



Home Office

The Home Office response to the Independent Chief Inspector of Borders and Immigration's report:

An Inspection of the Home Office's Mechanisms for Learning from Immigration Litigation.

April – July 2017

The Home Office thanks the Independent Chief Inspector of Borders and Immigration for his report.

Pre-Action Letters, Judicial Review and Private Law Claims are a particularly high profile and challenging area of work. The teams within Litigation Operations (LO) deal with a caseload that stems from business areas across the Borders, Immigration and Citizenship system and there have been significant peaks in workload over recent years. There is consistent time pressure to meet court deadlines and the work of LO is subject to intense court scrutiny.

Against this backdrop, we are pleased that the Independent Chief Inspector has acknowledged the many process improvements that the LO team has made over recent years, that there are clear systems and processes in place to manage this work and that they are being routinely followed. This has led to a broadly effective approach to managing litigation - of those claims that proceed to paper permission stage over 90% are refused by the courts (with a significant portion found to be 'totally without merit'). We are also pleased that the inspectors have referenced the positive joint relationships between LO and the Government Legal Department (GLD), as well as other teams in the Home Office.

The report is right to highlight that there is room for further improvement. This includes accelerating the work that is already in train to ensure that performance information and lessons learned through the management of litigation are shared with colleagues in decision making areas. It was helpful that the report recognised various examples of good practice but we acknowledge the challenge of spreading best practice across all teams and all areas of work.

The Home Office partially accepts two and fully accepts five of the seven recommendations. The reasons for this are set out in more detail below.

1. Review the (updated) Service Level Agreement (SLA) between the Home Office and the Government Legal Department to take account of the findings and recommendations from this inspection report, and ensure that a fully up-to-date version is signed off as soon as possible, and is reviewed and re-signed annually.

1.1 Accepted.

1.2 As the report recognises LO and the GLD already have a close working relationship and clear mechanisms for jointly reviewing performance. We do, however, recognise that there would be some additional value in having performance expectations formally signed off by both Departments.

1.3 It is the Department's intention to have an updated Service Level Agreement (SLA) between the Home Office and the GLD in place by April 2018. This will be subject to an annual review.

2. Trial (with a manageable cohort of claim types) the involvement of Government Legal Department in the preparation of responses to Pre-Action Protocol letters to test whether this can reduce the percentage of cases that proceed to Judicial Review applications.

2.1 Accepted.

2.2 LO already involves the GLD in the early stages of litigation for certain higher profile cases and we will review whether there is a business case for expanding this.

2.3 In January 2018, LO will undertake a review of Judicial Review (JR) claims that have resulted in a permission grant where there has been a previous Pre-Action Protocol (PAP) challenge on identical grounds.

2.4 This exercise will enable the business to better understand the scope and volume of cases where early intervention may make a material difference and it will also help establish the initial cohort of cases where the benefits from the GLD involvement in the earlier stages of drafting the PAP response is likely to outweigh any additional costs.

2.5 Subject to the findings of the review, LO and the GLD will commence a trial of the GLD intervention and assess whether this strategy reduces the percentage of cases that proceed to bring a JR and are granted permission to proceed. It is envisaged that the trial will last at least three months to enable sufficient time for the first cohort of PAP cases to materialise into a JR claim in the event the early intervention measures are not deemed an effective resolution to the challenge. If this approach proves value for money, then we will incorporate this handling approach as business as usual and seek to extend to a wider cohort of case types during the remainder of 2018/19.

3. Enlist the Home Office Performance and Risk Directorate (the Continuous Improvement Unit and the Knowledge and Information Management Unit) to work with Litigation Operations and decision-making business areas to identify, create and imbed the processes and tools required to improve mutual understanding and learning at working level.

3.1 Accepted.

3.2 We were pleased that the report highlighted a number of examples where teams are already working closely together as well as the range of mechanisms which have been developed to ensure that decision making areas receive feedback on the outcomes of litigation. These include the Triage process (which looks at all JR claims which get permission) and Virtual Litigation Teams (which bring together representatives from operational areas, policy and the Home Office Legal teams). It also includes revised performance dashboards using the improved management information that we are able to generate through our new workflow system (JIRA) introduced in 2017/18.

3.3 The Home Office is committed to continuing to improve in this area and agrees that there is more that we can do to share best practice between LO and those teams within Performance and Risk Directorate which focus on continuous improvement and knowledge management.

3.4 Following the inspection, improvement specialists are being assigned to work with LO. They will conduct a review of current mechanisms with the aim of producing a joint improvement plan by the end of March 2018.

4. Ensure that Litigation Operations is equipped with the analytical skills and tools required to use the improved data available through JIRA to identify and apply “what works best” at each stage of the litigation process.

4.1 Accepted.

4.2 As the inspection recognised, LO has introduced a new workflow tool to manage the high volume of PAP letters and JRs. This system enables LO to adapt and adjust the functions to obtain improved data and since introducing the system a number of adaptations have been made to further improve the system so it better meets the needs of the business.

4.3 Across LO a lead official in each location has been identified to contribute to a virtual network of expert users to further enhance the system and its functionality, learning from the experiences of those that use the system on a daily basis. We will further develop this process so that we imbed continuous improvement into this process, ensuring that the JIRA database produces high quality data.

4.4 LO has a central team, with the ability, to provide teams with a suite of reports to assist managers and teams to understand the flow of work and carry out data

analysis. Since the inspection this team has further improved the reports they generate, including providing weekly team level reports to drive improved performance within teams. The Department expects to see these deliver an improvement in performance during 2018 as team managers utilise the improved data.

- 4.5 Following the inspection LO will roll out further training for managers and users to develop and broaden skills needed to maximise use of this system and data.

5. Review Litigation Operations' internal targets for the completion of responses to Pre-Action Protocol letters, and for the provision of initial instructions to the Government Legal Department for the proposed handling/outcome of a Judicial Review application, and set them so that they drive improved performance towards 100% completion within deadlines other than for exceptional cases.

5.1 Accepted.

- 5.2 As governed by the Civil Procedure Rules and as set out at Section 20 of the 'Pre-Action Protocol for Judicial Review', respondents in litigation are ordinarily required to provide a substantive response to all PAP letters within fourteen calendar days of receipt. However, there is provision for respondents to issue a holding response for those cases that require further investigation and are therefore deemed more complex.

- 5.3 LO have currently set their PAP response key performance indicator to achieve ninety per cent substantive response rate within fourteen days but we agree with the inspection report that this should be reviewed to ensure that we are being ambitious in driving improved performance. To inform this LO, together with the United Kingdom Visas and Immigration (UKVI) Operational Assurance and Security Unit (OASU), will commence a review in January 2018 of a selection of cases where we have not been able to provide a PAP response within the fourteen-day service standard to ensure that there are good reasons for this.

- 5.4 Similarly, in relation to JRs, and we will examine a cohort of cases to clarify precisely why internal deadlines are being missed and where further improvement can be made. We will focus on cases where the Home Office has not provided the GLD instructions by working day seven. The review will commence in January 2018 and make recommendations on how current targets can be adapted to drive performance by the end of March 2018.

6. Set targets for the progression and completion of Private Law Claims (PLCs) that ensure Home Office performance in relation to PLCs is subject to the same level of scrutiny and challenge as Judicial Reviews.

6.1 Partially accepted.

- 6.2 LO has undertaken work this year to improve its management information and workflow tool (JIRA) in relation to PLCs. This is already providing us with more accurate data in relation to PLCs which in turn is allowing us to manage the system more effectively. Since the inspection took place we have established a new internal process, the Case Review Group, which meets monthly to review PLC cases and establish the appropriate next steps. We have also drafted guidance for our caseworkers to improve general case handling.
- 6.3 Although PLCs are comparatively small in number we recognise that because of their high cost they need to be managed efficiently. However, the court process in respect of JRs and PLCs is not the same and the PLC process does not lend itself as easily to the setting of fixed targets in the way the initial stages of the JR process does. We will though continue to review the PLC process in consultation with GLD to see where there is scope for introducing targets for progression and completion of PLCs comparable to that we have for JR cases.

7. Review and reissue guidance concerning who may authorise a litigation claim to be conceded, and align this with budget allocations and financial authority for expenditure associated with settling or defending a claim.

- 7.1 **Partially accepted.**
- 7.2 As the report recognises, effective conduct of litigation requires close working between LO and decision making areas.
- 7.3 When settling a litigation claim, it is necessary to agree a Consent Order which often commits a particular team other than LO to an agreed set of actions. The current process is designed to ensure that where commitments are being made to the Court these have been agreed by the team who will be taking them forward. In the vast majority of cases this process works well, with no conflict between the views of LO and decision making areas.
- 7.4 We are, however, already updating both the litigation cost and JR guidance and will consider whether this should be more explicit on what the escalation process is where it is not possible to reach agreement. We will also review, as part of this process, whether there can be closer alignment of authority to concede a case and financial authority.
- 7.5 Revised guidance will be issued by March 2018.