including emails, letters, and meeting notes) referring to the current status or whereabouts of these items."

24. The decision letter explains that the MOD refused the information request on the basis that s.12 of FOIA applied (i.e. it would exceed the "*appropriate limit*" of £600 prescribed in the 2004 Regulations to provide an answer, as set out above). The decision letter continues that, on review, the MOD had determined that the search requirements initially identified as being necessary to process the request were excessive. Accordingly, information could in fact be processed within the cost limit and a fresh, substantive, response would be provided "*on or before the 29th of April*". (As events transpired, Mr Soppitt submitted a further FOIA request and then made a complaint to the Information Commissioner's Office ("**the ICO**"); the MOD therefore intends to provide a consolidated response to both requests on or as soon as possible after 01 June 2026).

25. The decision letter concerns a request for information under s.1(1) of FOIA. If and insofar as Mr Soppitt seeks to challenge a decision contained within that letter, the appropriate route is via the ICO and the First-tier Tribunal. That is plainly a proper alternative remedy, provided by Parliament, and the claim should not proceed by way of judicial review: R (Cart) v Upper Tribunal [2011] UKSC 28, [2012] 1 AC 663 at [71].
26. Conversely, insofar as Mr Soppitt seeks to challenge underlying matters that arose “*during or around 2003-2009*”, then any judicial review claim would be long out of time and has not been brought promptly. The limitation period in CPR r.54.5(1) runs from when the grounds to make a claim first arose, not from when a particular claimant first had knowledge of them; however, a claimant’s knowledge may be relevant to whether a claim has been brought promptly (see. e.g. R (Hynot Ltd) v Secretary of State for Energy and Net Zero [2025] EWHC 2644 (Admin) at [64]). Here, any grounds arose at least 21 years ago and Mr Soppitt states that he learned of matters on 2 December 2025 [CB/25] (i.e. almost four months before the claim was issued).
27. This delay cannot be avoided by formulating the claim as directed against a “*continuing omission*” nor by attempting to ‘prompt’ the Secretary of State to take a new decision to enable a public law challenge. Whatever steps were (or were not) taken in respect of the memorials and gravestones were taken (or not taken, as the case may be) in the period 2003-2005. Properly considered, Mr Soppitt describes: (a) the continuing effects of one or more acts or omissions in the 2003-2005 period, not (b) a series of acts comprising a course of conduct over the intervening period. The Court of Appeal confirmed in R (Delve) v Secretary of State for Work and Pensions [2020] EWCA Civ 1199 at [124] that:
- “Unlawful legislation is not a continuing unlawful act in the sense that the time limit for challenging it by way of judicial review rolls forward for as long as the legislation continues to apply. If that were the test, there would effectively be no time limit for challenging primary or secondary legislation or for that matter administrative conduct which continues to affect a claimant unless or until the action is withdrawn or revised.”
28. Accordingly, the claim is out of time and has not been brought promptly and time should not be extended by the Court.

Ground 1

29. It is uncontroversial that a refusal to discharge a public law duty may sound in judicial review. However, Mr Soppitt has not identified any specific public law duty pursuant to

which the Secretary of State was obliged to take steps “*to investigate, account for, or recover the material*” [CB/62]. There is no such duty and this ground fails on its own terms.

30. Mr Soppitt seeks to rely upon the Secretary of State having “*exercised operational control over Basra War Cemetery and assumed custody of the removed memorial infrastructure*” as the source of a relevant duty [CB/62]. However, the Secretary of State has not exercised any operational control (or even presence) in Basra for 19 years: this plainly cannot be the basis of any subsisting duty. Moreover, any arguable duty arising from having “*assumed custody*” would be a private law duty (presumably, in bailment) owed to the CWGC and not a public law duty, actionable by Mr Soppitt.

Ground 2

31. The Court will know well the high bar that must be cleared to establish Wednesbury irrationality. Nothing in the present case approaches that standard.
32. The core principles and the essential modern caselaw on rationality were summarised by Chamberlain J in R (KP) v Secretary of State for Foreign, Commonwealth and Development Affairs [2025] EWHC 370 (Admin) at [58]-[63] and [75]-[78], including the distinction between “*process*” and “*outcome*” forms of irrationality.
33. The Secretary of State understands Mr Soppitt to allege outcome irrationality: i.e. that a decision not to investigate the removal of the memorials and headstones or take further steps in respect of them was outside the range of reasonable decisions open to a decision maker (KP at [57], citing Boddington v British Transport Police [1999] 2 AC 143, 175).
34. The context for decision-making is a key factor in the standard or intensity of Wednesbury review (KP at [63], citing R (Hoareau and Bancoult (No.5) v Secretary of State for Foreign and Commonwealth Affairs [2020] EWCA Civ 1010, [2021] 1 WLR 472).
35. The matters raised by the Claimant variously concern the conduct of UK Armed Forces during operations overseas, the proper use of public funds and other limited resources and, potentially, diplomatic engagement with the Government of another sovereign country, Iraq (if all of the relief sought were to be granted). These are areas in which the Executive is accorded a very broad margin of decision-making: see, e.g. R (Al Rawi) v.

Secretary of State for Foreign and Commonwealth Affairs [2006] EWCA Civ1279, [2008] QB 289, CA at [148].

36. The Secretary of State knows – and has explained in these Summary Grounds – what happened to the headstones and plaques: they were destroyed in 2005. In these circumstances, the notion that there was no reasonable course of action open to the Secretary of State other than to expend time and resources pursuing this matter further – either during the campaign in Iraq or, 20 years later (amid a major European war and renewed conflict in the Middle East) – is, with respect, untenable.

Ground 3

37. Mr Soppitt contends that the Secretary of State was obliged to consult with, or obtain authorisation from, the CWGC before removing memorials or gravestones from the Basra cemetery.

38. As to consultation:

- (a) The proposed ground fails to identify the source of any relevant obligation(s);
- (b) It is well-established that there is no general duty to consult (see, e.g. R (Moseley) v Haringey LBC [2014] UKSC 56, [2014] 1 WLR 3947 at [35]) and Mr Soppitt has not identified any particular duty arising from the facts of this case;
- (c) Even if a duty to consult had somehow arisen, it would have been owed to the CWGC and a consultation challenge would need to have been brought in 2003-2005;
- (d) The historic records identified by the Secretary of State indicate that the CWGC was consulted at relevant points.

39. As to authorisation:

- (a) Mr Soppitt's assertion that "[a]ny removal without CWGC authority was unlawful" also fails to identify a legal basis for this proposition;
- (b) The historic records identified by the Secretary of State indicate that the CWGC approved of the steps that were taken in 2003-2005;

- (c) There is no indication that the CWGC has ever regarded the Secretary of State as having acted unlawfully, still less that the CWGC would seek to pursue a public law challenge more than 20 years after the event.
40. For the avoidance of doubt, the CWGC Charter of 1917 is an international agreement and, under the UK's dualist system, does not give rise to any domestic law rights (see, e.g. R (Heathrow Airport Ltd) v HM Treasury [2021] EWCA Civ 783, [2021] STC 1203 at [139]).

Ground 4

41. Finally, Mr Soppitt seeks to rely upon his right to private and family life under Art.8 ECHR and prays in aid two judgments of the European Court of Human rights ("**the ECtHR**"): Elli Poluhas Dodsbo v Sweden (2006) 44 EHRR 11 and Hadri-Vionnet v Switzerland (App. No. 55525/00, ECtHR, 14 February 2008) which, he says, stand for the proposition that "*loss of memorial infrastructure constitutes an interference with that right*" [CB/63].
42. Mr Soppitt's situation is clearly distinguishable from those ECtHR cases and this proposed ground is unarguable.
43. Elli Poluhas concerned a prohibition on the removal of physical remains (ashes) then contained in an urn from one Swedish cemetery to another, 70km away. It was common ground between the parties that Art.8 was engaged and the ECtHR did not determine that. The ECtHR found, at [25], that states should be afforded a broad margin of appreciation when weighing "*the individual's interest in having a burial transfer against society's role in ensuring the sanctity of graves*". Critically, this was not a case about "*memorial infrastructure*" at all; it was a case about human remains.
44. Hardri-Vionnet was a case in which the claimant, while accommodated in a centre for asylum seekers in Switzerland, had given birth to a stillborn baby, later buried without ceremony and in the mother's absence by municipal authorities. Once again, it was not contested that Art.8 was engaged and the ECtHR referred to Elli Poluhas when considering at [52] "*Article 8 to be applicable to the question of whether or not the applicant was entitled to attend the burial of her child, possibly accompanied by a ceremony, and to have the child's remains transported in an appropriate vehicle*". The ECtHR went on to find that Art.8 was breached because the steps taken had not been "*in accordance with law*" (for the purpose of art.8(2): the municipal authorities had acted

contrary to local regulations governing cemeteries and funerals and to federal road traffic regulations. Once again, “*memorial infrastructure*” was no part of the case.

45. Properly considered, therefore:

- (a) No Art.8 ECHR right is engaged on the facts of this case;
- (b) There is neither domestic nor Strasbourg authority to suggest that Art.8 would be capable of imposing a positive obligation, with extra-territorial effect, still less one to investigate or reinstate “*loss of memorial infrastructure*”;
- (c) In any event, Art.8 confers only qualified rights and can lawfully be infringed subject to requirements of necessity and proportionality which would apply in the circumstances summarised above.

F. CONCLUSION

- 46. The claim seeks relief that would rarely, if ever, be granted in a judicial review claim – compelling the Secretary of State to exercise discretionary powers in a specific way, at potentially significant cost, and in respect of matters for which the CWGC is properly responsible, in a foreign country. The grounds relied upon for such relief are unarguable.
- 47. In the circumstances, the Court is invited to refuse permission for the reasons set out above. The Secretary of State claims his costs of preparing these Summary Grounds on a Mount Cook basis and invites the Court summarily to assess those costs if not agreed and order their payment accordingly.

John Bethell

11KBW

29 May 2026