



# Public Law Project

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Government Legal Department  
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London,  
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Your Ref: Z2309649/JBD/JD5

Our Ref: DR/PUB2.12

Date: PUB 2.12

2 November 2023

**By email only:**

[REDACTED]

Dear [REDACTED]

**Collapse of provision of immigration and asylum legal aid  
Proposed claim for judicial review concerning breach of the Lord  
Chancellor's duty under s 1(1) of LASPO 2012  
Proposed meeting**

1. We write further to your substantive pre-action response received on 24 October 2023. Thank you for your client's offer to meet with us (at paragraph 35 of the letter).
2. We would welcome an opportunity to meet with officials from the Ministry of Justice and Legal Aid Agency to discuss the issues raised in PLP's pre-action letter and the situation in the South West in particular.
3. Notwithstanding our remaining concerns (see below), we agree to a meeting and suggest the following time slots over the next two weeks:
  - a. Monday 6<sup>th</sup> November 2023 (during normal working hours).
  - b. Tuesday 7<sup>th</sup> November 2023 (before midday).
  - c. Wednesday 8<sup>th</sup> November 2023 (before midday).
  - d. Monday 13<sup>th</sup> November 2023 (before midday).
  - e. Tuesday 14<sup>th</sup> November 2023 (before midday).

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4. Proposed attendees would be Public Law Project staff working on this issue from across our casework and legal teams:
  - a. Carla Clarke, Legal Director
  - b. Daniel Rourke, Lead Lawyer
  - c. Emma Vincent Miller, Solicitor
  - d. Ed Cripwell, Paralegal (Legal Aid)
  - e. Jo Hynes (Senior Researcher)
5. If a meeting can be arranged on one of the dates offered we agree not to issue proceedings in advance of it. We reserve our position on whether PLP will issue proceedings if the meeting cannot be arranged for one of those dates, given the urgency of the concerns raised in our pre-action letter, the reasons set out below and the requirement in CPR 54 that our client act promptly.

### **The Lord Chancellor's response to our pre-action letter**

6. We note that the Lord Chancellor accepts that there is a lack of legal aid lawyers in the South West Procurement Area (§8). The documents enclosed with the response confirm that the LAA has been aware of this situation for several years. The Lord Chancellor maintains however that there is sufficient capacity in the sector that can be re-distributed via remote advice (§9).
7. We note the Lord Chancellor plans to repeat an exercise of assembling a list of providers in other procurement areas who can take on cases remotely. As you appear to acknowledge in the letter (§31 – 35), this measure largely replicates steps the LAA took to maintain a similar list between 2022 and June 2023. This time the Lord Chancellor plans to take the additional steps of providing the list to the Civil Legal Advice ('CLA') telephone line and publishing it on the LAA website (§10).
8. He also indicates that he will extend this procedure to other procurement areas, where he becomes aware of similar issues affecting those areas (§11). He does not however, for the time being accept that there is a lack of legal aid provision in the North West or that any such steps are required (§47). We note that the LAA has already begun to compile the new list, by emailing providers on 25 October 2023 (enclosed).

### Concerns regarding the Lord Chancellor's approach to remedying the situation in the South West

9. PLP has a number of concerns regarding the approach set out. These concerns raise further questions (highlighted in numbered ***bold italics***). We raise them for your client's consideration in advance of the proposed meeting and propose them as a framework for discussion.
10. Chiefly, there is abundant evidence that there is no spare capacity elsewhere in the system that can be redistributed. We refer to the

evidence enclosed with our pre-action letter and the further evidence that has emerged since, highlighted below.

***[1] Why does the Lord Chancellor consider there is any spare capacity in the system, given the evidence present with our pre-action letter and set out further below?***

11. The Defendant has tried this approach before. The exercise failed as providers did not in fact have capacity, or the limited capacity was exhausted quickly (see §55(i), pre-action letter and p 23 of the PLP Report – many firms on the list did not even respond to enquirers).

***[2] Why does the Lord Chancellor consider this approach will work this time, when the listed providers quickly reached capacity last time and the list will be given additional publicity this time?***

***[3] What ongoing monitoring of provider capacity will the LAA undertake and how frequent will this be?***

***[4] How will provider capacity be assessed?***

***[5] Will the LAA undertake additional monitoring to check whether people given the list are in fact taken on by the listed providers?***

***[6] What additional steps will the Lord Chancellor take if the list again promptly reaches capacity?***

12. There will be many individuals in need of advice in the South West for whom face to face advice is essential. The Lord Chancellor has made no proposal capable of addressing the needs of this cohort. This will include clients who are unable to utilise remote advice for Equality Act reasons and others whom providers consider they cannot provide an adequate standard of service, take adequate instructions, or adequately progress their matters, without face to face advice provision. There will be still others capable of utilising remote advice but only if adequate facilities are provided for them (for example, asylum seekers living in areas with poor internet connections or who do not have access to a suitable confidential space).

***[7] What steps does the Lord Chancellor propose to take to secure that legal aid is made available for those needed face to face advice?***

13. Although the Lord Chancellor has indicated that he is willing to adopt this approach in other procurement areas, he has given no reasons why he does not accept that the evidence we provided shows that the North West is also suffering under-provision:

***[8] What threshold is the Lord Chancellor applying to decide that there are not similar capacity issues in other procurement areas,***

***despite the evidence enclosed with our previous letter and at paragraph 18 below?***

***[9] Why does the Lord Chancellor not consider the threshold to be met in the North West?***

***[10] If, in future the Lord Chancellor does accept that the situation in other procurement areas has deteriorated to a similar level as the South West, does he plan to produce a similar list for these areas?***

14. Providers in the South West have raised concerns, through the Immigration Law Practitioners Association, that the Lord Chancellor publicising his list of out of area providers willing to take on matters remotely will encourage out of area providers to cherry pick the most profitable cases, leaving in area providers with a case-load of loss-making cases, thereby making their businesses even less sustainable. Please see enclosed email from Zoe Bantleman of the Immigration Law Practitioner's Association dated 25 October 2023.

15. The Lord Chancellor's approach appears therefore to be wholly counterproductive – it provides a financial incentive to divert capacity from other procurement areas in a way that undermines the remaining providers in the South West. We understand that examples of 'cherry picking' include taking on initial asylum claims but refusing to represent clients at appeal, with local providers subsequently determining that appeals have merits and picking up this less profitable (or loss-making) work.

***[11] What measures will the Lord Chancellor put in place to avoid 'cherry picking' more profitable cases and leaving less profitable (or loss-making) cases? Has he given thought to any of the measures proposed by ILPA (see enclosed email)?***

***[12] Why has the Lord Chancellor not consulted providers in the region about proposals to address under-capacity?***

16. The Lord Chancellor appears to be repeating a failed approach, without considering reasonable alternatives that might improve the situation, such as:

- a. Subsidising in area providers.
- b. Providing support for out of area providers to deliver face to face services in the South West (e.g., travel and premises costs).
- c. Providing additional remuneration or other incentives to take on work in the South West procurement area.
- d. Providing additional remuneration or incentives for out of area providers to take on currently less profitable work.

***[13] Has the Lord Chancellor considered any of the above options (and if so, why has he ruled them out)?***

## Further evidence of issues beyond the South West

17. Your PAP response acknowledges there are problems in the South West that warrant attention, but the Lord Chancellor does not consider that any other parts of England and Wales require measures to address the lack of immigration and asylum advice. Evidence referred to in our PAP letter shows many of the problems seen in the South West are replicated in other areas, including but not only the North West of England. No reasons have been given for discounting this compelling evidence.
18. In the time taken for the Lord Chancellor to respond to our pre-action letter, further evidence has emerged of under provision across England & Wales. As the Claimant will rely on this evidence, we draw it to your attention and provide a further opportunity to explain how the Lord Chancellor can sustain his position that there are no issues accessing immigration legal aid outside of the South West:
  - a. Analysis by Jo Wilding (the author of the Mapping report) of asylum statistics and legal aid matter start data for 1 September 2022 to 31 August 2023 indicates that more than half (51%) of all initial asylum applicants are now unrepresented (up from 43% in the previous year). The article, published on freemovement.org.uk and the original FOIA data are enclosed.
  - b. A report published by the Bevan Foundation ('Firefighting: protecting legal aid funded immigration services in Wales, September 2023, enclosed) finds that the provision of legal aid in Wales is also in a state of collapse. Among its findings are that in the last 5 years, Wales has lost nearly half of its premises providing immigration legal services. A provider which closed in Cardiff this year opened 47% of matter starts in Cardiff, and nearly a quarter of all in Wales in 2022-23. They have been unable to refer their caseload (Summary, p 3). At p 17-18 of the report, providers and referrers are quoted summarising unprecedented levels of unmet need for in scope matters among vulnerable populations (such as UAS Children).
19. For the reasons set out in our initial pre-action letter, we consider the above to be further evidence of the Lord Chancellor's breach of his duty under s. 2 of the Legal Aid, Sentencing and Punishment of Offenders Act ('LASPO') 2012, contrary to the principle in *UNISON*.
20. Further, the Lord Chancellor has undermined the statutory purpose of the Act, which is to ensure that legal aid is available for '*the great majority of persons in the most deserving categories*' (see *R (oao Rights of Women) v Lord Chancellor [2016] EWCA Civ 91, at 41*). It cannot be said that in practice, legal aid is available for the great majority of in scope immigration and asylum matters. The Lord Chancellor's breach of duty is therefore contrary to the principle in *Padfield v Minister of Agriculture and Fisheries [1968] AC 997*.

## Exceptional Case Funding

21. We note the section of your PAP response on the ECF scheme (§40-43), while referring to the number of grants of ECF in immigration cases, does not address the issue of individuals being unable to find a representative to take on their case even with an ECF grant. This serious problem was raised in §41(v) our PAP and is highlighted in the Bevan Foundation report, p 24, which concluded most people who need ECF are unable to find a provider willing to take on their case and access to this type of legal aid in Wales is 'effectively blocked'.

***[Q14] Does the Lord Chancellor recognise this issue? If so, why is the Lord Chancellor not taking similar steps in respect of ECF (seeking to ascertain providers capacity for Immigration ECF work)?***

22. We would like to discuss these issues and others at the proposed meeting on w/c 6 November or 13 November 2023 and look forward to hearing from you in terms of your preferred time/date slot. We would prefer to meet face to face and would be happy to travel to the Ministry of Justice at 102 Petty France. Alternatively, we could arrange meeting space at our offices in Clerkenwell.

## **Enclosures**

23. We enclose:

- a. LAA email to providers dated 25 October 2023
- b. ILPA email to MoJ dated 25 October 2023
- c. 'Firefighting: protecting legal aid funded immigration services in Wales, September 2023' (Bevan Foundation)
- d. Article by Jo Wilding and original FOIA data (Free movement).

24. We would be grateful for a response to our proposed meeting times as soon as possible and ideally by **5pm on Friday 3 November 2023.**

Yours faithfully



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**Public Law Project**

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