



AC-2024-LON-001935

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**IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT**

BETWEEN

THE KING

(on the application of DUNCAN LEWIS SOLICITORS)

Claimant

-and-

THE LORD CHANCELLOR

Defendant

CONSENT ORDER

UPON the Claimant's application for permission to apply for judicial review

AND UPON the Defendant confirming that she will make a decision on whether or not to increase the fees and rates payable for Controlled Work in the field of immigration and asylum (as set out in the attached Statement of Reasons)

AND UPON the parties having agreed that the claim should be withdrawn (in the circumstances set out in the attached Statement of Reasons)

BY CONSENT IT IS ORDERED THAT:

1. The Claimant withdraws its claim against the Defendant.
2. The Defendant shall pay £210,891 (inclusive of VAT, if any) towards the costs of the Claimant in full and final settlement of costs and there shall be no further order as to costs.

Dated this 20th day of September 2024.

Duncan Lewis

For the Treasury Solicitor

Signed.....

Signed.....

Claimant's Solicitors
Duncan Lewis Solicitors
Sackville House
143-149 Fenchurch Street
London
EC3M 6BL

Defendant's Solicitors
Government Legal Department
102 Petty France
London
SW1H 9AJ

STATEMENT OF REASONS

1. This claim was filed on 7 June 2024, sealed by the Court on 10 June 2024, and served on 13 June 2024.
2. The claim challenged the lawfulness of the Lord Chancellor’s alleged refusal or failure – in the exercise of his powers under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“LASPO”) – either to raise the rates payable for Controlled Work in immigration and asylum, or to take any other action capable of addressing the alleged issues in a timely and effective way.
3. The Claimant alleged that the evidence demonstrated that demand for Controlled Work in immigration and asylum had significantly outstripped supply, leading to serious issues for access to justice, and that financial pressures were a significant constraint on supply. The Claimant’s case was that the Lord Chancellor’s refusal or failure to act was unlawful on the basis that it (i) placed the Lord Chancellor in breach of his duty under section 1(1) of LASPO to secure that legal aid is made available; (ii) was in breach of the *Padfield* principle; and (iii) was irrational.
4. On 4 July 2024, the General Election took place, on that same day, the then Lord Chancellor filed and served an Acknowledgement of Service, accompanied by an application for an extension of time to file his summary grounds of defence on 31 July 2024.
5. As a result of the General Election, a new Government was formed on 5 July 2024. With the formation of a new Government on 5 July 2024, a new Lord Chancellor was also appointed on 5 July 2024.
6. On 31 July 2024, the new Lord Chancellor filed an application to stay the claim until 30 September 2024. On 3 September 2024, Chamberlain J refused the application, but extended time for the Lord Chancellor’s Summary Grounds of Defence to 20 September 2024, to enable the new Lord Chancellor to consider her position and to provide the Court with a response to the Claimant’s Statement of Facts and Grounds. In his reasons for refusal of the Defendant’s application, Chamberlain J concluded that the date for the Lord Chancellor’s response should not be further extended because *‘[o]n the information in the Statement of Facts and Grounds, the challenged conduct is causing injustice to asylum seekers who cannot secure representation’*. This was a reflection of the Judge’s understanding of the material submitted by the Claimant, and the next step in the proceedings would have been for the Lord Chancellor to have filed “Summary Grounds of Resistance”, setting out the Lord Chancellor’s response.
7. In the event, as a result of discussions between the parties, it has been agreed that the application for judicial review should not proceed, and as such the Lord Chancellor will not be responding to the Claimant’s grounds and evidence in the context of this claim. The relevant background to this agreement is as follows.
8. The outgoing Government had commissioned a lengthy, evidence-based, and wholesale review of the operation of legal aid across all eleven categories (not only immigration and asylum controlled work) known as the Review of Civil Legal Aid (“ROCLA”), which concluded its evidence gathering just prior to the General Election. The current Lord Chancellor has been carefully considering the operation of legal aid in immigration and asylum controlled work in the light of the evidence which has been obtained through ROCLA, and has also considered the evidence put forward by the Claimant in these proceedings.
9. Decisions concerning spending on legal aid will need to be considered in the context of the Budget scheduled to be delivered by the Chancellor of the Exchequer on 30 October 2024. The Lord Chancellor recognises the urgency of the issues and anticipates that she will be able to announce a decision by the end of November 2024, as to whether or not to increase the fees

and rates payable under the Civil Legal Aid (Remuneration) Regulations 2013 for Controlled Work in the field of immigration and asylum and (if so) then to what extent. Once the Lord Chancellor has made the decision, she will communicate the decision to the Claimant in writing promptly.

10. Any initial decision to increase the fees and rates payable in Controlled Work in the field of immigration and asylum matters, would be subject to a consultation, including as to the proposed level of that increase. Absent any unforeseen circumstances, any such consultation will be commenced within 8 weeks of the decision identified at paragraph 9 above. Following any such consultation, the Lord Chancellor will make a final decision which she anticipates being able to do during Spring 2025. Any decision in relation to an increase which is made following the conclusion of this consultation would be reflected in a statutory instrument to be laid before Parliament, and (if approved), implemented by the Legal Aid Agency. In the event that the Lord Chancellor decides to increase rates, she will use her best endeavours to secure that these steps are taken and a final decision made with reasonable promptness.
11. In the circumstances outlined above, and in particular in light of the Lord Chancellor's commitment to the decisions and process set out in paragraphs [9] and [10], the Claimant has agreed to withdraw its claim.