



Public Law Project

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Your Ref: Z2309649/JBD/JD5

Our Ref: DR/PUB2.12

Date: PUB 2.12

22 November 2023

By email only: [REDACTED]

Dear Mr Davis

Proposed claim for judicial review concerning breach of the Lord Chancellor's duty under s 1(1) of LASPO 2012

1. Our sincere thanks to your colleagues for their time at the meeting on Monday 13 November 2023. We are writing to follow up on issues discussed at the meeting.
2. We enclose a draft note of the meeting and would be grateful if you/ your colleagues could review and confirm it is agreed, or if not suggest any amends.
3. We have not received a response to our 2nd PAP letter (a response to which was due 16 November 2023). We understand from your 9 November 2023 email that your clients may decide not to provide a response, but we kindly ask you to confirm either way.

PLP's position following the meeting

4. The focus of the discussion was the South West remote providers list ('the list') and the extent to which it is capable of addressing recognised capacity problems in the South West.

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5. The Claimant's position following the meeting remains that the list does not provide an adequate solution to current severe lack of access to immigration and asylum legal aid in the South West.
6. First, there is insufficient capacity amongst immigration and asylum providers elsewhere in England and Wales to meet the demand in the South West. This is apparent from the evidence about severe unmet need elsewhere in England and Wales, presented with PLP's 1st and 2nd pre-action letters, including;
 - PLP's report 'An Ocean of Unmet Need' which provided evidence of unmet need in multiple procurement areas, not just the South West (enclosed with our 1st pre-action letter).
 - Jo Wilding's extensive research on this subject, including 'No Access to Justice' for Refugee Action which covered all parts of England and Wales.¹
 - Geographically focused evidence including Justice Together Initiative on immigration legal aid in London² and the Bevan Foundation on the situation in Wales.³
 - The analysis of matter starts for previous years, cross referenced with the LAA list of active providers in the South West, set out at paragraph 49 of our 1st pre-action letter.
7. Against this background, even if the list facilitates some individuals to access remote advice, it will only achieve this at the expense of other individuals elsewhere in England and Wales. That is necessarily the case as providers cannot increase their capacity for all the reasons set out at p 41 of our report 'An Ocean of Unmet need' (September 2023, shared with the pre-action letter). It cannot be an adequate solution in circumstances where there is no surplus of capacity to redistribute.
8. Second, the list facilitates the provision of remote advice only. For this reason, even if capacity in other areas improves, so that there is a surplus of capacity that could be redistributed through remote advice, it would still not be an adequate solution. Not all clients, or even necessarily most clients, will be able to access remote advice. No provision is made for those clients that need face to face advice, due to disability, vulnerability, the nature of their claim or other factors. The list does nothing to address this.

¹ Refugee Action/Jo Wilding: 'No access to justice: How legal advice deserts fail refugees, migrants and our communities', May 2022: <https://www.ragp.org.uk/programmes/noaccess-to-justice>

² Justice Together initiative 'A Huge Gulf: Demand and Supply for Immigration Legal Advice in London', June 2021: <https://justice-together.org.uk/wpcontent/uploads/2021/06/A-Huge-Gulf-FINAL-report.pdf>

³ Bevan Foundation: 'Firefighting: protecting legal aid funded immigration services in Wales', September 2023: <https://www.bevanfoundation.org/wp-content/uploads/2023/09/FIREFIGHTING-protecting-legal-aid-funded-immigration-services-in-Wales.pdf>

9. Our instructions therefore remain to continue to prepare to issue this claim.
10. Further, nothing discussed at the meeting purported to address the Claimant's concerns raised in both pre-action letters about the severe shortage of immigration legal aid in the North West of England (or indeed any procurement area other than the South West). We also understood from the meeting that there are no proposals to deal with the problems with the ECF system, because the LAA's view is that given the grant rate is high and forms have recently been simplified no further changes to the ECF system are needed. This fails to acknowledge the significant barriers to individuals finding a legal aid provider once ECF is granted. We cited evidence for this in both our pre-action letters, and Bail for Immigration Detainees have since published a report titled 'Hurdle after Hurdle' (enclosed) which includes multiple case studies demonstrating the problems they face finding legal aid firms to take on ECF cases for their clients.⁴

Information requests

11. There are several matters we wish to seek further information on following the meeting.

Face to face advice

12. At the meeting, we discussed the fact that the list provides a potential route for individuals in the South West to access remote advice but no solution for those who need face to face advice. LAA/ MoJ confirmed that the list aims to facilitate remote provision only. PLP explained that there are some individuals for whom remote advice will be unsuitable, including for Equality Act reasons, and gave examples.
13. The LAA explained that they had looked into options for ensuring access to face to face as well as remote advice in the South West. In particular, pre-Covid the LAA investigated facilitating face to face 'outreach' advice from external providers via premises in Plymouth.
14. From subsequent discussions with partners in the South West, we understand that this 'outreach advice' was considered by the LAA in January 2020 and the plan was that a provider called NLS would deliver the outreach in Plymouth. We understand NLS pulled out of the arrangement in early 2020 and have since closed their offices and that there have been no attempts since by the LAA to reprise this proposal.

15. However, please could you confirm

⁴ See pages 27 – 28 and Annex A, Bail for Immigration Detainees, 'Hurdle After Hurdle: The Struggle for Advice and Representation through Exceptional Case Funding, November 2023': https://hubble-live-assets.s3.eu-west-1.amazonaws.com/biduk/file_asset/file/1045/ECF_report_final_3_.pdf

- a. **What options for face-to-face advice in the South West were considered pre-Covid, and why they were not pursued. Please also provide an explanation of any contracting or procurement issues that were considered.**
- b. **What options (if any) are being considered for face to face outreach advice in the South West now and what is the timeframe for implementing them?**

Capacity monitoring

16. We discussed how the LAA intend to monitor capacity of the providers on the list. The LAA explained that they had written to all immigration providers and asked them if they were *'willing and able'* to provide assistance remotely to clients in the South West. The LAA intend to ask the same question to those on the list on a fortnightly basis, thus giving providers an opportunity to come off the list if they wish to. Other than that, no other steps have been taken by the LAA to estimate provider capacity, such as asking providers how many clients they are likely to be able to take on or checking how many caseworkers they employ.
17. We disagree with the LAA's view that this list offers a significantly different solution to the previous list, operated in 2022/2023, which failed to address capacity issues and as such was halted by the LAA earlier this year.
18. We also noted that the question being asked of providers ('willing and able to assist') is ambiguous. It could in good faith be answered 'yes' to, even if in practice the firm's capacity will be very limited indeed. There are providers on the list with just one accredited caseworker, whose capacity will necessarily be limited. Sometimes firms may have capacity for 'more sustainable cases' but not 'less sustainable' (i.e. potentially loss-making) cases, like ECF cases, or complex or urgent cases. We have heard multiple reports of referrers trying firms on the list only to be told there is no capacity.
19. We suggested that to better understand capacity the LAA could seek more information from providers including, for example, whether they were willing to take on (a) any in scope legal aid case (b) any ECF case (c) emergency cases. We said there were other ways of monitoring capacity that would not impose administrative burdens on providers, such as following up with individuals who had called the CLA line and been given the list to contact to check whether they had been successful in finding a representative. Monitoring of the list should ultimately involve a review of whether matters have actually been taken on by providers.
20. **We would be grateful if you could:**
 - a. **Confirm whether our understanding of the way the LAA intend to monitor capacity of the providers on the list is accurate (and correct it if not).**

- b. **Disclose a copy of any correspondence (or records of other communications) that the LAA has had with providers as part of its monitoring of the list.**

Extending 'Illegal Migration Act (IMA) work' measures

- 21. At the meeting, we noted that in relation to Illegal Migration Act work the Lord Chancellor has taken measures to try and make this work more sustainable for providers. Principally by increasing rates by 15%, paying for travel, increasing use of delegated functions and increasing disbursement limits. We understand from our meeting that these measures have not been considered in relation to addressing the lack of capacity in the South West or elsewhere.
- 22. **Please correct us if our understanding is not right. If these measures or similar have been considered as a solution to address capacity problems in the South West, why were they not taken forward?**

Response deadline

- 23. I would be grateful for your response to this letter within **14 days i.e. by 6 December 2023.**
- 24. PLP do not intend to issue this claim before 6 December 2023, the deadline for the response. We reserve our position on whether PLP will issue proceedings after that date.

Yours faithfully



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