

**LORD JUSTICE SINGH**  
**MR JUSTICE JAY**

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Between :

The KING (on the application of the LAW  
SOCIETY OF ENGLAND AND WALES)

**Claimant**

- and -

THE LORD CHANCELLOR

**Defendant**

- and -

(1) THE CRIMINAL LAW SOLICITORS'  
ASSOCIATION

(2) THE LONDON CRIMINAL COURTS  
SOLICITORS' ASSOCIATION

**Interested  
Parties**

## PRESS SUMMARY

**NOTE: This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are publicly available. A copy of the judgment as handed down can be obtained at <https://www.judiciary.uk/judgments/>.**

**References to paragraph numbers in the judgment are given thus: [XX].**

1. This claim for judicial review arises from recommendations made by Sir Christopher (now Lord) Bellamy KC in the ‘Criminal Legal Aid Independent Review’ (“CLAIR”) report dated 29 November 2021. The Claimant is the Law Society of England and Wales. The Defendant is the Lord Chancellor. Although the Lord Chancellor accepted and has implemented many of the recommendations made by Lord Bellamy, the Law Society challenges two aspects of the response to the report:
  - (1) The failure to implement the “Central Recommendation” in full, that is Recommendation 5 of the Report at para 16.4, that additional funding of at least £100 million per annum (an overall increase of some 15%) was required for criminal legal aid solicitors’ firms;
  - (2) The alleged failure to implement Recommendation 3(i) at para 16.2, that an Advisory Board should be established and that the Ministry of Justice (“MoJ”) should consider, in conjunction with the Advisory board as appropriate, the extent of unmet need in criminal legal aid and how those needs should be met, referred to by the Claimant as the “Non-Intervention Recommendation”.
2. In outline, the four grounds of challenge are that:
  - (1) The Lord Chancellor has breached the duty to provide criminal legal aid in accordance with section 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“Ground 1”).
  - (2) The Lord Chancellor has acted irrationally (“Ground 2”).
  - (3) The Lord Chancellor has failed to provide adequate reasons (“Ground 3”).
  - (4) The Lord Chancellor has breached the duty to make adequate enquiries (often referred to as “the *Tameside* duty”, after the leading case on the subject) (“Ground 4”).
3. Lord Bellamy had received a mass of evidence relating to the current state of the system of criminal legal aid, particularly in connection with Duty Solicitor Schemes in police stations where all suspects have a statutory right to be legally represented. In 2014 all criminal legal aid fees were cut by 8.75% and there have been no increases since then. Lord Bellamy’s view was that the additional funding of 15% across the board should be provided as soon as possible to ensure the sustainability of criminal legal aid.
4. The Lord Chancellor provided an Interim Response and then, in November 2022, a Final Response to the CLAIR report. The Lord Chancellor’s decision was that there should be an overall increase in criminal legal aid funding of 11% (with 2% of that amount not coming into force immediately), and that aspects of the Litigators’ Graduated Fees Scheme should be reformed before fee levels could be increased.
5. The Divisional Court (that is the High Court when more than one judge is sitting, in this case Lord Justice Singh and Mr Justice Jay) has examined the decision-making process at Ministerial level in some detail. At no stage did Ministers question Lord Bellamy’s reasoning and conclusions [174]. In the Divisional Court’s assessment, the

decision-making process was driven by overarching funding considerations including the amount made available by HM Treasury in the current spending review and the ability within the department to make savings elsewhere.

6. The Divisional Court's approach to the relevant legal principles was two-fold. In relation to the issue arising under Ground 1, it decided the issue for itself. In relation to Grounds 2 and 4, it applied the traditional *Wednesbury* review standard, i.e. whether the decision at issue was irrational. As for Ground 3, the Divisional Court decided that it added nothing to Ground 2.
7. For the Law Society to succeed on Ground 1, it would have to be shown that the system of criminal legal aid was so inherently defective that it could be seen in advance that it would produce unfairness in at least a significant and identifiable number of cases [126]. The Law Society and the Interested Parties adduced an impressive body of evidence showing that duty solicitors work in difficult and pressurised circumstances during all hours of the day and night. Statistical evidence was adduced seeking to show that increasing numbers of suspects are declining legal representation in police stations. Submissions were advanced to demonstrate that in certain areas there are "legal aid deserts" and clear examples of unmet need. The Law Society's basic argument was that the system was falling apart through underfunding over many years.
8. Ultimately, the Divisional Court rejected the Law Society's case on Ground 1 [173-181]. In particular:
  - although there is some evidence of "legal aid deserts" and unmet need, overall duty solicitors are just about managing, often with the paid of back-up [177];
  - the statistical evidence is not sufficiently compelling to prove a breach [178-179];
  - the economic evidence is also insufficient to establish a breach of section 1 of LASPO [180].
9. The Divisional Court addressed Ground 4 before Ground 2 because logically it comes first. The issue is whether the Lord Chancellor complied with his duty to carry out adequate enquiries before he issued his Final Response.
10. The Divisional Court rejected the argument that it was incumbent on the Lord Chancellor to obtain more data, and to undertake further monitoring, before giving his Final Response. It could not be said that the Lord Chancellor's failure to undertake these steps was irrational, particularly in circumstances where the matter was urgent [204-207].
11. The Divisional Court accepted the Law Society's argument that further modelling as to the economic impacts of increasing fees by 11% and not 15% should have been carried out before the Final Response was issued [214]. This was essential to determine whether the aims and objectives of CLAIR – sustainability in the system of criminal legal aid – could be achieved with a lower amount of additional funding. The Lord Chancellor's reasons for not undertaking further modelling do not bear scrutiny [208-210].

12. The Divisional Court also rejected the Lord Chancellor's contention that it is highly likely that the outcome would not have been substantially different had this further modelling been carried out [211-213].
13. Ground 2 of the Law Society's challenge has two limbs: first, that no reasonable Lord Chancellor, having accepted the reasoning and conclusions of CLAIR, could have concluded that increasing fees by 11% and not by 15% would nonetheless secure the sustainability of criminal legal aid; and, secondly, that the Lord Chancellor failed to ask himself the right question in this regard. The first limb goes to *outcome*; the second to *process*.
14. The Divisional Court rejected the Law Society's case on the first limb [229-232] for reasons similar to those which led to the rejection of the case on Ground 1.
15. The Divisional Court accepted the Law Society's case on the second limb [234-237]. In this respect, Ground 2 is closely linked to Ground 4. Instead of considering whether the aims and objectives of CLAIR could still be met by less additional funds, the Lord Chancellor's consideration was limited to budgetary constraints.
16. The Divisional Court rejected the Law Society's irrationality case directed to the Non-Intervention Recommendation [238]. Lord Bellamy recommended that the Lord Chancellor *consider* taking further steps to monitor possible unmet need. The Lord Chancellor has undertaken some steps in this respect, and his alleged failure to meet the Law Society's case is not irrational.
17. In conclusion:
  - Ground 1 fails.
  - Grounds 2 and 4 succeed in part: the Lord Chancellor failed to undertake due enquiry by carrying out further economic modelling as to the impacts of not implementing the CLAIR report in full, and failed to ask himself the right question as to whether not implementing it in full would still achieve its aims and objectives; and, if not, to what extent.
  - By way of remedy, the Divisional Court has made a declaration to reflect its judgment [247].
18. It has been confirmed that neither party seeks to appeal against the decision of the Divisional Court.