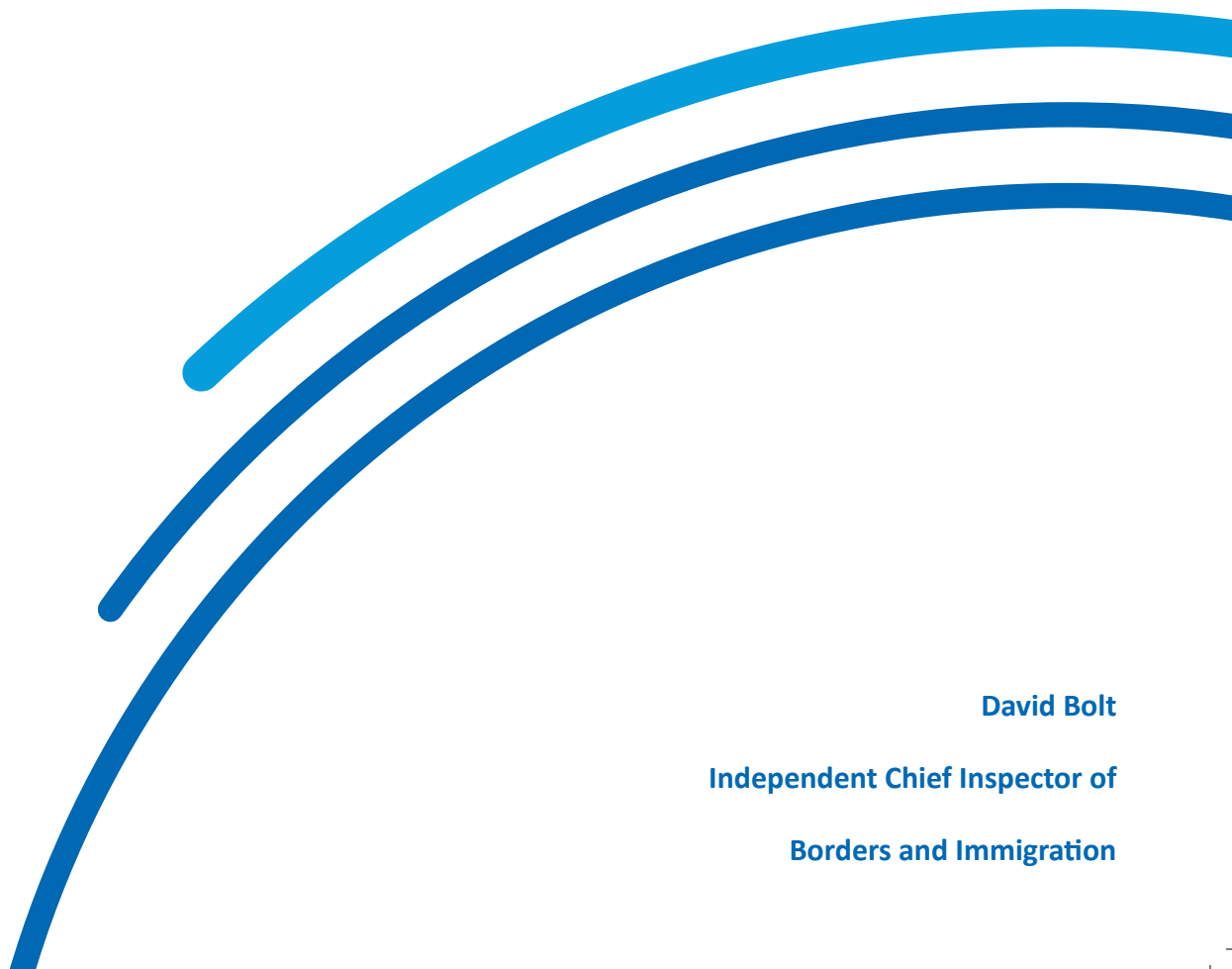




An inspection of the Home Office's mechanisms for learning from immigration litigation

April – July 2017



David Bolt

Independent Chief Inspector of
Borders and Immigration

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Presented to Parliament pursuant to Section 50 (2) of the UK Borders Act 2007

January 2018



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To help improve the efficiency, effectiveness and consistency of the Home Office's border and immigration functions through unfettered, impartial and evidence-based inspection.

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Foreword

It is important that the Home Office, with support from the Government Legal Department (GLD), is efficient and effective in its management of litigation claims made against the decisions and actions of its Borders, Immigration and Citizenship System (BICS) business areas.

In addition to being an opportunity to acknowledge errors and provide appropriate remedies to claimants, the costs of processing and defending cases are substantial, as are the sums paid out to settle claims, and in compensation when cases are lost. There are also risks to the Home Office's reputation and functioning if claims are handled poorly and result in adverse judgements.

Between 2004 and 2013, the number of Judicial Reviews raised against the Home Office increased seven-fold. In 2013, the Home Office's Legal Strategy Team (LST) produced a document entitled 'Litigation – Blueprint for a Target End to End Process'. This 'Blueprint' recognised that learning "should be used to identify improvements and refine our processes, or suggest actions to other units to improve the handling of litigation."

This inspection focused on the mechanisms the Home Office had put in place since 2013 to manage litigation claims, and to capture and use the learning from litigation in order to improve the way claims are handled and, as far as possible, to reduce the number of future claims and associated costs through better ("right first time") decision making.

Litigation Operations manages the bulk of the Pre-Action Protocol letters, Judicial Reviews, and Private Law Claims that relate to BICS business areas. The inspection found that since its creation in 2013, and particularly in the last two years, Litigation Operations had made various process improvements and, at the time of the inspection, was looking to build on these.

The inspection identified room for further improvements in the processing of claims, as well as the need for clearer communication to decision makers in other units about litigation outcomes in order to avoid the same issues giving rise to repeated claims.

With regard to costs, the inspection found that the budgets for legal costs and compensation payments were overspent in 2016-17, which raises concerns about the Home Office's ability to control its expenditure in this area. The equivalent budgets are planned to reduce by almost a fifth in 2019-20. This will require an exceptional level of cost saving efficiencies. The inspection found no evidence to support such optimism.

Ultimately, the actions of claimants and the Courts are not within the Home Office's control. However, if it is to have greater influence over the costs and other consequences of litigation it needs to make a more deliberate and determined organisational effort to learn lessons from the claims it receives, and to apply these systematically to initial decision making as well as to the management of claims.

This report makes 7 recommendations. These include formalising, and possibly extending, the involvement of GLD; creating a closer and more structured working relationship between Litigation Operations and decision-making business areas; enhancing Litigation Operations' analytical capabilities, reviewing performance targets, and aligning the responsibility for deciding which claims to settle or defend with budget allocations and financial authorities.

The report was sent to the Home Secretary on 24 November 2017.

David Bolt

Independent Chief Inspector of Borders and Immigration

1. Purpose and Scope

- 1.1 This inspection examined how outcomes from litigation claims against Home Office decisions and actions are used to learn lessons and drive improvements in decision quality and to reduce the risks of further litigation.
- 1.2 The inspection focused on:
 - the Home Office's handling of the Pre-Action Protocol¹ process, Judicial Reviews² and Private Law Claims,³ including interactions and 'hand-offs' within the Home Office and with the Government Legal Department
 - how Litigation Operations (LO) works with Home Office decision-making units to promote organisational learning from litigation
- 1.3 The inspection also looked at the costs associated with litigation cases and the governance of financial awards and compensation payments.
- 1.4 The following areas were excluded from scope:
 - litigation cases raised in Scotland⁴ or Northern Ireland, where different legislation and processes apply, and where the numbers involved are relatively small
 - litigation cases relating to decisions or actions by Border Force, HM Passport Office, and the Civil Penalty Compliance Team as these are not handled by LO
 - inquests into deaths in custody

1 A Pre-Action Protocol (PAP) letter is written with the purpose of trying to resolve a dispute before court proceedings are started.

2 A Judicial Review (JR) is 'a type of legal challenge where an individual asks the High Court or Upper Tribunal to review the lawfulness of a decision, action or failure to act of a public body or government department.

3 A Private Law Claim (PLC) is a civil dispute between two parties where one party is seeking damages in compensation from the other for an alleged wrongdoing.

4 'An inspection of Representation at First Tier Appeals in Scotland', published in 2011 as part of a suite of reports covering Scotland and Northern Ireland, found there to be a link between cases where the Home Office was represented and the department's success rate in defending its decisions. It also highlighted a lack of national analysis of litigation outcomes.

http://icinspector.independent.gov.uk/wp-content/uploads/2011/02/Scotland-Northern-Ireland_Representation-at-appeals.pdf

2. Methodology

2.1 Inspectors:

- visited Appeals, Litigation and Subject Access Requests (ALS)⁵ in London and Croydon for a familiarisation briefing by the ALS Senior Management Team and walkthrough of its functions and processes
- reviewed previous audits and inspections, in particular the 2009 National Audit Office (NAO) report 'Helping Government Learn', and the ICIBI's 'An Inspection of the Handling of Complaints and MPs' Correspondence, July-September 2015',⁶ and 'An Inspection of the Administrative Review Processes introduced following the 2014 Immigration Act, September-December 2015'⁷
- researched and analysed relevant open source material, including Home Office guidance to applicants, and guidance published by HM Courts & Tribunals Service explaining the procedures for Judicial Reviews for all Court users⁸
- examined policies and staff guidance available on the Home Office intranet, and performance data, management information and reports provided by the Home Office
- called for and examined 60 Home Office files for cases concluded between 1 April 2015 and 31 March 2017, comprising:
 - 10 cases settled at the Pre-Action Protocol stage
 - 30 cases settled by the Home Office after the Pre-Action Protocol stage, but prior to a substantive Judicial Review hearing
 - 15 cases that proceeded to a substantive Judicial Review hearing, broken down by "allowed" and "dismissed"
 - 5 Private Law Claims, including cases won, lost and settled
- called for evidence from stakeholders, including the Immigration Law Practitioners' Association (ILPA), and HMCTS
- visited ALS offices in West London, Croydon and Sheffield and observed, interviewed and held focus groups with managers and staff
- interviewed representatives from the Government Legal Department

⁵ Litigation Operations is part of Appeals, Litigation and Subject Access Requests, one of 5 commands managed by the Immigration and Protection directorate of UK Visas and Immigration (UKVI).

⁶ Published 1 March 2016, re-inspection report published 12 July 2017.

⁷ Published 26 May 2016, re-inspection report published 13 July 2017.

⁸ Available on www.gov.uk.

3. Summary of conclusions

- 3.1 Litigation Operations (LO) is 1 of 3 business units within Appeals, Litigation and Subject Access Requests (ALS), itself 1 of 5 commands in the Immigration and Protection directorate of UK Visas and Immigration. LO manages Pre-Action Protocol (PAP) letters, Judicial Reviews (JR), and Private Law Claims (PLC)⁹ received by the Home Office in respect of decisions and actions taken by certain Borders, Immigration and Citizenship System (BICS) business areas.¹⁰
- 3.2 This is a large and important part of the Home Office's BICS work due to: the number of litigation claims; the annual costs to the Home Office of processing and defending cases; the sums paid out to settle claims, or in compensation when cases are lost; and, not least, the risks to the Home Office's reputation and functioning.
- 3.3 LO was created in 2013. In the preceding 10 years, the number of JRs received by the Home Office had increased seven-fold. Prior to the creation of LO, responsibility for managing a litigation claim sat with the business area that had taken the decision or action that had led to the claim, and the way cases were managed, and the capture and application of any learning, was reportedly unstructured and inconsistent. Since 2013, and particularly in the last two years, LO had made various process improvements and, at the time of the inspection, was looking to build on these.
- 3.4 In July 2015, working with the Government Legal Department (GLD), LO had produced a 4-part Judicial Review Case Allocation pro-forma. This was designed to ensure that when the Home Office receives PAP letters and JRs they are processed efficiently and within the timescales prescribed by Her Majesty's Courts & Tribunals Service (HMCTS).
- 3.5 Despite these court-imposed timescales, LO's internal performance targets for responding to a PAP and to the service of a JR (part 2) in time were set at only 90%. This is low compared to some other UKVI internal timeliness targets, and appeared to align with what might be achievable rather than of what was required. The target was missed in 3 out of 12 months in 2016-17.
- 3.6 In the case of JRs, the 90% target applied to an interim deadline of 7 days from receipt of a JR for LO's completion of part 2 of the pro-forma. This recognised that the Acknowledgement of Service (AoS) stage required input from GLD after LO. However, between November 2016 and the end of April 2017, LO failed to achieve 90% in 12 out of 25 weeks.
- 3.7 Originally, the deadline imposed by HMCTS for AoS responses was 21 days. This was extended to 42 days for non-urgent immigration-related cases in 2014. How far LO's failure to achieve its own AoS target affects the achievement of these external deadlines was unclear, but the monthly data for 2016-17 showed that there was no month in which 90% of responses were provided within 42 days, and fewer than 40% of cases received an AoS response within 21 days.¹¹

9 Plus inquests into deaths in custody

10 Excluding Border Force, Her Majesty's Passport Office, Civil Penalty Compliance Team

11 R (on the application of Kumar and Another) v Secretary of State for the Home Department (acknowledgement of service; Tribunal arrangements (JR)) [2014] UKUT 104 (IAC) permits lodgement within 42 days except for urgent claims.

- 3.8 Inspectors found that while LO and GLD generally worked well together, there was no current Service Level Agreement (SLA) between the Home Office and GLD. The latest version was dated December 2011. Inspectors were told that an updated version had been agreed, but had yet to be signed-off.
- 3.9 In April 2016, a bespoke litigation database (built in software called JIRA – and referred to by staff as ‘JIRA’) went live. Previously, LO had been reliant on the Casework Information Database (CID),¹² which did not meet its needs, despite having had some functionality added to enable the submission and outcome of a PAP letter to be recorded.
- 3.10 JIRA records the outcome of each stage of the Home Office’s PAP and JR processes. It is also used to manage and plan workflow, produce statistical data and ‘dashboards’, and to generate reports for managers, which they can tailor to their own requirements. The additional information stored on JIRA meant that the accuracy and usefulness of reports and data analysis were improving, but at the time of the inspection were not yet fully developed.
- 3.11 Access to the ALS data in JIRA is limited to ALS staff. Consequently, LO was still having to duplicate some records on CID, as caseworkers outside LO needed to be able to see the current status of any litigation case, since it might affect a decision or action, for example the removal of an individual from the UK, where litigation may present a barrier to removal.
- 3.12 As well as administrative and record-keeping process improvements, ALS had improved its management of risks through 3 linked oversight processes. A triage process for all JRs granted permission to proceed to a hearing, Virtual Litigation Teams (VLTs) focused on particular BICS business areas, and an Immigration and Borders Litigation Board (IBLB), ensured that the right people, including GLD, came together at the right time to consider the legal, policy and strategy issues arising from significant litigation cases and trends.
- 3.13 Most of the improvements already made by LO, and its recent initiatives, have concentrated on PAPs and JRs, which was understandable given the volumes. However, though small in number (around 230 a year) PLCs are potentially high in impact and merited greater attention.
- 3.14 At the time of the inspection, 80% of PLCs received in 2015-16 remained unresolved.¹³ LO had made some small efficiencies, for example in the timeliness of submission of scanned evidence, but overall inspectors found limited evidence of organisational learning or continuous improvement in this area. The involvement of LO managers in Detention Review Panels was an important exception, given how many PLCs related to unlawful detention, as was an analysis of the costs of unlawful detentions.
- 3.15 UKVI’s aim is for “right first time” decision making across all its business areas. This has a particular relevance to reducing litigation claims and their impacts, and the inspection looked specifically at feedback mechanisms to see if these were supporting learning and helping caseworkers in LO and decision makers in other units to get it “right first time”.
- 3.16 In terms of LO’s performance, group feedback was more developed and more organised than individual or case-specific feedback. The former made effective use of newsletters, Team Information Boards (TIBs), conference calls, workshops and various trend reports. Feedback to LO caseworkers about specific claims was mostly informal and unstructured, received through email exchanges with GLD.

¹² Case Information Database (CID) is the Home Office’s main caseworking and operational database. It is used throughout the Home Office to record personal details of all foreign nationals who pass through the immigration system.

¹³ Resolution of PLCs is not entirely within the control of ALS as the courts and the claimant also influence the timeline.

- 3.17 LO was looking to JIRA to help with quality assurance and with individual and team performance assessments. Along with other parts of ALS, LO was aligning its quality assurance processes with the QATRO system¹⁴ used elsewhere in UKVI. LO's new quality assurance framework will ensure that significant elements of a caseworker's work are quality assured against defined assessment criteria, including the PAP response, the AoS, Summary Grounds (SG),¹⁵ Detailed Grounds¹⁶ or Skeleton Arguments.¹⁷
- 3.18 The new quality assurance framework had the potential to improve case-specific feedback to caseworkers, as well as addressing their overall performance. Its stated purpose was to contribute to continuous improvement, and to recognise good performance and identify ineffective performance and support improvement. However, it had not been in operation for long enough for inspectors to be able to examine its effectiveness.
- 3.19 Most of the assessment criteria relied on open and objective questions. But, there was a risk that it would be seen by staff to focus on performance weaknesses rather than on identifying and promoting instances of good practice. For example, PAP caseworkers were not routinely told when cases where they had responded to a PAP letter were granted permission to proceed to a JR. The assessment criteria sought to capture this by asking "If the case has been handled inefficiently at PAP stage, has the PAP Team Leader been notified?" It did not ask "Was permission to proceed to a JR refused because of the quality of the PAP responses?"
- 3.20 The picture with regard to feedback to decision-making business units was mixed. The relevant business areas are represented on VLTs, for example, and receive thematic reports highlighting trends. However, interaction between LO caseworkers and decision makers on specific cases was less structured. GLD staff told inspectors that they felt there needed to be a clearer line of communication back to the original decision makers regarding JR outcomes, in order to avoid the same issues being challenged repeatedly.
- 3.21 Proximity and familiarity helped with mutual understanding and professional respect, and affected how well the two interacted. The closest relationships were where LO was collocated with decision-making units, and where staff had been in post for a long time, as in Sheffield. Here, LO found decision makers receptive to advice on claims, whereas LO caseworkers in Croydon reported that they encountered resistance from decision makers when they offered advice, and managers described their relationships with decision-making units as "poor".
- 3.22 Good working relations were important, not least as guidance gave initial decision-making units the final say on whether to defend or concede litigation claims. LO could only make recommendations. A Legal Strategy team senior manager told inspectors that this "grey area" needed clarifying, as the business areas did not hold the budget for the litigation and they would always defend their decision and want to contest a claim.
- 3.23 LO records the number of JR applications granted permission to proceed to a Paper or Oral Permission Hearing, and the outcomes of these hearings. The percentages of claims refused at each are high (65.9% and 45.5% respectively in 2016-17), and those of claims conceded or lost low (the Home Office conceded 3.7% of claims at Paper hearings and 1.2% at Oral hearings in

¹⁴ QATRO is a spreadsheet-based system that records the outcomes of quality assurance by managers, providing scores on individual caseworkers and the capability to conduct trend analysis.

¹⁵ Summary Grounds accompany the Acknowledgement of Service and outline why the Home Office contends its decision-making process and actions were correct.

¹⁶ The defendant's Detailed Grounds for contesting the claim are filed by the defendant once permission to proceed at a paper hearing has been granted.

¹⁷ Skeleton Arguments are filed by the defendant and claimant before a substantive hearing, setting out the issues, legal points, chronology of events and documents to be considered at the hearing.

2016-17, and 5.2% and 11.8% of claims were granted). Meanwhile, a relatively small number of cases proceed to a Substantive Hearing (670 in 2016-17). Again, the percentage of allowed claims is low (3.6% or just 24 of the 670 claims). However, the percentage of conceded claims jumps significantly (18.2% or 122 of 670 claims).

- 3.24 These percentages provide some indication of the effectiveness of LO's strategy and tactics, and the quality of its judgement regarding which claims to contest. However, two other sets of numbers are relevant to whether the Home Office is learning from litigation. The first concerns how many PAP letters and JRs are received each year. This is an indicator (albeit imperfect given that other factors that may influence a claimant's decision to raise a PAP or JR) of the quality of the Home Office's initial decision making, and also of its commitment to customer service excellence.
- 3.25 In 2015-16, LO received 25,858 PAP letters and 16,297 JRs. In 2016-17, the numbers were 22,610 and 13,855. The biggest reductions were in Human Rights (HR) claims (the largest category of claim). CID data indicated these accounted for 80+% of the reduction in PAPs and 60+% of the reduction in JRs. However, the data did not reveal whether this resulted from specific measures taken by the Home Office expressly to reduce HR claims, and if so whether the outcome was as expected and may be replicated.
- 3.26 The second set of numbers relates to the costs to the Home Office of litigation. The 2016-17 budget for litigation was £92.67 million. The outturn for the year was £6.23 million over budget. The full year variances of particular note were in relation to the Legal and Compensation budgets – the former (essentially the costs of engaging GLD) was £3.65 million (12.3%) overspent, while the latter was £5.37 million (19%) overspent. These overspends occurred despite the intake of claims for 2016-17 being lower than had been forecast by Home Office Science.
- 3.27 Inspectors examined the controls for authorising expenditure on individual claims and found that they were effective and being applied correctly. However, the 2016-17 overspends raise concerns about the Home Office's ability to control the overall expenditure. On present plans, in 2019-20 the budget for Legal and Compensation is due to reduce from £52.7 to £42.2 million, against a forecast intake of between 19,000 and 23,600 JRs.
- 3.28 Given LO's limited analytical capabilities and JIRA's relative newness, and LO's uneven and indirect influence over decision-making units, it is difficult to have much confidence in intake forecasts, even with such wide margins for error. Meanwhile, whatever the intake in 2019-20, the reduced budget will require an exceptional level of cost saving efficiencies. Inspectors saw no evidence that would support such optimism.
- 3.29 Based on the findings from this inspection, there is some room for improvement in the processing of claims within LO, and engagement with GLD would benefit from more clearly defined expectations on both sides. However, longer-term, the greatest potential for reducing the scale and costs of litigation appear to lie in improved initial decision making, so that fewer individuals have cause to make a claim and fewer of those who do so progress beyond the PAP stage. This will require not just closer working but a more deliberate and determined organisational effort to learn lessons.

4. Recommendations

The Home Office should

1. Review the (updated) Service Level Agreement 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.
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.
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.
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.
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.
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.
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.

5. Background

Judicial Reviews

- 5.1 A Judicial Review (JR) is ‘a type of legal challenge where an individual asks the High Court or Upper Tribunal to review the lawfulness of a decision, action or failure to act of a public body or government department. It can also be used to challenge secondary legislation, the Immigration Rules or policy, or the compatibility of an Act of Parliament with the Convention rights under the ECHR.’¹⁸

Pre-Action Protocols

- 5.2 ‘The Administrative Court: Judicial Review Guide 2016’, published by HM Courts & Tribunals Service (HMCTS), explains the procedures for JRs for all Court users.
- 5.3 The guide advises those considering bringing proceedings to try “to resolve the claim without litigation. Litigation should be the last resort.” It refers to pre-trial negotiations, and describes the Judicial Review Pre-Action Protocol (PAP) process, underscoring its importance:
- “First of all, it may serve to resolve the issue without need of litigation or at least to narrow the issues in the litigation. Secondly, failure to follow the Protocol may result in costs sanctions being applied to the litigant who has not followed the Protocol.”
- 5.4 The guide explains that the PAP process has two stages. Stage 1 requires the parties to consider whether a method of alternative dispute resolution would be more appropriate, for example discussion and negotiation.
- 5.5 Stage 2 is to send the defendant¹⁹ a pre-action letter,²⁰ containing the date and details of the act or omission being challenged and a clear summary of the facts on which the claim is based, plus details of any relevant information that the claimant is seeking and an explanation of why it is considered relevant.
- 5.6 The guide states that the defendant should normally be given 14 days to respond to the pre-action letter. The defendant may request additional time to respond, and the claimant should allow the defendant reasonable time where this is possible without putting the time limits²¹ to start the case in jeopardy.

18 Judicial Review Guidance for England and Wales, Version 0.12 – an internal Home Office guidance document for staff Judicial Review.

19 “Claimant” and “Defendant” are terms used when referring to JRs in the Administrative Court.

20 A Pre-Action Protocol letter (also known as a ‘letter before claim’ or a ‘letter before action’).

21 The guide states “The general time limit for starting a claim for judicial review requires that the claim form be filed promptly and in any event not later than 3 months after the grounds for making the claim first arose.”

Judicial Reviews

- 5.7 Judicial Review is a two-stage process. First, the claimant must obtain permission (sometimes referred to as “leave”) to apply for judicial review from the Administrative Court or, in the case of the majority of decisions relating to immigration and asylum, from the Upper Tribunal (Immigration and Asylum Chamber) (“UT(IAC)’)²². This is done by submitting a claim form, together with certain documents, including:
- a detailed statement of the claimant’s grounds for bringing the claim
 - a statement of the facts relied on
 - any written evidence in support of the claim
 - a copy of any decision letter or order the claimant seeks to have quashed
- 5.8 Permission will be refused unless the Court is “satisfied that there is an arguable ground for judicial review having a realistic prospect of success.” Even if a case is considered to be arguable, it will be refused if “the judge considers that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred.”
- 5.9 Where permission is granted, the second stage is the substantive claim.

Judicial Reviews of Immigration and Asylum Decisions

- 5.10 The UT(IAC) deals with any JR application that calls into question:
- “A decision made under the Immigration Acts²³ or any instrument having effect, whether wholly or partly, under an enactment within the Immigration Acts, or otherwise relating to leave to enter or remain in the UK ... or
- A decision made of the Immigration and Asylum Chamber of the First-tier Tribunal, from which no appeal lies to the Upper Tribunal.”
- 5.11 The Administrative Court has jurisdiction for all other immigration and asylum matters, plus any application made to the First-tier Tribunal with no right of appeal to the Upper Tribunal, that is a challenge to:
- the validity of primary or subordinate legislation (or of Immigration Rules)
 - the lawfulness of detention
 - a decision concerning inclusion on the register of licensed Sponsors maintained by the UKBA²⁴, or
 - which determines British citizenship, or
 - relates to asylum support or accommodation, or
 - is a decision of the Upper Tribunal, or

²² The appropriate authority since 1 November 2013.

²³ The Immigration Acts are defined as: Immigration Act 1971; Immigration Act 1988; Asylum and Immigration Appeals Act 1993; Asylum and Immigration Act 1996; Immigration and Asylum Act 1999; Nationality, Immigration and Asylum Act 2002; Asylum and Immigration (Treatment of Claimants, etc.) Act 2004; Immigration, Asylum and Nationality Act 2006; UK Borders Act 2007; Immigration Act 2014.

²⁴ UK Border Agency was the border control agency until replaced by UK Visas and Immigration, Border Force and Immigration Enforcement in 2013.

- of the Special Immigration Appeals Commission,²⁵ or
- a decision which is certified (or otherwise stated in writing) to have been taken by the Secretary of State wholly or partly in reliance on information which it is considered should not be made public in the interests of national security, or
- an application for a declaration of incompatibility under section 4 of the Human Rights Act 1998

5.12 The Administrative Court also has jurisdiction over challenges to decisions made under the National Referral Mechanism for identifying victims of human trafficking or modern slavery as these are not immigration decisions.

Private Law Claims (PLCs)

5.13 A Private Law Claim (PLC) is a civil dispute between two parties where one party is seeking damages in compensation from the other for an alleged wrongdoing. The three main areas in which PLCs are raised against the Home Office are:

- false imprisonment due to unlawful detention (where there is a 6 year time limit to bring the claim)
- personal injury (usually psychiatric injury) (where there is a 3 year time limit to bring the claim)
- breach of the claimant's rights under the European Convention on Human Rights (ECHR) (where there is a 1 year time limit to bring the claim)

Home Office responsibilities

Litigation Operations

5.14 The Appeals, Litigation and Subject Access Requests unit (ALS) is 1 of 5 commands in the Immigration and Protection directorate of UK Visas and Immigration (UKVI). Its aim is to control migration by successfully defending immigration decisions made in accordance with legislation and government policy, and ensuring that learning from appeals and litigation is captured and fed back to decision makers.

5.15 Litigation Operations (LO) is 1 of 3 business units within ALS.²⁶ It manages Pre-Action Protocol letters (PAPs), Judicial Reviews (JRs), Private Law Claims (PLCs), and inquests into deaths in custody,²⁷ where these relate to decisions and actions concerned with:

- asylum
- asylum support
- EEA
- temporary migration
- permanent migration
- sponsorship

²⁵ A superior court of record that deals with appeals from persons deported by the Home Secretary.

²⁶ The other two are Appeals Operations and Subject Access Requests.

²⁷ Inquests into death in custody were not included within the scope of this inspection.

- human trafficking
- statelessness

- 5.16 LO does not deal with litigation challenges to decisions or actions by Border Force, Her Majesty's Passport Office, or the Civil Penalty Compliance Team.
- 5.17 PAPs that challenge decisions or actions of Detained Asylum Casework, National Removals Command Detained Casework, Criminal Casework or Entry Clearance decision making centres are dealt with directly by the original decision-making teams and not by LO.
- 5.18 Where removal action is set for within 5 days of receipt of a pre-action letter, the Operational Support and Certification Unit (OSCU) considers the case and responds. However, LO manages all JRs that arise from such challenges.
- 5.19 On an ad hoc basis, LO can also be involved with other types of litigation where there is an underlying immigration issue, examples being cases involving the European Court of Human Rights, Family Court proceedings or Ombudsman matters.
- 5.20 LO caseworkers:
- assess claims set out in PAP letters against UKVI rules, policies and procedures and the decisions taken on immigration applications
 - respond in writing to PAP letters, and where appropriate refer to operational areas for action to remedy any original errors in the decision being challenged
 - escalate policy or procedural issues arising from PAP handling
 - review the lawfulness of a decision, action or failure to act in relation to the exercise of a public function
 - manage applications through the judicial process to a conclusion
 - assess claims set out in the JR against immigration and enforcement rules, policies and procedures and the decisions taken on immigration applications
 - liaise with and instruct the Government Legal Department (GLD) and Home Office Legal Advisors (HOLA) to achieve an agreed course of action
 - approve grounds of defence on behalf of the Home Secretary
 - liaise with and provide advice to case-owners from individual business areas.
- 5.21 In May 2017, there were 333 staff in LO. Of these, 6 Higher Executive Officers (HEOs) and above²⁸ and 31 Executive Officers (EOs) and below²⁹ were responsible for processing the allocation and distribution of PAPs and JRs. A further 30 staff (4 HEOs and above and 26 EOs and below) were responsible for compiling and replying to PAP letters. LO staff were spread across ALS offices in London (Central and West), Croydon, Liverpool, Sheffield and Glasgow.³⁰ Figure 1 gives a breakdown by grade and location.

²⁸ Staff of a more senior grade to HEOs.

²⁹ Staff of a more junior grade to EOs.

³⁰ LO work in Scotland was not within the scope of the inspection.

Figure 1: Litigation Operations staff numbers – May 2017

Location	Grade EO and below	Grade HEO and above
Central London	16	3
West London	134	39
Croydon	62	24
Liverpool	15	8
Sheffield	17	9
Glasgow	2	4
Total	246	87

Government Legal Department and the Home Office ‘instructing client’

- 5.22 The Government Legal Department (GLD) is a non-ministerial government department that provides legal advice to most central government departments, including the Home Office. GLD’s Litigation Group provides litigation services, including attendance at hearings. In the case of ALS, GLD provides legal advice and manages aspects of JRs and PLCs.
- 5.23 Where the Home Office asks GLD to act on its behalf, an LO caseworker will act as the Home Office ‘instructing client’. The ‘instructing client’ will:
- act as the Home Office point of contact for the GLD litigation lawyer
 - instruct GLD whether to concede or defend (having consulted with relevant business areas)
 - ensure (working with the Litigation Finance Team) that costs authority is in place at all stages of the process
 - ensure high profile issues are escalated (including to ministers and Press Office)
 - support Home Office teams in carrying out a disclosure exercise and providing witness statements
 - ensure relevant business areas are notified of the outcome
 - ensure that all post hearing outcomes are completed
- 5.24 The ‘instructing client’ role may be delegated formally to a member of staff in another department, for example, where the case raises a significant challenge to a key area of policy. If this occurs, it must be clearly communicated to GLD.
- 5.25 Inspectors found that there was no current Service Level Agreement (SLA) between the Home Office and GLD. An SLA existed dated December 2011, that referred to defunct structures, such as ‘TSol’ and ‘UKBA’.³¹ LO senior management informed inspectors that an updated version had been agreed between the Home Office and GLD and was waiting to be signed-off. Inspectors were told despite the absence of a current SLA, joint performance and outcome management meetings were taking place, and both parties were satisfied.

³¹ Treasury Solicitors and UK Border Agency.

Home Office Legal Advisers (HOLA)

5.26 Home Office Legal Advisers (HOLA) provides legal advice to ministers and officials. HOLA is part of GLD. It is actively involved in only a small number of cases, typically those where:

- the case raises a point of law that is difficult or controversial
- there is a realistic chance that an applicant³² will win their case and, if so, the Home Office would need to consider making significant changes to the law, policy or practice
- the case is in the Supreme Court or is otherwise particularly high profile

Home Office Legal Strategy Team (LST)

5.27 The Home Office Legal Strategy Team (LST) is part of Borders, Immigration and Citizenship Policy and Strategy Group Directorate. It is responsible for the legal framework (Immigration Acts and Rules) and has oversight of immigration litigation. LST ensures that key litigation is managed strategically to minimise the risk that policies or processes are found to be unlawful – including by ensuring that the right officials are involved in the litigation that may impact their areas of responsibility.³³

³² “Applicant” and “Respondent” are terms used when referring to JRs in the Upper Tribunal.

³³ Judicial Review Guidance for England and Wales, Version 0.12 – an internal Home Office guidance document for staff.

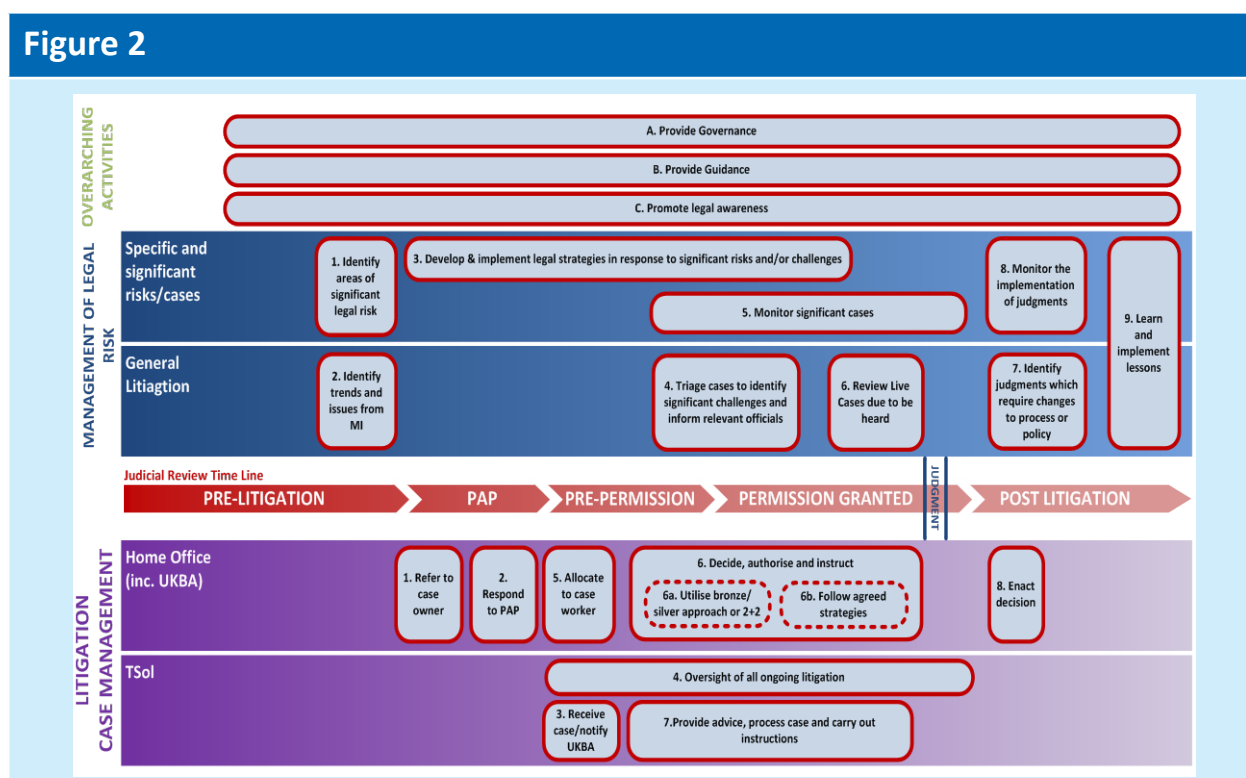
6. Inspection findings – Receiving and processing claims

Increase in Judicial Reviews 2004-2013

- 6.1 Between 2004 and 2013, the number of Judicial Reviews (JRs) challenging immigration-related decisions or actions by the Home Office increased seven-fold. This resulted in the transfer of such cases to the Upper Tribunal from the Administrative Court.³⁴
- 6.2 During this period, from the comments made to inspectors, it appears that the way the Home Office managed cases, and sought to learn from them and reduce the numbers was largely unstructured and informal.

A new “end to end” process for managing litigation

- 6.3 Litigation Operations was formed in 2013. In the same year, the Legal Strategy Team (LST) produced ‘Litigation – Blueprint for a Target End to End Process’.³⁵ The process map at Figure 2 is taken from that document.



- 6.4 The LST process recognises that learning “should be used to identify improvements and refine our processes, or suggest actions to other units to improve the handling of litigation.”

³⁴ ‘Mapping immigration judicial review: an empirical legal analysis’ by Robert Thomas, School of Law, University of Manchester – <https://www.research.manchester.ac.uk/portal/files/48220230/POST-PEER-REVIEW-NON-PUBLISHERS.PDF>.

³⁵ An internal Home Office document.

- 6.5 A new allocation team was created at the Litigation Operations Allocation Hub (LOAH).³⁶ LOAH became responsible for organising LO's systems of work, and for the allocation of Pre-Action Protocol (PAP) letters, helping to ensure that they are dealt with systematically, which had not previously been the case. LOAH also allocates JRs and Private Law Claims (PLCs).

Pre-Action Protocol letters

- 6.6 The guidance³⁷ for individuals considering the option of Judicial Review states:

“In good time before making a claim, the claimant should send a letter to the defendant. The purpose of this letter is to identify the issues in dispute and establish whether they can be narrowed or litigation can be avoided.”

Defendants are required to respond to PAP letters within 14 calendar days.

- 6.7 There is no legal obligation to submit a PAP letter, and it is possible to seek a JR without having sent one. But, if either party to a JR fails to follow the protocol they can be made to pay their own and the other side's legal costs, in the case of the claimant even if their claim is successful.
- 6.8 The protocol does not always apply in urgent cases, most commonly when an applicant is to be removed from the UK and departure arrangements have been set, or where an individual seeks to be released from immigration detention.
- 6.9 In the case of “Asylum, Nationality and Immigration” PAPs, a template letter is available on GOV.UK, which contains an email address and postal address to ensure PAP letters are received by LOAH. Upon receipt, the letter is scanned and logged onto the Case Information Database (CID) and LO's own internal database, JIRA. The scanned letter and any other scanned accompanying supporting evidence are stored in a folder with shared, restricted access on the Home Office network. Letters are then directed by the LOAH to a LO PAP caseworker.
- 6.10 If appropriate, the caseworker, usually an Administrative Officer (AO), liaises with the original decision-making unit and possibly with a senior caseworker within LO, before producing and dispatching a substantive reply.
- 6.11 The substantive reply supports the original decision or offers a remedy to the claimant. Typical remedies include a reconsideration of all or part of the original decision and/or an undertaking to proceed with a course of action within a specified timescale, for example agreeing to reconsider a decision within 3 months.

Judicial Review (JR)

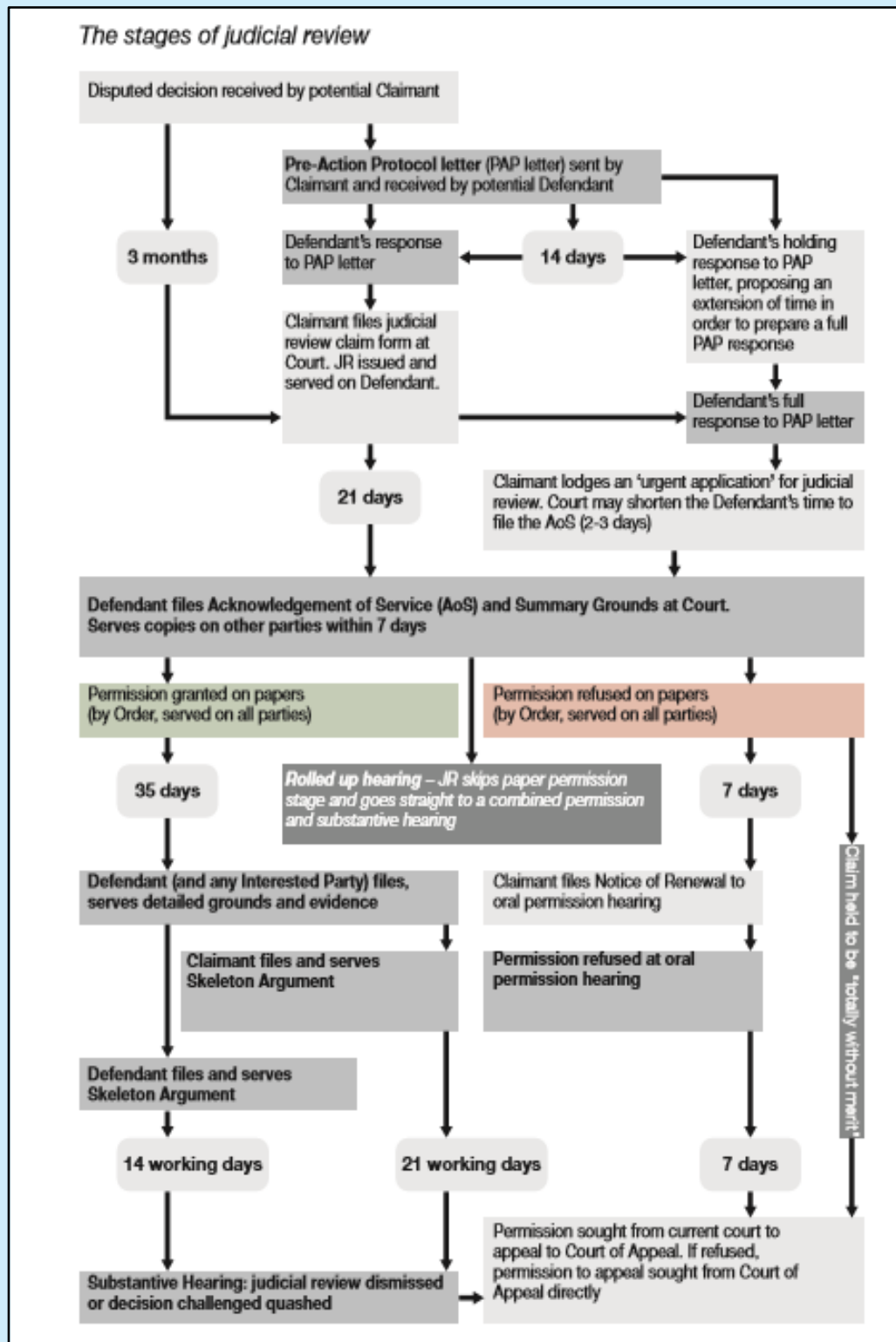
- 6.12 The Judicial Review application and decision process is multi-stage – see Figure 3.³⁸

³⁶ LOAH moved to West London in December 2014.

³⁷ Paragraph 14 of the Pre-Action Protocol for Judicial Review section of the Civil Procedure Rules 1998.

³⁸ Taken from 'Judge Over Your Shoulder', published by the Government Legal Department in July 2016 and available on GOV.UK.

Figure 3



6.13 If LO decides to settle a JR at any point during the process, this is usually achieved by agreeing the terms of any remedy with the applicant and incorporating these into a Consent Order.³⁹ Once ratified by the court overseeing the application, the consent order serves to terminate the JR application.

6.14 If a JR application is dismissed by the court at either the permission or the substantive stage, the Home Office's original decision, action or position remains unaffected. However, if the JR application is allowed after a substantive hearing, the remedy required will be specified in a court order. The remedies include:

- Quashing Order – the original decision is revoked and must be reconsidered
- Prohibiting Order – prevents a specified action from being undertaken
- Mandatory Order – orders a specified action to be undertaken
- Declaration - states the legality of a decision, policy or legislative provision
- Damages – financial remuneration for loss or as punishment for an unlawful action

6.15 JR applications are received at the LOAH through 2 routes. If an application is made to the Upper Tribunal, the applicant must inform LO at the West London address specified in the 'Guidance notes on completing a Judicial Review claim form'.⁴⁰ If an application is made to the High Court, notification will initially be made to Government Legal Department (GLD) who will forward it to LOAH. The majority of applications are made to the Upper Tribunal.

6.16 LOAH's first step on receipt of a JR application is the same as for PAP letters. The application is scanned and logged onto CID and JIRA. Scanned copies of any accompanying documents are stored in the shared, restricted folders on the HO network, and also uploaded onto the Government Online (GO) portal. The portal allows LO's GLD counterparts to view the scanned documents at any stage in the process. From this point, the workflow of each JR application is accompanied by the completion and transmission of a document known as the 'Judicial Review Case Allocation pro-forma'.

6.17 The Judicial Review Case Allocation pro-forma is a 4-part document, developed jointly by LO and GLD. GLD interviewees told inspectors about its introduction. It was designed to formalise and improve the flow of information and case-specific feedback between the two.

6.18 The 4 parts of the pro-forma are:

Part 1: Application and LO allocation details

To be completed by the LO allocation hub within 2 calendar days of receipt of the JR application

Part 2: Initial instructions from LO to GLD for the proposed handling/outcome of the application

To be completed by the LO caseworker within 7 calendar days of receipt of the JR application

Part 3: GLD allocation details

To be completed by GLD administrative staff within 9 calendar days of receipt of the JR application

³⁹ A legally binding agreement.

⁴⁰ <https://formfinder.hmctsformfinder.justice.gov.uk/t481-notes-eng.pdf>.

Part 4: GLD prognosis on the proposed handling/outcome of the application

To be completed by the allocated GLD lawyer within 14 calendar days of receipt of the JR application

- 6.19 Within 2 days of receipt of the JR application, the JR allocation team within LOAH must decide which litigation case-working team to allocate the case to, notify them and send them the completed part 1 of the JR Case Allocation pro-forma.
- 6.20 Within 7 days of receipt of the JR application, the allocated LO caseworker, usually an Executive Officer (EO), will review the grounds of the claim alongside any supporting evidence submitted, and, if required, will consult the individual or team that took the original decision or action under dispute for further clarification. The LO caseworker may also consult a senior caseworker (a Higher or Senior Executive Officer) to reach a conclusion on how to instruct GLD to proceed with the application, using part 2 of the pro-forma, which will be emailed to GLD. This will propose to settle or contest the claim.
- 6.21 Within 2 days of receipt of part 2 of the pro-forma, GLD administrative staff will allocate the application to a lawyer and notify them, using part 3. The GLD lawyer will consider LO's instructions alongside the JR application and any supporting documentation, and respond to LO, using part 4 of the pro-forma. The response will either agree with LO's proposal or offer an alternative. It will include the GLD lawyer's prognosis of the likelihood of successfully defending the claim, plus the anticipated costs that may be incurred by the Home Office and by the applicant (known as adverse costs).
- 6.22 If the process keeps to the agreed schedule, the completed 4-part pro-forma should be returned to the LO caseworker no later than 14 days from receipt of the JR application.
- 6.23 If the JR application is going to be contested and taken forward to the permission stage, GLD has a further 7 days before it has to submit an Acknowledgment of Service (AoS)⁴¹ with Summary Grounds of Defence (SG)⁴² to the court. During this period, the LO caseworker must evaluate the prognosis from the GLD lawyer and decide whether to continue to contest the claim or not. If the decision is to contest the claim, GLD is informed and set to work preparing to meet the AoS 21-day deadline.
- 6.24 Once GLD has submitted the AoS and SG, the application moves to the 'permission stage'. If permission to proceed to a substantive hearing is granted by the court, either based on the papers or following an oral hearing,⁴³ GLD informs the LO caseworker and there is a reassessment of the decision to defend.
- 6.25 Applications granted permission to proceed to the substantive hearing stage are assessed by the BICS Litigation Strategy Team. Cases not deemed to have "wider significance" are returned to the original LO caseworker for consultation with a senior caseworker. Those of "wider significance" are sent for consideration by a 'triage' process under the chairmanship of the Litigation Strategy Team and attended by LO's grade 7 Chief Caseworker and a senior lawyer from HOLA.
- 6.26 In all cases, the potential financial costs of both defending and settling the application are considered. Where the decision is to contest, GLD are instructed to proceed with the defence and authorised to engage the services of counsel. If at any point in the process, the decision is

⁴¹ This sets out whether the Home Office intends to defend or settle the JR.

⁴² Summary Grounds accompany the Acknowledgement of Service and outline why the Home Office's contends its decision-making process and actions were correct.

⁴³ If a JR application has been refused permission to proceed, it can be renewed at an Oral Permission Hearing (OPH).

taken to settle the claim, the terms of any proposed Consent Order are agreed with GLD before they are sent to the applicant to consider.

Private Law Claims

- 6.27 As with JRs, the claimant looking to make a PLC may submit a pre-action letter in an attempt to resolve the issue before the claim moves to the more costly litigation stage. Again as with JRs, there is no legal requirement that the claimant will submit such a letter, and they may go straight to lodging a PLC.
- 6.28 LO, in conjunction with GLD, considers the contents of any PLC pre-action letter against Home Office records, and respond either by rejecting the claim or making an offer to settle in part or in full. A response to a pre-action letter should be given within 3 months.
- 6.29 Where the claimant decides to proceed with a PLC, a completed claim form must be served on GLD. GLD contacts LO to notify the receipt of a PLC and to seek instructions. The PLC is then allocated by the LO office in Croydon to an LO caseworker in the same building. The caseworker, usually an Executive Officer, reviews the case and decides, in consultation with GLD, on a course of action.
- 6.30 If LO decides to defend the PLC, GLD is instructed to act on their behalf and an AoS must be submitted to the court within 14 days of receipt of the claim. LO's defence of a PLC, drafted by GLD or counsel, must be lodged with the court within 28 days of initial receipt.
- 6.31 A settlement offer can be made at any point prior to a hearing. GLD and counsel advise LO on the level of any settlement to be offered. If a PLC proceeds to a substantive hearing and the claimant is successful in any part of their claim, the judge will set the award of damages.

Recording of Litigation Operations' work

- 6.32 LO uses 2 main databases to record the progress and completion of litigation cases: the Case Information Database (CID); and, JIRA.

Case Information Database (CID)

- 6.33 When it was designed, the Home Office's main immigration casework database, CID, was not intended to be a litigation database. As such, it is capable of capturing only rudimentary details of any JR application and progress towards its resolution.
- 6.34 Initially, CID was even less able to deal with actions on PAP letters, which were not envisaged when the database was commissioned and designed. Subsequent upgrades to CID have added a limited amount of functionality to enable the submission and outcome of a PAP letter to be recorded.
- 6.35 A searchable electronic record of litigation cases is a requirement not just for LO, but for other parts of the Home Office's Borders, Immigration and Citizenship System (BICS). They need to be able to see the current status of any litigation case, since it might affect a decision or action, for example the removal of an individual from the UK, where litigation may present a barrier to removal. Beyond that, in order to learn from JRs and PAP letters and to inform workflow and resource management, LO needs to be able to analyse relevant data, and the ability to do so using CID is extremely limited.

JIRA

- 6.36 In light of CID's limitations, LO commissioned the development of a bespoke database, JIRA, that would allow PAP letters and JRs to be tracked as they progressed through UKVI's litigation system. JIRA went 'live' in April 2016.
- 6.37 JIRA records the outcome of each stage of the Home Office's PAP and JR processes, such as the completion of each part of the 4-part Judicial Review Case Allocation pro-forma, and the tracking of consent orders. It does this in far greater detail than is possible using CID.
- 6.38 JIRA is used to record work allocation, milestone dates and key outcomes. LO uses it for:
- workflow assessment and future planning
 - assistance with quality assurance regimes
 - individual and team performance assessments
 - highlighting training needs for individual staff members
 - internal service level assessments
 - easy location of priority and high profile cases
 - production of 'dashboards' and other, longer-term management information
 - production of statistical data for internal and external uses
- 6.39 The production of individually tailored reports for managers is significantly easier for LO using JIRA than CID. It is relatively easy for trained LO staff to design and produce the reports themselves. The extra depth and detail of the information stored on JIRA means that the reports and data analysis are more meaningful and accurate.

7. Inspection findings – Managing, learning and improving

Quality Assurance of Litigation Operations’ casework

“Signed off” caseworkers

- 7.1 During interviews and focus groups at all of the Litigation Operations (LO) offices visited by inspectors, staff referred to the quality assurance of their work, but said that individual feedback was limited.
- 7.2 LO caseworkers assessed as fully competent were categorised as “signed-off”. In order to become “signed-off”, a caseworker’s work had to be error-free when checked on three consecutive occasions. The process relied entirely on the opinion of the Team Leader or Senior Caseworker (SCW). No feedback was sought from the Government Legal Department (GLD) regarding the quality of any PAP responses or Acknowledgement of Service (AoS) instructions, and inspectors found little evidence that GLD offered feedback on the quality of the work it received.
- 7.3 “Signed off” caseworkers had 1 or 2 pieces of work quality assured each month. LO caseworkers who were not “signed off” had 100% of their work checked by a Team Leader or SCW.

File sample evidence

- 7.4 Inspectors examined 60 records and found evidence of some degree of quality assurance in 18 of them (see Figure 4), but the overall impression was that the approach to quality assurance was unsystematic, as was the recording of the results. The latter took various forms, including emails (between LO managers, HOLA and GLD, and Home Office policy colleagues), and notes on CID or JIRA. This made any analysis and the identification of trends more difficult.

Figure 4: Number of sampled cases containing evidence of quality assurance

Case Type	Number examined	Evidence of quality assurance
PAP	10	2
JR	45	16
PLC	5	0
Total	60	18

- 7.5 Inspectors also found imprecise labeling of emails by caseworkers, for example “email from GLD”, making them harder to search and retrieve.
- 7.6 LO relied on caseworkers saving and transferring documents into shared e-folders, but there was little in place to identify whether this was done. The document retrieval process was long-

winded, often requiring the opening/sifting of multiple attachments and email chains, which did not support straightforward or quick analysis and assurance.

New Quality Assurance Framework

- 7.7 At the time of the inspection, LO was introducing a new quality assurance framework.⁴⁴ The new framework, set out in guidance entitled ‘Litigation Quality Assessment Caseworker Process and Guidance’ and published internally in May 2017, is based on the QATRO⁴⁵ system in wide use across UKVI. The guidance states, “There are two main purposes of quality assessing PAP responses and JR instructions/process dealt with by litigation caseworkers:
- To contribute to continuous improvement
 - To monitor performance – identifying and recognising those caseworkers that perform very well and ensuring that those caseworkers who do not perform effectively can be identified and receive any relevant or appropriate support to improve.”
- 7.8 The new framework has defined assessment criteria that ensure that significant elements of a caseworker’s work are quality assured in a consistent way, including the PAP response, the AoS instructions, Summary Grounds (SG), Detailed Grounds or Skeleton Arguments.
- 7.9 In relation to JRs, the criteria state “The assessment criteria for JRs covers the various stages of a JR, Initial consideration, Paper Permission Stage, Oral Permission Stage, Substantive Hearing Stage and Settlement. The idea being that the case can be assessed at any stage of the process and doesn’t require waiting for the case to be concluded.”
- 7.10 The results of LO’s quality assurance work are fed into the QATRO system by a Team Leader or SCW, and QATRO calculates a numerical score, which is translated into an (“Decision Quality” or “DQ”) outcome. See Figure 5.

Figure 5: Outcomes of Quality Assurance		
Outcome	Description	Overall Assessment
DQ 1	The consideration is fully justified and adheres to legislation, policy and guidance – there are no risks to the litigant, Home Office or the UK.	Correct
DQ 2	An error which does not detract from the consideration and would not affect the outcome of the decision, and should be quickly rectified – there are no apparent risks/negative impact on the litigant, Home Office or the UK as a result.	Minor Error

⁴⁴ At the time of the inspection, this did not cover Private Law Claims (PLCs).

⁴⁵ QATRO is a spreadsheet-based system that records the outcomes of quality assurance by managers, providing scores on individual caseworkers and the capability to conduct trend analysis.

DQ 3	An error which detracts from the quality of the consideration of the decision and requires attention to address serious weaknesses or omissions - there are potential risks/ negative impact on the litigant, Home Office or the UK as a result.	Significant Error
DQ 4 & DQ 5	An error which not only detracts from the consideration but also affects the decision such that the outcome cannot necessarily be relied upon and immediate attention is required to address the critical failure(s) – there are significant risks / negative impact on the litigant, Home Office or the UK as a result of this error.	Fail

7.11 The new framework provides a weighting for scores in certain scenarios. The guidance states that “any Caseworker who is marked with more than 20% of minor errors will be marked as DQ 2. Any Caseworker who receives a ‘Significant Error’ against a criterion will gain a maximum overall score of DQ 3.”

7.12 Caseworkers have access to the system and can log on and see their scores for any work that has been assessed. The scores and final outcomes from the assessment are then to be used as part of the regular Personal Development Review (PDR) process.

7.13 The guidance includes a section on consistency, which states,

“Various initiatives will be undertaken to assist in ensuring consistency between Assessors, as follows:

- Monthly reports will be generated and form part of the wider performance pack issued by the Litigation Performance Hub.
- There will be a regular Quality Assurance meeting to discuss key developments/issues. In addition QA trends/issues should be discussed at SCW Team Information Boards (TIBs)/ meetings so that QA leads can feedback.

There will be a national record containing all the details of the assessments made. If an Assessor appears to be consistently scoring significantly higher or lower than the others, further investigation can be undertaken. If necessary, benchmarking (wherein two Assessors assess the same case then compare outcomes) may be undertaken locally.”

7.14 The frequency with which a “signed off” caseworker will have their work quality assured will remain as before. The guidance states “Each caseworker should be assessed at **least once per month**.⁴⁶ (...) Only 1 case per litigation type and caseworker will be checked per month. For caseworkers who work on both PAPs and JRs they will have 1 PAP and 1 JR assessed per month.”

⁴⁶ The **bold** and underlining are as this appears in the guidance.

7.15 The new quality assurance framework had not been in place for long enough at the time of the inspection for inspectors to examine its effectiveness.

Risk management

7.16 ALS had created 3 linked processes for managing risks arising from litigation.

“Triage”

7.17 All JRs permitted to proceed to a hearing, along with some high profile cases at the pre-permission stage, are subject to a triage process.

7.18 The process was designed to act as the earliest possible “checkpoint” to spot cases that raise legal or policy issues and ensure that the relevant operational or policy leads and/or Home Office Legal Advisers (HOLA) are sighted, and to assess the potential costs, and impact on policy and the Home Office’s reputation. The Director of ALS told inspectors that the triage process was a particularly good example of prioritising genuinely high risk cases for special consideration.

7.19 A senior manager from the Legal Strategy Team (LST) told inspectors that the triage process had been introduced after the Home Office had lost a case concerning the ‘best interests’ of a child, where no-one had foreseen the outcome. It became clear from this case that there needed to be a structured way to ensure that the right areas of the Home Office, for example policy makers, were brought into cases at the right time.

7.20 Triage meetings take place once a week. Inspectors observed a meeting, and also saw evidence of the triage process at work in 15 of the 60 sampled records where permission had been granted to proceed to a hearing.

7.21 The triage process works as follows:

- the assigned GLD case lawyer writes a prognosis of the likelihood of success for any cases of interest after permission to proceed has been granted
- prognoses go to the Legal Strategy Team (LST)
- LST analyses the information and picks out any trends and issues of wider significance
- cases grouped by trend or issue go to triage where each case is assessed
- HOLA identifies cases requiring legal advice and advises on any issues that could have an impact on legislation or policy
- where a case is deemed by the triage team to require policy involvement or advice, an appropriate point of reference is identified and details are fed back to the LO caseworker after the meeting

7.22 The triage meeting analyses the cases and sorts them into 1 of 3 types – see Figure 6.

Figure 6: Litigation Operations “triage” outcomes

Type	Example	Action
Internal error	LO missed something or contested a PAP, when the prognosis is that the JR will be difficult to contest	Feedback is provided to LO managers and staff
External error	An incorrect operational decision or performance issue, e.g. an original decision maker deviated from correct procedure	Feedback is provided to the original decision-making unit
No error	There has been no error or deviation from procedure, the litigation means that there may be a need for clarification or change to guidance, policy or legislation	Feedback is provided to LO managers and staff and to the original decision-making unit

7.23 LO caseworkers liaise with their SCW and GLD contact prior to triage. At the triage meeting, the Chief Caseworker (a role created in July 2016 to identify and manage risks arising from litigation) presents cases on behalf of the LO caseworkers. Following the meeting, a report is circulated to relevant LO caseworkers containing actions agreed on those cases identified as requiring HOLA or policy involvement or advice.

7.24 The value of the triage process is shown in Case Study 1 below.

Case Study 1: Example of the ‘triage’ process at work

The disputed decision

The claimant, a Somali national, challenged the Home Office’s refusal to recognise her as a refugee.

She was not given a right of appeal at the time of her asylum refusal, because she held Indefinite Leave to Remain (ILR) as a dependant of a refugee. She challenged the lawfulness of the decision and sought a right of appeal.

Pre-Action Protocol stage

The Home Office received a PAP letter on 28 November 2014. At this time, responsibility for responding still rested with the Asylum Directorate rather than Litigation Operations (LO).

Judicial Review application

The Home Office received the JR application on 5 January 2015. The 4-stage JR Case Allocation pro-forma had not yet been introduced (it was introduced in July 2015), and the Home Office simply followed the GLD’s advice to defend the case.

GLD was instructed to defend the case at the Paper hearing stage, and at an Oral hearing.

Re-assessment

Following the Oral permission hearing on 15 September 2015, permission was granted to proceed to a substantive hearing. The Home Office was notified of this decision on 13 October 2015. By this time, the LO triage process had been introduced. During the triage process, the case was re-assessed and errors were identified in the decision letter. Because of these errors, the decision was taken to seek to settle the case.

Independent Chief Inspector's comments

This claim straddled the old and new processes for managing PAPs and JRs. The old processes failed to identify the errors in the decision letter at the PAP response stage, on receipt of the JR application, and prior to the Paper and Oral hearings. Fortunately, the new triage process identified the error prior to the substantive hearing and was able to prevent further expenditure on defending a case that in all likelihood the Home Office would have lost.

Virtual Litigation Teams

- 7.25 Virtual Litigation Teams (VLTs) were established in 2016. They comprise LST, HOLA and LO Senior Caseworkers. Different business areas have their own VLT: the Points Based System (PBS), Detention (Enforcement and Removals), Private Law Claims, Third Country, Criminality (General Grounds for Refusal, Nullity and Citizenship) and the EEA.
- 7.26 Meetings are held every 6 to 8 weeks, under the chairmanship of LST, and with the relevant business area invited to attend. Inspectors observed an EEA VLT meeting, and reviewed the minutes of other VLT meetings.
- 7.27 Each VLT has an overview of the live cases in their business area. Their function is to manage cases post-triage and ensure the consistent and strategic management of legal risk, by:
- reviewing JR cases settled pre-permission to identify vulnerabilities and errors requiring changes to policy, processes or guidance
 - reviewing JR judgments requiring such changes
 - implementing changes identified as a result of litigation
 - considering factors that may generate litigation risk (for example, new policies or external reports) – each VLT maintains a Risk Register
 - identifying emerging litigation trends and providing feedback to operational and policy teams
 - providing a report on key cases and litigation issues to the Immigration and Borders Litigation Board (IBLB)
- 7.28 As an example of the value of VLTs, inspectors were told about a trend in JR challenges brought by Tier 1 entrepreneurs against refusal of Indefinite Leave to Remain (ILR). In these cases, the initial decision maker had refused ILR due to discrepancies in the applicants' declared earnings to the Home Office and to Her Majesty's Revenue and Customs (HMRC). The trend was spotted initially through the triage process, after which the relevant VLT monitored the litigation cases as they proceeded, meanwhile revising the guidance on deception and establishing the operational steps needed to strengthen initial decisions.

- 7.29 A LST senior manager told inspectors that the VLTs were “checkpoint 2” (the triage process was “checkpoint 1”), but they were not yet demonstrating their full worth. The same senior manager questioned whether VLTs were resolving issues as early as possible. However, they had shown that they could react quickly to events. For example, a senior manager in Sheffield told inspectors that a VLT had distributed details of a judgment on income threshold to caseworkers on the day the judgment was promulgated.

Immigration and Borders Litigation Board

- 7.30 Both the triage process and the VLTs feed into the Immigration and Borders Litigation Board (IBLB). IBLB oversee all aspects of immigration litigation and develop the overarching strategy. For example, IBLB set the approach to be taken regarding the settling of JRs in section 94 certification cases.⁴⁷
- 7.31 IBLB receives updates from and the minutes of VLTs. It meets every two months, for approximately 90 minutes, and looks at the Immigration Litigation Risk Register, reviews key cases and judgments, and also the numbers and types of challenges being received.
- 7.32 IBLB is attended by staff from the LST, ALS, GLD, HOLA and the Office of the Advocate General (GLD’s Scottish equivalents).

Feedback loops within Litigation Operations

Feedback to LO caseworkers on litigation outcomes

- 7.33 LO caseworkers told inspectors that they did not receive feedback on the outcome of the litigation cases they had worked on unless they asked for it.
- 7.34 Staff who worked on PAPs, both in Croydon and in the Litigation Operations Allocation Hub (LOAH) in West London, said that they were not informed whether any of their cases proceeded to JR, or if permission to proceed was refused based on their PAP response. They believed such feedback would be helpful. The staff in Croydon did see business area dashboards, and received feedback in the form of themes and trends, but this was too high-level and did not provide any specifics about the cases they had worked on.
- 7.35 LOAH staff told inspectors that the lack of case-specific feedback had been identified as a learning gap. As a result, a PAP pilot had been conducted, in which a record was kept of any instances where a PAP response had proceeded to a JR, and this was fed back to the relevant PAP caseworker. However, the LOAH staff were unsure whether the results of the pilot had been disseminated.
- 7.36 JR caseworkers in Croydon said that their caseload was so high that there was no time for them to provide feedback on PAPs. The same group said that any email feedback they received was from GLD. They pointed out that they saw discussing cases with original decision makers as giving feedback, but there were no formal mechanisms for it.
- 7.37 LO managers in Croydon believed it was up to LO caseworkers to review their own work through the QA process, their interactions with GLD and also when preparing costs submissions.⁴⁸ This

⁴⁷ Certification of protection and human rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 (clearly unfounded claims).

⁴⁸ Costs submissions set out the details of the claim, the findings in relation to the decision or action being challenged, the legal advice and proposed course of action, along with the estimated costs.

view was echoed by the LO's Chief Caseworker, who told inspectors that individual feedback occurred through the email exchanges about a case between the caseworker, SCW and GLD contact. Inspectors saw evidence of these case-specific email exchanges and costs submissions in the 60 case records examined for this inspection.

- 7.38 In Sheffield, inspectors found that SCWs had adopted a different approach. There, they took it in turns to sit with teams they did not routinely work with in order to have the opportunity to provide face-to-face feedback.

'Team' Feedback

- 7.39 Inspectors found that there was little interaction between PAP caseworking teams in Croydon, West London, Liverpool and Sheffield, and no sharing of feedback or discussion of trends. JR caseworkers in Croydon confirmed that there was no systematic liaison between them and their West London colleagues, but explained that the latter worked on specialist areas, whereas in Croydon caseworkers worked on all types of cases, so they would have little to contribute to one another.

- 7.40 However, a fortnightly SCW bulletin is distributed throughout LO, and the LO Performance Hub in Croydon produces a monthly litigation newsletter which identifies the latest national trends. This is distributed throughout ALS. Both are used to update local TIBs.

- 7.41 Within the teams, newsletters (such as one produced by the West London PAP team) and TIBs are used as a means of team (rather than individual) feedback. Inspectors saw examples of the TIBs during their site visits, and were told that meetings were held around them to talk about information in the newsletters, to share successes and to put forward staff ideas. These meetings are also an opportunity for staff to tell colleagues about progress on cases of general interest.

- 7.42 In Croydon, there are TIB meetings for business areas and for certain grades of staff. The business area meetings take place 2 or 3 times a week, while meetings for certain grades are less frequent. In addition, the Croydon PAP team holds a twice-weekly meeting, and the whole team meets once a week.

- 7.43 Other group feedback and learning mechanisms within LO include conference calls, a weekly review of team boards, and workshops.

Feedback from the Government Legal Department

Pre-Action Protocols

- 7.44 GLD is not normally involved at the PAP stage of a claim (except in the case of PLCs), and there is no formal agreement or mechanism for GLD to provide feedback to LO PAP caseworkers about their responses to PAP letters.

- 7.45 LO PAP caseworkers told inspectors that they were not informed if a PAP they had responded to progressed to the JR stage, so there was no means for them to initiate feedback from GLD. In focus groups, LO staff said that better communication could improve PAP responses. GLD agreed, and commented that the feedback they provided to JR caseworkers "probably doesn't make it back to the ... person who drafted the PAP".

Judicial Reviews

- 7.46 GLD's involvement in the JR process begins once an application has been "sealed"⁴⁹ by the High Court or Upper Tribunal. From that point, an assigned GLD case officer liaises with an LO JR caseworker until resolution of the claim.
- 7.47 In focus groups at all of the LO offices visited by inspectors, LO JR caseworkers spoke positively about their relationship with their GLD counterparts. One group said that they had a good relationship with GLD "in 99% of instances". LO staff told inspectors that for each case, while there was no formal feedback mechanism, there was a constant email dialogue between them, a by-product of which was that informal case-specific feedback was routine. Inspectors found evidence of this in the case records they examined.
- 7.48 At the end of April 2017, an 'LO feedback inbox' had been created to enable GLD to communicate information on trends and notable decisions in JR cases. It is also a means for GLD and LO staff to provide feedback on one another's performance.

Private Law Claims

- 7.49 A PLC or letter threatening a PLC may be received by the Home Office or by GLD. In the latter case, GLD notifies the Home Office. If it wishes to defend the case, the Home Office gathers evidence from records, and submits this to GLD at the earliest opportunity. GLD is responsible for advising liability, risk and costs, and for drafting legal responses and filing court documents.
- 7.50 Although the PLC process had been made more efficient, for example in relation to the timely submission of scanned evidence, inspectors found limited evidence of organisational learning or continuous improvement in relation to PLCs. One LO staff focus group told inspectors there was little communication between GLD and LO caseworkers on PLCs. GLD confirmed that feedback on PLCs was not provided on a case-by-case basis, and tended to be given in general terms by the Legal Strategy Team.
- 7.51 Inspectors found that no guidance had been issued on the handling of PLCs. GLD told inspectors that it would be helpful to have timelines and expectations of LO's role in relation to PLCs set out, along with instructions for hand-offs to GLD, especially as there was a high turnover in LO staff.

Continuous learning

- 7.52 GLD produces a 'GLD Monthly Immigration Litigation Report to the Home Office', which was widely circulated within the Home Office. This contains statistics of new and closed cases and a summary of key JRs. It also reviews JR determinations with reference to learning points and their wider significance, and detailed trends in types of litigation.
- 7.53 GLD invites the Home Office to various training events, and HOLA runs litigation awareness sessions, open days, and job shadowing to encourage mutual understanding and learning. LO staff told inspectors that the job shadowing opportunities were "invaluable", however such opportunities were "very rare", and teams were not always able to release staff. LO staff also said they felt they would benefit from attending JR hearings, but few had been able to do so.

⁴⁹ In order for the judicial review claim form to have been served correctly it must first have been sealed with a stamp by the court. The 21 days to file the Acknowledgement of Service does not start until the JR is sealed. (Judicial Review Guidance for England and Wales, Version 0.12 – an internal Home Office guidance document for staff).

Feedback to Home Office decision makers

'Formal' feedback

- 7.54 GLD staff told inspectors that they felt there needed to be a clearer line of communication back to the original decision-makers regarding JR outcomes, in order to avoid the same issues being challenged repeatedly.
- 7.55 The Director of ALS told inspectors that he wanted to see improved communications between ALS and Home Office decision-making business areas.
- 7.56 At the time of the inspection, formal feedback was provided through monthly "dashboard" reports (separate from the PAPs, JRs and PLCs dashboard reports). The feedback dashboards incorporate trends and recommendations from ALS to decision makers. They are assembled at the ALS Programme Hub in Croydon, and correspond to the decision-making business areas and are broadly aligned to the Virtual Litigation Teams.
- 7.57 The feedback dashboards are sent to the following business areas:
- Administrative Review
 - Asylum; Criminal Casework
 - European Casework
 - National Removals Command;
 - Premium Service Centre
 - Refused Case Management (formerly Complex Casework Directorate)
 - Returns Preparation
 - Status Review

'Informal' feedback

- 7.58 LO staff told inspectors that caseworkers in these business areas also learnt from their day-to-day dealings when LO staff made contact to ensure that the business area understood the actions required to resolve specific litigation cases.

Liverpool and Sheffield

- 7.59 Where decision makers are co-located with LO staff, as they are in Liverpool (European Casework and Nationality teams) and Sheffield (Temporary Migration and Sponsorship teams), there are more opportunities for feedback. While they do not discuss every litigation case, there is a regular dialogue about cases, and in Liverpool the LO Team Leader attends bi-monthly meetings with decision-making units.
- 7.60 In Sheffield, managers described the relationship between the two sets of staff as close. Such closeness was partly a legacy from when there was a Judicial Review Unit (JRU) within each decision-making unit, and it also helped that staff turnover was lower in the north. Inspectors were told about a collaboration between the Sponsorship teams and LO to produce a guide for new staff joining the former. This came about because LO identified that when new staff joined the Sponsorship teams their responses to LO PAP queries were "not good enough".

- 7.61 The LO SCWs in Sheffield meet the Sponsorship teams on a quarterly basis. LO was included in the Sponsorship teams' planning process, so that it would be prepared if the Sponsorship teams were going to run a campaign, such as increased compliance visits, that might lead to an increase in PAPs and JRs.
- 7.62 An LO senior manager based in Sheffield, responsible for LO's teams in Sheffield and Liverpool, referred to the "huge amounts" of applications in European Casework. LO attended policy meetings and was kept up-to-date with what European Casework was doing, and consulted on a new refusal template that European Casework was planning to use before this was rolled out to decision makers. This was described as "a real development". The senior manager expected to see more examples of this type of collaborative working as the relationship between LO and decision-making business areas developed.
- 7.63 However, inspectors were also told of an example where the relationship between LO and a decision-making unit in Sheffield had become more distant. Previously, there had been quarterly meetings between LO and the Post-Decision Casework team. These had fallen away, and at the time of the inspection LO did not have a working relationship with the Post-Decision Casework team. This was unhelpful as the Post-Decision Casework team was responsible for reconsidering cases where the proposed resolution or outcome of a claim was a reconsideration, in which case it was normally required to do so within 3 months.
- 7.64 In Sheffield, there is a technical support team that assists the decision-making units. This team deals with complaints and with queries from MPs, and provides policy advice to caseworkers. In a local initiative to improve feedback, it was looking to identify the 'top ten' caseworking errors and to get ALS to comment on them.

West London

- 7.65 In West London, there is a positive relationship between LO and decision-makers. LO managers in West London told inspectors that there is a lot of "negotiation" with colleagues in decision-making units. These managers said they needed to understand how decision makers were being trained, as they might need to influence the training. For example, they believed that better training on the "General grounds for Refusal"⁵⁰ could help to reduce litigation.
- 7.66 The LO managers found decision-making business areas to be receptive to LO advice. By way of an example, they told inspectors that JR caseworkers in the Points Based System (PBS) workstream had noticed a rise in PAPs referring to the incorrect use of certification in student further leave to remain cases.⁵¹ The issue was raised with the decision-making unit and quickly resolved.
- 7.67 LO staff in West London use "litigation referral forms" when referring decisions back to the original decision-making unit. They understood that this was not standard practice across all LO offices. As well as this structured means of providing feedback, staff said there is also a lot of informal feedback through emails and phone calls, of which there had recently been a lot in relation to European Casework.

⁵⁰ General grounds for refusal are covered in Part 9 of the Immigration Rules and relate to grounds when a person's background, behaviour, character, conduct or associations may lead to a refusal.

<https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-9-grounds-for-refusal>

⁵¹ Section 94(1) of the Nationality, Immigration and Asylum Act 2002 states that the Secretary of State may certify a protection or human rights claim as clearly unfounded. The effect of certification under section 94 is to restrict the right of appeal against refusal so that the claimant can only appeal once they have left the UK (referred to as a "non-suspensive appeal").

Croydon

- 7.68 LO caseworkers in Croydon communicate regularly with original decision makers through emails, which include feedback. PAP caseworkers said that they use templates for specific case types, and carry out additional research and consult decision makers on anything out of the ordinary. They were unsure how the decision-making units prioritised their requests for additional information. Some were better than others at keeping the PAP team updated on progress, but they often had to chase decision makers for a response.
- 7.69 Managers in Croydon described their relationship with decision-making units as “poor”. They experience resistance when they ask the latter to reconsider a case. According to Home Office guidance, decision-making units have the final say on whether to defend or concede claims. LO can only make recommendations. A Legal Strategy team senior manager told inspectors that this “grey area” needed clarifying, as the business areas did not hold the budget for the litigation and they would always defend their decision and want to contest a claim.
- 7.70 The managers in Croydon suggested that decision-making units needed to learn more about LO’s role and try to understand the pressure it was under, and this would take time. They explained that, because PAP caseworkers were not trained in the work of the decision-making units, decision makers appeared to lack confidence in the advice they were receiving when first contacted by a PAP caseworker.
- 7.71 Managers referred to LO having previously run Litigation Roadshows for decision-making units, in order to improve the latter’s understanding of litigation. Some of the LO caseworkers in Sheffield had been involved in organising roadshows at which they had tried to encourage decision-making units to consider the potential for legal challenges to their decisions. They told inspectors that this had been at their own initiative rather than in response to requests from the business areas. However, the decision makers in Sheffield who spoke to inspectors said that they had not received a presentation from LO “for years”.

Detention Review Panels

- 7.72 Inspectors did not look in detail at the work of Detention Review Panels, but focused solely on LO’s interactions with them.
- 7.73 Detention Review Panels were established in February 2017 to assess the risks to the Home Office of keeping a person in detention. The Panels can decide to maintain detention; to release; to instruct that further casework is done; or to refer the case to another part of the Home Office for further information.
- 7.74 The Panels meet 4 times a week and are chaired by a senior manager from Criminal Casework. From the beginning, LO managers have been invited to attend to contribute their knowledge and expertise regarding whether continued detention is likely to result in litigation and, if so, what the likely outcome will be. The decision whether to continue to detain or to release rests with the Panel, and LO’s recommendations are sometimes rejected, for example because the Panel determines that the risks associated with litigation are outweighed by the risks to the public of releasing a particular detainee.

7.75 The Director of ALS told inspectors that he saw LO's involvement in Detention Review Panels is a good way of getting on top of PLCs by reducing the number raised against unlawful detention. At the time of the inspection, the Panels had been in operation for less than 6 months, and it was therefore too soon to assess the value of LO's attendance. However, inspectors did attend a Panel meeting and observed LO interacting effectively with Panel members.

8. Inspection findings – Performance and outlook⁵²

Performance measurement

- 8.1 Appeals, Litigation and Subject Access Requests (ALS) produce a monthly ‘ALS Performance Pack’ for managers, including LO senior management. This slide pack covers all aspects of ALS’ work. It shows long terms trends against various measurable inputs and outputs, for example:
- Intake - Forecasts and Actual
 - Productivity
 - Service Standards
 - Work in Progress
 - Outcomes
 - Staffing
 - Budgets
- 8.2 LO had also developed a range of performance measures. Separate monthly ‘dashboard’ reports for each of the three work-streams (PAPs, JRs and PLCs) inform LO’s senior management and local managers about overall performance and the performance of each LO location.

Efficiency of litigation processing

2016-17 intake and ‘WiP’⁵³

- 8.3 Between 1 April 2016 and 31 March 2017, 13,855 Judicial Review applications were filed in relation to decisions and actions taken by the Borders, Immigration and Citizenship business areas that fell to Litigation Operations (LO) to process.⁵⁴ At the end of 2016-17, the Home Office had 8,690 JRs in its work in progress (“WiP”) store, plus 240 PAPs.⁵⁵

PAP performance and records

- 8.4 LO’s “key priorities” include an internal performance target “to respond to 90% of Pre Action Protocols within 14 days.” The inspection did not establish the rationale for setting the target at 90%. In other areas of the Home Office, time-sensitive performance targets were set at 95% or higher.⁵⁶ Here, 90% needed to be seen in the context of the requirement of the courts that the defendant should respond to a PAP within 14 days of receipt. LO’s internal target referred only to full responses. It did not include holding responses requesting additional time.

⁵² This chapter contains figures extracted from a number of different data sources, as indicated in subsequent footnotes.

⁵³ Intake figures are taken from CID, which includes JRs not dealt with by ALS. WiP figures are taken from JIRA. Both CID and JIRA are live operational databases and, as such, figures may change as information is updated.

⁵⁴ Excluding Border Force, Her Majesty’s Passport Office, Civil Penalty Compliance Team.

⁵⁵ The Home Office uses the term “Work in Progress” (“WiP”) to denote a body of casework about which it is aware but about which it has yet to make a decision or complete the necessary action(s).

⁵⁶ For example, performance targets for answering ministerial correspondence are 95% within 15 working days, and for answering public enquiries by letter and email they are 95% within 20 working days.

8.5 Inspectors reviewed data provided by the Home Office and spoke to staff regarding performance in relation to PAPs. The data⁵⁷ covered April 2016 to March 2017. It showed that LO achieved the 90% target in 9 of the 12 months. See Figure 7.

Figure 7: Performance against 14 day target for responding to PAPs

	0 -14 days	15 - 20 days	21 - 30 days	31 - 60 days	61 - 90 days	Over 90 days	To be done	Total
Apr-16	84.26%	9.83%	4.09%	1.26%	0.31%	0.08%	0.00%	1,271
May-16	90.33%	4.98%	3.10%	0.85%	0.19%	0.28%	0.19%	1,065
Jun-16	93.38%	2.48%	2.89%	1.08%	0.08%	0.00%	0.00%	1,209
Jul-16	84.47%	9.62%	4.24%	1.41%	0.09%	0.09%	0.09%	1,133
Aug-16	91.25%	4.96%	2.77%	0.95%	0.00%	0.00%	0.00%	1,371
Sep-16	91.17%	4.76%	1.82%	1.90%	0.26%	0.00%	0.00%	1,155
Oct-16	88.26%	6.91%	4.30%	0.54%	0.00%	0.00%	0.00%	1,303
Nov-16	92.53%	2.75%	2.28%	0.24%	0.16%	0.08%	0.00%	1,248
Dec-16	93.64%	2.27%	2.55%	1.09%	0.00%	0.27%	0.18%	1,100
Jan-17	95.09%	1.58%	2.41%	0.83%	0.00%	0.00%	0.09%	1,079
Feb-17	92.48%	4.81%	1.86%	0.51%	0.00%	0.00%	0.25%	1,184
Mar-17	94.67%	2.31%	2.31%	0.40%	0.00%	0.00%	0.24%	1,258

8.6 LO managers and staff told inspectors that where the 14-day target was not achieved the reasons were recorded, and this is reported on the monthly PAP dashboard, so that managers can identify potential performance improvements. The categories of reasons shown on the dashboard were:

- Action to be taken by casework/enforcement team
- Agreement for case to be reconsidered
- Allocated outside 14 days
- Awaiting further information from Sponsorship
- Awaiting letter of authority
- Delay in receiving PAP
- HO file required
- HOLA
- Information required from decision maker
- Information required from JR caseworker
- Redrafting required
- Senior Caseworker (SCW)
- Volume

⁵⁷ Data taken from JIRA.

- 8.7 In 2016-17, the most common reasons recorded were (in order) “Information required from decision maker”, “Senior Caseworker” and “Agreement for case to be reconsidered”.
- 8.8 Inspectors called for and examined 10 randomly-selected case records for claims settled by the Home Office at the Pre-Action Protocol stage. All of the cases were concluded between 1 April 2015 and 31 March 2017. Of the 10, 6 had achieved the 14-day target for a response. Of the 4 cases that had failed to meet the target, the number of calendar days taken to respond were 17, 20, 24 and 42. All 4 cases were reconsidered by the Home Office.
- 8.9 The Home Office provided data⁵⁸ showing how PAPs had been recorded on the Casework Information Database (CID) using CID “case type” categories. See Figure 8.

Figure 8: PAP “case types” for 2016-17 as recorded on CID

Case Type	Number	Percentage ⁵⁹
Human Rights/Complex Case	6,165	27.27%
Further Submissions	3,140	13.89%
Asylum	2,634	11.65%
Admin Removal	2,225	9.84%
Permanent Migration	2,100	9.29%
European Casework	1,820	8.04%
Temporary Migration	1,597	7.06%
Deportation	864	3.82%
PVoT ⁶⁰	437	1.93%
Third Country	380	1.68%
Other Asylum	261	1.15%
Illegal Entrant	245	1.08%
Curtailment	185	0.82%
Other	177	0.78%
Admin	145	0.64%
International	119	0.52%
Travel Docs	69	0.31%
Revocation	42	0.19%
Visitor	5	0.02%
Total	22,610	

- 8.10 However, the CID page where the information is recorded was not designed to capture PAP outcomes. Senior managers acknowledged the need to improve data collection for PAPs, and told inspectors that since the introduction of JIRA in 2016 more useable data was being collected, and JIRA contains a specific field, ‘PAP Conclusion’, to capture the outcome(s) of each PAP. However, JIRA data was still maturing and the volumes of data required for detailed analysis were only just being reached.

⁵⁸ Data taken from CID, which includes PAPs not dealt with by ALS.

⁵⁹ Percentages have been rounded and do not add up to 100.

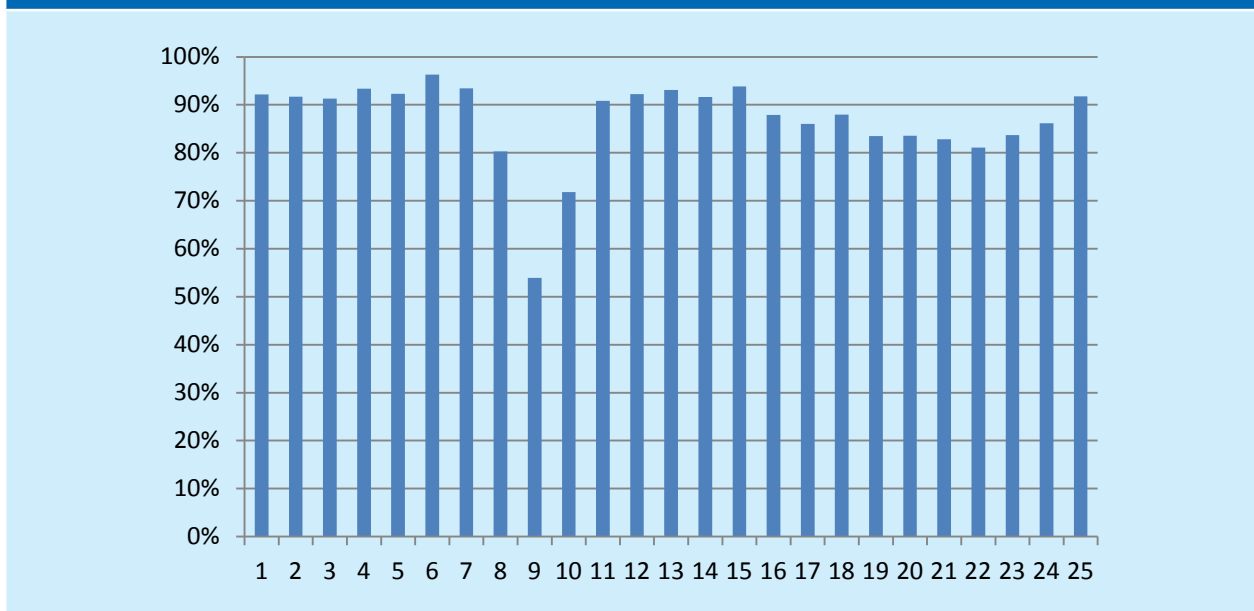
⁶⁰ Potential Victim of Trafficking (now referred to as Potential Victim of Modern Slavery “PVoM”).

- 8.11 PAP data is recorded on CID principally in relation to whether there were any barriers to removing an individual from the UK. A PAP letter without a response is a barrier. In such cases, the CID record should be completed with “CID Barrier Concluded” once the PAP response had been sent. In March 2017, of 1,884 PAPs received, 1,064 were recorded as “CID Barrier Concluded”.
- 8.12 The monthly dashboard reports for PAPs show only the number of PAPs concluded, not how they have been concluded.

Judicial Review performance

- 8.13 Another LO “key priority” relates to the timeliness of JR processing. This references the 4-part Judicial Review Case Allocation pro-forma: “To complete 90% of part 2s within 7 days from receipt to facilitate the timely lodgement of Acknowledgments of Service in accordance with Court deadlines.”⁶¹ The latter requires the AoS to be lodged within 21 days of receipt of the JR.⁶² As with PAPs, the rationale for a 90% target, rather than a higher (or lower) figure, was not made explicit.
- 8.14 The monthly JR dashboard reports contain data about the “part 2” completion target and about the lodgement of AoS, the former on a week to week basis, the latter on a month to month basis.
- 8.15 Figure 9 shows “part 2” completion performance for a 25-week period up to and including Week 4 (the end of April) of 2017-18.⁶³ Performance dipped between Week 8 and 10 (the Christmas and New Year period 2016-17), but more significantly LO was unable to achieve its 90% target for a prolonged period in early 2017 - between Weeks 16 and 24 (mid-February to mid-April). Overall, LO achieved the 90% target in only half (13) of the 25 weeks.

Figure 9: Percentage of “Part 2” responses within 7 days of receipt

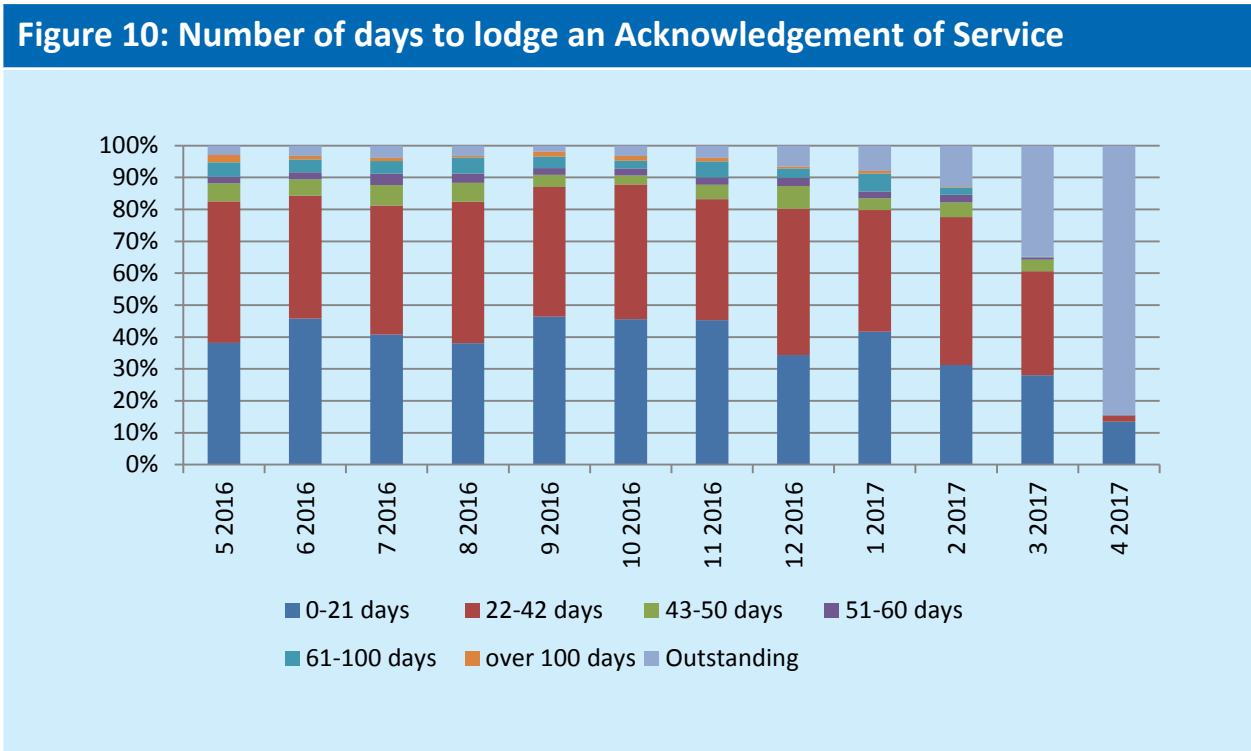


61 Part 2 of the pro-forma is entitled Initial instructions from LO to GLD for the proposed handling/outcome of the application.

62 R (on the application of Kumar and Another) v Secretary of State for the Home Department (acknowledgement of service; Tribunal arrangements (IJR) [2014] UKUT 104 (IAC) permits lodgement within 42 days except for urgent claims.

63 Data taken from JIRA.

8.16 Figure 10 shows the days taken to lodge an AoS between May 2016 and April 2017.⁶⁴ AoS are lodged by GLD. During this period, over 12,000 AoS were lodged in relation to JRs managed by LO. Fewer than half of these were lodged within 21 days, and in the last quarter performance dropped away month on month. From the available data it was not clear to what extent, if any, the time taken for GLD to lodge an AoS was adversely affected by LO’s performance in relation to “part 2” completion, or to any delays in responding to GLD later in the process.



Private Law Claims performance

8.17 LO does not have timeliness targets related to PLC handling. However, LO’s monthly PLC dashboard report highlights relevant information to managers. The dashboard provides a snapshot of the workload and statistical information to show the number of PLCs at each stage of the process, including “case opened”; “case allocated to a caseworker”; “case settled”.

8.18 Figure 11 shows the numbers of PLCs received in 2015-16 and 2016-17 and their outcomes (according to the data recorded on JIRA) at the time of the inspection. The Home Office told inspectors that while it did not have a detailed breakdown by claim type, it believed that over 90% of PLCs related to unlawful detention.

⁶⁴ Data taken from JIRA.

Figure 11: Outcome of PLCs received in 2015-16 and 2016-17

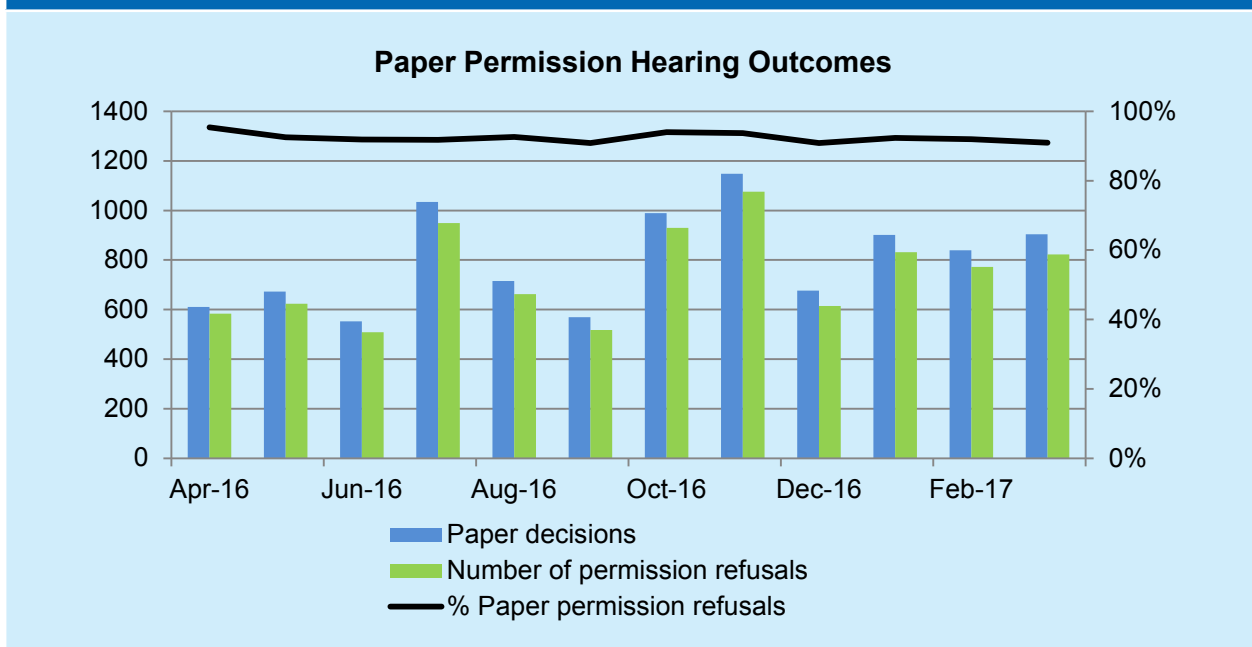
Outcome	2015-16	2016-17	Total
No outcome by the time of the inspection	180	221	401
Settled	27	4	31
Dismissed	3	2	5
Withdrawn	3	2	5
Closed	4	0	4
Allowed	2	1	3
Struck out	3	0	3
Case closed by court	2	0	2
Case closed	1	0	1
Settled (Before Issue)	1	0	1
Total	226	230	456

Effectiveness of litigation processing

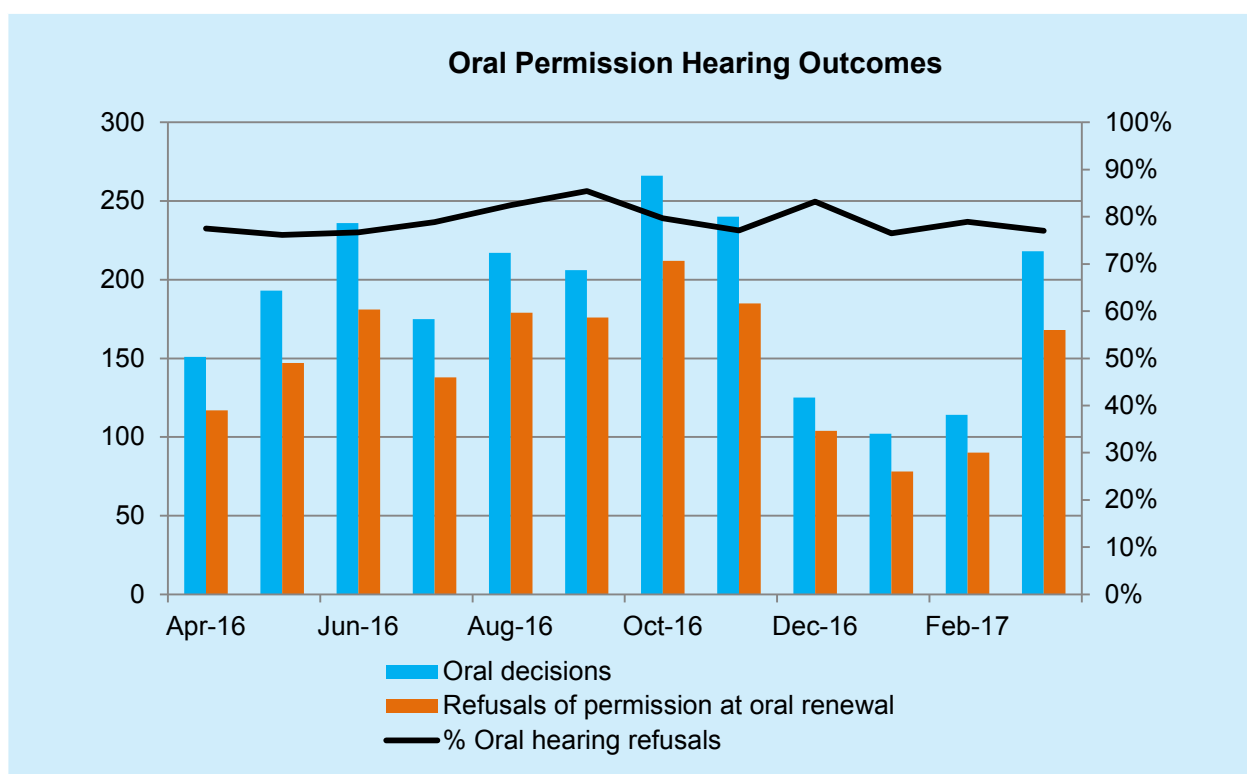
Permission to proceed

- 8.19 LO's "key priorities" include "To ensure correct JR decisions are made enabling the permission refusal rate to be maintained at 95% or above."
- 8.20 There are two types of permission hearing, "Paper" and "Oral". The Home Office collects data on the outcomes of each. Figure 12⁶⁵ shows those outcomes in 2016-17, and appears to confirm that "Permission Refused" was the most common outcome for both "Paper" and "Oral" hearings, albeit the rate for "Oral" hearings is well below the overall 95% target.

Figure 12: Outcome of permission hearings



⁶⁵ The charts for Paper permission Hearings, Oral Permission Hearings and Consent Orders (Figure 13) were provided by the Home Office. They are based on GLD Management Information and, as such, may be subject to change.



8.21 However, a more detailed breakdown the data recorded on CID⁶⁶ produces a different picture.

8.22 During 2016-17, 12,490 JRs were referred for a “Paper” hearing, of which:

- 8,231 (65.9%) were refused, 29% of these being adjudged as “totally without merit”⁶⁷
- 1,611 (12.9%) cases had no outcome recorded, either because the hearing had not taken place at the time of the inspection, or the result had not yet been sent to the Home Office
- 1,354 (10.8%) cases were either closed by the court (because the claimant had failed to comply with the rules), withdrawn or dismissed
- 644 (5.2%) were granted
- 468 (3.7%) were conceded by the Home Office
- 182 (1.5%) had a range of outcomes, of which the most common (56) was adjournment for an Oral hearing

8.23 In the same period, 2,808 cases were referred for an “Oral” hearing, of which:

- 1,277 (45.5%) were refused, 1% of which were deemed “totally without merit”
- 828 (29.5%) were result not yet known
- 339 (12.0%) had various outcomes, including adjourned, remitted or withdrawn
- 330 (11.8%) were granted
- 34 (1.2%) cases were conceded by the Home Office

⁶⁶ CID data includes JRs not dealt with by ALS.

⁶⁷ If a case is refused on the papers, a defendant can apply for the case to be renewed by filing a notice of renewal to oral permission hearing. However, they cannot do this if a JR is refused as “totally without merit, but the applicant can appeal the decision.

Substantive hearings

8.24 In 2016-17, 670 JRs proceeded to a substantive hearing.⁶⁸ Of these:

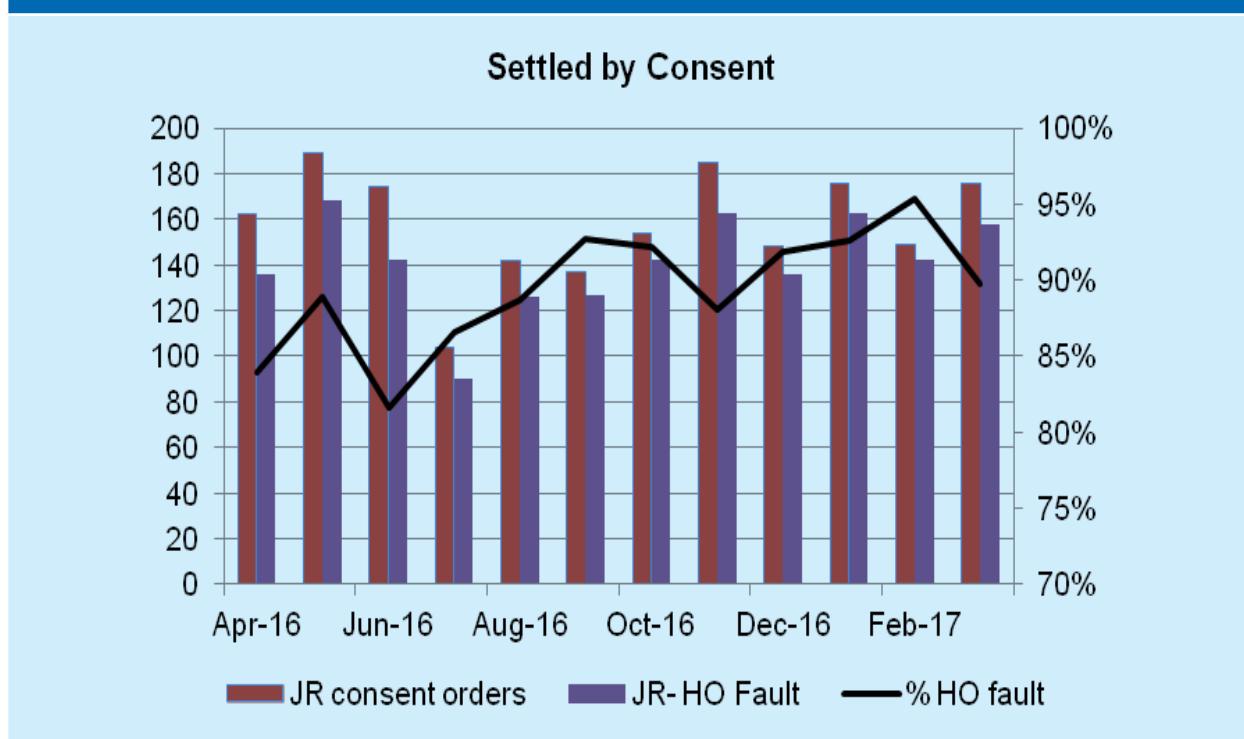
- 122 (18.2) cases were conceded by the Home Office
- 24 (3.6%) cases were allowed by the judge

Consent orders

8.25 Where the Home Office is able to reach an agreement with an applicant prior to a hearing, whether on certain interim matters or in full settlement of their claim, this is covered by a consent order. Where a settlement is reached, the hearing does not go ahead, and once the consent order is ratified by the court the JR application is terminated.

8.26 Figure 13 shows the number of JRs settled by consent each month in 2016-17, and the percentage of those cases where the Home Office conceded that it was at fault.

Figure 13: Consent orders



Managing the costs of litigation

2016-17 overspend

8.27 The 2016-17 budget for Litigation was £92.67 million, of which £34.98 million was Pay Costs, £1.47 million Non Pay Costs, £57.9 million Legal and Compensation Costs, and £1.68 million was offsetting Income.

⁶⁸ A substantive hearing is the stage in the JR process where the judge hears and considers the details of the case, and decides whether to make an award in favour of the claimant.

8.28 The outturn for the year was £7.58 million over budget (£98.9 million), despite Income of £4.1 million. The full year variances of particular note were in relation the Legal and Compensation budgets – the former (essentially the costs of engaging GLD) was £3.65 million (12.3%) overspent, while the latter was £5.37 million (19%) overspent. The variances in Period 12 (March 2017) were £2.67 million and £2.87 million respectively (despite the P12 budget for Compensation being set at £3.4 million), which suggests a conscious effort to push expenditure through before year-end.

Costs of lost and settled claims

8.29 While the percentage of JR claims lost or settled is small, the costs are high. Budgeting is complicated by the fact that the expenditure often relates to claims raised in previous financial years. Home Office figures for cases lost or settled between 1 April and 31 December 2016 (Q1-Q3 2016-17) showed that almost half (44%) of the expenditure related to claims that had been made prior to 2014-15, while only 3.5% related to claims raised in 2016-17. The same data showed the volatility year-to-year of the costs of different claim types, although claims related to enforcement and detention made up the largest costs throughout.

Costs submissions

8.30 A costs submission template must be completed to obtain authority to proceed with a course of action in relation to a litigation claim that will incur expenditure. The submission should not normally exceed two pages. It includes the following sections:

- Timing – setting out by when approval is required and why
 - Urgent (24 hrs)
 - Pressing (2-5 days)
 - Routine (5 days+)
- Purpose – describing case progress, the proposed action/cost implications and outlining the cost approval required
- Summary of the main issues of the JR

8.31 The person authorising the expenditure must have financial authority to do so. They send a copy of the authorised submission template to the Litigation Finance Team. At the time of the inspection, the delegated authority levels set out in the Home Office’s internal guidance document on the handling of JRs were:

- | | |
|---------------------|--|
| • £1 – £4,999 | Senior Executive Officer (SEO) ⁶⁹ |
| • £5,000 – £19,999 | Grade 7 |
| • £20,000 – £39,999 | Head of Litigation Command |
| • £40,000 – £49,999 | Director of ALS |
| • £50,000 and over | HM Treasury ⁷⁰ |

⁶⁹ Staff at SEO, Grade 7 or Grade 6 must have delegated budgetary authority in writing from the Director of Appeals and Litigation (the budget holder) before authorising costs. Staff at these grades who do not have this authority cannot approve litigation costs.

⁷⁰ via the Home Office Management Accounting Unit, once approved by Director ALS. When costs go over £50,000 or look like they will, this must be flagged to the relevant Director General.

- 8.32 Inspectors spoke to LO staff, visited the Litigation Finance Team (LFT) and reviewed case records. From the latter, inspectors had some concerns that while there was a record in the majority of cases that the appropriate financial authority had been sought the costs recorded were estimates rather than final figures. An onsite ‘spot check’ of LFT’s separate records confirmed that financial authority was in place in all cases, and that final costs were being recorded clearly.

Forecasts and allocations

Intake⁷¹

- 8.33 In the last three completed business years (2014-15 to 2016-17), the numbers of PAPs and JRs received by LO have fluctuated, but have followed the same pattern (a small increase from 2014-15 to 2015-16, followed by a sharper decrease (12.56% for PAPs and 14.98% for JRs) from 2015-16 to 2016-17).
- 8.34 Data for PLCs for 2014-15 was not available. Between 2015-16 and 2016-17 the number of PLCs received increased, but not materially. See Figure 14.

Figure 14: Number of PAPs, JRs and PLCs received by Litigation Operations in 2014-15, 2015-16 and 2016-17

	2014-15	2015-16	2016-17
PAPs	25,357	25,858	22,610
JRs	15,188	16,297	13,855
PLCs		226	230

- 8.35 Inspectors were told that the principal cause of the reductions in PAPs and JRs from 2015-16 to 2016-17 was that fewer Human Rights claims were received. In the three years, these accounted for 10,174/ 8,810/ 6,165 PAPs, and 5,337/5,489/3,945 JRs.

2017-18 Forecasts

- 8.36 Between April 2016 and March 2017, the monthly intake of PAPs ranged from 1,708 to 2,114. The forecasting model within the ‘ALS Performance Pack’ gave three possible levels of intake for the period April 2017 to March 2018: “Upper”, “Mid” and “Lower”. The “Upper” forecast was for a monthly intake of approximately 2,250 PAPs. The “Lower” forecast had the monthly average for 2016-17 (1,884) continuing through 2017-18.
- 8.37 The same approach was taken to forecasting JR intake. Between April 2016 and March 2017, the monthly intake ranged from 1,004 to 1,307. The “Upper” forecast for April 2017 to March 2018 showed intake rising from 1,600 to 1,900 JRs per month, while the “Lower” forecast was approximately 1,500.
- 8.38 The working assumptions underlying these forecasts were not explained in the ‘ALS Performance Pack’, so inspectors were not able to test how robust they were, or at what point any deviation from the forecasts would require ALS managers to escalate matters to more senior Home Office management.

⁷¹ The PAP and JR statistics are taken from CID and, as such, include PAPs/JRs not dealt with by ALS.. The PLC data is taken from JIRA and includes only those PLCs dealt with by ALS. Both CID and JIRA are live operational databases and, as such, figures may change as information is updated.

- 8.39 Nor was it evident from the Performance Pack how the forecasts played through into management decisions, for example about resourcing. From the expenditure on Pay Costs, it appeared that ALS ran well below strength through 2016-17 (the Pay Costs budget was underspent by £4 million (11.4%), however £1.57 million of this was spent on unbudgeted “Contingent Labour”).
- 8.40 The ‘ALS Performance Pack’ did not contain monthly data for PLCs, or any forecasts for future PLC intake.

Longer-term forecasts and allocations

- 8.41 In 2016-17, the litigation budget for Legal and Compensation (that is excluding staff costs) was £57.9 million. At the time of the inspection, there was a plan to reduce this to £42.5 million in 2019-20. Home Office Science had forecast that the Home Office will receive between 19,000 and 23,600 JRs in 2019-20. The working assumptions behind this forecast were not explained.

Plans for reducing litigation costs

- 8.42 LO senior managers told inspectors that a number of initiatives to reduce the costs to the Home Office of litigation were being considered. These included possibly “front loading” the legal advice by bringing GLD in at an earlier stage, for example, to strengthen the initial PAP response; “in-housing” legal work, such as writing Acknowledgements of Service, including the Summary Grounds; and, more emphasis on proactive work to prevent PAPs and JRs being raised in the first place. The managers expressed mixed opinions on the likely success of these initiatives.
- 8.43 Given the time taken for claims to be heard and resolved, any plans for reducing litigation costs through any of these measures, especially through improved initial decision making, will need to be in place well ahead of 2019-20 to affect the costs that fall to be met in that year.

Annex A: Criteria used for this inspection

Inspectors used all ten of the ICIBI inspection criteria:

Operational Delivery

- Decisions on the entry, stay and removal of individuals should be taken in accordance with the law and the principles of good administration
- Customs and Immigration offences should be prevented, detected, investigated and where appropriate, prosecuted
- Resources should be allocated to support operational delivery and achieve value for money
- Complaints procedures should operate in accordance with the recognised principles of complaints handling

Safeguarding Individuals

- All individuals should be treated with dignity and respect and without discrimination in accordance with the law
- Enforcement powers should be carried out in accordance with the law and by members of staff authorised and trained for that purpose
- All border and immigration functions should be carried out with regard to the need to safeguard and promote the welfare of children
- Personal data of individuals should be treated and stored securely in accordance with the relevant legislation and regulations

Continuous Improvement

- The implementation of policies and processes should support the efficient and effective delivery of border and immigration functions
- Risks to operational delivery should be identified, monitored and mitigated

Annex B: Role and remit of the Independent Chief Inspector

The role of the Independent Chief Inspector of Borders and Immigration (until 2012, the Chief Inspector of the UK Border Agency) was established by the UK Borders Act 2007. Sections 48-56 of the UK Borders Act 2007 (as amended) provide the legislative framework for the inspection of the efficiency and effectiveness of the performance of functions relating to immigration, asylum, nationality and customs by the Home Secretary and by any person exercising such functions on her behalf.

The legislation empowers the Independent Chief Inspector to monitor, report on and make recommendations about all such functions. However, functions exercised at removal centres, short-term holding facilities and under escort arrangements are excepted insofar as these are subject to inspection by Her Majesty's Chief Inspector of Prisons or Her Majesty's Inspectors of Constabulary (and equivalents in Scotland and Northern Ireland).

The legislation directs the Independent Chief Inspector to consider and make recommendations about, in particular: consistency of approach

- the practice and performance of listed persons compared to other persons doing similar activities
- the procedure in making decisions
- the treatment of claimants and applicants
- certification under section 94 of the Nationality, Immigration and Asylum act 2002 (c. 41) (unfounded claim)
- the law about discrimination in the exercise of functions, including reliance on section 19D of the Race Relations Act 1976 (c. 74) (exception for immigration functions)
- the procedure in relation to the exercise of enforcement powers (including powers of arrest, entry, search and seizure)
- practice and procedure in relation to the prevention, detection and investigation of offences
- the procedure in relation to the conduct of criminal proceedings
- whether customs functions have been appropriately exercised by the Secretary of State and the Director of Border Revenue
- the provision of information
- the handling of complaints
- the content of information about conditions in countries outside the United Kingdom, which the Secretary of State compiles and makes available, for purposes connected with immigration and asylum, to immigration officers and other officials

In addition, the legislation enables the Secretary of State to request the Independent Chief Inspector to report to her in writing in relation to specified matters.

The legislation requires the Independent Chief Inspector to report in writing to the Secretary of State. The Secretary of State lays all reports before Parliament, which she has committed to do within eight weeks of receipt, subject to both Houses of Parliament being in session. Reports are published in full except for any material that the Secretary of State determines it is undesirable to publish for reasons of national security or where publication might jeopardise an individual's safety, in which case the legislation permits the Secretary of State to omit the relevant passages from the published report.

As soon as a report has been laid in Parliament, it is published on the Inspectorate's website, together with the Home Office's response to the report and recommendations.

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