Dear colleagues,

**Re: Briefing counsel in the FtT (IAC) Digital Pilot Scheme**

We are writing to you regarding the approach of One Pump Court Chambers to HMCTS’s pilot project for digital immigration appeals. We would be grateful if you would forward this letter to all of the fee earners in your firm dealing with legally aided asylum appeals.

One Pump Court Chambers has been engaging with HMCTS, the LAA, the tribunal judiciary, and other key stakeholders regarding the rollout of the pilot project. The pilot has already been rolled out to Taylor House and Manchester, was due to be rolled out to Newport and Bradford by the end of 2020, and is expected to be rolled out to Birmingham and Hatton Cross, and to all legally aided cases, in 2020.

Our engagement with the relevant stakeholders, and our members’ personal experiences of the pilot scheme, have highlighted a number of key problems with the scheme. The cumulative effect of these problems is such that many of our members will not be in a position to take legally aided work under the pilot scheme.

In particular, there are significant issues with the public funding available for the conduct of work under the scheme. When cases are listed in the scheme, the Appellant is required to provide the evidence upon which they rely and a skeleton argument significantly in advance of the hearing. The Home Office is then required to review the case. As a direct result of this early engagement process, in 13.5% of cases up to the end of August 2019 decisions were withdrawn by the Home Office with a view to grant. This of course provides very clear benefits to clients, who will avoid unnecessary delay and the potentially traumatic experience of attending a Tribunal hearing.

However, in cases where the decision is withdrawn, no funding is available to counsel for the work that they have already done. Further, if counsel changes prior to the hearing, for example because the hearing is listed for a date which is not convenient to counsel, then counsel who drafted the skeleton argument and counsel who attend the hearing are required to share the single flat fee for the hearing. The LAA has confirmed that under the current funding regulations there is not scope for granting separate funding for counsel’s early engagement in preparing the case and drafting the skeleton argument.

We are aware that it is possible for solicitors to share some of their fee with counsel, but we take the view that, first, this is impractical, and, second, it would unacceptably reduce the remuneration available for the litigation of the case.

As such, in all cases within the scheme, counsel is instructed on an “at risk” basis. Further, this “at risk” basis has the effect of penalising counsel for their early engagement, given that the better counsel perform their jobs, the more likely it is that the Home Office will withdraw decisions with a view to granting leave, inevitably leading to counsel not being paid for the work undertaken.

Given the risk that funding for the work that counsel carry out will not be remunerated, many of our members have taken the difficult decision not to undertake any publicly funded work within the pilot scheme until such time as the funding regulations are changed so that the LAA can assure us that all work carried out will be properly funded.

We therefore request that when briefing counsel you make clear at the outset whether the case falls within the pilot scheme.

If you would like further information regarding the implementation of the pilot scheme, including the results of recent stakeholder meetings, then our members would be happy to talk to you and your colleagues about it.

Yours sincerely,

Ian Burrow

Senior Clerk to Chambers