

## **Written evidence submitted by the Law Society of England and Wales to the Foreign Affairs Committee on Afghanistan**

### **Introduction**

1. The Law Society of England and Wales ('Law Society') is the independent professional body that works globally to support and represent 200,000 solicitors, promoting the highest professional standards and the rule of law nationally and internationally.
2. The Law Society has been active on Afghanistan since the Taliban captured Kabul through its Lawyers at Risk programme. This programme aims to support lawyers (also judges, prosecutors, and others in the justice system, depending on the circumstances) who are at risk for carrying out their professional duties. We operate worldwide by responding to incidents against lawyers such as intimidation, arbitrary detention, prosecution, illegitimate disciplinary measures, enforced disappearance and assassination. We also address the structural causes that give rise to risk (through advocacy, amicus curiae briefs to domestic courts and international tribunals, trial observation, and research reports).

### **Summary**

3. The Law Society's efforts on Afghanistan so far have included: referring cases of legal professionals at risk to the FCDO's special cases unit; referring cases for alternative evacuation routes; carrying out advocacy before UK Government departments (FCDO, MoJ, and Home Office) on ARAP, ACRS, and visa/entry requirements; advocacy at the UN Human Rights Council and UN Special Procedures; coordination with NGOs and foreign Bar associations and law societies.
4. In this evidence we focus on our engagement with the FCDO since the fall of Kabul until the date of submission. We focus on the category of people who are Afghan nationals, most of them have not been directly employed by the UK Government (but served the UK Government interests by upholding the rule of law), and who are at grave risk. The great majority are still in Afghanistan.
5. Our main concerns are, in no particular order of importance: (i) U-turn on ARAP, (ii) delay to ACRS, (iii) possible U-turn on ACRS, (iv) lack of clarity on process of ACRS, (v) possible undue restrictiveness in requirements under ACRS, (vi) lack of immigration status and support for Afghan legal professionals who arrived in the UK, (vii) lack of direct engagement by FCDO with Afghans at risk, (viii) lack of inter-departmental coordination on Afghanistan, (ix) lack of ambition in UK diplomacy on accountability for Taliban's human rights violations.

### **Law Society activity and FCDO engagement**

6. On 18 August 2021, we wrote to the then Foreign Secretary, copying the Home Secretary and Lord Chancellor, asking for attention for the situation of legal professionals – especially female judges - and urging to speed up the resettlement programme.
7. At that time, the UK Government had announced that 5,000 Afghans would be admitted under the new resettlement scheme in the first year. Spreading the target of 20,000 to be admitted over a period of three years seems to defeat the urgency and purpose of the scheme, since most of those at risk would already have been killed by the Taliban (as we

are seeing is happening now). We did not anticipate that the scheme would not even have opened 4 months after the fall of Kabul.

8. On 19 August 2021, we provided advice to government, including the FCDO, on the possible amendment of eligibility criteria under ARAP and criteria for the new resettlement scheme. In general, we noted that the latter should be: (i) speedily implemented, (ii) inclusive, and (iii) not restrictive in terms of requirements (such as documentation to prove risk).
9. More specifically, we expressed the need for: (i) recognition of risk being associated with the exercise of the legal profession itself, as well as being a woman, so there should not be a disproportionate burden of proof, (ii) no condition of membership of (international) organisation should be included, due to difficulties in providing documents (people having to flee and move from house to house, often having to leave possessions behind), (iii) lawyers and prosecutors (male and female) also to be included, not only women judges, (iv) dependents to be included, in light of retaliation risk against family members.
10. On 23 August 2021, we sent the first batch of names and full documentation of legal professionals at risk and their dependents to the FCDO special cases unit for evacuation and eligibility under ARAP or the new scheme. We expressed the hope that these applications would be processed quickly, and decisions would be favourable.
11. We sent this information as soon as we received it from Afghans at risk, making sure to provide as much information as possible to the FCDO special cases unit on job title, copies of IDs, employment agreements, judges' cards, contact details, description of their situation (we later started to receive proof of risk in the form of written death threats); all grouped together per family. We wanted to facilitate the work of the FCDO as much as possible, so that referrals could be dealt with quickly and in time for evacuation flights.
12. Relatively quickly after our first email, an FCDO contact kindly shared a brief suggestion with us – on our request - on the need to show a link to the UK or UK interests. We included this in all subsequent referrals, arguing that legal professionals who had worked in the Afghan justice system to uphold the rule of law served UK Government interests by virtue of their profession, and that those who prosecuted and convicted Taliban fighters for terrorism-related offences had assisted the UK Government's anti-terrorism efforts in Afghanistan and the region.
13. We continued sending cases to the FCDO, as they came in. We did not receive any subsequent replies but assumed that was because the FCDO special cases team received so many emails and was busy processing the cases.
14. On 25 August 2021, we received a reply from the Lord Chancellor to the letter we had sent to the Foreign Secretary (in which he was copied), confirming that judges would be eligible for relocation in the UK. That same day, we were informally advised by the MoJ that judges would fall under the ARAP scheme (and prosecutors and lawyers most likely too).
15. On 25 August 2021, we also sent information to this Committee, highlighting that: (i) the requirement to prove a link to the UK or UK interest could be interpreted restrictively; (ii) the telephone number for assistance of people in Afghanistan was not working (as we had been informed by people on the ground); and (iii) the resolution adopted by the UN Human Rights Council on 24 August 2021 – by the UK Government and others – fell short because it does not mention the Taliban or accountability for human rights violations committed.

16. Once the final UK evacuation flight left Kabul, we compiled a list with a partner organisation to further assist those legal professionals who were left stranded in Afghanistan, especially looking at possible alternative evacuation routes.
17. On 7 September 2021, we received the first automatically generated email from the FCDO saying that, among other things, the Afghan Citizens Resettlement Scheme (ACRS) would open shortly for applications.
18. On 14 September 2021, we received reports that women judges had their ARAP applications rejected, even though we had been told they would be eligible and specific mention had been made of such judges by the then Foreign Secretary. We now heard that judges would no longer be eligible under ARAP, but possibly under the ACRS. No clarity was provided by the FCDO or any other Government department on this apparent shift.
19. On 24 September 2021, we received a second automatically generated update from the FCDO, saying among others that: (i) the ACRS was not open yet, despite "quick" work from the Home Office; (ii) those who were called to the airport for evacuation during the UK Government airlift were guaranteed a place under ACRS, suggesting that others would have to apply; (iii) biometric requirements and third country visa applications still applied; and (iv) a specific email address for legal proceedings against the Foreign Secretary or FCDO was given.
20. On 29 October 2021, many emails start to come in again from desperate legal professionals still in Afghanistan asking for our assistance with evacuation and immigration. Many of these are prosecutors who helped to convict Taliban fighters for terrorism offences, some of them women, who are now being hunted down by those same Taliban fighters.
21. Some of them are being recognised in the street and have received death threats. Family members of these legal professionals have been beaten or threatened. None of them stay in the same place for long out of fear of being found and killed. At least a few of these prosecutors are single women with children who face special risk, stigmatisation, and additional challenges in trying to support their family and keep them safe.

### **Other activities**

22. Apart from engagement with the FCDO, we carried out other activities on Afghanistan which we mention here briefly for the Committee's information.
23. On 16 August 2021, the Law Society - together with the Bar Council and Bar Human Rights Committee - put out a joint statement expressing concern for legal professionals at risk in Afghanistan, especially women judges.
24. On 18 August 2021, we contacted the UN Special Rapporteur on the Independence of Judges and Lawyers to urge him to make a public statement on the need for support of legal professionals at risk in Afghanistan (he later joined a statement together with other UN Special Rapporteurs on the situation in Afghanistan generally).
25. On 19 August 2021, we joined an NGO platform to coordinate efforts and hear from Afghan human rights defenders on the situation on the ground. The main issues raised were: start of extrajudicial killings, door-to-door house searches, NGO offices locked, fear of revenge (also against family members). The main asks were: temporary relocation, creation of a safe zone in a neighbouring country (preferably not Pakistan due to Taliban links), more

safe houses, alternative ways of funding (banks were closed), international advocacy on civic space, and diplomatic pressure on the Taliban.

26. On 19 August 2021, we sent an email to the Home Office requesting flexibility on entry requirements and visa applications (such flexibility was later denied, see above).
27. On 20 August 2021, we had a meeting with the bar associations and law societies across Europe to coordinate efforts and give an update on immigration schemes in our respective countries for Afghan legal professionals at risk and possibilities of support.
28. On 24 August 2021, we made a joint statement – together with partner organisations – at the UN Human Rights Council to urge for relocation and resettlement of legal professionals and establishment of a fact-finding mission.
29. On 3 September 2021, we provided an update to the MoJ, on the number of cases we sent to the FCDO special cases unit. At that time, we had forwarded 46 cases to the FCDO (28 women, of which 16 judges, and 18 men).
30. On 14 September 2021, we had a meeting with the NGO platform to receive an update on information on the ground. The main issues: (i) coordination of local civil society organisations was in chaos after many leaders left the country; (ii) only organisations providing humanitarian aid were allowed by the Taliban; (iii) many disappearances and public beatings; and (iv) the legal system had collapsed (there was only justice “in the street” by Taliban).

## Main concerns

31. The main concerns arising from our experiences over the last few months in trying to support Afghan legal professionals at risk are the following.
32. First, the **U-turn regarding ARAP** and judges’ eligibility for it. On 25 August 2021, we were informed by a Government department that women judges were eligible under ARAP (and lawyers and prosecutors at risk most likely too). However, on 14 September 2021, we heard that women judges had their ARAP applications rejected and learned that they were now no longer eligible under ARAP but could be under ACRS. This U-turn was very detrimental for all those at risk who applied and those who assisted them.
33. Second, the **delay of ACRS**. On 24 September 2021, we received an automated email from the FCDO saying that all those who had not been called forward for evacuation as part of the UK Government’s operation at Kabul airport, would have to apply individually to ACRS, once that scheme opens.
34. On 24 November 2021, we sent out a press release expressing frustration that ACRS was still not open for application and were quoted in the Observer about this on 28 November 2021: <https://www.theguardian.com/world/2021/nov/28/tory-anger-grows-over-priti-patels-failure-to-start-resettling-stranded-afghans>
35. We recognise that setting up this new resettlement scheme is a complex endeavour, but four months after the fall of Kabul this scheme should already have opened. It is still not open, and we do not expect it to be before the end of this year. The failure to open the scheme will impact on Afghans at risk.
36. Third, the possible **U-turn on ACRS**. On 2 December 2021, we received an automated message from the FCDO saying that “There will not be a formal application process for

the ACRS. Instead, eligible people will be prioritised and referred for resettlement to the UK". This suggests that the FCDO itself – in collaboration with the UNHCR - will identify those eligible, supposedly through information it received in the FCDO's special cases inbox. Again, this change from the suggestion that those who had not been called for evacuation would have to apply (like under ARAP) is very detrimental. We had just informed Afghans at risk that they would probably need to apply for the scheme and now that it is not possible.

37. Fourth, the **lack of clarity on process of ACRS**. The FCDO's most recent message suggests that only those with international contacts can be (indirectly) referred to ACRS, leaving many at risk unable to be identified as eligible or self-refer. It also raises the question what the "opening" of this scheme actually means (supposedly "open" means once places have already been allocated under it).
38. The ACRS website now refers to prioritisation taking place in the following order: (i) first those who have arrived in the UK on evacuation flights or were called for evacuation but did not make it out, (ii) those identified by UK Government in collaboration with UNHCR, and (iii) a referral process with international partners for those in Afghanistan (if they can get out safely) or in the region.
39. For the latter two categories, it is not clear how identification takes place or based on which information. Are the cases we referred to the FCDO's special cases unit being considered in this exercise or not? And who are the "international partners" referred to? There is a lack of clarity which makes it impossible to assist the FCDO further in its efforts (nor Afghan legal professionals at risk).
40. There is also a circularity in the FCDO's process for ACRS. On the one hand, it says that no one should approach a UK embassy in a third country unless they have been given immigration status under ARAP, ACRS or otherwise. It also says that Afghans may be given a place under ACRS if they can safely make their own way out of Afghanistan. However, to leave the country, it is usually necessary to be able to show immigration status.
41. Five, **possible undue restrictiveness in requirements for ACRS**. We were previously asked by the FCDO to show a "link to UK / contribution to UK objectives" (as well as why people "are particularly vulnerable") in all applications. The contribution to the UK Government's counter-terrorism and rule of law objectives over the last two decades should be self-evident for this group of people, as well as their vulnerability by virtue of their gender and profession. From the FCDO whistle-blower's evidence provided to this Committee previously it also seems that overly burdensome requirements are applied at the FCDO regarding evidence of risk.
42. Six, the **lack of immigration status and support** for Afghan legal professionals at risk who do make it out of the country and arrive in the UK. No one in the category of people that we have assisted and who have made it to the UK (a very small minority) has immigration status: no visa and no place under ARAP or ACRS. As far as we are aware, no one who we referred to the FCDO special cases unit was evacuated with UK Government support.
43. The only support these Afghan refugees can get, because they are not formally entitled to any UK government support, is support of informal networks of colleagues (UK lawyers who – out of solidarity – are willing to offer temporary accommodation in their own homes, for example). Although we are proud of Law Society members' generosity in this regard, this should not be the case. It is for the UK Government to provide adequate support.

44. Seven, **lack of direct engagement by FCDO with Afghans at risk**. In addition to the lack of possibility to apply to ACRS or self-refer, there seems to be little direct engagement by UK Government with this group of people at risk. Apart from a general phone number on the Government website, they are largely cut off from communications with the UK Government and UK embassies, until they receive a place under ACRS.
45. Eight, we are also concerned about an apparent **lack of coordination** (not only within the FCDO, but between the FCDO and other government departments). It seems like there has not been adequate coordination between the four relevant departments (MoD overseeing ARAP, FCDO overseeing evacuation efforts, Home Office overseeing ACRS and immigration, and MoJ providing advice on the above).
46. Ninth, **lack of ambition in UK diplomacy on accountability for Taliban's human rights violations**. The UN Human Rights Council adopted a resolution, which is regarded as lacking in ambition (particularly because it makes no mention of the Taliban or accountability). This resolution was apparently adopted by consensus, with only the EU explaining its vote and saying that the resolution falls short but at least refers to human rights violations.
47. We understand that the UK voted in favour of this resolution and are disappointed that no more ambitious position could be taken to support Afghan human rights defenders, including members of the legal profession. We understand the diplomatic difficulties of having to negotiate with the de facto Taliban government, but human rights violations committed against Afghans at risk should not be left unaddressed.

## **Conclusion**

48. The evidence previously given by the FCDO whistle-blower to this Committee confirms our suspicions that perhaps little progress was being made with the emails that we sent to the special cases unit.
49. The U-turns on ARAP and ACRS, the lack of clarity on process of ACRS, as well as its delay and other concerns addressed in this evidence, are very detrimental to the legal professionals at risk who are still in Afghanistan (as well as those who made it to the UK) and who continue to contact the Law Society for support.