

# 5 Year Review & Impact

## Report 2006-2011



The Public Law Project

**Since 1990 the Public Law Project has worked tirelessly to improve access to public law remedies for those who cannot obtain justice due to poverty, discrimination or other disadvantage.**

**Its three main objectives are:**

- **increasing the accountability of public bodies;**
- **enhancing the quality of decision-making; and**
- **improving access to justice.**

**To fulfil this mission PLP provides support and expertise for the lawyers and advisers who work on behalf of those marginalised within the UK.**

**PLP also takes on cases where litigation can change policy.**

**[www.publiclawproject.org.uk](http://www.publiclawproject.org.uk)**



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Southall Black Sisters, *inside cover*

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Tackling poverty and inequality

# Introduction



Recent research tells us that tens of thousands of our fellow citizens have never heard of our civil justice system. They know nothing of the ways in which lawyers and the courts may be able to help them overcome problems which affect their family life, their health, their welfare or their jobs. If this is true of private law remedies, it is truer still of public law remedies. These are often available to help poor, disabled and vulnerable people confront the misuse of power, but the potential beneficiaries do not know this – let alone know where to go to obtain reliable advice.

The Public Law Project exists to fulfil a real public need. At a local level PLP has been concerned in recent years on advising on the legality of a proposal to criminalise the distribution of food to the homeless and the hungry. It has rescued the funding for that redoubtable organisation, the Southall Black Sisters, by reminding the local authority of the scope of its legal duty to consult and the potency of its legal duty to provide equality of opportunity. It has acted to save a valuable scheme which provided town centre transport for disabled shoppers. It has fought the cause of a disabled single mother whose adult son with learning disabilities was housed in an unsatisfactory care home 300 miles away. And it has saved funding for a community law centre. These are just a few examples of its quiet, unsung work.

“**The Public Law Project exists to fulfil a real public need.**”

But these low level acts of practical assistance are just part of the picture. Its high level successes in developing the usefulness of public law in a fast-moving age depend on the scale to which its staff can enlist the assistance of skilled public lawyers for whom the general equality duty, the scale of the duty to consult, and the public law doctrine of legitimate expectation are regular bedside reading. These lawyers live in a world with which the generalist lawyer, much less the ordinary citizen or many office-holders in central and local government, is very unfamiliar. PLP makes their services readily available to those that need them, and I know just how grateful their clients are.

The developing world of third party interventions has also seen PLP participating, at little or no risk as to costs, in litigation at Supreme Court and Court of Appeal level on a scale which would have seemed unbelievable only ten years ago. In the days when I sat as a judge I remember just how welcome its interventions often were in ground-breaking cases. Its invaluable training programmes no longer have a London-centric bias. And now I am a mediator, I know the relevance of the very important reports PLP has produced in recent years which explore the value of mediation in appropriate public law cases and give practical guidance on this still little known add-on to our dispute resolution tools.

I am proud to be the Patron of the Project and I salute its work.

**Sir Henry Brooke, Patron, PLP**



# Foreword



The Public Law Project is 21 years old this year and that seems a good time to review the continued relevance of the Project. Some charities have a very definite “sell by” date by which time they have achieved their aims or the world has moved on. But that is certainly not the case with PLP. More than ever before, and especially in an age of austerity where the poorest in society appear to be bearing the brunt of cuts and savings, PLP’s services are needed. The accountability of public decision-makers to the people and communities faced with a reduction in services as a result of cuts is now a primary aim of the Project. At present, access to legal services and access to justice are also under threat so the skills and expertise of the Project and its staff have never been more essential.

The Project has always sought to combine a number of approaches to increasing access to justice for the poorest in society and enhancing public decision making. Its combination of ground-breaking case-work, nationally recognised research and hard-hitting policy work is a unique blend, especially when combined with its expansive training programmes for both lawyers and non-lawyers.

Our casework highlights issues which affect the most disadvantaged in society. Often the Project is able to work alongside community groups lobbying for change or against injustice. One of many examples, the *Medical Justice* litigation (see Casework Section p10), illustrates a case where individuals would have found it difficult to initiate an action alone. Our research reports emerge from the practical issues raised during our other work, for example, *The Dynamics of Judicial Review*

*Litigation* looked at how and why real cases settle. Moreover, in our influencing and policy work we are often able to draw together a number of NGOs to respond to government consultations and proposals. Our response to proposed changes in legal aid for judicial review cases is a good example.

Training also plays a key role in achieving our objectives – the more we can increase awareness and expertise about how best to use public law remedies, the more effectively we can improve access to justice. Not only do we run a nationally acclaimed annual judicial review conference in London (hosted for the past few years by Herbert Smith), we also organise focused events elsewhere in the UK and our conferences in Wales and the north are now fixtures in the legal calendar.

This report provides many, many more details of the work of PLP over the last five years and of our plans for the future, made possible only by our indefatigable and talented staff. I would like to thank all those who serve or have served as trustees of PLP, and all those who have supported PLP over the years not only financially, but also with generous donations of time and energy (including of course our willing band of volunteers). For PLP, the next 21 years is set to be as exciting and productive as the first.

**Steve Cragg, Chair, PLP**

“Our casework highlights issues which affect the most disadvantaged in society. Often the Project is able to work alongside community groups lobbying for change or against injustice.”

# Casework

## Introduction

PLP's close relationship with other agencies helps us to identify test cases that can really make a difference. We also undertake casework that strengthens the voluntary sector.

## Specialist Support

PLP runs a public law advice line, currently funded by the LSC, providing support to legal practices, advice agencies and not-for-profit organisations operating under the Community Legal Service. Our assistance ranges from detailed advice on complex legal issues to brief, informal advice on tactics and procedure.

“As lay advisers it is sometimes hard for us to be able to advise our clients about issues that go beyond the main benefits legislation... I have used the advice line on many occasions and I've found the advisers **willing to listen and eager to help. The standard of written work/opinion is excellent.**”

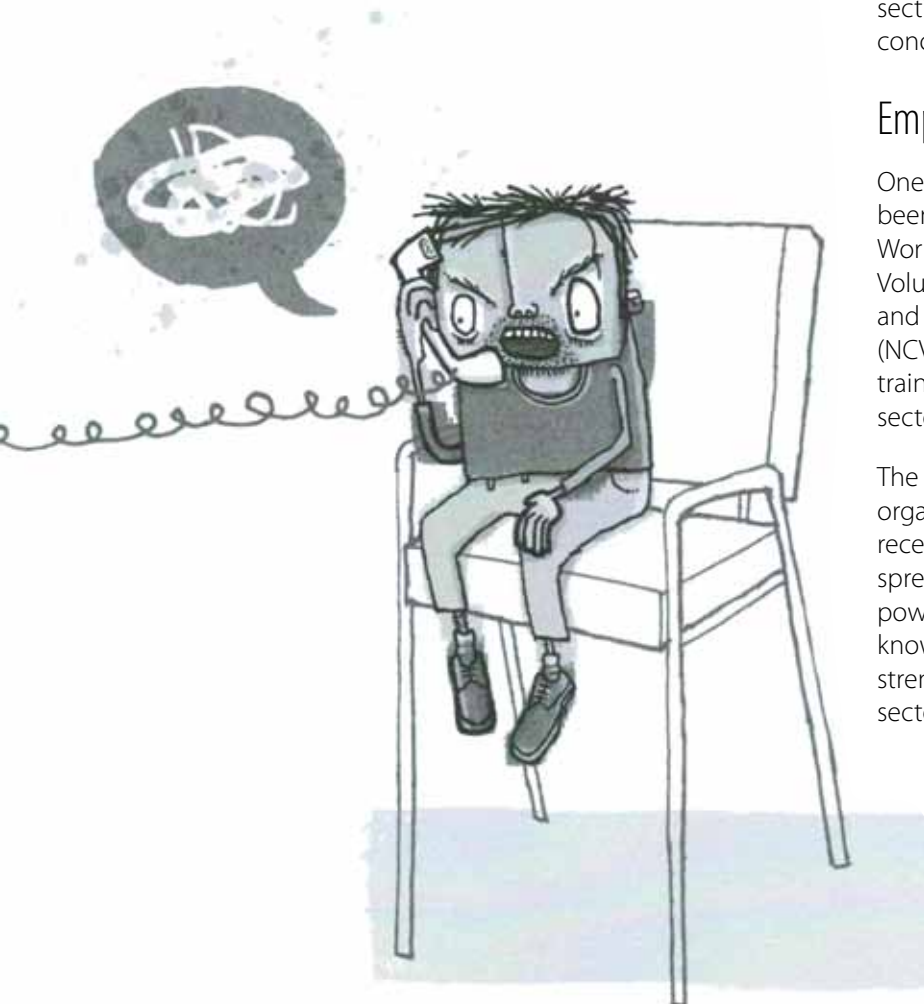
Senior Welfare Rights Adviser,  
Reading Welfare Rights Unit

The service keeps us in touch with advisers throughout the country, ensuring our case work priorities focus on the most pressing and persistent problems. For instance, our work on Debt Relief Orders (described in the *Helping Fight Poverty* section on page 9) reflects an increase in enquiries concerning unfair debt recovery practices.

## Empowering the Voluntary Sector (EVS)

One of the most successful partnerships has been the EVS project, funded by the Big Lottery. Working together with the National Association of Voluntary and Community Associations (NAVCA) and National Council for Voluntary Organisations (NCVO), PLP has been providing advice and training on public law principles to voluntary sector organisations.

The most common problem for voluntary organisations is the insecurity of the funding they receive from public bodies. The EVS project helped spread the word in the voluntary sector that the powers of public bodies are limited, and that knowing and applying public law principles can strengthen the relationship between the voluntary sector and the public bodies they work with.



“The case is relied on by many organisations seeking to challenge similar decisions by public bodies who have failed to properly assess the likely impact of the reduction or withdrawal of funding on the black minority ethnic communities, women and people with disabilities.”

## Case Study: Southall Black Sisters

In a number of groundbreaking legal cases PLP helped small voluntary organisations to challenge the decisions of their funders, arguing they had failed to consult properly or to take account of their equality duties. Perhaps the most significant of these cases was the Southall Black Sisters (SBS) Case. SBS has provided specialist services to Asian and Afro-Caribbean women for more than 30 years, particularly in relation to domestic violence. Ealing council decided in June 2007 to cease funding them. PLP represented service users of SBS in a challenge to the decision, successfully arguing that the council had breached its general equality duty under the Race Relations Act. Ealing had failed to properly assess the likely impact of its decision on black minority ethnic women.

Immediately before the hearing Ealing agreed to withdraw its decision and to continue to fund SBS. Nevertheless, in July 2008 a detailed judgment was given setting out several key principles about the race equality duty. The case is relied on by many organisations seeking to challenge similar decisions by public bodies who have failed to properly assess the likely impact of the reduction or withdrawal of funding on the black minority ethnic communities, women and people with disabilities. (Since April 2011 the equality groups have been expanded and these principles now apply to all those with protected characteristics under the Equality Act 2010).

# Sisters' fight at the High Court

by JACK ROYSTON  
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EALING  
TIMES

A SOUTHALL domestic abuse group is fighting a High Court battle which could make or break its future. Southall Black Sisters (SBS) has been preparing for a landmark case which will either provide a long-awaited reprieve or throw the future of ethnic minority charities across the country into disarray.

Hannana Siddiqui, of SBS, said: "The women we help are not going to be able to go to other organisations. They come to us because we are part of the community."

"We are black and minority women ourselves, we know where they are coming from. We can provide them with a service in their own language very quickly."

Ealing Council has traditionally funded Southall Black Sisters (SBS) to the tune of £100,000 a year but wants to change the way it provides support to women who suffer from violence in the home.

The plans would involve funding one group to cover the whole borough, meaning it would not give money to specialist groups.

The group has taken Ealing Council to the High Court for failing in its race relations duties, and a win would strengthen the position of similar minority groups across the country.

However, the council is challenging whether selective support groups like the SBS can legally exist.

It has not yet decided which group the council wants to give the money to, but even if SBS was chosen, Ms Siddiqui says there would not be enough to expand without sacrificing its existing specialist services.

She said: "Ironically, what we provide is what the council are saying they want to replicate across the whole borough but they don't want to target it at minority women, the most vulnerable."

"If we can't provide local services to people that are specialised, as we do now, I don't think these women are going to find our services accessible and they're not



Members of the Southall Black Sisters pictured at a demonstration outside Ealing Town Hall earlier this year.

going to be able to go to other organisations."

The group which is chosen will get a £100,000 grant, with £50,000 in reserve as a back up.

Virendra Sharma, MP for Ealing and Southall, said: "In supporting the black sisters campaign and I'm supporting the judicial review."

"I personally feel that it's sad that a local group has to go to that length to get justice."

During its 29-year history, the group has helped a number of women who are victims of domestic violence, forcing changes to how manslaughter law is applied and changing attitudes in the Asian community.

In the early 1990s, it represented Kiranji Ahlawalia, an Asian woman, whose husband died after she set him on fire, following years of abuse, including rape and violence.

She was initially jailed for the attack but, with the help of a new lawyer, SBS supported her in a successful campaign to overturn the conviction.

The group has also sought to bring a number of men to justice over honour killings.

The case will be heard today (Thursday) and tomorrow (Friday) in the High Court. SBS supporters have promised to be out in force.

“This ensured that SPAN and the council continued to enjoy a good relationship and that hundreds of service users could continue to benefit from SPAN’s work, with the support of the council.”

### Case Study: Colchester Shopmobility Scheme

Using the same principles PLP helped countless organisations to resolve their difficulties with public bodies without going to court. Colchester Shopmobility scheme provides town centre transport for disabled shoppers. They contacted the EVS advice line after being told by the council that their funding was to be cut. PLP wrote to the council’s monitoring officer pointing out that the decision had been made without consultation and in breach of the council’s duty, under the Disability Discrimination Act to have regard to the need to promote equality of opportunity for people with disabilities. The monitoring officer immediately agreed that the decision should be withdrawn and that the council should continue to fund the scheme until a proper consultation and assessment had been carried out. To date, the Scheme is still in place.

### Case Study: The Single Parent Action Network (SPAN)

SPAN is a Bristol based voluntary organisation supporting single parents and their children. It offers services from an inner city location to single parents who are predominantly female and largely from BME communities, including childcare, childcare training, parenting and English language classes. SPAN received funding from the city council as well as being accommodated in premises owned by the council. A formal notice to quit was served as the council intended to redevelop the site. Given the nature of the community SPAN serves, and the lack of any suitable alternative site, this action would have severely disrupted its work and SPAN’s clients would have suffered.

PLP negotiated on behalf of SPAN, which was keen to communicate to the council how much it valued the council’s support and that it wanted to resolve the problem in a collaborative way. PLP argued the decision was unlawful because of a failure to consult and to have regard to duties to promote equality of opportunity under the Sex Discrimination Act and the Race Relations Act. SPAN carried out a great deal of local lobbying in parallel. In the end the council agreed to accommodate SPAN in the same location and agreed to convene regular meetings of all those involved in the re-development.

This ensured SPAN and the council continued to enjoy a good relationship and hundreds of service users could continue to benefit from SPAN’s work.





## Tackling Systemic Problems: Public Law Strategic Support (PLSS)

The PLSS project, funded by the Legal Services Commission (LSC), enabled PLP to work with frontline agencies identifying and addressing systemic maladministration.

### CASE STUDY: Law Centres Federation and Youth Homelessness

The Law Centres Federation (LCF) run a London based youth homelessness project working across several boroughs. The issue faced by PLP and the LCF was the continued unlawfulness of the way local authorities dealt with homeless children. The courts have ruled that homeless 16 and 17 year olds are primarily the responsibility of social services departments (rather than housing departments) and that local authorities must provide a package of support. Despite this, local authorities continued to pass homeless young people from one department to another, often refusing any help. PLP worked with the manager of the LCF youth homelessness project, providing support and training to their advisers and organising a training event attended by lawyers from City firms acting pro bono. This enabled LCF staff to give legal advice, issue proceedings if necessary and helped advisers follow up with complaints. We continued this coordinated, strategic approach, meeting with the Local Government Ombudsman to help ensure the most vulnerable are given appropriate support.

“The issue faced by PLP and the LCF was the continued unlawfulness of the way local authorities dealt with homeless children.”

## Challenging Maladministration

Although LSC funding for the PLSS project has ended, we are keen to continue our work with other agencies ensuring that public law wrongs are addressed systematically. We are funded by Trust for London to undertake similar work in London with a focus on the alleviation of poverty. Using this funding PLP is advising a coalition of organisations on the possibility of legal challenge to a byelaw proposed by Westminster Council. The proposed law would criminalise both the distribution of food to the homeless and hungry and the act of rough sleeping. PLP have worked closely with concerned organisations, responded to the Council's consultation on the draft law, advised campaigners as to the lawfulness of Westminster Council's proposals, and have committed ongoing support to challenge this byelaw, if passed.



From *'The Pavement'*, magazine for homeless people

“The outcome of this case will have significant ramifications for other complainants.”

## Challenging Service Failure

### Ombudsmen – Challenging Service Failure

One of PLP’s key interests is the accessibility and efficacy of non-litigation public law remedies (such as complaints procedures and ombudsmen). Regrettably, our perception is that such procedures do not always achieve justice. However, as litigation costs remain prohibitive and with legal aid funding becoming more restricted, PLP considers that ombudsmen play a significant role in ensuring affordable access to justice. Accordingly PLP offers training jointly with ombudsmen to encourage best practice.



### Case Study: LB

Our client LB lives in a London borough. She has an adult son with significant care needs, who was accommodated by the local authority in a care home some 300 miles away. LB found it prohibitively expensive and physically difficult to visit her son. She was worried both about the standard of his accommodation and about delays in finding him accommodation closer to home. She complained to the Council but was dissatisfied with its response. PLP assisted LB to take complaints to the Local Government Ombudsman (LGO).

The LGO found the delays constituted maladministration. It found that £1500 was sufficient compensation for the injustice that had been caused by the delays.

However, the LGO found no remedy was required in relation to the standard of LB’s son’s accommodation. The LGO accepted that the care home was inadequate, but did not accept that this was an injustice (and therefore worthy of compensation) in and of itself. It found that the inadequate accommodation would only be an injustice if it had been caused by the Council’s delays. In the LGO’s view, the inadequate accommodation had not been caused by the delays, because even if the delays had not occurred, LB’s son would still have had to have been accommodated in the same inadequate accommodation.

On this basis, in May 2010, the LGO decided to discontinue investigations into LB’s complaint.

LB instructed PLP to challenge by judicial review the decision to discontinue investigations. LB felt that it should have followed from the LGO’s finding that her son’s accommodation was inadequate, that she should be compensated, regardless of whether the inadequacy of the accommodation was caused by the delays. In her view, the delays and the inadequacy of the accommodation were two separate injustices.

At the time of writing, the case continues.

### Wider Implications

This case is likely to have significant ramifications for other complainants. From April 2008, the Ombudsman has been required to consider complaints of “failure to provide a service” and “failure in a service” in addition to the long-established grounds of “maladministration”. However, until now, the Ombudsman has treated it as making no real difference. LB’s case will be the first time that the court will consider the expansion of grounds for complaint.

PLP considers that the wider basis for complaint was intended to greatly increase the range of possible challenges. If the LGO’s approach is held to be lawful, then vulnerable adults accommodated by any local authority in substandard placements may have no right to redress, unless they can also prove that they would have been accommodated

elsewhere but for additional failings. In PLP's view, an inadequate placement should be treated as service failure causing injustice in and of itself. In addition to proving that a placement is inadequate, a complainant should not have to prove that the inadequacy was caused by some other maladministration.

## Helping the Advice Sector Survive

In addition to high profile litigation, PLP supports the voluntary sector by helping other organisations to enforce their right to fair treatment.

### Case Study: Greenwich Community Law Centre (GCLC)

In 2010 all contracts to provide social welfare law and legal aid ended and providers had to bid for new contracts from the LSC. GCLC bid for a contract to provide debt advice. Due to a badly designed tender application form, the LSC wrongly decided that GCLC had failed to meet the essential criteria. After PLP sent a letter before claim, setting out the grounds on which a claim for judicial review would be brought, the LSC agreed to a further appeal and awarded the Law Centre a contract. This means that the clients of the Law Centre can now receive help with their debt problems.

## Helping Fight Poverty

### Debt Relief Orders

A Debt Relief Order (DRO) is an insolvency instrument created to help people with long term debt problems and who have nothing to offer their creditors. For one year after it is granted no creditor is allowed to take action against the debtor after which period (assuming their circumstances have not changed) all their debts are written off giving them a fresh start.

“As a result of our successful actions in both the High Court and Court of Appeal... a minimum of 2000 people per year will be better off.”



Giving advice at Greenwich Community Law Centre

### Case Study: Ms Cooper, Debt Relief Orders and DWP Policy

In *R(Cooper) v Secretary of State for Work and Pensions [2010]*, PLP challenged the Department of Work and Pension's (DWP's) assertion that they had the power to make deductions from benefits for past overpayments even when the person concerned has been granted a Debt Relief Order. The DWP argued that, despite this, they – uniquely among creditors – still have power to reclaim overpayments of benefits. As a result of our successful actions in both the High Court and Court of Appeal, PLP calculates that, as well as Ms Cooper, a minimum of 2000 people per year will be better off. At the time of writing, the Secretary of State's appeal is before the Supreme Court and is due to be heard in November 2011.

### Case Study: Debt Relief Orders and Rent Arrears

AD is a single parent who had debts that she was unable to clear. She was helped by her local Citizens Advice Bureau (CAB) to apply for a DRO.



AD was in rent arrears and her social landlord objected to the inclusion of the arrears in the DRO. The objection was rejected by the Insolvency Service. The landlord then issued a claim for possession, arguing that the DRO did not prevent them from doing this even though what they were seeking was a suspended possession order so that AD would have to pay something towards the arrears to keep her home. AD was referred by the CAB Specialist Support Service to PLP and we represented her in defending the possession claim. The County Court judge held that the existence of the DRO prevented the landlord from pursuing the claim and dismissed the action. AD's arrears have now been written off and she has started a college course to train as a nursery nurse.

## Fighting for Access to Justice

### Protective Costs Orders

The risk of paying an opponent's legal costs if a claim is unsuccessful can deter litigants from bringing cases to court. Where a litigant is eligible for legal aid, regulations provide protection against having to pay an opponent's costs. However, the same is not the case for individuals and community groups who wish to bring a case in the public interest.

Protective Costs Orders (PCOs) are orders that the court can make to enable those with limited resources to be able to budget for litigation, by capping the amount that applicants have to pay towards an opponent's costs if they lose. The rules governing the making of PCOs have evolved in the last 12 years or so. PLP has played an important role throughout this period through interventions in key cases.

### Case Study: The Case of Ms Compton

An association of local residents came together to support a claim for judicial review, by Ms Compton, challenging the termination of services at a local hospital. Ms Compton was not eligible for legal aid, and applied for a PCO. One of the rules that the courts have developed is that a PCO should only be made in cases of "general public



importance". The PCT argued that a hospital closure was only of local interest, and was not of "general public importance". However the Court of Appeal held that "general public importance" can include matters of only local interest. The decision (in line with PLP's intervention) means the court will, in appropriate circumstances, allow people access to the court to challenge local decisions like hospital closures.

“The decision... means the court will...allow people access to the court to challenge local decisions like hospital closures.”

## Migrant Rights, Immigration Detention and Access to Justice

Although PLP does not generally deal with immigration law, we do get involved in public law and access to justice cases. We outline two cases of great significance, both of which resulted in the courts quashing government policies.

### Case Study: Medical Justice

PLP acted for Medical Justice, an NGO concerned with the rights of immigration detainees, to challenge exceptions to the general policy of the UK Border Agency (UKBA). The general policy required UKBA to give at least 72 hours notice of an immigrant's removal from the UK. The exceptions to the policy permitted reduced or no notice of removal in certain categories of case (e.g. where the immigrant was suicidal, or a child who might abscond). PLP argued that the exceptions did not permit immigrants to access the court to challenge removals where



the removal was unlawful. In response, the Government argued that it was believed to be in certain individuals' best interests not to be given notice; that the policy was monitored; and that, despite the lack of notice, those concerned still had effective access to the courts.

The court took into account that in order to challenge an unlawful removal, a detainee would need to be able to find a lawyer who was ready, willing and able to challenge the removal directions, and that this would obviously take time. The Administrative Court therefore held that a policy of giving less than 72 hours notice of removal violated the (constitutionally important) right of access to the court. In July 2010, the court quashed the exceptions policy. At the time of writing, UKBA's appeal will be heard by the Court of Appeal in November 2011.

## Immigration Detention

Immigration detainees represent an exceptionally marginalised and often highly vulnerable client group, for whom there are often physical, financial and linguistic barriers to access to justice. Further, tribunals hearing bail applications from those detained under immigration powers pre-suppose that individuals' detention is lawful. This means that the only route by which an immigration detainee can challenge the legality of their detention is by application for judicial review and/or a writ of Habeas Corpus.

“Immigration detainees represent an exceptionally marginalised and often highly vulnerable client group, for whom there are often physical, financial and linguistic barriers to access to justice.”



# “...serious abuse of power...”

## Case Study: Lumba

In March 2011 a nine judge panel of the Supreme Court handed down judgment in the PLP case of *R (Walumba Lumba) v Secretary of State for the Home Department*. This case was issued in the High Court in 2007 further to concerns that the then Government was detaining foreign nationals indefinitely at the expiry of their sentence. It became a lead case on a number of fundamental issues.

PLP successfully established that the Government had systematically abused its powers of immigration detention between 2006-2008 by operating a secret policy of blanket detention which was deliberately withheld from detainees, their lawyers and the Courts.

The Supreme Court rejected the approach of the lower courts (the case had lost at High Court and the Court of Appeal) and re-stated fundamental historical principles of the law of false imprisonment. The consequence of the judgment

is that all individuals detained under the unlawful policy (understood to be thousands of detainees) were unlawfully detained, and it is now open to them to sue in false imprisonment. It is our hope and belief that the judgment in Lumba will serve to guard against future abuses.

Lord Dyson, giving the leading judgment, held there was “clear evidence that [UKBA] caseworkers were directed to conceal the true reason for detention” and, in a reference to the then Home Secretary Jacqui Smith, that there was a “deliberate decision taken at the highest level to conceal the policy that was being applied...”. Lord Walker, agreeing with Lord Dyson, held that this constituted a “serious abuse of power” and Lord Hope that the conduct of the Government was “deplorable”.

The Supreme Court also confirmed that the lower courts had applied the wrong tests when considering the length of Mr Lumba’s detention. His case has been remitted back to the lower courts to reconsider those issues.





# Policy Work & Interventions

## Policy Work & Consultation Responses

PLP undertakes policy work, often at the invitation of other organisations, focusing on consultations where we feel we can make the most impact. Legal aid and the funding of civil litigation is central to ensuring access to justice for poor people and small community groups. Most recently:

- PLP has responded to the consultation on civil litigation costs (The Jackson consultation) in 2009 and the subsequent government consultation in 2010-2011.
- We coordinated and supported other agencies responding to the consultation paper Legal Aid: Refocusing Priorities as well as submitting a written response on behalf of PLP.
- We fed into the Government Equalities Office consultation in November 2010, to ensure that public bodies should not restrict themselves to prioritising only one equalities objective where more are appropriate (subsequently accepted by the Government).

PLP also contributes to policy development through its interventions.

## Interventions

Third party interventions enable public interest groups to 'intervene' in litigation for the public benefit. They are particularly important in judicial review claims when the lawfulness of a public body's decision making is being scrutinised by the court. The parties to a claim for judicial review can only make legal argument relevant to the issues between the parties. But sometimes it is clear that what is at stake goes beyond the parties' interests. One example is our intervention that developed the law on protective costs (see protective costs orders on page 10).

PLP undertakes interventions that are consistent with its objectives – increasing the accountability of public bodies, enhancing the quality of decision making and improving access to justice. We



successfully intervened in the landmark case of *R (Cart) v The Upper Tribunal*, heard by the Supreme Court in March 2011. This case opened the decisions of the Upper Tribunal (which deals with welfare benefits and immigration cases, amongst others) to scrutiny by the courts. It constitutes a significant increase in access to justice. Most recently, PLP intervened in the Court of Appeal case of *R (Bahta and others) v SSHD*. The court reversed the accepted approach to awarding costs in cases where a defendant public body concedes a judicial review claim before the case comes to trial. The default position was for the courts to make no order for costs in such cases unless it was "plain and obvious" that the claimant would have gone on to win. In practice public bodies often took a "wait and see" approach, declining to address allegations of wrong-doing and illegality and forcing claimants to issue proceedings unnecessarily, safe in the knowledge that they could then change their minds and escape without any sanction in costs. The Court of Appeal has now made it clear that where a defendant concedes a claim, then the presumption will be that the defendant must pay the claimant's costs.

# Conferences & Training

## Conferences

The last five years have seen PLP's programme of training and conferences develop significantly. The current programme began in 2004, with the launch of our now flagship conference, 'Judicial Review London – Trends and Forecasts'. Our intention was that this conference would be the forerunner of several similar events, including judicial review events outside London. This ultimately successful strategy was underscored by the regionalisation of the Administrative court in 2009 (this is the court that hears judicial review proceedings).

Although PLP has always provided training and advice, establishing a number of regular events allows us a structure and context within which to gather the committed practitioners that give their time and advice to PLP and connect them and their expertise to a wider audience. It also provides us with some steady income throughout the year. These events build capacity in the public law/human rights sectors, spread good practice and empower lawyers, advisers, and the voluntary sector. Delegates are instructed in representing their clients more effectively and advancing charitable agendas. They are also given greater awareness of legal arguments and, when appropriate, how to challenge policy.

Our conferences enable us to create partnerships, explore ideas, and respond promptly to systemic issues in the sector. The events provide a forum for the voluntary, advice and legal sectors to engage with us about localised and grassroots concerns.

## Wales and the North

2011 sees PLP celebrate our fifth annual conference in Manchester; and our third in Cardiff. The conferences have grown and become sustainable through engagement, consultation and research centred on local stakeholder groups. The regional events have a completely distinct character. Their contributors embody local strengths, while the subject matter addresses local needs and concerns.

The audience for our Manchester conference is weighted towards the front line of advice services,

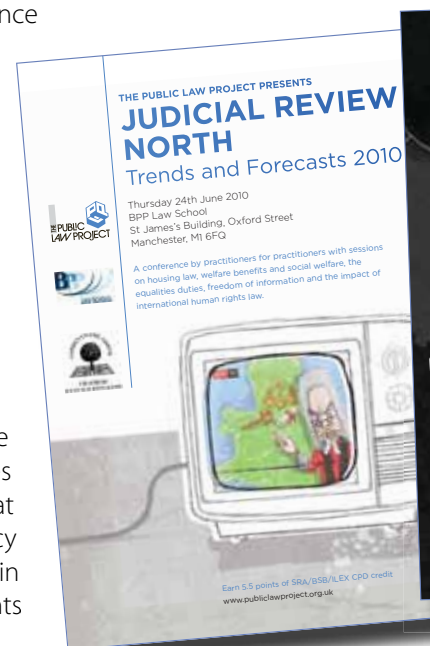
such as Citizen's Advice Bureaux and Law Centres. Although typically under resourced, these are the types of small organisation best suited to partnering with PLP, and who, often as a result of greater awareness through our training, will be more able to spot public law challenges and more likely to approach PLP as a second tier advisory service.

We are all facing an unprecedented drop in funding for advice and legal services, and regional services are likely to be disproportionately affected by these cuts. Though the North has a developed public law and human rights network, with specialist chambers able to partner with PLP in delivering training, continued development of our programme will require imaginative thinking about how training is funded, and how PLP can best assist.

PLP's Cardiff conference is the preminent public law event in Wales. It aims to bring together emerging and established Welsh practitioners with experts outside Wales to foster greater awareness of public law remedies at a crucial time in Wales's constitutional development. The event also engages with the big question as to how to deal with a partially devolved jurisdiction within the UK. 'Legal Wales' is becoming a reality, and our 2011 conference in Cardiff will look at, amongst other issues, the distinct Wales implementation of the Equality Act 2010, and Wales specific legislation, such as 'The Welsh Language Measure'.

## Training

Beyond our large scale conferences, PLP provides training aimed purely at the advice and advocacy sector, specifically in the use of complaints





London conference

“**Well organised, quality speakers and impressive to have two judges attending...**”

Wales conference

“**The significant reduction in fees for voluntary organisations really helped. Without that reduction I couldn't have attended which would have been a pity as the day was relevant to my work and very useful.**”

North conference

“**The PLP North Conference fuelled my desire to pursue a career in public law. ...it left me with the impression that a successful career in public law could be forged outside London.**”

processes and Ombudsman schemes. Our training in non-litigation remedies has evolved into a popular course entitled 'Making the Perfect Complaint', and has pulled together partners and sponsors as diverse as Consumer Focus, The Energy Ombudsman and the LGO. Unfortunately use of complaints processes will become an increasingly important part of the public law system as legal aid cuts make themselves felt. We are unique in providing independent training in this area.

Running these events has helped PLP better understand the public law landscape in England and Wales and the huge difficulties and challenges faced by the advice and legal aid sectors. Our conference and training programme would not be possible were it not for all the professional associates, sponsors, partners and friends that make PLP what it is, allowing us to extend our influence and expertise far beyond our office in North London. The very existence of the events and their success reflect a growth in understanding and practice of public law across England and Wales. We are proud that PLP events have done more than exploit that trend: they have actively contributed to it.



# Research

## Research

The Public Law Project's policy and research work has been extensive and varied.

Our programmes are developed in accordance with our aim of improving access to public law remedies for those most in need of them. Accordingly, our projects have focused on the judicial review process and other relevant redress mechanisms such as internal complaints and Ombudsmen, as well as mediation.

PLP recognises the need to ground reform in independent and rigorous research. As a result we have been at the cutting edge of empirical research that brings together academics, practitioners and policy makers to address central issues concerned with access to justice. Over the years we have undertaken a number of major investigations which have received national attention and played a part in policy formation and legal reform. In this, we are fortunate to have obtained generous financial assistance from the Nuffield Foundation, which has funded the research projects mentioned in this section.

## Major Reports

In 2009 we published two major research reports. The first of these, a joint project with Professor Maurice Sunkin of the University of Essex *The Dynamics of Judicial Review Litigation: the resolution of public law challenges before final hearing*<sup>1</sup>, mapped out the litigation process from first contact between the parties until after the permission stage. It focused on the resolution of disputes by way of negotiated settlements between the parties and threw significant new light on the way that the vast majority of judicial review claims are actually concluded. It provided the first insight into the effects of settlements on the parties, and the most detailed picture of the contemporary judicial review caseload available.

The second report, *Mediation and Judicial Review: An Empirical Research Study*<sup>2</sup>, aimed to establish an independent evidence base for identifying the value and the limits of mediation as an alternative to, or used alongside, judicial review, and thereby

address the dearth of data on the use of mediation in judicial review cases. This is important in light of the ongoing pressure on practitioners to use alternative dispute resolution (ADR) and, in particular mediation, from policy makers and the Legal Services Commission.

The study also examined the main claims made for the benefits of mediation by mediation providers and some policy makers and academics i.e. that it is cheaper and quicker than litigation and that it can offer better outcomes. These claims were examined within the particular context of judicial review litigation and no evidence was found to support these assertions. Nevertheless, in some cases mediation can result in a better outcome for the client. The report contains the first collection of case studies of mediated public law disputes.

Our experience of this study subsequently led to publication of a handbook on mediation and judicial review, designed to offer practical guidance to public law practitioners and to mediators engaged in mediating in public law disputes.<sup>3</sup>

Both these studies were very well received by practitioners, policy-making and law-reforming bodies. Toby Fisher, a barrister who specialises in public law, reviewed the reports in a leading practitioners' journal *Judicial Review* and concluded by saying that the researches '...and the Nuffield Foundation which funded the research deserve high praise for the quality of these papers and the comprehensive nature of the research.'<sup>4</sup>

The data and conclusions of these projects informed responses to the Legal Services Commission/Ministry of Justice consultation paper 'Legal Aid: Refocusing on Priority Cases' and were heavily drawn upon by Lord Gill's Review of Civil Courts in Scotland. It also formed the basis of a widely disseminated paper by Bondy and Sunkin: 'The Use of Statistics in Proposing Reforms to the Public Funding of Judicial Review Litigation: A Critical Review'.<sup>5</sup>

While *The Dynamics of Judicial Review Litigation* dealt with cases that concluded without reaching final hearing, in 2011 PLP embarked on another

“The data and conclusions of these projects informed responses to the Legal Services Commission/ Ministry of Justice consultation paper...”

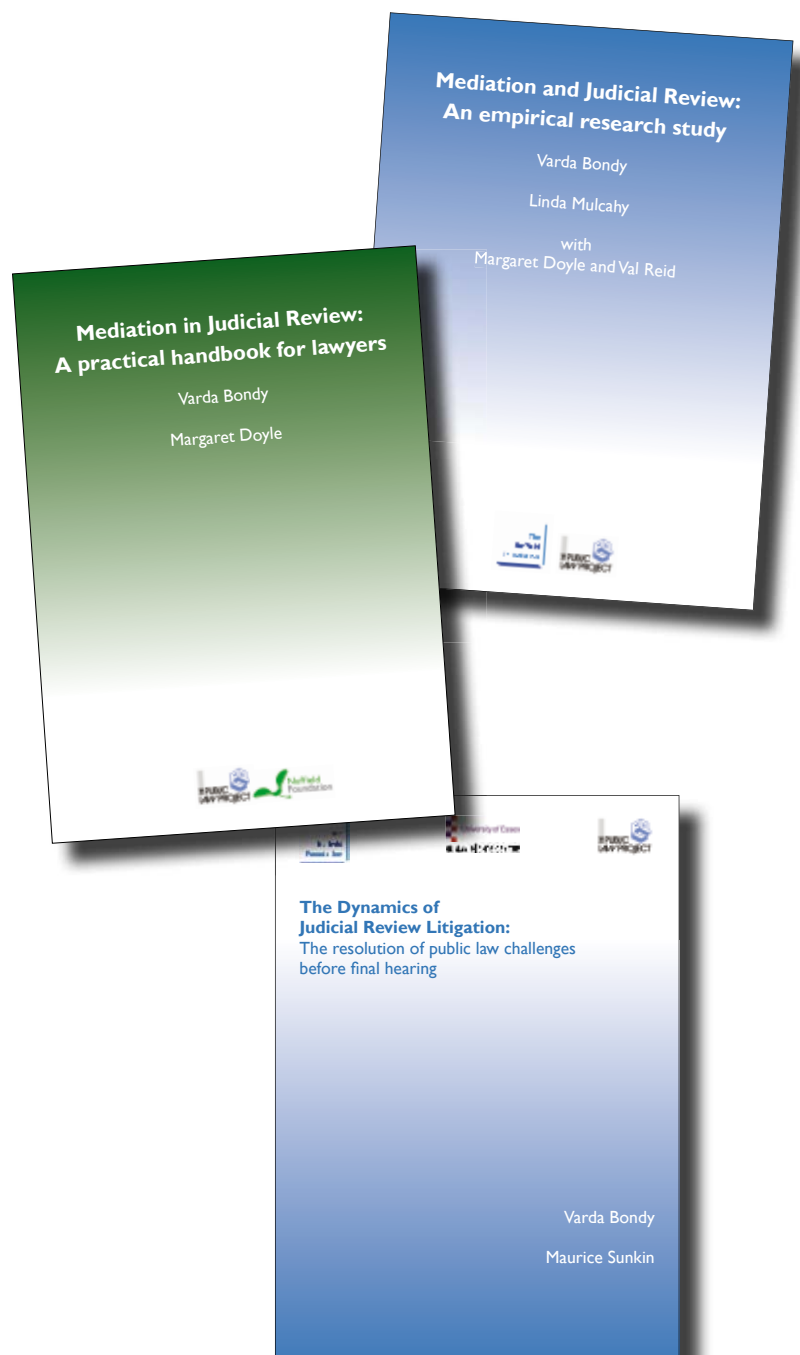
major empirical research project, again jointly with Professor M Sunkin of the University of Essex, designed to extend that work by focusing on what happens following final hearings. This will cover direct outcomes for the claimant and any changes in legislation as well as changes in practice within authorities arising from court judgments. Drawing on subjective responses from solicitors for the parties and from claimants, we will also seek indications of the value of the judgments from the perspectives of the main players.

The two projects will therefore together provide a complete empirically-based picture of the nature, and the implications, of judicial review litigation at all stages from before the commencement of proceedings to the effects of final hearings. This study is expected to be published in 2013.

### Administrative Justice System

In 2011 we plan to publish the results of a study on Design of Redress Mechanisms, a joint project with Professor A Le Sueur of Queen Mary University London. The overarching aim of this project is to understand better how the various elements of the administrative justice system relate to one another. These elements include institutions and processes including: internal complaints systems within public bodies; contracted-out complaints handling (e.g. the Independent Case Reviewer Office); ombudsmen; tribunals; and judicial review. The elements also include different categories of wrong decision making: legality; maladministration; errors relating to substantive merits.

- 1 V Bondy and M Sunkin (2009) The Dynamics of Judicial Review Litigation: the resolution of public law challenges before final hearing The Public Law Project <http://www.publiclawproject.org.uk/documents/TheDynamicsofJudicialReviewLitigation.pdf>
- 2 V Bondy and L Mulcahy Mediation and Judicial Review: An Empirical Research Study The Public Law Project <http://www.publiclawproject.org.uk/documents/MediationandJudicialReview.pdf>
- 3 V Bondy and M Doyle Mediation and Judicial Review: A Practical Handbook for Lawyers Public Law project <http://www.publiclawproject.org.uk/documents/MJRhandbookFINAL.pdf>
- 4 [2009]JR 380-387
- 5 [2009] JR 372



# Management & Staffing

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## Current Management Committee Membership

**Nony Ardill**, Senior Lawyer, Legal Policy Team, Equalities and Human Rights Commission

**Stephen Cragg** (Chair), Barrister, Doughty Street Chambers

**Ron Glatter**, Emeritus Professor of Educational Administration and Management, the Open University

**Amanda Illing**, Practice Director, Hardwicke Chambers

**Ben Jaffey**, Barrister, Blackstone Chambers

**Richard Stein**, Partner, Leigh Day & Co

**Kevin Caulfield**, Project Coordinator Young Disabled Leaders of the Future Project

**Louise Restell**, Freelance Legal Consumer and Communications Expert, (previously Head of Public Affairs, Russell, Jones and Walker)

We would also like to express our appreciation to previous Management Committee Members over the last 5 years – Prof. Andrew Le Sueur, Prof. Maurice Sunkin, Janice Edgar, Andrew Lidbetter and John Halford.

## Current Staffing Structure

**Research Director** (full time)

**Operations Coordinator** (.8)

**Project Solicitor** (full time)

**Project Solicitor** (.8)

**Events and Resources Development Manager** (.6)

**Accounts Officer** (.4)

PLP are currently consulting on a structural reorganisation to better engage with new challenges faced by the sector.

PLP operates a volunteering programme, with up to three legal research volunteers, one events volunteer and one administrative volunteer, undertaking tasks under supervision throughout the year.

A PLP solicitor sits on the Legal Services Commission Public Interest Advisory Panel (now the Special Controls Review Panel); the Advisory Board to the British Institute of Human Rights' Health and Human Rights Project.

In 2009 a project solicitor was nominated for a RADAR person of the year award for their work with disability organisations promoting equality and challenging funding cuts.



# Funders & Projects

List of Funders and Projects over last five years

## Sources of Funding: 5 year analysis

	2009/10	2008/9	2007/8	2006/7	2005/6
Big Lottery Funding	42,124	116,421	84,609	86,391	-
Nuffield	25,375	101,362	95,000	47,245	39,437
Legal Services Commission	163,257	127,453	96,478	108,895	101,661
Esme Fairbairn	-	-	5,964	12,700	20,459
Tudor Trust	-	-	-	8,000	15,000
Joseph Rowntree	-	-	-	-	30,000
Allen Lane Foundation	-	-	-	-	2,000
Voluntary Income	12,022	4,000	12,853	1,033	1,015
Courses & conferences	56,184	43,421	59,270	26,739	17,483
Other	19,421	64,020	24,830	9,547	71,534
<b>Total</b>	<b>318,383</b>	<b>456,677</b>	<b>379,004</b>	<b>300,550</b>	<b>298,589</b>

### Big Lottery Funding

Empowering the Voluntary Sector (Nov 2005-2009)  
Empowering the Voluntary Sector 2 (2009-2011)

### Nuffield

Empirical Research Study on the Permission Stage in Judicial Review (2005-2007)  
Third Party Interventions (2006)  
Mediation and Judicial Review research study (2007-2008)  
Design & Choice of Redress Mechanisms (2008-2010)

### Legal Services Commission

Public Law Strategic Support (2008-2011)  
Specialist Support Services (2005-2011)  
Legal Aid

### Esme Fairbairn Foundation

Development of Training & Events Programme (2004-2007)

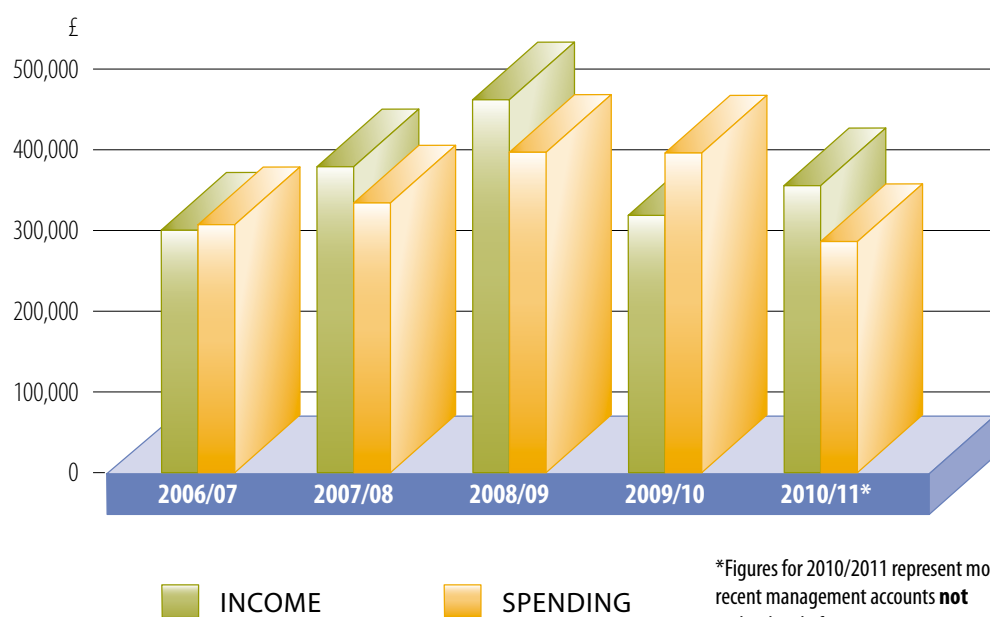
### Tudor Trust

Training & provision of information to debt advisors (2005-2007)

### The Joseph Rowntree Charitable Trust

Corporate Accountability Project (2006)

## Yearly expenditure and income from 2007 to present



## List of conference sponsors and partners

The Public Law Project would like to thank the following organisations for their support, sponsorship and partnership for our ongoing conference and training programme:

### **Judicial Review London, Trends and Forecasts**

Blackstone Chambers, Herbert Smith

### **Public Law and Judicial Review North**

Garden Court North, BPP Law School, Irwin Mitchell

### **Public Law Wales**

Morgan Cole LLP, Wales Public Law and Human Rights Association, Cardiff University (Cardiff Law School), University of the West of England

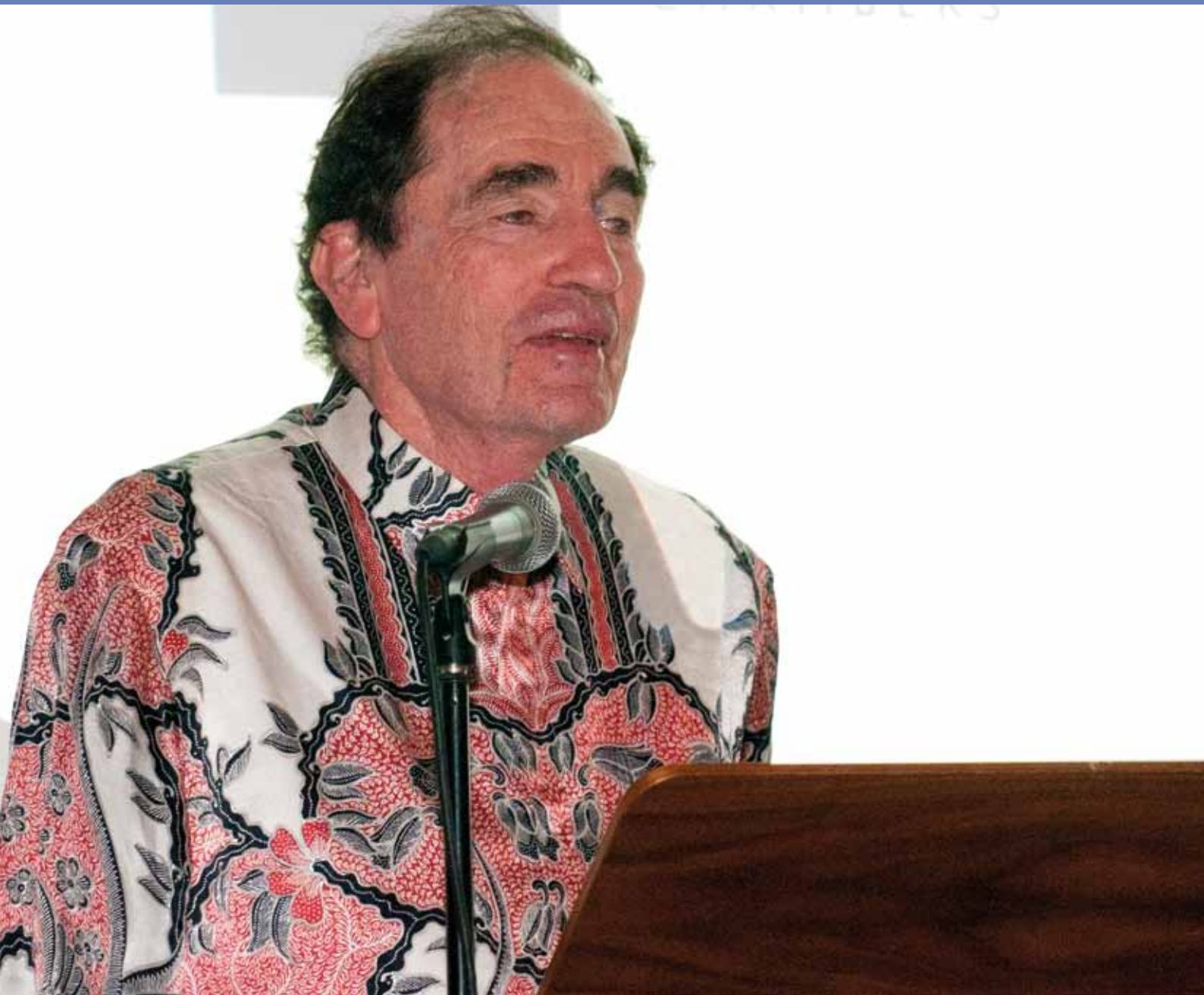
### **How to Make the Perfect Complaint**

The Local Government Ombudsman, The Housing Ombudsman's Service, Consumer Focus, The Energy Ombudsman, OTELO.

## Thanks

**PLP would like to thank everyone who has contributed to our success over the last few years. Without the continued support and commitment of volunteers, lawyers acting pro bono, the voluntary and community sector, public law advocates in the public sector and members of the judiciary, none of this would be possible.**

Albie Sachs making the keynote address at PLP's 21st Birthday party, March 1st 2011







**The Public Law Project**  
**150 Caledonian Road**  
**London N1 9RD**

[www.publiclawproject.org.uk](http://www.publiclawproject.org.uk)

**Casework • Consultancy • Training • Policy work • Research**

The Public Law Project is a company limited by guarantee (registration number 2368562),  
and a registered charity (registration number 1003342)