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Public Law Project and JUSTICE House of Lords Second Reading briefing: Nationality and Borders Bill

December 2021

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About Public Law Project

1. Public Law Project ('PLP') is an independent national legal charity. We work through a combination of research, policy work, training and legal casework to promote the rule of law, improve public decision-making and facilitate access to justice.

About JUSTICE

2. JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system. It is the UK section of the International Commission of Jurists. Our vision is of fair, accessible and efficient legal processes in which the individual's rights are protected and which reflect the country's international reputation for upholding and promoting the rule of law.

Executive summary

3. This briefing focuses on provisions of the Nationality and Borders Bill ('the Bill') which we believe undermine the rule of law and threaten access to justice. Contrary to the Home Secretary's stated intention of 'ensuring access to justice and upholding the rule of law',¹ PLP and JUSTICE consider that as currently drafted, the Bill does not strike the right balance between its competing aims of making the system fairer, protecting those in need of asylum, and facilitating removal. Instead, it risks creating a system in which people with a legitimate basis to stay in the UK – and genuine grounds to fear removal – can be removed without effective access to justice, whilst the independent scrutiny of the judiciary is curtailed.
4. We draw attention to the remarkably high number of Government amendments during Committee Stage and Report Stage. These have significantly changed the number of people affected and the severity of the risk to access to justice posed by the legislation. These amendments have had limited Parliamentary scrutiny. Wide-ranging exceptions have been added to the requirement to give someone notice of a decision to deprive them of their citizenship. This undermines British citizens' ability to challenge such decisions. Additionally, amendments have extended provisions which curtail access to the courts in relation to appeals against deprivation of citizenship and to EU citizens appealing against immigration decisions. As such, the ability to challenge unlawful Home Office decision-making is threatened more severely now than was envisioned in the New Plan for Immigration Consultation or in the Bill as introduced to Parliament.

¹ Explanatory Notes, para 30.

Recommendations

5. Our concerns with the following clauses include:
6. **Clause 9 – Notice of decision to deprive a person of citizenship:** Notice of a decision is vital to enable individuals to challenge that decision – people cannot challenge decisions they are not aware of. Notice is indispensable to the right of access to justice. This is all the more important when the decision concerns a right as significant as citizenship.
We recommend the removal of Clause 9.
7. **Clause 20(4) – Priority removal notices: supplementary:** This provision means individuals will still be subject to the consequences of Priority Removal Notices, including vastly curtailed appeal access, even when they are no longer liable to removal. Priority Removal Notices should not apply to people who are not prioritised for removal.
We recommend the removal of Clause 20(4).
8. **Clause 21 – Priority removal notices: Late compliance; damage to credibility and Clause 25 – late provision of evidence in asylum or human rights claim:** These provisions create presumptions that material and evidence deemed ‘late’ are not to be considered credible or given weight by the Home Office decision-maker unless good reasons are provided. We disagree with an automatic burden on the individual to show their good reasons before the weight of their evidence or their credibility can be properly assessed. Furthermore, we consider the extension of these presumptions to the judiciary risks unfair outcomes, as well as being an unnecessary and concerning restriction on judicial independence.
We recommend the removal of Clauses 21 and 25 entirely or, at a minimum, the removal of their application to the judiciary.
9. **Clause 22 – Priority removal notices: expedited appeals and Clause 23 – Expedited appeals: expedited appeals and joining of related appeals:** These clauses create an expedited appeals process for a ‘late’ claim, after a Priority Removal Notice cut-off date. They result in ‘one shot’ at justice, restricting access to just one level of the Tribunal. The Committee stage-addition of Clause 23 means other appeals that are not deemed ‘late’ will also be pulled into the expedited appeals process.
We primarily recommend the removal of Clause 22 and 23. If either clause remains, we recommend access to the Court of Appeal is preserved.
10. **Clause 24 – Priority removal notices: Civil legal services for recipients of notices:** We support the provision of dedicated legal aid for recipients of removal notices, given the consequences of removal and the inadequate existing legal aid provision. However, this is needed by all recipients of removal notices, not just priority ones because recipients of removal notices suffer the same jeopardy as those who are issued a PRN.
We recommend Clause 24 be amended to include all recipients of removal notices. See further Clause 45.

11. **Clause 26 – Accelerated detained appeals:** This recreates the detained fast track scheme which was found to be unlawful by the Court of Appeal in 2015. The Tribunal Rule Committee has been clear that the appeals of detainees cannot be fairly completed if they are undertaken at such speed. **We recommend the removal of Clause 26.**
12. **Clause 27 – Claims certified as clearly unfounded: removal of right of appeal:** We oppose this removal of an appeal for ‘clearly unfounded’ claims. It is the Secretary of State and immigration decision-makers who determine whether something is “clearly unfounded” under this provision, not an independent court. Therefore, an in-country right of appeal is effectively removed on the say so of a minister or caseworker in the executive. The person will only be able to appeal out of country, which makes it much more difficult to access legal advice or access and provide documental evidence. **We recommend the removal of Clause 27.**
13. **Clause 45 – Removals: notice requirements:** We support the statutory 5 day minimum notice period in this clause. However, we are concerned that the clause preserves exceptions which are effectively ‘no notice removals’, risking serious injustice. Furthermore, there is no adequate or sustainable legal aid funding in this area, without which there cannot be effective access to justice regardless of the notice period.
We recommend:
- **the exceptions to notice are removed; and**
 - **Clause 24 be amended to provide additional legal aid funding for all recipients of removal notices.**
14. A clear theme throughout the Bill – and the late amendments added by Government – are attempts to reduce appeals. We believe this focusses on the wrong end of the system. There is no reference in the Bill or its explanatory notes to the fact that around 50% of the appeals to the First-tier Tribunal against the Home Office’s decisions are successful,² or that, on the Government’s own evidence to the Independent Review of Administrative Law (‘IRAL’), about one third of judicial reviews lodged against it were either settled or decided in the claimant’s favour.³ These figures demonstrate an unacceptably high level of unlawful decision-making.
15. Indeed, nothing in the Bill addresses the really urgent issue: how to improve the fairness, quality and efficiency of Home Office decision making processes so that more people receive the right decision first time and in a timely manner. The clauses addressed below will increase the risk of unlawful decisions for those subject to the immigration system and their families; at the same time, they will not achieve the Home Office’s aims of a more efficient immigration system, particularly as the Bill does not address the need for access to proper legal advice, better first-instance decision making, and a properly funded courts and tribunals system.⁴

² Tribunal Statistics Quarterly: July to September 2021, Table FIA_3 *First-tier Tribunal (Immigration and Asylum Chamber) Number of appeals determined at hearing or on paper*, available at: <https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-july-to-september-2021>.

³ The Government told the IRAL that 2/3 of judicial reviews lodged against it in 2019/20 were successfully defended. See Summary of Government Submissions to the Independent Review of Administrative Law, §47. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/976219/summary-of-government-submissions-to-the-IRAL.pdf

⁴ The need for investment in the courts and tribunals system was recognised by the outgoing Lord Chancellor, Robert Buckland QC MP, in his letter of resignation to the Prime Minister: <https://twitter.com/RobertBuckland/status/1438185693386354688/photo/1>

Deprivation of citizenship – Clause 9

16. Clause 9 introduces exceptions to the requirement to give a person notice if they are going to be deprived of their citizenship. It inserts a new subsection 5A into section 40 of the British Nationality Act 1981, and provides that no notice is required 'if it appears to the Secretary of State that:
- a) the Secretary of State does not have the information needed to be able to give notice under that subsection,
 - b) it would for any other reason not be reasonably practicable to give notice under that subsection, or
 - c) notice should not be given
 - d) in the interests of national security,
 - e) in the interests of the relationship between the United Kingdom and another country, or
 - f) otherwise in the public interest.'

The problem with this clause

17. Clause 9 was introduced to the Committee at a very late stage, leaving no adequate time for its consideration. It follows a 2021 High Court judgment,⁵ in which a regulatory provision, which allowed notice to be deemed given even if it had not been, was held to be unlawful. The regulation only applied when the person's whereabouts were unknown and their address and their representative's address were unknown or defective. The High Court observed, in finding this part of the regulations unlawful, 'you do not "give" someone "notice" of something by putting the notice in your desk drawer and locking it.'⁶
18. There is clearly now a need to consider what to do in a situation in which a person's whereabouts are unknown but where it is appropriate to remove citizenship. This might include for example, placing an ongoing duty on the Secretary of State to try to effect notice and providing a no notice power in very limited circumstances. However, PLP and JUSTICE are concerned that, instead of doing this, the Secretary of State has proposed legislation which would go far further than the previous regulations; allowing her to dispense with notice altogether based on a very low threshold.
19. Clause 9 allows notice to be dispensed with on a subjective test: if it appears to the Secretary of State that the exemptions apply, not if they do apply. Furthermore, it provides for much broader circumstances than an unknown address, including: any other reason making it reasonably impracticable including; national security; the UK's relationships with other countries; and otherwise in the public interest. There is lack of clarity as to how these circumstances will be interpreted given their breadth, vagueness and subjectivity. Factsheets recently made available about the Bill online describe the test for dispensing with notice to be 'exceptional circumstances', yet that phrase appears nowhere in Clause 9.⁷
20. It is important to remember that notice of a decision is not a mere technicality, particularly when decisions are as serious and have such fundamental consequences as deprivation of citizenship. As Lord Steyn stated in *R (Anufrijeva) v Secretary of State for the Home Department*.

⁵ See *D4 v SSHD [2021] EWHC 2179 (Admin)*

⁶ *Ibid*, para [49].

⁷ See the Deprivation of Citizenship Factsheet published on 3 December 2021. Available at:

<https://www.gov.uk/government/publications/nationality-and-borders-bill-deprivation-of-citizenship-factsheet>

'Notice of a decision is required before it can have the character of a determination with legal effect because the individual concerned must be in a position to challenge the decision in the courts if he or she wishes to do so. This is not a technical rule, it is simply an application of the right of access to justice.'⁸

21. The current appeal provision reflects how inextricably linked notice and appeal are: it is not the decision which entitles an individual to appeal, but notice of that decision.⁹ Whilst Clause 9 amends that, by giving an appeal to those who have been deprived of their citizenship without having been given notice, this clause exposes the practical impossibility of exercising this appeal right. You cannot challenge a decision you are not notified about. It therefore becomes a theoretical and illusory right of appeal, rather than a practical and effective one.
22. In our view, if Parliament did wish to provide in primary legislation for a situation in which notice is impossible but where deprivation of citizenship should still occur this would need to:
- be drawn extremely restrictively and be limited to situations where the deprivation is necessary to protect, for example, national security or the rights of others;
 - contain an objective not subjective test;
 - be accompanied with an ongoing duty for the Secretary of State to take reasonable steps to give notice of the decision, and thereby notice of the right of appeal to the person; and
 - contain safeguards to protect recourse to access to appeal, for example suspension of any time limits for appeal until actual notice has been given.
23. None of the above is provided for in the Bill. This clause has been drawn broadly and rushed through Parliament. The provisions pose a barrier to effective access to justice in relation to such the deprivation of a constitutional right. As such they deserve further scrutiny and consideration.
24. **PLP and JUSTICE recommend the removal of Clause 9 from the Bill.**

Priority Removal Notices – Clauses 20–24

25. Priority Removal Notices (PRNs) are introduced by Clause 19 of the Bill, solely for those who are liable to removal or deportation (Clause 19(1)). The PRN regime gives the recipient a period of time within which to access legal advice and inform the Home Office of any grounds or evidence they want to provide in support of a claim to be allowed to remain in the UK. After the 'cut-off date', new claims will be subject to presumptions about damaged credibility (Clause 21); minimal weight of evidence (Clause 25);¹⁰ and appeal rights of the 'late' claim *and* any other pre-existing claims which were made on time will be severely curtailed (Clauses 22 and 23). The avowed purpose of these clauses is 'to reduce the extent to which people can frustrate removals through sequential or unmeritorious claims, appeals or legal action'.¹¹
26. Although the Explanatory Notes suggest a PRN will only be issued when there is a reasonable prospect

⁸ [2003] UKHL 36, para [26]. As recently observed in the Joint Committee on Human Rights report on Part 3 of the Bill, this is the same right of access to justice as is conferred by Article 13 ECHR (the right to an effective remedy), See Joint Committee on Human Rights *Legislative Scrutiny: National and Borders Bill (Part 3) – Immigration offences and enforcement*, Ninth Report of Session 2021–22 (24 November 2021), footnote 161.

⁹ Section 40A of the British Nationality Act 1981.

¹⁰ Clause 25 also attaches a minimal weight presumption if evidence is provided after the cut-off date of an evidence notice under Clause 17.

¹¹ Explanatory Notes, para [220].

of removal,¹² and that further guidance will be issued as to the factors that may prompt a PRN being issued,¹³ nothing in the Bill explains when a person will be served with a PRN. It is unclear how the PRN provisions relate to existing powers to issue 'One Stop Notices' under s120 Nationality Immigration and Asylum Act 2002 and to certify 'late' claims under s96 of that Act. PRNs impose a short time limitation period for legal challenge, after which evidence presented by the person is considered to be of limited credibility and appeal rights are restricted.

27. The purpose of a PRN is to truncate the period of time in which a person can challenge their removal. If this provision is to meet the stated aim of the Bill of increasing the fairness of the system, the Bill must also make provision for there to be adequate time and access to legal provision required for people to make legitimate challenges to their removal. PLP and JUSTICE consider that much more detail is required about the intended operation of the PRN, and its place in the removal process, before Parliament can assess its effectiveness in achieving the Bill's aims.

28. Peers may wish to ask:

- a) At what stage will a person be served with a PRN?
- b) What factors will influence whether a person is served with a PRN?
- c) How long will the 'cut-off period' last?
- d) What steps will be taken to ensure that those served with a PRN can *in fact* access the new legal advice provision during the 'cut-off period'? Will the 'cut-off period' be extended if a person has not been able to access legal advice during that time?
- e) What guidance will be given to Home Office caseworkers to ensure that those who raise claims after the 'cut-off period' with good reason are not unfairly penalised?
- f) How will the PRN relate to the existing 'one stop' notices under s120 of the Nationality Immigration and Asylum Act 2002?

Clause 20(4)

29. Clause 20(4) was added in Committee Stage and provides that 'A priority removal notice remains in force until the end of the period mentioned in subsection (1) [at least 12 months after the cut-off date] *even if the PRN recipient ceases to be liable to removal or deportation from the United Kingdom during that period*' (our emphasis).

The problems with this clause

30. An individual cannot challenge their removal if they are no longer liable to be removed. If the legislative purpose of the PRN regime is to expedite removals for those who are a priority for removal, there can be no justification for it to apply to those who are no longer liable for removal or deportation. PLP and JUSTICE do not think the onerous consequences of PRNs can be justified due to the unnecessary and disproportionate restrictions of fair process they impose, and this is discussed below. Even if the scheme were an acceptable way to speed up removals, Clause 20(4) would still make no sense. It is a disappointing attempt to restrict access to appeal for as many as possible, even beyond those who are supposed to be targeted by the PRN regime on the Government's own description.

31. PLP and JUSTICE recommend Clause 20(4) is removed.

¹² Explanatory notes, para [30].

¹³ Explanatory Notes, para [219].

Priority removal notices: Late compliance: damage to credibility; and late provision of evidence in asylum or human rights claim – Clauses 21 and 25

32. Once the PRN period comes to an end, Clause 21 stipulates that a person’s credibility will be automatically damaged if their claim is late, unless they show good reason for missing the cut-off period. Clause 25 further stipulates that any late evidence provided will automatically be taken to have ‘minimal weight’, unless good reason is shown for the lateness. In the initial draft of the Bill, Clause 21 was applicable only to executive decisions: the Secretary of State when making protection and human rights decisions and competent authorities making slavery and trafficking decisions. However, in the House of Commons Report Stage, the Government amended Clause 21 to extend it to judicial consideration of appeals of those decisions as well.¹⁴ Clause 25 also applies to judicial consideration of appeals.¹⁵

The problem with these clauses

33. PLP and JUSTICE disagree with the assumption that a person’s credibility and any evidence they provide should be automatically treated differently if the claim is late. We consider the obligations on the judiciary around the assessment of credibility and the weight of evidence to be concerning and likely to lead to unfair outcomes.

34. There are numerous and perfectly legitimate reasons why late claims are made. These include difficulties in accessing legal advice; lack of understanding of the scheme; new evidence; changes in the law; shame and fear of disclosure; and the impact of trauma on disclosure for survivors. Indeed, the Government’s own equality impact assessment identified that:

‘Vulnerable people [...] might find it more difficult than others: to disclose what has happened to them; to participate in proceedings; and to understand the consequences of non-compliance with legal requirements. There may also be trauma-related considerations, in terms of how any vulnerable groups adduce evidence.’¹⁶

35. There is a possibility to rebut the presumptions in both clauses if claimants can show good reason for lateness. However, with the above difficulties in mind, we consider this burden seriously risks unfair decision-making and outcomes. If it is acknowledged that vulnerable people will experience barriers to effectively accessing and participating in proceedings, which could make them ‘late’, then it is not justifiable to place the burden of disapplying blanket presumptions on those same people, who may well also experience difficulty in harnessing evidence and effectively arguing their ‘good reasons’ for lateness.

36. The provisions are, in any event, unnecessary. The Home Office, courts and tribunals have always been able to consider the timing of a claim as a factor in determining credibility and in considering the appropriate weight for evidence. They can do so on an individual, case-by-case basis. The judiciary are already required to take account of behaviour as damaging to credibility if it is designed or likely to mislead, conceal information or obstruct or delay the handling or resolution of the claim or the taking

¹⁴ The First-tier Tribunal, the Upper Tribunal in its appellate court capacity but not when considering judicial reviews, and the Special Immigration Appeals Commission.

¹⁵ As above.

¹⁶ *The Nationality and Borders Bill: equality impact assessment (accessible version)*, 16 September 2021, para 19. Available at: <https://www.gov.uk/government/publications/the-nationality-and-borders-bill-equality-impact-assessment/the-nationality-and-borders-bill-equality-impact-assessment-accessible-version>

of a decision in relation to the claimant.¹⁷ The judiciary are also used to considering and balancing the weight given to evidence based on various factors. In relation to lateness, there are already strong requirements in place under s.120 and s.96 of the Immigration Act 2002, as well as under s.353 of the Immigration Rules, to ensure that all evidence is submitted at the earliest possible opportunity and any late submissions be justified.

37. The effect therefore of these Clauses will not be to give the judiciary further tools with which to assess credibility and weight; it already has such tools. Instead, the effect is to give the Secretary of State the power, through the issuing of a notice, to constrain the assessment of credibility and weight and restrict the proper and independent exercise of judicial scrutiny of all circumstances.
38. Independent judicial scrutiny is a matter of fundamental constitutional importance. Practically, too, it is important that the judiciary can depart from the Home Office's presumptions surrounding lateness, given the high proportion of Home Office decisions which are found by the First-tier Tribunal on appeal to have been wrong.¹⁸ The potential injustice of these clauses could be devastating for vulnerable appellants for whom robust and probative evidence is reduced to having minimal weight through arbitrary measures.
- 39. We recommend the removal of Clauses 21 and 25. At a minimum, we recommend the removal of their application to the judiciary.**
40. In Clause 21 this would be an amendment to leave out Clause 21(1A); Clause 21(3A)-(3B); Clause 21(4A)(a)(iii)-(v); and Clause 21(4B). In Clause 25 this would be an amendment to leave out Clause 25(1)(b)(ii); Clause 25(6)(b) and Clause 25(7)(c)-(e).

Priority removal notices: expedited appeals: expedited appeals and joining of related appeals - Clauses 22 and 23

41. Clauses 22 and 23 prescribe further automatic consequences when a 'late' protection or human rights claim is made after a PRN cut-off date. Clause 22 creates a new procedure¹⁹ whereby the Secretary of State can certify a late claim if she is not satisfied there are good reasons for the claim being late. In so doing, she can severely circumscribe access to appeal in three ways.
42. Firstly, appeals will be to the Upper Tribunal rather than the First-tier Tribunal, and must be brought and decided on an expedited basis.
43. Secondly, there is no onward appeal: if the Upper Tribunal dismisses the appeal, there will be no further right of appeal to the Court of Appeal.
44. Thirdly, Clause 23 - which was introduced at Committee Stage - provides that where a person brings an appeal that is subject to the expedited procedure in Clause 22, certain other appeals pending for that person also become subject to the expedited procedure. This is the case even if they predated the PRN and were made on time. These include protection and human rights appeals, EU and EEA

¹⁷ Under s.8 Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

¹⁸ Around 50% of appeals to the First-tier Tribunal against the Home Office's decisions are successful: Tribunal Statistics Quarterly: January to March 2021 (published 10 June 2021), table FIA.3, available at:

<https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-january-to-march-2021>

¹⁹ Introducing new section 82A to the Nationality, Immigration and Asylum Act 2002.

appeals, and also appeals against deprivation of citizenship.²⁰

The problems with these clauses

45. The stated justification of the PRN regime is 'to reduce the extent to which people can frustrate removals through sequential or unmeritorious claims, appeals or legal action'.²¹ However, an important preliminary point to make is that they do not target sequential or unmeritorious claims, instead they target claims which have a right of appeal under s82 of the Nationality, Immigration and Asylum Act 2002. This right of appeal is only available for human rights or protection claims which are either (a) first claims or (b) fresh claims which the Home Secretary accepts have a realistic prospect of success. If she does not accept the latter, she can certify the claim as clearly unfounded, and it will come outside of the s.82 appeal rights scheme anyway.

46. This provision will not tackle abusive, repetitious or unmeritorious claims but it will severely circumscribe the right of appeal in cases which the Home Secretary accepts have at least a real prospect of success on appeal. We consider this preliminary point is reason enough for the Clauses to be removed - they are not targeting the appeals they purport to be. However, further to this, we highlight below the problems with the three ways in which appeal is limited by these provisions.

47. Expedition of appeal:

- a) Mandating that appeals must be brought and decided more quickly because they are late is difficult to reconcile with access to justice principles. The mere fact that a claim is made late, even without good reason, does not mean it can be decided fairly on an expedited basis. We have provided a case study of AT at Annex 1 of this briefing to provide an example of the unfairness risked by expedited procedures.
- b) In the original draft of the Bill, this could at least be partially protected if the Tribunal found it was in the interests of justice for the appeal to come out of the expedited procedure. However, this has been further restricted during the passing of the Bill; a judge can now only order that an appeal comes out of the expedited process if 'it is the only way to secure justice is done', rather than when it is in the interests of justice.²² As such, the Home Office has even more power to circumscribe access to justice prior to any Tribunal having the opportunity to consider the case.
- c) PLP and JUSTICE are concerned that the scheme gives one party to the appeal (the Home Office) the power to decide (through certification) that the appeal should be dealt with more quickly than other appeals, without any duty on the Home Office to consider whether that can be done fairly. The more appropriate mechanism would be for the Home Office to apply to the Upper Tribunal for directions if it wants a particular appeal to be heard more expeditiously. This would allow a judicial decision to be taken, after hearing from both parties, as to whether the appeal can fairly be decided on an expedited basis.

²⁰ See Clause 23(2).

²¹ Explanatory Notes, para 220.

²² Clause 22(1)(5) and Clause 23(7), as amended by amendments 39, 40, 42, and 43 at House of Commons Report Stage.

48. No onward appeal:

- a) Lateness also does not insulate a claimant from judicial error. Of particular concern therefore is the removal not only of the First Tier Tribunal, but also the Court of Appeal, leaving one sole judge to be the first and only independent judicial check available to scrutinise Home Office decision-making. No tribunal is perfect and judicial error happens. Indeed, that is the purpose of there being more than one level of judicial consideration within our justice system: to ensure that errors at first instance can be rectified. As the Supreme Court noted just last year in another area of law,²³ restricting parties' access to justice at appellate level has the effect of 'leaving pockets of unchallengeable, potentially erroneous first instance decisions.'²⁴
- b) The exclusion of a right of appeal to the Court of Appeal also means that such appeals will be entirely insulated within the Tribunal system. Appeals from the Tribunal into the ordinary court system are vital for the proper and just application of the law. As we explained in our responses to the government's earlier consultation on tribunal appeals,²⁵ closing off avenues for appeals risks closing off access to justice. An incorrect decision in this field can cost an individual their safety, security and livelihood.²⁶

49. Clause 23 and related appeals:

- a) For the reasons set out above we oppose the restrictions Clauses 21, 22 and 25 place on 'late' appeals. However, even if there was force in the Government's reasoning for punishing 'late' appeals, the addition of related appeals by Clause 23 is impossible to justify. This will restrict from onward appeal and expedite appeals which are on time and could never, on their own, be expedited through Clause 22, which applies only to human rights and protection claims.
- b) Our first concern is the impact this could have on meritorious claims and appeals. It is very common that people make a claim or appeal then they may subsequently realise and find that they have further claims or appeals which are totally valid and legitimate to bring. This can particularly be the case when there is limited access to quality legal advice, so the full history and subsequent analysis of the person's legal remedies can be delayed. In such circumstances, Clause 23 could have a chilling effect on completely meritorious claims after a PRN cut-off date, because to make that claim would put their previous claims or appeals in a worse position.

²³ Judicial reviews of a 'criminal cause or matter' which estopped from accessing the Court of Appeal by section 18 of the Senior Courts Act 1981. The Supreme Court Justices said that overinterpretation of which cases are deemed 'criminal causes or matters' would have the effect of reducing to an unacceptable degree parties' access to justice at appellate level'. However, even these cases do have an appeal to the Supreme Court when a point of law of general public importance is in issue (section 1 of the Administration of Justice Act 1960).

²⁴ *In the matter of an application by Deborah McGuinness for Judicial Review (Northern Ireland)* [2020] UKSC 6

²⁵ JUSTICE, *JUSTICE response to proposals to restrict appeals from the Upper Tribunal to the Court of Appeal*, available at <https://justice.org.uk/justice-response-to-the-ministry-of-justices-proposals-for-reforms-to-arrangements-for-obtaining-permission-to-appeal-from-the-upper-tribunal-to-the-court-of-appeal/>; and Public Law Project, *Submission to Ministry of Justice consultation Proposals for reforms to arrangements for obtaining permission to appeal from the Upper Tribunal to the Court of Appeal*, available at <https://publiclawproject.org.uk/content/uploads/2021/01/Consultation-submission-PLP.pdf> The Ministry of Justice has not yet published its response to this consultation.

²⁶ See *Wiles v Social Security Commissioner* [2010] EWCA Civ 258 at [47] (Dyson LJ).

50. Our additional concern is in the inclusion of other appeals which could never on their own be expedited under Clause 23, because they could relate to claims made perfectly on time, even predating any PRN. These relevant appeals include European Union citizens' rights appeals, appeals against European Economic Area decisions, and appeals against deprivation of citizenship.

51. This expands the risk of injustice of the scheme – through expedited appeals which are unchallengeable in the Court of Appeal – far beyond protection and human rights claims and far beyond those which are 'late'.

52. The inclusion of a deprivation of citizenship appeal is of particular concern. Combined with new Clause 9, this creates an additional barrier to effectively challenging the State's unilateral decision to deprive a citizen of their citizenship. Whilst Clause 9 will inevitably mean more people are not informed of the decision, Clause 23 puts their access to appeal in jeopardy if they are also a recipient of a PRN.

53. PLP and JUSTICE primarily recommend the removal of Clause 22 and 23. In the event of Clause 22 being preserved, we recommend the removal of Clause 23.

54. In the event of either Clause 22 alone or both Clauses being preserved in the Bill, we recommend that the Court of Appeal is retained for onward appeals. This would involve an amendment to leave out the clauses barring access to the Court of Appeal, namely Clause 22(2) and Clause 23(9).

Accelerated detained appeals – Clause 26

55. Clause 26 seeks to recreate, through primary legislation, a Detained Fast Track process. A Detained Fast Track for appeals previously existed in the First-tier Tribunal Procedure Rules. Those rules were found to be unlawful in 2015 because they created an unfair system in which asylum and human rights appeals were disposed of too quickly to be fair.²⁷ The Court of Appeal described the timetable for such appeals as 'so tight that it is inevitable that a significant number of appellants will be denied a fair opportunity to present their cases'.²⁸ It held that the policy did not sufficiently appreciate 'the problems faced by legal representatives of obtaining instructions from individuals who are in detention'²⁹ nor did it 'adequately take into account of the complexity and difficulty of many asylum appeals [and] the gravity of the issues that are raised by them'.³⁰

56. Hundreds, if not thousands, of cases have had to be reconsidered by the Home Office and/or the Tribunal because they were unfairly rushed through that process. This includes survivors of trafficking and torture and other individuals who on the basis of a rushed and unfair procedure will have been removed to places where they fear persecution or are separated from their families. There was no adequate system for ensuring that such people were removed from the fast track and given a fair opportunity to present their claims.

57. Since the Detained Fast Track procedure was overturned, the Home Office has twice sought to persuade the Tribunal Procedures Committee to recreate it in Tribunal Procedure Rules. After consultation, The Tribunal Procedures Committee refused, stating: 'a set of specific rules would not lead to the results sought by the Government. If a set of rules were devised so as to operate fairly,

²⁷ *Lord Chancellor v Detention Action* [2015] EWCA Civ 840.

²⁸ *Lord Chancellor v Detention Action* [2015] EWCA Civ 840 para [38].

²⁹ *Ibid.*

³⁰ *Lord Chancellor v Detention Action* [2015] EWCA Civ 840 para [45].

they would not lead to the increased speed and certainty desired.’³¹ The Committee was not satisfied that a Detained Fast Track procedure could be created in a way that was compatible with the fair hearing of asylum and human rights appeals. It was found to be also unnecessary because the Tribunal already had ample case management powers to deal with appeals on an expedited basis if necessary.

58. During Committee and Report Stage, Clause 26 has been further amended to expand the number of appeals covered by the expedited procedure and to narrow the test for any appeals to be heard outside the accelerated procedure. Accelerated detained appeals can now include European Union citizens’ rights appeals, appeals against European Economic Area decisions, as well as the protection and human rights appeals and appeals against deprivation of citizenship.³² Furthermore, the Tribunal’s ability to order that a case is not dealt with within the accelerated procedure has been further limited, from when it is in ‘the interests of justice’ to when it is ‘the only way to secure justice is done’.³³

The problems with this clause

59. Clause 26 seeks to force the Tribunal Procedure Committee’s hand by *requiring* it to make provision for a new Detained Fast Track. The sole criteria for inclusion in the proposed new Detained Fast Track are (1) that the person is in detention, (2) is of a description prescribed by regulations made by the Secretary of State (3) that in the opinion of the Secretary of State the appeal ‘would be likely to be disposed of expeditiously’.³⁴

60. Nothing in these criteria requires any consideration of whether the appeal can be dealt with fairly if it is decided on an accelerated basis. There is no requirement to ensure that the appellant has access to competent legal advice and representation. There is no requirement to ensure that they have adequate time to secure essential evidence, such as medico-legal reports, country expert evidence, or other documentary or witness evidence.

61. Under this clause, the Tribunal can only transfer cases out of the Detained Fast Track if it is ‘the only way to secure justice is done’. This is not an adequate safeguard to ensure the system is fair. A wider version of this ‘safety valve’ clause, existed in the old Detained Fast Track where the Tribunal had an ‘interests of justice’ test to apply,. However, the Court of Appeal found even this wider test did not provide a sufficient safeguard against the structural unfairness of the scheme.³⁵ The more restrictive test only compounds this unfairness.

62. Finally, the old Detained Fast Track did not include the expanded list of appeals in Clause 26(6), including EU citizen, EEA and deprivation of citizenship appeals. This provision, as amended by the

³¹ Tribunal Procedure Committee, *Response to the consultation on Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 and Tribunal Procedure (Upper Tribunal) Rules 2008 in relation to detained appellants*, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807891/dft-consultation-response.pdf

³² Clause 26(6).

³³ Clause 26(5).

³⁴ New s106A(1)(b)(i) provides for the procedure to apply to decisions of a ‘prescribed description’. It is unclear what this is intended to achieve and the Explanatory Notes do not assist: see para 282 which refers only to ‘further criteria which will be set out in regulations’.

³⁵ *Lord Chancellor v Detention Action* [2015] EWCA Civ 840 at paras 43-45. It held, that practically speaking, it was an unfair application to have to make, since appellants had to try to argue it would not be in the interests of justice to continue since they needed more time at the very hearing at which their appeal would otherwise be determined. This put them in a paradoxical Catch 22 position of having to argue that they needed more time to prepare in order for their appeal to be dealt with fairly, and if that argument failed to then argue that they had enough evidence for their appeal to be decided in their favour. This was found to be ‘an invidious position... unfair and unjust’.

Government during Committee and Report Stage, means many more appellants may face an unfair appeals process. Of particular concern is the effect on deprivation of citizenship when combined with new Clause 9. Whilst Clause 9 will inevitably mean more people are not informed of the decision, Clause 26 could severely restrict their access to a fair appeal process if they are also detained.

63. PLP and JUSTICE consider an accelerated detained appeal process, i.e. a recreated Detained Fast Track, is unnecessary and unjust. The Tribunal has adequate case management powers to deal with appeals expeditiously in appropriate cases, where it can be done justly and fairly, and already prioritises detained cases.

64. PLP and JUSTICE recommend Clause 26 is removed from the Bill.

Claims certified as clearly unfounded: removal of right of appeal - Clause 27

65. Clause 27 removes the right of appeal for cases which are certified as 'clearly unfounded'. At present, where the Home Secretary certifies a case as 'clearly unfounded', any appeal may only be brought 'out of country', i.e. after a person has been removed from the UK.

The problem with this clause

66. In cases concerning protection claims or Article 3 human rights claims, such appeals may not provide an effective remedy because the feared harm can have eventuated before the appeal can be heard. As the Explanatory Notes (para 285) acknowledge, the right of appeal is rarely exercised and instead challenges are brought by way of judicial review. Nevertheless, in some cases these appeals can and have provided an important backstop and they may become even more important should the provisions punishing lateness elsewhere in the Bill become law. For example, late evidence under Clause 25 attracting 'minimal weight' - despite how robust or probative it actually is - could lead to arguable cases more likely to be declared clearly unfounded.³⁶

67. This section contributes to a general trend in immigration and asylum law towards unappealable and unchallengeable decision-making. This is regrettable and will not increase the fairness or efficiency of the system. It is furthermore unclear how this further restriction of appeal rights will contribute to the Home Office's aims of creating a more fair and efficient procedure.

68. PLP and JUSTICE recommend Clause 27 is removed from the Bill.

Removals: notice requirements - Clause 45

Clause 45 makes clear in statute the duty on the Home Office to give people a minimum of 5 working days' notice of when they are going to be removed from the UK. As evidenced in the case study below, for more than 10 years, the courts have recognised that this duty to give notice of removal is essential to access to justice and the rule of law. The Explanatory Notes to the Bill make clear that the purpose of the notice period is to enable individuals to access justice prior to removal (para 493), and that by legislating for a statutory minimum period, the Bill aims to 'standardise the time to access legal advice' (para 497). The Home Office's removal powers can have profound consequences for people's lives. It is vitally important that when officials decide people should be removed, they can access the courts to challenge that decision if they have an arguable case that it is wrong.

³⁶ Clause 25(6) confirms that 'determining a claim' in the section includes when the Home Office is deciding whether a claim should be certified as clearly unfounded and whether to accept or reject evidence as a further submission.

69. The clause also creates a number of exceptions to the right to notice which will lead to ‘no notice’ removals, removing the courts’ ability to supervise the Home Secretary’s use of her power to enforce removal. These exceptions include:

- a) when the first attempt at removal failed and was not the Home Office’s fault, namely due to adverse weather, technical faults, or when the person to be removed or others cause disruption;
- b) when someone is refused leave to enter at a port;
- c) when the planned removal did not go ahead because of judicial review proceedings; and
- d) for PRN recipients.

The problems with this clause

70. Providing a statutory minimum period for individuals to access just and creating a standard period of time ‘access legal advice’ (para 497) are important aims of the Bill but their efficacy in ensuring access to justice depends critically on the availability of legal advice. Unlike the provisions for Priority Removal Notices, there is no specific provision in the Bill for ensuring that those who are served with notice of intention to remove under these provisions can access legal advice within the notice period. The scheme therefore depends on existing legal aid provision. There are serious limitations in the availability of that provision both for those in detention³⁷ and in the community³⁸.

71. Section 10B of the clause creates an exception to the requirement for the 5-day notice period when a planned removal has failed as a result of matters reasonably beyond the control of the Home Office, such as adverse weather conditions, technical faults or other issues causing delays to transport, or disruption by the person to be removed or others.

72. We can see valid reason for this provision but are concerned about a number of unintended consequences. First, there is no definition of what ‘disruption by the person to be removed or others’ means. In our experience, Home Office caseworkers interpret the notion of ‘disruption’ on an extraordinarily broad basis. For example, a person refusing to leave their room in detention because they want to speak to their lawyer first has been defined as ‘disruption’. This is highlighted in the case study of AT, at Annex 1, who protested that he could not go back to Gambia because his wife was about to give birth to his child, and he needed to see a lawyer. This protestation was recorded by the Home Office as an attempt to ‘disrupt’ his removal. In such a case, this new exception would allow the Home Office to then proceed with removal at any time over the following 3 weeks without any notice at all. This is more than the current Home Office policy of 10 days. In AT’s case, his removal on less than 24 hours’ notice (under the Home Office’s unlawful removal windows policy) was itself held to be unlawful because it was based on a seriously flawed decision which had been reached in an unfair

³⁷ [Joint Committee on Human Rights, ‘Immigration Detention’, Sixteenth Report of Session 2017, HC 1484 HL Paper 278 at §41](#): The proportion of detainees who were unrepresented was noted with concern in the JCHR report³⁷. [BID Legal Advice Surveys](#) (currently suspended due to COVID-19 pandemic), [Autumn 2018](#), [Spring 2019](#), [Autumn 2019](#): proportion of detainees interviewed who had to wait for over one week for an appointment with a DDAS lawyer (1) Autumn 2018 – 43% (2) Spring 2019 – 54% (3) Autumn 2019 – 54%; proportion of detainees interviewed without representation (1) Autumn 2018 – 49% (2) Spring 2019 – 37% (3) Autumn 2019 – 41%. Court of Appeal in [R\(FB\) v SSHD](#), 21 October 2020 at §59(i): Home Office evidence of average waiting times for the DDAS exceeding the standard length of the notice period prior to removal.

³⁸ [Joint Committee on Human Rights, ‘Enforcing Human Rights: July 2018, Tenth Report of Session 2017 – 2019, HC 669 HL Paper 171 at §§79 – 83](#); [Refugee Action, “Tipping the Scales: Access to Justice in the Asylum System”](#) March 2018. Home Office Policy Equality Statement “Updated Policy: notice of removal” 14/09/15 acknowledging that a longer notice period was needed for those who are not detained as it may take them longer to find an immigration adviser. See also [R\(FB\) v SSHD](#) at §59(iv).

way. The lack of notice – compounded by difficulties in accessing legal advice from detention – meant that he could not access the court to challenge that decision before removal. It resulted in his being separated from his wife and new-born child for a year, missing out on crucial time to bond with his son.

73. The third exception, at 10(e) concerning judicial review is even more problematic because it is effectively unlimited in time. It applies where a planned removal does not proceed because of judicial review proceedings. If those proceedings are resolved in a way which means removal can proceed, the Home Office does not have to give any notice of removal if it is carried out within 21 days of the court's decision. But that decision could come weeks, months, or even years after the first notice of removal. Over time, the person's circumstances could have changed fundamentally, important new evidence could have come to light, or the situation in their own country might have changed dramatically – and such changes can happen virtually overnight as has recently been witnessed in Afghanistan. Yet once their previous judicial review proceedings – potentially based on completely different facts and circumstances – are decided they can be removed without any notice or opportunity to raise these new circumstances with the with the Home Office or access the court. There is not even provision in the Bill as to what would happen if the person wished to appeal the court's decision that they could be removed.
74. Whilst the policy focus has been relentlessly on stopping spurious claims, it is vital that notice is understood to be a safeguard against erroneous and dangerous removals. The case studies at Annex 2 concern removals, which under these exceptions will continue to take place.
75. **We therefore recommend that Sections 10B, and 10E are removed from Clause 45.**
76. **In the alternative we support the Justice Committee's conclusion that 'the power of the Secretary of State to remove a person without further notice being given where a removal has previously failed must not be used in cases where a removal has failed for legitimate reasons or where the claimant's right to access justice requires him or her to have additional notice. This power must not be relied upon to detain individuals on immigration grounds when detention is not necessary.' We support their recommendation that 'the Bill should be amended to make plain that the right to access justice must be respected in any decision on providing notice to an individual liable to removal.'**³⁹

³⁹ Joint Committee on Human Rights *Legislative Scrutiny: National and Borders Bill (Part 3) – Immigration offences and enforcement*, Ninth Report of Session 2021–22 (24 November 2021), para [176].

Effective access to justice in the notice period: Legal aid

77. The reason for the Clause 45 notice period is, as stated in the Explanatory Notes, to enable individuals to access justice prior to removal (para 493). By legislating for a statutory minimum period, the Bill purportedly aims to ‘standardise the time to access legal advice’ (para 497).
78. However, there are no proposals about how the government will ensure access to legal advice, or the quality of advice provided within that notice period. This contrasts with Clause 24 of the Bill, which has provided for a limited amount of legal aid to be made available for those served with a Priority Removal Notice (PRN). Not all people being removed from the UK will receive a PRN, and therefore it is important to consider the position of a recipient of a notice of removal under the Clause 45 provisions separately and consider if their notice period can enable them to access the legal advice they need. If it cannot, then the notice period in and of itself does nothing to secure effective access to justice.⁴⁰
79. Analysis of the Legal Aid Agency directory of providers and the Office of National Statistics, suggests 63% of the population do not have access to an immigration and asylum legal aid provider, and due to the Home Office’s dispersal policy, there can often be a mismatch between supply and demand, with those in need of advice housed in areas without legal aid provision.⁴¹
80. Cuts to legal aid have also had unintended consequences, as highlighted by the recent investigation by the Parliamentary and Health Service Ombudsman. Their report found that Legal Aid Agency delays resulted in three vulnerable EU citizens living in the UK being locked out of accessing the justice system to challenge deportation orders.⁴²
81. Whilst the above is true of advice in the community, PLP and JUSTICE observe that the advice provision in detention is inadequate. Although there is a Detained Duty Advice scheme, this only offers an initial 30-minute appointment at which advisors must assess eligibility for legal aid. Whilst those in detention are eligible for legally aided advice when served with a notice of removal, there are significant accessibility issues.
82. PLP and JUSTICE are very aware that the legal aid landscape is in need of comprehensive structural reform which goes beyond legal advice on removal. Earlier this year, Justice Committee published a report calling for an overhaul of the current system designed around the needs of those who use it.⁴³ Furthermore, the All-Party Parliamentary Group (“APPG”) on Legal Aid, in their Westminster Commission on Legal Aid report into the sustainability and recovery of the legal aid Sector, concluded the current legal aid system is neither sufficient nor sustainable.⁴⁴ It recommended that the government should restore legal aid for early legal advice to the pre-LASPO position for all areas of social welfare law including immigration on the basis of client needs and provider sustainability. We therefore recommend that urgent attention is given to the need to ensure the accessibility, quality

⁴⁰ Sections 10 and 10A of the Immigration and Asylum Act 1999

⁴¹ See the report and an interactive map showing the absence of legal aid providers per local authority here:

<https://www.lawsociety.org.uk/campaigns/legal-aid-deserts/immigration-and-asylum>

⁴² Parliamentary and Health Service Ombudsman, ‘Barred from justice: vulnerable people locked out of legal aid to challenge unlawful deportation orders’ (November 2021) available at: <https://www.ombudsman.org.uk/news-and-blog/news/barred-justice-vulnerable-people-locked-out-legal-aid-challenge-unlawful>

⁴³ House of Commons Justice Committee, ‘The Future of Legal Aid’, (July 2021) <<https://committees.parliament.uk/publications/6979/documents/72829/default/>>.

⁴⁴ APPG on Legal Aid, *Westminster Commission Inquiry into the Sustainability and Recovery of the Legal Aid Sector* (October 2021). Available at: <https://www.apg-legalaid.org/node/735>

and sustainability of immigration advice for those who are served with Notice of Removal Directions, whether in detention or in the community.

83. More immediately, this Bill can be amended to improve advice available to those who are liable for removal. Indeed, if the purpose of the notice period is – as stated – to enable those facing removal to access legal advice and the courts then it is essential that people served with the notice are able in practice to access that advice.

84. **We therefore recommend Clause 24, which provides for 7 hours of legal aid to be available for those served with a Priority Removal Notice to receive advice on their immigration status and removal, be amended to provide for that advice to be also available when a person is served with Notice of Removal Directions under Clause 45.**⁴⁵

⁴⁵ After 'priority removal notice' insert 'or notice of removal directions' throughout Clause 24.

Annex 1

Case study: AT and family – R (AT, FF, BT) v SSHD [2017] EWHC 2714 (Admin)

AT is a Gambian national who had unsuccessfully sought asylum in the UK. He was married to a Gambian woman who had been granted indefinite leave to remain in July 2016 as she was unable to return to Gambia. His wife was heavily pregnant with his child, but their relationship had not been raised with or considered by the Home Office as part of his asylum claim. On 19 September 2016, over three months after his asylum appeal was dismissed, AT received a ‘notice of liability to removal’. This notice (issued under a Home Office policy since found to be unlawful⁴⁶) gave him a period of just 7 days within which to raise any new claims (the ‘notice period’), following which he could be removed without further notice at any time during the following three months.

AT had had solicitors who had acted for him in his asylum claim but he was not able to secure an appointment with them to obtain advice about the notice of removal until 28 September 2016, after the notice period.

On 26 September 2016, the day the notice period ended and before AT’s appointment with his lawyers, AT was detained and told he would be removed to Gambia the following day. Immigration Officers took him to the flat he lived at with his wife to collect his belongings and saw that she was heavily pregnant. AT protested that he could not go back to Gambia because his wife was about to give birth to his child and he needed to see a lawyer.⁴⁷ However his removal was not deferred for this reason. Instead, the Home Office recorded that AT had ‘disrupted’ his removal by his actions and it was for that reason that removal was deferred.⁴⁸ Just over a week later, AT’s wife gave birth to their son, BT, a British citizen. Informing the Home Office of the birth of his son the same day, AT stated: ‘please I really need to go and meet my partner (wife) and my son’, and provided photographs and a copy of BT’s birth certificate which named him as a father.⁴⁹ AT was not released from detention and the Home Office continued to make arrangements for his removal.

The Home Office refused AT’s human rights claim based on his family life with his wife and British child, focusing on the late stage at which he had raised his family life with his wife, and removed him to Gambia before he could access legal advice and challenge that decision. His subsequent judicial review proceedings were successful and he was allowed to return to the UK in order to exercise his right of appeal to the First-tier Tribunal against that decision. The Home Office subsequently conceded his Article 8 family life claim and granted him leave to stay in the UK with his wife and son.

If the Priority Removal Notice provisions of the Bill had been in force then AT’s right of appeal – even after he had succeeded in a judicial review – would have been severely circumscribed.

⁴⁶ *R (FB (Afghanistan) and Medical Justice) v SSHD* [2020] EWCA Civ 1338.

⁴⁷ Para [34].

⁴⁸ *Ibid.*

⁴⁹ Para [37].

He would only have been able to appeal directly to the Upper Tribunal; the appeal would have been decided on an expedited basis; the Tribunal would have been required to treat AT's claims to a family life as lacking credibility; and if the Upper Tribunal had found against him he would have had no right of appeal to the Court of Appeal.

Annex 2

Case study: R(MLF) v SSHD – CO/4418/2017

MLF is a Sri Lankan national whose asylum claim had been dismissed. During judicial review proceedings, in which he was unrepresented, he submitted further representations to the Home Office based on new evidence of the killing of 3 male relatives, which post-dated the hearing of his asylum appeal. This new evidence could not be considered in the judicial review proceedings because it post-dated the decision being challenged. The Home Office's barrister informed him that the material would be forwarded to the relevant part of the Home Office for consideration. MLF was subsequently served with a decision which refused to consider his fresh representations (on the incorrect basis that he had not followed the correct procedure for providing further evidence) and removed to Sri Lanka on the same day without any notice or opportunity to access the court (under the Home Office's unlawful removal windows policy).

PLP assisted MLF, who was in hiding in Sri Lanka, to apply for judicial review of his removal without notice. The Home Office conceded that he had been unlawfully removed and arranged for MLF to return to the UK. He has since been granted refugee status on the basis of evidence which post-dated his original appeal, including that which he had submitted during his judicial review proceedings.

Annex 3

Case Study: RAO - CO/2789/2017

RAO is an Iraqi national who had issued judicial review proceedings challenging the Defendant's refusal of further representations he had made in support of his asylum claim. He obtained an injunction preventing his removal pending consideration of his judicial review. However, he was refused permission to apply for judicial review on the papers and the judge ordered that any request for renewal to an oral hearing would not be a bar to removal.

Despite an undertaking given to his solicitors that RAO would be given 72 hours' notice of any removal directions, he was removed without notice to Iraq before the renewed application for judicial review could be heard.

The lack of notice meant that RAO was unable to apply to court for a fresh injunction. After his removal, the High Court granted permission to apply for judicial review on the renewed application and ordered RAO's return to the UK. The Home Office subsequently conceded RAO's judicial review and granted him a right of appeal to the First-tier Tribunal. His appeal was allowed and he has now been granted refugee status.

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