



# Government Legal Department

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Your ref: **KB/CLGV/80**  
Our ref: **Z2607118/UBM/JD7**

8 June 2026

Dear Paul Turner and Katie Bray,

**RE: Pre-action letter of response in relation to proposed claim for judicial review of local government reorganisation decision in Essex**

## Introduction and summary

1. We write pursuant to your letter before claim dated 18 May 2026 (“**LBC**”). This is a formal letter of response sent in accordance with the pre-action protocol for judicial review.
2. Your client is proposing to challenge by way of judicial review the decision of the Secretary of State for Housing, Communities and Local Government (the “**Secretary of State**”) dated 25 March 2026 to: (i) pursue the implementation of a five unitary proposal (“**the 5UA proposal**”) for local government reorganisation in Essex, and; (ii) not pursue the remaining proposals which had been submitted (“**the Decision**”).
3. You propose to challenge the Decision on six grounds. For the reasons set out below, the Secretary of State contends that none of your proposed grounds are arguable. Accordingly, we invite your Client not to issue any claim for judicial review.

## The proposed defendant’s legal advisors

4. The matter is being dealt with by Usman Mohammed, Senior Lawyer at the Government Legal Department. His email address is [Usman.Mohammed@governmentlegal.gov.uk](mailto:Usman.Mohammed@governmentlegal.gov.uk).

## Factual background

### *Local government reorganisation*

5. On 16 December 2024, the Minister of State for Local Government and English Devolution communicated to councils in areas with a two-tier local government structure, and to neighbouring

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smaller unitary authorities, his intention to in January 2025 formally invite their proposals for reorganisation into single-tier, or 'unitary', structures.

6. Subsequently, on 5 February 2025, the Minister sent an invitation letter to your Client and other two-tier councils and neighbouring unitaries in your Client's area (the "**Invitation Letter**"). The Invitation Letter set out guidance for the development of proposals, and also the criteria against which proposals were to be assessed. The 'headlines' of the criteria were as follows:

*"1. A proposal should seek to achieve for the whole of the area concerned the establishment of a single tier of local government.*

...

*2. Unitary local government must be the right size to achieve efficiencies, improve capacity and withstand financial shocks.*

...

*3. Unitary structures must prioritise the delivery of high quality and sustainable public services to citizens.*

...

*4. Proposals should show how councils in the area have sought to work together in coming to a view that meets local needs and is informed by local views.*

...

*5. New unitary structures must support devolution arrangements.*

...

*6. New unitary structures should enable stronger community engagement and deliver genuine opportunity for neighbourhood empowerment."*

7. Further, the Invitation Letter provided guidance on additional matters that should be taken into account by authorities in formulating a proposal as well as guidance on the engagement and consultation on reorganisation which was expected.
8. The criteria in the Invitation Letter were not weighted. Ultimately, how much weight to afford each factor was a matter for the Secretary of State.

### *The proposals*

9. In response to the Invitation Letter, four separate proposals were submitted by the local authorities within your Client's area:
  - a. The '3 unitary proposal', put forward by your Client and Braintree and Epping Forest District Councils.
  - b. Two variations of a 4 unitary proposal, one put forward by Thurrock Council and one by Rochford District Council.
  - c. A 5-unitary proposal, put forward by Southend-on-Sea, Chelmsford and Colchester City Councils; Tendring, Harlow, Uttlesford, and Maldon District Councils; and Brentwood, Castle Point, and Basildon Borough Councils.

### *Consultation*

10. A consultation exercise was subsequently launched in respect of all proposals received that sought to meet the terms of the Invitation Letter. This included all four of the proposals submitted in respect of your Client's area. The consultation began on 19 November 2025, and concluded on 11 January 2026.
11. Over 4100 responses were received as part of the consultation exercise in respect of your Client's area. These were analysed by the Ministry for Housing, Communities and Local Government ("**MHCLG**"). A summary and analysis of the consultation responses was subsequently published in a document on 25 March 2026 (the "**Consultation Summary Document**"). This document was not provided to the

Secretary of State as part of his decision-making process. Instead, a separate summary of the consultation responses was provided for his consideration and evidence from the consultation was used to develop the wider Advice provided to him as detailed below.

12. Parallel to and beyond the consultation process, MHCLG officials began working to analyse proposals, with assistance other government departments. They also conducted meetings with the proponents of the proposals, to ensure they were properly understood. This included meeting with and receiving representations from your Client on matters including the financial aspects of the four Essex proposals. Such representations were considered by MHCLG officials, and were taken into account in preparing the Advice ultimately given to the Secretary of State. In particular, on 30 January 2026, MHCLG officials completed a financial assessment of the proposals. This assessment formed the basis of the summary assessment that was provided to the Secretary of State and about which he received advice (as detailed below).

### *The Decision*

13. On 11 February 2026, the Secretary of State was provided with advice in respect of his decision on the proposals. This included: (i) general advice on his decision in respect of the reorganisation proposals (the “**General Advice**”); and (ii) specific advice on his decision in respect of the Essex area (the “**Specific Advice**”) (together, the “**Advice**”).
14. On 12 February 2026, the Secretary of State held a meeting with MHCLG officials on the LGR proposals across six areas, ahead of him considering the Advice. He noted the proposals and also voiced some apprehension about whether proposals for larger councils (by population size) in some of the six areas under consideration would be able to retain local connection to local communities and deliver effective public services tailored to those communities’ needs.
15. In sum, the Advice:
  - a. Reminded the Secretary of State that his decision should have regard to the proposals, statutory requirements, available evidence, consultation responses, other information available to him and the criteria in the Invitation Letter. It also emphasised that it was for the Secretary of State to decide which proposal best met the criteria.
  - b. Recommended the implementation of the ‘3 unitary proposal’, but recognised that all proposals nevertheless met the invitation criteria:

“...  
*We recommend the 3 unitary proposal as it meets all the criteria and does so more strongly than the other three proposals. It is the only proposal we assess to be financially viable within five years, which is particularly pertinent given unsupported debt in Thurrock. ...*”
  - c. Provided the Secretary of State with: (i) copies, as well as summaries of, the proposals; (ii) a summary assessment of the proposals against the Invitation Letter criteria; (iii) a more detailed assessment against the Invitation Letter criteria, incorporating evidence from the proposals, the consultation and other relevant information; and (iv) a summary financial assessment of the proposals.
  - d. Noted that officials had also considered, if the proposals additionally demonstrated how reorganisation may contribute to putting local government on a firmer footing and what area specific arrangements may be necessary to make new structures viable. Noted that Ministers had agreed in principle to provide debt repayment support for Thurrock’s unsupported debt at the Spending Review.

- e. Explained that supporting housing growth and devolution are key roles that councils play in local economic growth, and both fell within the criteria (criterion 1 and 5 respectively). Communities, and the importance of local identity/connection, also fell within the criteria (criterion 4 and 6).
- f. It was noted in particular that a consistent theme across the consultations and stakeholder engagement was that local identity/connection is viewed as stronger in proposals with smaller unitary councils. It was noted that smaller councils are also naturally seen as closer to the communities and international evidence links smaller councils to higher community and democratic engagement. The view of officials was that effective community engagement could be achieved within different sized councils and that whichever proposals were chosen, they could be implemented in a way requiring them to pay attention to strong community engagement.
- g. With respect to meeting criterion 1, it explained that all four proposals meet this criterion by seeking to establish a single tier of local government for the whole of the area with the rationale and evidence base underpinning their proposed unitary areas. It noted that the 5UA proposal risked creating councils that are at significant disadvantage (tax base, service demand and ability to deliver services) but set out that the proposal received strong local council support with 10 out of 15 councils supporting the proposal. It also set out arguments made in favour of the 5UA proposal, namely:
  - i. the 5UA proposal was anchored on five urban centres (Basildon, Chelmsford, Colchester, Harlow, and Southend) reflecting those local communities and economies.
  - ii. the 5UA proposal had a clear vision on how their approach will improve local government across the area.
  - iii. the 5UA proposal sought to empower each unitary to directly manage place-based housing strategies, with a balanced distribution of housing growth and accountability to address Temporary Accommodation pressures.
  - iv. the 5UA proposal gave rise to less significant council tax risks, with fewer residents impacted by significant jumps in council tax.
- h. With respect to criterion 2 explained that:
  - i. The economic and financial analysis in the Advice had been based in part on figures provided from councils. Analysts had stress tested and benchmarked figures in proposals against each other, external analysis and previous reorganisations. An Optimism Bias adjustment had also been applied to stress test recurring costs and projections. It was noted that overall, the analysis was a guide, not a guarantee, and should not be the only consideration. Any conclusions should be viewed alongside the other criteria and wider evidence/objectives.
  - ii. All four proposals met the criterion, although there were concerns noted for the 4 unitary (Rochford) and the 5UA proposal. The overall assessment was that the 3 unitary proposal, performed the strongest based on sustainability and economic area concerns.
  - iii. With respect to the first part of officials' assessment of financial efficiency (effectively analysing the costs and savings presented within the proposals), the 3 unitary presented the strongest case based on the data submitted. Officials' confidence in this information was informed by benchmarking from sector data, previous reorganisation exercises and the Government's appraisal guidance. The payback period for the 5UA proposal was unclear, with figures disputed locally and officials were not able to verify the position. It was noted that there were ambitious savings in the 5UA proposal although officials had low confidence in the estimates.
  - iv. In relation to the second part of the assessment focusing on financial sustainability and risk metrics, all four proposals were rated similar for sustainability. The risk of placing Thurrock and Basildon together due to their combined debt levels was raised, particularly in the 5UA proposal although officials' current assessment was that only

Thurrock holds 'unsupported debt' that cannot be managed locally, and Basildon is not in receipt of government support.

- v. With respect to economic areas/growth, each proposal was credible on aligning with local economic areas and each had presented a case for being based on growth – the 3 unitary being centred on new cities, the 4 unitary (Rochford) on roads, the 4 unitary (Thurrock) on ports (airports, sea ports and freeports) and the 5UA proposal on towns (as set out in above). There were concerns noted for the 4 unitary (Rochford) and the 5UA proposal in regard to the scale of potential socio-economic imbalance. Overall, the 3 unitary option was strongest.
  - i. With respect to criterion 3 and prioritising the delivery of high quality/sustainable public services to citizens, all four proposals met the criterion. The advice set out the arguments made in favour of the 5UA proposal in relation to delivering more responsive public services via place-based models of care, education, housing, and community safety and the arguments made that smaller councils would strengthen service delivery across adult and children's social care, housing, education, Special Educational Needs and public health. The 3 unitary was, however, judged by officials to be the strongest proposal and supported by officials from the Department for Education. But the Department for Health and Social Care officials had a strong preference for the 4 unitary (Thurrock). Both departments' officials raised concerns about the 5UA proposal.
  - j. With respect to criterion 4, all four proposals met this criterion and were informed by a shared evidence base, which was augmented by local surveys conducted by each proposal. The statutory consultation found the 5UA proposal to be the most popular proposal among residents who responded
  - k. All four proposals were identified to meet criteria 5 and 6, although as regards criterion 6, the 3 unitary was the most developed of the proposals for community engagement. The three voluntary and community sector named consultees favoured the 5 unitary with one highlighting the benefits of closer links to communities and another stating it best reflects the communities their groups work with. MHCLG communities' team assessment was that they recognised the criticism from the area that large unitary councils could feel too remote from residents.
16. The Specific Advice included summaries of the consultation responses received and representations which had been made. With respect to the consultation responses received, the Specific Advice set out, *inter alia*:
- a. Although the consultation analysis was subject to further quality assurance, of those who responded to the specific questions there was a clear preference for the 5 unitary from all. Officials advised that the extent of local support was not a criterion, but that the Secretary of State should have regard to the detail of the responses when assessing proposals.
  - b. Your Client had expressed significant concerns about the 5UA proposal given disaggregation risks (demand, quality, resilience) and financial modelling and assumptions.
  - c. The MP for Chelmsford had written in support of the 5UA proposal. The MP for Rayleigh and Wickford asked that Ministers reconsider the programme, setting out concerns including lack of public demand and creating a new two-tier structure with devolution. He did not express a preference for a proposal.
  - d. The County Council's Network set out their concerns over the financial data underpinning the 5 unitary, particularly regarding the unit costs of people-based services, such as social care.
  - e. A summary of consultation responses in accordance with their relevance to each of the Invitation Letter criterion.

17. As to the summary financial assessment provided to the Secretary of State, this was essentially reflected in the Advice provided to him in relation to criterion 2 (summarised above). It made clear that:

- a. all proposals were identified to provide credible economic areas and potentially improve the economic alignment with the local areas.
- b. As regards to financial sustainability/risk modelling, each option was found to perform no worse than current arrangements in terms of their projected sustainability and there may be a net sustainability improvement as a result of reducing risk in the highest risk council (Thurrock). Most of the new authorities within the proposals across Essex would be relatively low risk. In light of in principle decisions to provide debt repayment, but ahead of decisions on the total, illustrative debt repayment scenarios for Thurrock's debt servicing costs showed minimal impact on overall risk. It noted that these debt repayment scenarios were illustrative and a final decision on Thurrock's unsupported debt had not yet been made.
- c. The analysis suggested that each option might introduce some degree of socio-economic imbalance, particularly in population size and taxbase.
- d. The 3 unitary option appeared to perform the strongest of the four proposals against efficiency, financial risk/sustainability metrics and economic area alignment overall.
- e. In relation to the 5UA proposal, it was noted that there were ambitious savings as a result of potential transformation of adult and children's social care but there was a lack of evidence supporting these estimates.
- f. A full version of the financial assessment was available on request, and although not provided to the Secretary of State, was discussed with him at the meeting on 10 March 2026.

18. The Advice also reminded the Secretary of State of the need to have regard to the Public Sector Equality Duty ("PSED"). It:

- a. Noted that all proposals were considered to be consistent with the need to eliminate prohibited conduct. In respect of advancing equality of opportunity and fostering good relations, proposals including disaggregation had an increased risk of short-term disruption that may impact people sharing protected characteristics. However, it was considered that this was likely outweighed by the benefits and could be minimised through mitigations.
- b. Contained an Annex providing the Secretary of State with a detailed overarching equality analysis of the reorganisation process. This included an analysis of the impact of his decision on individuals with the protected characteristic of race.
- c. Further, the Specific Advice explained that:

*"...our assessment is that implementing any of the unitary proposals will bring benefits in the long term and there is no reason to anticipate that implementing any of the proposal will have a disproportionate adverse impact on residents, councillors or staff who share protected characteristics, though there may be some short term disruption to services that can be mitigated. For residents the risks will be greater where there is disaggregation, merging of unitary councils or boundary change. For the 4 unitary (Thurrock) and 5 unitary there is disaggregation; for the 3 unitary and 4 unitary (Rochford) there is disaggregation and merging of unitary councils. The scale of disaggregation is greatest in the 5 unitary and least in the 3 unitary."*

- d. A specific equality analysis was carried out by MHCLG officials in respect of the proposals in your Client's invitation area. Whilst this was not provided to the Secretary of State, it did inform the above analysis which was provided and which he took into account.
19. On 10 March 2026, a meeting was held between MHCLG officials and the Secretary of State to discuss the proposals again. At this meeting:
- a. The Secretary of State set out his views on how the local government reorganisation criteria could best help to deliver on his objectives of increasing housing supply, supporting devolution, place, and improving community cohesion. This included that: (i) the Invitation Letter criteria specifically included references to housing supply and local needs, local identity, devolution, and place-based/community engagement; (ii) housing needs for local communities were best met by councils who were connected to those communities and understood the local identities and communities within their local areas; and (iii) such criteria were important factors for how local government could help contribute to economic growth, and how local councils can best design public services that are responsive to local places and the needs of local residents.
  - b. In respect of Essex, specifically:
    - i. MHCLG officials set out that the official recommendation is for the 3 unitary proposal with it being the stronger proposal on finances in particular, but that all proposals met the criteria. They noted that disaggregation of social care services was part of each proposal.
    - ii. There was discussion focused on the fact that the 5UA proposal was weaker on the finances and public service delivery criteria with other proposals (4UAs) in the middle (of the 3UA and 5UA) on those criteria, but that the 5UA proposal was more popular locally with 10 in 15 councils supporting along with residents in the consultation. Officials noted that this may be explained by the proposal's sensitivity to key towns and community identities around five urban centres in Essex.
    - iii. Baroness Taylor agreed with points made on community identity and growth, reiterating that the needs of local communities were best met by councils connected to those communities, and which understand the local identities and communities within a place.
    - iv. Officials set out the circumstances with regard to Thurrock's debt and ongoing cross-government engagement on this issue. They also set out that the risks, agreed across government, with the 5UA proposal for social care/health delivery, especially given the size of the councils and increase in number of councils delivering social care from 3 to 5. There was discussion about the options to mitigate this through shared services and commissioning, as well comparing the population size of the proposed authorities with the average size of a unitary council.
    - v. Officials also set out that, based on the history of local government reorganisation, some new councils may require exceptional financial support, and smaller councils carry more risk if savings do not materialise. It was noted that MHCLG needed to agree discuss an overall plan across government on exceptional financial support.
20. On 11 March 2026, the Secretary of State made the decision to implement the 5UA proposal. He did so having had regard to the discussions had with officials on 10 March and 12 February 2026, the proposals, written advice and annexes. He then proceeded to seek collective agreement on that decision.

## *Reasons*

21. On 25 March 2026, the Secretary of State communicated the Decision to your Client. The letter explained that:

- a. He had decided to implement the 5UA Proposal;
- b. He had “*considered your proposals carefully against the criteria set out in the invitation letter of 5 February 2025, alongside the responses to the consultation, representations made and all other relevant information*”.

22. The letter set out the reasons for the Decision. Whilst each of the other proposals met the criteria for unitary local government, the 5UA proposal ‘*best met the criteria overall.*’

23. The letter explained:

*“[The 5UA proposal] performed particularly well due to the fact that it is clearly shaped by the communities across the area and reflects local identities. This is demonstrated by both feedback in the statutory consultation and support from 10 out of 15 councils in the area.*

*In more detail, I found that the five unitary model was firmly anchored around the five key urban centres of Basildon & Thurrock, Chelmsford, Colchester, Harlow and Southend. I am confident that this decision will enable these urban centres across Essex, Thurrock and Southend-on-Sea to thrive.*

*As I set out above, it is vital we put in place new councils that are connected to the communities they serve, and that will best meet the needs of those communities. The approach set out in the five unitary model creates sensible geographies that will empower each new council to deliver new housing in line with local needs. Each unitary will also be directly accountable for delivering public services tailored to local challenges across each community, including those around temporary accommodation and social care. As I also set out, this proposal is supported by a majority of local councils within the area and aligns with local preferences expressed within the consultation for councils that are connected to the communities they represent.*

*I considered the expected costs and benefits, including transition costs, and the ability of each new council to be financially resilient. On the evidence, I am satisfied that the five unitary proposal can be delivered on a sustainable financial basis. The 500,000 population figure has always been a guiding principle, not a fixed threshold. Where any new council is below that level, I am satisfied that it is appropriate on the basis that it produces a more coherent and effective outcome for Essex, Thurrock and Southend-on-Sea.*

*Simplifying local government ensures a strong foundation for devolution. I judge that the five unitary authority proposal will provide that strong foundation [...].”*

24. As regards Thurrock, specifically, the letter stated:

*“I would also like to confirm our commitment to repay in-principle £200m of Thurrock Council’s debt in 2026-27. This is a significant and unprecedented commitment given historic capital practices at the Council and reflects an assessment of value for money for national and local taxpayers. Locally, Thurrock Council has made significant progress as set out in Commissioners’ sixth report (27 January 2026) and this commitment recognises the Council still retains a significant level of unsupported debt that cannot be managed locally. This is not a decision that has been taken lightly but is necessary to protect taxpayers from the spiralling cost of ever-increasing debt. I would like to thank the Council’s current leadership for its grip of the financial situation and to recognise the progress that has been made to reduce debt.*

*The figure of in-principle support we are announcing today is subject to further assurance of the Council’s financial position, continued progress on remaining asset disposals and divestments as well as other local actions to strengthen financial sustainability. This is a first tranche of repayment support,*

*and we will continue to explore what further debt support is required at a later point. The government remains clear that any support must take into account value for money for the local and national taxpayer and the Council's continued commitment to reduce debt as far as possible within its local capacity."*

25. These reasons have to be viewed against the background of the written advice and the meetings that took place, as referred to above.
26. The Secretary of State understood and took into account that the 5UA proposal was weaker in respect of finances and public service delivery criteria but, as discussed at the meetings on 12 February and 10 March 2026, the Secretary of State was concerned to ensure that:
  - a. New unitary local councils retain connection to local communities – as councils with that local connection could best meet local housing needs given their understanding of the local identities and communities within their local areas, in turn supporting economic growth.
  - b. New unitary local councils retain a connection in order to make sure that they can best design public services that are responsive to local places and the needs of local residents.

#### *Further engagement with your Client*

27. On 16 and 22 April 2026, your Client wrote to MHCLG to request clarification in relation to various matters. A response was provided on 24 April 2026. The letter explained, in particular, that:

*"As set out in the Secretary of State's letter of 25 March 2026, his decision was taken in the round, having regard to all the criteria in the statutory invitation and all other relevant information available to him. While the letter highlighted, amongst other things, that the proposal performed particularly well due to the fact that it was clearly shaped by communities across the area and reflects local identities, the Secretary of State's assessment was based on the overall balance of evidence across the full set of criteria, and on the judgement of which proposal best met those criteria when taken together. His judgement also reflected the approach set out in the five unitary model to create sensible geographies that will empower each new council to deliver new housing in line with local needs. Although each of the proposals met the criteria for unitary local government, the Secretary of State concluded that the five unitary model provided best met the criteria when those criteria were considered collectively.*

*The Government's assessment of the proposals included the proposed costs and savings as well as the financial sustainability and resilience of the proposed new councils. Our assessment of costs and savings is based on the material submitted by local councils. Our confidence in this information is informed by benchmarking from sector data, previous reorganisation exercises and Government's appraisal guidance. This included consideration of the financial position of the predecessor authorities, such as levels of reserves and debt, as well as recent changes to funding formulae and allocations arising from the Fair Funding Review. Taken together with information submitted by local councils, this provided a rounded assessment of financial sustainability.*

*In reaching his decision, the Secretary of State also took account of the consultation responses received, including the range of views expressed for and against all proposals, and considered those responses alongside the proposals submitted by councils and the evidence and assumptions in each proposal.*

*The Secretary of State was required to reach his own judgement on the evidence before him, having considered each proposal alongside the others and formed a judgement in the round across the full set of criteria. Having done so, he concluded that the five unitary best met the criteria overall and was satisfied that it can be delivered on a sustainable financial basis."*

#### **Response to proposed grounds of challenge**

- (1) *Failure to give adequate reasons*

28. You allege that the Secretary of State failed to give adequate reasons for the Decision. In particular, you suggest that it was necessary for the Secretary of State 'to articulate fuller reasons than he did' having regard to the implications of the decision for local democracy and the delivery of essential services, the fact that the decision was taken by reference to published criteria and that it involved choosing between four proposals. You suggest that it would not have been impractical to provide fuller reasons and note that the decision was likely to attract controversy. You suggest that fuller reasons are required where to omit them would frustrate the possibility of judicial review. You suggest that the reasons given by the Secretary of State do not articulate why the 5UA proposal met all the criteria and that it is not clear that all the criteria were considered, nor why the 5UA proposal met the criteria better than the other proposals. You have compared the reasons given for the decision as regards Essex with the letters for other areas and suggest that there is extensive duplication. You also refer to the letter of 24 April 2026 and suggest that it failed to clarify obviously relevant matters which had been left obscure by the decision and refused to provide underlying documents.
29. The Secretary of State does not accept that this ground of challenge gives rise to any arguable unlawfulness.
30. First, there is no general common law duty to give reasons: see *Dover District Council v CPRE Kent* [2017] UKSC 79 at §51. The Secretary of State does not accept that, in the circumstances of this decision, there was a duty to give reasons, whether by reference to the factors that you refer to, or otherwise.
31. Second, and in any event, there is no arguable basis for your allegation that the reasons voluntarily given by the Secretary of State are inadequate.
32. By way of context, the Secretary of State would note that your Client was heavily involved in the process leading up to the making of the Decision, and has a detailed awareness of several of the matters which the Secretary of State took into account: the various proposals, the Invitation Letter criteria, the consultation responses and representations made. Indeed, your Client has been able to produce a lengthy LBC.
33. Your Client has now been given lengthy reasons for the Decision on two separate occasions. While you consider the Secretary of State ought to have provided more detailed reasons, the Secretary of State does not accept that the reasons he gave are arguably legally inadequate.
34. Indeed, the reasons why the Secretary of State considered that the 5UA proposal best met the criteria overall are abundantly clear and set out in the letter, namely that "*it is clearly shaped by the communities across the area and reflects local identities*", that it "*was firmly anchored around the five key urban centres of Basildon & Thurrock, Chelmsford, Colchester, Harlow and Southend and would 'enable these urban centres across Essex, Thurrock and Southend-on-Sea to thrive.'*" The Secretary of State considered it to be '*vital we put in place new councils that are connected to the communities they serve, and that will best meet the needs of those communities*' and, in that context, he considered that '*[t]he approach set out in the five unitary model creates sensible geographies that will empower each new council to deliver new housing in line with local needs.*'
35. The Secretary of State does not accept that fuller reasons were 'necessary' in the circumstances, as you allege, whether having regard to the implications of the decision or otherwise. The fact that 'fuller' reasons could have been given does not mean that the reasons that were given were legally inadequate. The reasons given by the Secretary of State have not frustrated the possibility of judicial review (as is evident from the fact that you have been able to articulate six potential grounds of challenge to the Decision). The matters that the Secretary of State took into account are detailed in the letter and are set out above in the Advice and there is no uncertainty as to what those matters are. As is also set out above, the Secretary of State was provided with copies of the proposals alongside detailed advice in relation to the performance of each of the options against the published criteria and considered those criteria carefully in making his decision (as is evidenced not only by the written advice provided to him but also by the meetings with MHCLG officials). The reasons why he found the 5UA

proposal to best meet those criteria, reflecting the content of the advice he received and his discussions, are set out explicitly in the Decision, as summarised above.

36. While you may disagree with the Secretary of State's assessment that the 5UA proposal best met the criteria overall, there is no arguable basis for complaining that his reasons do not permit you to understand why he concluded that to be the case.

*(2) Procedural Unfairness*

37. You set out your understanding that *'financial modelling was undertaken by MHCLG on the five unitary proposal and that its analysis tended to undermine the financial case for the five unitary council proposal which the Secretary of State regarded as unreliable.'* You suggest that procedural fairness requires that those affected by a decision should be able to make properly informed representations, including on any matters that are known to the decision-maker and are adverse to the person making representations. You say that *'[i]f and to the extent that such modelling and analysis was carried out on the five unitary model and the Secretary of State knew of financial weaknesses in that model, then that should have been made clear to those affected, to enable effective representations before the decision was taken.'*

38. MHCLG officials did undertake a financial assessment of the proposals, including the 5UA proposal, the nature of which is set out above. A summary of that assessment was provided to the Secretary of State, and he received advice from MHCLG officials in respect of it (as set out above).

39. Insofar as you contend that it was procedurally unfair for the Secretary of State to take into account the financial assessment of the proposals carried out by MHCLG officials without affording your Client the opportunity to comment upon that financial assessment, the Secretary of State does not accept that there was any arguable unfairness in that regard.

40. It was for the Secretary of State to determine what was the appropriate procedure for making the Decision. The Secretary of State consulted with your Client (among others) in relation to the proposals (the adequacy of which is considered below) and took your representations into account as part of his Decision. It was open to him, having carried out that consultation, to also take into account a financial assessment prepared by MHCLG officials without affording your Client (or anyone else) a further opportunity to comment on it.

41. This ground is unarguable.

*(3) Inadequate consultation*

42. You allege that either:

- (i) The Secretary of State knew about financial weakness in the 5UA proposal before the consultation concluded and he failed to provide consultees with critical information that was necessary to enable properly informed responses in line with the Gunning requirements;
- (ii) The Secretary of State knew about this after the consultation had concluded and the modelling gave rise to a "fundamental change of circumstance", engaging a duty to 're-consult.'

43. As set out above, MHCLG officials did carry out a financial appraisal of the proposals which was produced on 30 January 2026 after the consultation had concluded. The first alternative allegation you make does not therefore arise in the circumstances.

44. Insofar as you contend that the financial assessment gave rise to a 'fundamental change of circumstance' giving rise to a duty to re-consult, the Secretary of State does not accept that to be the case.

45. Where it is alleged that a public authority should have consulted on any changes to the proposals which arise during or after a consultation exercise has been conducted, the question of whether it is necessary to carry out further consultation will be determined by reference to the concept of fairness: see R (Moseley) v London Borough of Haringey [2014] UKSC 56; [2014] 1 W.L.R. 3947 at [23]-[24].
46. Here, contrary to the premise of your allegation, the financial assessment did not give rise to any change in circumstance, let alone a fundamental change. The financial assessment was simply a comparative financial analysis of the proposals. No change whatsoever was made to the proposals themselves. There is therefore no basis for suggesting that the production of the financial analysis gave rise to a 'fundamental change of circumstance' so as to give rise to a duty to re-consult.
47. So far as the adequacy of the consultation is concerned, the materials provided to your Client (and others) were clearly sufficient to enable you to respond intelligently and meaningfully to the consultation. Indeed, the Secretary of State notes that you made detailed comments in relation to the financial aspects of the proposals, including the 5UA proposal and, what is more, your concerns in respect of the 5UA proposal in that regard were reported to, and taken into account by the Secretary of State. That being the case, it is not arguable that your Client was not provided with sufficient information to enable you to comment meaningfully on the proposals as part of the consultation. Insofar as you have referred to R (Breckland DC) v Electoral Commission Boundary Committee for England [2009] EWCA Civ 239, [2009] PTSR 1611, the Secretary of State does not accept that the facts of that case are in any way analogous to the circumstances of this case. Your reliance on Breckland in support of your arguments is misconceived.
48. This ground of challenge is unarguable.

*(4) Misapplication of the Secretary of State's criteria*

49. Under this ground, you allege that the Secretary of State failed properly to consider the terms of the published criteria against which he indicated he would assess the proposals. You allege that, properly considered, the 5UA proposal did not satisfy the criteria and the Secretary of State erred in misapplying those criteria to find that it did.
50. This ground of challenge is, in reality, nothing more than the expression of your disagreement with:
- a. the Secretary of State's judgement that the 5UA proposal (along with the other proposals for Essex) met the criteria in the Invitation Letter; and
  - b. the Secretary of State's judgment that, considered overall, the 5UA proposal best met the criteria for the reasons given in the Decision.
51. The Court will not entertain a challenge to the merits of the Secretary of State's decision in this regard and, for that reason, this proposed ground of challenge is unarguable.
52. The Advice provided clearly gave the Secretary of State the detailed circumstances of each proposal, relevant information on each aspect of each criterion contained within the proposals, as well as assessment from MHCLG and wider government officials. Having considered that, he arrived at a judgment on both the 5UA proposal meeting each criterion and then best meeting the criteria overall.
53. So far as your detailed points are concerned on the application of criterion 1, and specifically (1a), (1b), and 1(c), MHCLG officials set out in the Advice and the other documents referred to above at paragraph 15(c) that:
- a. all four proposals meet this criterion overall by seeking to establish a single tier of local government for the whole of the area, with a rationale and evidence base underpinning their proposed unitary areas provided. All proposals were informed by a shared local evidence base

- b. With regards to the sub-criteria (1a), (1b) and (1c), although the 5UA proposal was viewed as giving rise to a risk of creating councils that were at significant disadvantage (tax base, service demand and ability to deliver services), the proposal was for sensible geographies deemed to align with credible local economic areas and create new unitary councils connected to local communities which would in turn help to increase housing supply and meet local needs. In particular, it was noted in the detailed assessment against the Invitation Letter criteria that *“The proposal is anchored on five urban centres (Basildon, Chelmsford, Colchester, Harlow and Southend) reflecting communities and economies”* and that *“Each unitary is empowered to directly manage place-based housing strategies, with a balanced distribution of housing growth and accountability to address Temporary Accommodation pressures”*
  - c. In addition, the evidence and analysis provided in support of the 5UA proposal was sufficiently robust to meet the requirements of Criterion 1, informed by a shared local evidence base, notwithstanding that there were some concerns in that respect as set out above.
  - d. Taken together – based on careful consideration of the detailed circumstances, relevant information within the proposal, and assessment from officials - the Secretary of State therefore judged the proposal have met the criterion 1 overall.
54. So far as your detailed points on criterion 2, as set out above, the 5UA option was explicitly considered as set out above. As regards the amalgamation of Thurrock and Basildon, the advice provided by MHCLG officials is set out above and dealt with explicitly in the Decision.
55. On criterion 2b specifically, the Secretary of State took that matter into consideration as clearly demonstrated in the Decision. It was explicitly discussed with MHCLG officials at the 10 March meeting and the Secretary of State was satisfied that the authorities would be the appropriate size, including the fact that 5UA was based on towns, which were judged to credibly align with local economic areas.
56. So far as your detailed point on criterion 5, all proposals, including the 5UA, were found to support the devolution criterion with:
- a. each proposal significantly reducing the current population disparity in the existing devolution agreement between Essex County Council, Thurrock and Southend-on-Sea.
  - b. each proposal supporting equal membership on the planned Greater Essex Strategic Authority for the proposed constituent councils. This will bring it in line with the Government’s preferred governance arrangement for Strategic Authorities, helping ensure no single council is able to dominate or feels unable to influence the functioning of the Strategic Authority from April 2028.

*(5) Irrationality*

57. You have alleged that the Decision was irrational, both in terms of its ‘process’ and ‘outcome’. The Secretary of State does not accept that this is arguably the case. Dealing with each of the matters raised:
- a. The Secretary of State did consider, so far as necessary, the factors that you say were left out of account, including (i) the level of debt from Basildon and Thurrock in the new ‘South West Essex Council’ (as set out above); (ii) The nature of the geography of that new authority (and in particular that it would be centred on Basildon); (iii) the potential impacts of the proposals on social care costs. Insofar as you suggest that the Secretary of State was obliged to have explicit regard to *“the disproportionate social care burden which would fall on the new ‘North East Essex Council, because of the much greater density of residential care homes in that area of Essex, by comparison with other parts of the county”*, the Secretary of State explicitly considered concerns about the *“North-East Essex community fac[ing] significant health inequalities”* and regarding the high need in the North Essex unitary *“due to high need in Tendering the most deprived area in the UK.”* but he does not accept that this issue in isolation was in any event a mandatory material consideration to which he was obliged to have regard.

- b. The weight to be accorded to the various criteria in the overall decision was a matter entirely for the Secretary of State. His judgment was not arguably irrational.
- c. The decision was not otherwise irrational, having regard to the decision taken in respect of Surrey. The Secretary of State was not obliged, whether as a matter of fairness or otherwise, to treat the factors that were decisive in his decision for Surrey as being decisive in his decision for Essex. There was nothing arguably inconsistent, unequal, unfair, or arbitrary in his decision-making.

*(6) Breach of the PSED*

58. You argue that the Secretary of State failed to comply with the public sector equality duty imposed by s. 149 of the Equality Act 2010 ("PSED"), on the basis there is no evidence he had "due regard" for the implications of the Decision for persons sharing the protected characteristic of race. To the contrary, an extensive equality analysis was carried out by MHCLG and provided to the Secretary of State which included consideration of the impact on persons sharing the protected characteristic of race.

**Interested parties**

59. The Secretary of State agrees that the local authorities listed at §7 of the LBC will be interested parties to any claim.

**Information and documents requested**

60. Your request for extensive documentation at this stage in proceedings is unreasonable. The Secretary of State has set out a detailed account of his decision-making process within this response, which ought to be sufficient to allow your Client to satisfy itself as to the lawfulness of the Decision. Paragraph 13 of the Pre Action Protocol for Judicial Review states that pre-action disclosure must be proportionate and limited to what is properly necessary for the claimant to understand the decision. In circumstances where we have provided you with a full overview of the steps leading to the decision and that reasons for that decision, we consider no disclosure is proportionate or necessary at this time.

**Alternative dispute resolution**

61. The Secretary of State does not consider that alternative dispute resolution would be appropriate to resolve this matter, in circumstances where it has already engaged constructively with your Client and the Decision taken was lawful.

**Address for reply and service of court documents**

62. The Government Legal Department are instructed to accept service of proceedings for this matter. Please serve any proceeding at:

FAO Usman Mohammed  
GLD  
102 Petty France  
Westminster  
London  
SW1H 9GL

GLD Reference: Z2607118

Email for service of proceedings relating to this matter: Usman.Mohammed@governmentlegal.gov.uk, Madeline.Boyle@governmentlegal.gov.uk, Alishah.Andani@governmentlegal.gov.uk

Yours sincerely

**Usman Mohammed**  
**For the Treasury Solicitor**

**D 07857400576**

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