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c/o The Government Legal Department
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5 July 2022

BY EMAIL ONLY
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LETTER BEFORE CLAIM

Dear Ministry of Justice

Proposed challenge in relation to the fees payable to barristers under the Advocates' Graduated Fee Scheme

Our client: The Criminal Bar Association

We are instructed by The Criminal Bar Association. This letter is a formal letter before claim in accordance with the pre-action protocol for judicial review under the Civil Procedure Rules.

PROPOSED DEFENDANT:

1. The proposed Defendant is the Secretary of State for Justice. The proposed Defendant's reference details are:

   Mr Dominic Raab MP
   The Lord Chancellor and Secretary of State for Justice
   Ministry of Justice
   102 Petty France
   London
   SW1H 9AJ

PROPOSED CLAIMANT:

2. The proposed Claimant is the Criminal Bar Association ("**CBA**"), an organisation which represents the views and interests of approximately 2,400 specialist criminal barristers in England & Wales.

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The proposed Claimant's legal advisers

3. We confirm that the address for reply and service of any court documentation is our office address, the details of which (including our reference number). appear at the top of this letter.

4. Leading Counsel Tom de la Mare QC and Tom Hickman QC are instructed together with Faisel Sadiq and Celia Rooney to represent the proposed claimants in any judicial review proceedings.

5. All legal advisers are instructed on a pro bono basis.

The proposed Defendant's legal advisers

6. The proposed Defendant is presently represented by the Government Legal Department, the contact details of which are listed above.

The details of any Interested Parties

7. The Bar Council is an Interested Party. We can confirm that a copy of this letter has been sent to the Chair of the Bar Council, Mark Fenhalls QC.

Details of the matter being challenged

8. The matter challenged is the decision by the Ministry of Justice ("**MOJ**") to refuse to increase fees payable to barristers under the Advocates' Graduated Fee Scheme ("**AGFS**") for work that is yet to be done under existing representation orders ("**Future Retained Work**").

9. The basis for the MOJ's refusal appears to be based upon (or be materially influenced by) the MOJ's view that to increase fees for Future Retained Work would (i) be *ultra vires*; and (ii) require changes to be made, retrospectively, to contractual payment terms, which is not (on the proposed Defendant's case) permitted under Treasury rules. The MOJ is proceeding on the basis of an error of law, insofar as:

    a. Increasing fees payable to barristers under the AGFS is within the scope of the Lord Chancellor's powers under s.2(3) and s.41(1) to (3) Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("**LASPO**"). Doing so would not be *ultra vires*.

    b. The AGFS does not create a contractual relationship between barristers and the LAA. A barrister's entitlement to fees is a statutory debt which arises under a legislative scheme contained in the Criminal Legal Aid (Remuneration) Regulations 2013 (SI 2013/435) ("**2013 Regulations**"), made on 26 February 2013 and in force from 1 April 2013; and

c. The MOJ has, by an amending SI made in December 2013, namely the Criminal Legal Aid (Remuneration) (Amendment) Regulations 2013 (SI 2013/2803) ("**2013 Amendment Regulations**") itself imposed an immediate 30% reduction of fees payable under the 2013 Regulations, including in relation to then Future Retained Work. This reduction by the 2013 Amendment Regulations was made using the same statutory powers that the MOJ is now stating it cannot employ to increase fees for Future Retained Work. If making changes to *increase* rates of remuneration for Future Retained Work is *ultra vires*, as unfair retrospectivity (which it plainly is not) the case is so much the stronger to use the same powers to *reduce* the rates of pay for Future Retained Work (which, by contrast, does produce unfairness).

10. Given the above, and as expanded upon below, the proposed Defendant has made the refusal decision on the basis of an error of law, and accordingly the refusal is unlawful.

Relevant factual circumstances

11. The members of the CBA are in a dispute with the MOJ regarding, *inter alia*, remuneration for work done by defence counsel in criminal cases where the Legal Aid Agency ("**LAA**") is funding the defendant's representation under the AGFS[1] pursuant to a representation order made under s. 16 of the Legal Aid Sentencing and Punishment of Offenders Act 2012 ("**LASPO**").

12. In December 2018, the MOJ announced a criminal legal aid review ("**CLAR**"), that is a comprehensive review of the criminal legal aid fees scheme. There were two parts to the review:

(a) Gathering data – this data was published in the Data Compendium[2] in February 2021;

(b) An Independent Review of Criminal Legal Aid – this review was carried out by Sir Christopher Bellamy QC. The report[3] was published on 29 November 2021.

13. In his report, Sir Christopher Bellamy QC recommended, amongst other things, that funding for criminal legal aid should be increased overall for solicitors and barristers alike "*as soon as possible*" by at least 15% above present levels. This would require immediate additional annual funding of £135 million[4].

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[1] The AGFS is created by reg.4 and Sch.1, Criminal Legal Aid (Remuneration) Regulations 2013/435.

[2] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/960290/data-compendium.pdf

[3] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1041117/clar-independent-review-report-2021.pdf

[4] See Paragraphs 1.37-1.39 of the report dated 29 November 2021.

14. In its response[5] to CLAR the MOJ, amongst other things, proposed a 15% increase in fees for all offences, but only to "new cases" (i.e. not Future Retained Work") and only from October 2022 ("**New Work**"). In short, Sir Christopher Bellamy QC's recommended funding increase was delayed by a minimum of 11 months, but in practice, for far longer given the number of cases in play in the system.

15. On 30 June 2022, James Cartlidge MP, Parliamentary Under-Secretary of State for Justice, made a statement[6] to the House of Commons in which he announced the MOJ would introduce a statutory instrument by 21 July 2022 that will increase fees paid under the AGFS by 15% across the majority of the AGFS.

16. In discussions with the CBA and the Chair of Bar Council, the MOJ has stated that:

    (a) The 15% increase in fees will apply only to new cases – i.e. cases in which a representation order is granted on or after 1 October 2022, that is New Work;

    (b) To increase fees payable to counsel pursuant to the AGFS in respect of existing representation orders, i.e. Future Retained Work, would offend against the common law principle that legislation should not have retrospective effect; and

    (c) To increase fees in this way would also offend against "Treasury rules" that do not permit changes to contractual payment terms retrospectively.

17. On 30 June 2022, the Chair of Bar Council issued a statement entitled "*Message from the Chair of the Bar: Ministerial Statement of Criminal Legal Aid Review*". At Paragraph 2 of that statement, Mark Fenhalls QC, said (emphasis added):

    > *"Many of you have asked whether there is any prospect of increases being 'backdated' to current Representation Orders or brought in more quickly. We have asked for this, but the short answer is that Government has said "no". Bar leaders have been told that a combination of legal and technical reasons makes this impossible. As we understand it, the legal advice to the Government is that Treasury rules around the spending of public funds do not permit changes to contractual payment terms retrospectively and that current Representation Orders are therefore disqualified. Furthermore, the Government will not introduce increases for one scheme ahead of the others and we are told that software challenges at the LAA across all fee schemes mean it cannot be any faster."[7] (emphasis added)*

18. The CBA has rejected the MOJ's proposal as insufficient as, amongst other reasons:

[5] https://consult.justice.gov.uk/digital-communications/criminal-legal-aid-independent-review-response/supporting_documents/clairgovernmentresponseconultation.pdf
[6] https://questions-statements.parliament.uk/written-statements/detail/2022-06-30/hcws168
[7] https://r1.ddlnk.net/4CGD-1CM43-FBF97BA3C06C82371835TW40D7B593059CA181/cr.aspx

(a) It did not apply to the existing representation orders and therefore none of the cases in the existing 58,000 case backlog would be eligible;

(b) That the increase will not apply to existing representation orders will mean that for many barristers there will be a delay of at least 1 year before they benefit from the pay increase, on top of the 11 months delay since Sir Christopher Bellamy QC's report;

(c) In its view, a minimum 25% *immediate* increase in fees payable under the AGFS is necessary to arrest and reverse the crisis.

19. The CBA balloted its members on industrial action in February 2022 and then again on 11 June 2022. The results of the latter ballot were announced on 20 June 2022 with 81.5% voting in favour of "days of action". Those "days of action" commenced on Monday 27 June 2022 and are to operate by means of an escalating series of days when those who participate in the action do not attend court.

Legal Background

(a) Representation Orders: s.16 LASPO

20. The gateway through which defendants in criminal proceedings in the Crown Court need to pass in order to receive publicly funded representation from counsel is the making of a determination pursuant to s.16(1) LASPO. The making of a determination in favour of a defendant results in the grant to them of a representation order.

(b) Advocates' Graduate Fee Scheme

21. It is s.2(3) LASPO that confers upon the Lord Chancellor the power to pay those who represent defendants pursuant to a representation order. Section 2(3) provides that:

> *"The Lord Chancellor may by regulations make provision about the payment of remuneration by the Lord Chancellor to persons who provide services under arrangements made for the purposes of this Part."*

22. Section 41(1) to (3), makes further provision for regulations that are to be made by the Lord Chancellor under s.2(3). It provides (in the "boilerplate" language that commonly appears in powers of this kind) that:

> *"(1) Orders, regulations and directions under this Part—*
>
> *(a) may make different provision for different cases, circumstances or areas,*
>
> *(b) may make provision generally or only for specified cases, circumstances or*
>
> *areas, and*

(c) may make provision having effect for a period specified or described in the order, regulations or direction.

(2) They may, in particular, make provision by reference to—

(a) services provided for the purposes of proceedings before a particular court,

tribunal or other person,

(b) services provided for a particular class of individual, or

(c) services provided for individuals selected by reference to particular criteria or on a sampling basis.

(3) Orders and regulations under this Part—

(a) may provide for a person to exercise a discretion in dealing with any matter,
(b) may make provision by reference to a document produced by any person, and
(c) may make consequential, supplementary, incidental, transitional or saving provision."

23. In exercise of the powers conferred, *inter alia*, by s.2(3) and s.41(1) to (3), LASPO, the Lord Chancellor made the 2013 Regulations.

24. By Regulation 4(1) of the 2013 Regulations, claims for fees by a trial advocate for proceedings in the Crown Court must be made and determined in accordance with Schedule 1 to the 2013 Regulations. Schedule 1 effectively contains the AGFS, including the fees that are to be paid to counsel.

25. The liability to pay fees to an advocate pursuant to the AGFS is not founded on contract but Regulation 23(1) of the 2013 Regulations. This provides that:

    "Having determined the fees payable to each trial advocate, in accordance with Schedule 1, the appropriate officer must notify each trial advocate of the fees payable and authorise payment accordingly."

26. There is no provision in LASPO or the 2013 Regulations whereby the relationship between counsel and the LAA is placed on a contractual footing or deemed to be contractual.

27. Rather, the relationship is one of a statutorily created debt for services, much like the sums at issue (for GP services); see *Roy v Kensington & Chelsea Family Practitioner Committee* [1992] 1 AC 624.

(c) Very High Cost Cases

28. In a few cases, the representation of defendants pursuant to a representation order does not fall within the AGFS, but within a separate regime. These cases are called

"Very High Costs Cases" or "VHCCs" and fees for such cases have since 2 December 2013, been paid in accordance with the terms of the Very High Costs Cases contract (itself still not a contract in common law terms, but a form of statutory relationship) between the LAA and counsel (Regulation 12A(a)), and the rates set down in Schedule 6 to the 2013 Regulations.

The Proposed Defendant's position is wrong in law

29. The MOJ's position, as we understand it, is that fees payable under the AGFS for Future Retained Work cannot be increased, as to do so would be *ultra vires* and require changes to be made, retrospectively, to contractual payment terms which is not (on the proposed Defendant's case) permitted under Treasury rules. That position is not supported by the factual background, legal analysis; or the MOJ's approach to amendments to LAA fee schemes in the past.

(a) The AFGS does not create a contractual relationship

30. As set out at paragraph 34 above, the AGFS does not create a contractual relationship between barristers and the LAA. The relationship that gives rise to payment exists on a purely statutory footing. A barrister's entitlement to fees is a statutory debt which arises under the 2013 Regulations. This debt arises only at the point where the relevant work is done. Per Regulation 4(3) of the 2013 Regulations, "*a claim by an instructed advocate for fees in respect of work done…must not be entertained unless the instructed advocate submits it within three months of the conclusion of the proceedings to which it relates.*" (emphasis added)

31. Accordingly, in so far as the Chair of the Bar Council's assertion that "…*Treasury rules around the spending of public funds do not permit changes to contractual payment terms retrospectively…*" those rules are not engaged by increasing the fees payable to barristers under the AGFS for Future Retained Work. Any work done subsequent to a fee increase, under a representation order pre-dating such increase, can accordingly be remunerated pursuant to that new fee scheme.

(b) The change would not amount to retrospective legislation

32. There are a number of authorities articulating canons of statutory interpretation relating to retrospectivity and the unfairness it may generate. The authorities make clear that provisions that alter existing legal rights/relationships for the future are not retrospective, in contrast with provisions that seek to alter the legal position in the past or in relation to things that have happened in the past, i.e. "settled" or "closed" transactions or "vested rights". The principle generally arises in the context of statutory construction, in that legislation is presumed not to intend retrospective effects. There is however no hard-edged rule that, for example, delegated legislation cannot have retrospective effects.

33. We draw your attention to the following authorities on this point:

a) In Yew Bon Tew v Kenderaan Bas Mara [1983] 1 AC 553 Lord Brightman delivering the advice of the Committee at 558, said:

> "*…A statute is retrospective if it takes away or impairs a vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability, in regard to events already past*." (emphasis added)

b) In Secretary of State for Social Security v Tunnicliffe [1991] 2 All ER 712, the Court of Appeal gave further consideration to the scope of the rule that statutes are not to be construed to have retrospective effect unless that result is unavoidable. There at 724, Staughton L.J. described the rule thus:

> "*In my judgment the true principle is that Parliament is presumed not to have intended to alter the law applicable to past events and transactions in a manner which is unfair to those concerned in them, unless a contrary intention appears. It is not simply a question of classifying an enactment as retrospective or not retrospective. Rather it may well be a matter of degree the greater the unfairness, the more it is to be expected that Parliament will make it clear if that is intended.*" (emphasis added)

c) Buckley LJ in West v Gwynn [1911] 2 Ch 1, at 11-12 stated:

> "*Retrospective operation is one matter. Interference with existing rights is another. If an Act provides that as at a past date the law shall be taken to have been that which it was not, that Act I understand to be retrospective*."

Indeed, as his Lordship pointed out, "*[m]ost Acts of Parliament, in fact, do interfere with existing rights*."

d) Lord Reed has stated that: "*Changes in the law even if resulting from prospective legislation or judicial decisions, will frequently and properly affect legal relationships which were established before the changes occurred*." Axa General Insurance Ltd v HM Advocate [2011] UKSC 46, [2012] 1 AC 868, §120 (emphasis added).

34. These authorities demonstrate that any increase in funding for work still to be done by criminal barristers is not properly characterised as retrospective legislation.

35. In correspondence with the proposed claimants dated 29 April 2022, officials at the MOJ sought to rely on the decision of the Court of Appeal in Solar Century Holdings Limited v Secretary of State for Energy and Climate Change [2016] EWCA Civ 117. In Solar Century, in explaining why the legislative changes challenged in that case did not have retrospective effect, Floyd LJ (with whom Tomlinson and Treacy LJJ agreed) at §70 referred to an extract from Bennion on Statutory Interpretation (6th Ed). The extract reads as follows:

> "*It is important to grasp the true nature of objectionable retrospectivity, which is that the legal effect of an act or omission is retroactively altered by a later change in the law. However, the mere fact that a change is operative with regard to past events does not mean that it is objectionably retrospective. Changes relating to the past are objectionable*

only if they alter the legal nature of the past act or omission in itself. A change in the law is not objectionable merely because it takes note that a past event has happened, and bases new legal consequences upon it." (Our emphasis)

36. *Solar Century* concerned, in effect, the earlier than anticipated closure of a subsidy scheme to future applications/use. It is useful to consider that decision in the light of the earlier case of *R (Homesun) v SS for Climate Change* [2012] EWCA Civ 28, concerning changes to the feed-in-tariff rates of pay for domestic solar panels, where the changes did violate retrospectivity principles. The critical fact in *Homesun* was that proposed changes would indeed alter *vested* rights, because those who had been persuaded by the subsidies on offer to install solar panels had been promised a clearly defined amount of *future income* with which to defray the capital costs of installing such equipment and with which to make a return on such investment. The essence of the proposed measures (the scheme having become wildly successful and thus wildly expensive) was to reduce the future payments on panels already installed and benefiting from the scheme, thereby frustrating the parties settled expectations as to future income on which they had undertaken the costly installation in the first place. (The change was akin to unilaterally altering the agreed coupon in a long term bond). Unsurprisingly, in *Solar Century*, *Homesun* was distinguished on the basis that it concerned unfair changes to "accrued entitlements".

37. The situation addressed by these two cases could not be further removed from the present, which concerns in essence a statutory scheme for pay/remuneration, under which the material entitlements to payment have not yet accrued because the work has not been done. (And of course, if the proposal had been to *increase* the rate of return, no question of unfair retrospectivity would have arisen in the *Homesun* case, because no unfairness would have resulted).

(c) The funding powers are in any event sufficiently broad to permit the change

38. Sections 2(3) and 41(1) to (3), LASPO, are broadly drafted and give the Lord Chancellor the power to both increase and decrease fees payable under the AGFS. There is no restriction in the terms of the legislative scheme precluding the Lord Chancellor from altering the level of fees in respect of work to be undertaken pursuant to an existing representation order. Even if the change requested by the criminal bar amounted to a form of retrospective legislation, it is well within the broad powers of the Lord Chancellor.

(d) The MOJ itself has previously applied changes under the 2013 Regulations retrospectively

39. The MOJ's position in this matter, outlined in correspondence dated 29 April 2022, is entirely at odds with its approach to retrospectivity of the 2013 Amendment Regulations, as it relates to a *reduction* of fees for Future Retained Work. Respectfully, the MOJ cannot adopt the contrary position for no other reason than that an increase in fees is now under discussion. The difference in approach between the two situations is impossible to reconcile and creates the unfortunate impression of being a merely instrumental position adopted to reduce the scope of any potential fee increase.

40. Such inconsistency in approach is clearer still from the wider materials.

41. After the commencement of LASPO the LAA entered into VHCC contracts pursuant to that Act. On 5 September 2013, the MOJ commenced a consultation[8] on, *inter alia*, reducing fees on existing VHCC contracts (i.e. the changes that were to become embodied in the 2013 Amendment Regulations). At §2.46 to §2.47 of the consultation paper the MOJ said:

> "*2.46 In relation to fees for VHCCs we do not accept that a distinction in legal aid and CPS rates for VHCCs undermines the principle of "equality of arms". We are confident that defendants will continue to receive effective representation under the revised rates. Having considered, and given due regard to the responses to the consultation, the Government has decided to proceed with the proposed 30% reduction in fees payable to all new criminal VHCCs and to future work in existing cases, with the exception of pre-panel cases.*
>
> *2.47 It is intended that these changes will be introduced by way of amendments to secondary legislation, subject to Parliamentary approval, and contract amendments later this year.*" (Our emphasis)

42. Following consultation, the MOJ decided to reduce fees payable, *inter alia*, under existing VHCC contracts. This change was affected by the Lord Chancellor by the 2013 Amendment Regulations:

    a) The 2013 Amendment Regulations were made pursuant to s.2(3) and s.41(1) to (3), LASPO. This is the same power that the Lord Chancellor would use to make any increases to the fees payable under the AGFS.

    b) By reg.3(5), the 2013 Amendment Regulations inserted into the 2013 Regulations a new reg.12A.

    c) The new reg.12A(1) provided that work done pursuant to a representation order via a VHCC contract would be paid in accordance with that contract and at the rates set out in a new Sch.6, 2013 Regulations, that was inserted into the 2013 Regulations by the Amendment Regulations.

    d) The fees payable under the new Sch.6 effectively introduced a 30% decrease to fees payable for work done pursuant to a VHCC contract.

    e) As was foreshadowed by §2.46 of the consultation paper, the fees in Sch.6 constituted a reduction of fees in respect of work done pursuant to VHCC contracts.

    f) The transitional provisions at reg.4, 2013 Amendment Regulations, stated that:

[8] Transforming Legal Aid: Next Steps

"Very High Cost Cases

4. The amendments made by regulation 3(2) to (5) and (8) apply in relation to fees for work undertaken on or after 2nd December 2013."

The effect of reg.4 was that the reduction in respect of fees payable for work done under a VHCC contract did not simply reduce fees on new VHCC contracts (i.e. the equivalent of Work) but did so on new work done under existing VHCC contracts too (i.e. the equivalent of Future Retained Work).

g) That this was deliberate is evident from the explanatory note to the 2013 Amendment Regulations. As respects existing VHCC contracts, the explanatory note says:

"*For contracts signed before 2nd December 2013, the new fees apply to work done pursuant to any Task List agreed between a representative and the Lord Chancellor on or after 2nd December 2013. The previously applicable fees will continue to apply to work done pursuant to a Task List agreed before 2nd December 2013 and in any case where, before 2nd December 2013, the court has set a date for trial which is on or before 31st March 2014*." (Our emphasis)

43. The 2013 Amendment Regulations were subject to annulment pursuant to the negative procedure. Accordingly, the Lord Carlile of Berriew tabled an address in the House of Lords to have them annulled. The annulment was debated in the House of Lords on 11 December 2013. Lord McNally, Minister of State, MOJ, replied for the MOJ in the debate. Lord McNally made the following comments on the 2013 Amendment Regulations that are pertinent to the issue of retrospectivity under ss.2(3) and 41(1) to (3), LASPO. He said:

(a) Hansard, Column 983:

"*I turn now to the instruments that are the subject of this debate. They apply a reduction of 30% to the legal aid fees paid to litigators and advocates in what are known as very high cost criminal cases, although I will accept the description of them by the noble Lord, Lord Carlile, as being very high complexity cases as well. This will save £19 million per annum in a steady state. The noble Lord, Lord Carlile, will be familiar with these cases; as he told us, he has undertaken this sort of work in the past. For the benefit of others, I should explain briefly that VHCCs are the longest and most expensive Crown Court trials funded by legal aid. Under the current system, they are those cases which are expected to last more than 60 days at trial; the overwhelming majority of them relate to fraud offences of one type or another*." (emphasis added)

(b) Hansard, Column 985:

"*Concerns have been raised about the impact of this fee cut on existing contracts. It is precisely because these cases run over a number of years that we must ensure*

that the ongoing fees represent value for money. We are therefore reducing rates in existing contracts where cases are at a relatively early stage and where the ongoing costs are likely to be significant. I cannot give any assurances about changing the position that we have taken on this because we are under responsibilities to make these cuts." (Our emphasis)

44. From the foregoing it is incontrovertible that in 2013, not only did the MOJ believe that it had the power to make changes to fees payable to advocates pursuant to existing representation orders (VHCC cases can only be entered into where, inter alia, there is an extant representation order) but it believed that ss.2(3) and 41(1) to (3), LASPO granted the Lord Chancellor the power to reduce fees payable for future work that was to be done pursuant to existing VHCC contracts. The MOJ has failed to provide any analysis or explanation, in our submission because such a position cannot sensibly be supported, explaining why the same approach could not be adopted with respect to a fee increase for Future Retained Work. (The alternative of course is that the 2013 Amendment Regulations, and the some £160 million odd of savings they have produced, before interest/inflation, were themselves unlawful).

(e) Conclusions on the Proposed Defendant's error in law

45. In conclusion:

- The relationship between the LAA and counsel created by the AGFS is not contractual.
- Fees for advocates under the AGFS become payable at the point that the work is done (rather than at the point of issue of the relevant representation order).
- Increasing the level of such fees before work is done does not amount to legislating with retrospective effect.
- Even if such legislation is retrospective (which it is not) it is well within the powers of the Lord Chancellor under LAPSO.
- in so far as "*...Treasury rules around the spending of public funds do not permit changes to contractual payment terms retrospectively...*" those rules are not engaged.
- There was a 30% fee reduction under the 2013 Regulations for work that was to be done by barristers on existing VHCC contracts by the 2013 Amending Regulations. If the MOJ's position was correct, that reduction would have been ultra vires and the fees could be recovered.

46. Given the above, in making a decision to refuse to increase fees for Future Retained Work, the proposed Defendant has misdirected itself in law. The Claimant seeks to challenge the refusal decision on the basis of illegality.

47. If the MOJ continues to maintain that it lacks the vires to make a statutory instrument that increases fees for Future Retained Work, we shall as an alternative remedy seek a declaration from the Administrative Court as to whether s.2(3) and s.41(1) to (3), LASPO, grants the Lord Chancellor the power to make such a statutory instrument.

The details of the action the proposed defendant is expected to take

48. The proposed claimants ask that, in the light of the legal analysis set out within this letter, the MOJ accepts that there is no legal impediment to the immediate implementation of a minimum of 25% increase in AGFS fees requested by the Claimant and that the analysis set out in this letter is correct.

ADR proposals

49. Our client has sought to engage constructively with the Government in respect of this matter. However, to date, our client has faced intransigence in the Government's legal position; a position which, as explained in this letter, cannot be maintained. That being said, our client remains open to ADR if undertaken on an urgent basis, and it welcomes the Defendant's proposals at the earliest opportunity.

The details of any information sought and documents which are considered relevant and necessary

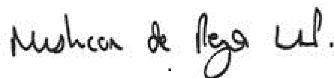
50. Please explain to which "Treasury Rules" the Chair of the Bar Council was referring in his statement of 30 June 2022 and provide a copy of such Treasury Rules. This is relevant and necessary as the Chair of the Bar Council relies on those rules as part of his analysis of why the MOJ's refusal to increase fees to barristers under the AGFS for Future Retained Work is permissible.

Proposed reply date

51. Given the urgency of the matters contained in this letter and on the basis that the MOJ appears to have considered the issues and taken specific legal advice in its previous correspondence with the Criminal Bar Association on these issues (and be prepared to maintain its view of the law in dealings with the Claimant) **we would ask that a response is provided by no later than 5:30pm on Friday 8 July 2022**.

In the event of any queries, please contact James Libson or Johanna Walsh of this office.

Yours faithfully



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