THE PUBLIC LAW PROJECT

Public Law Project

10th anniversary report

2000

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The Public Law Project

The Public Law Project (PLP) is a national registered charity founded in 1990 with the aim of improving access to public law remedies for people whose access to justice is restricted by poverty, discrimination or some form of disadvantage. Within this broad remit PLP has adopted three main objectives:

- Increasing the accountability of public decision-makers;
- Enhancing the quality of public decision-making; and
- Improving access to justice

What is public law?

Public law is the set of legal principles which govern the exercise of power by public bodies.

What are public bodies?

There are many public bodies of various kinds who take decisions everyday which affect the lives of thousands of individuals. They include government ministers and departments, local authorities, the prison service, NHS Trusts, coroners' courts and many more.

What are public law remedies?

There are many procedures by which citizens can challenge the legality of decisions made by public bodies. They include:

- **Judicial review**, court proceedings in which a judge is asked to review the lawfulness of the decision which is being challenged;
- **Complaints procedures** such as the social service complaints procedure; and
- **Ombudsman schemes** such as the Local Government Ombudsman, and the Parliamentary Commissioner for Administration.

Why is public law important?

Public law remedies are the means by which public authorities can be held to account. In the absence of effective and accessible mechanisms of accountability, the exercise of power by central and local government, and the many other public bodies, may go unchecked.

The decisions of public authorities have a particularly significant impact on the lives of those facing poverty, discrimination or disadvantage. Such decisions may determine whether health care is to be provided, whether a social security benefit is to be awarded, or whether a place in a care home is to be allocated to an elderly person awaiting discharge in hospital. Yet, despite being the very people who have the most to lose from an unlawful or unfair decision, those facing disadvantage are the ones also facing the greatest obstacles to accessing the public law remedy. The Public Law Project aims to tackle those obstacles and improve access to justice.

Chair's Foreword

Kate Markus
Chair, Public Law Project (PLP)
Management Committee

It was in the late 1980s, when local government legislation was undergoing major revision, and central government spending controls were impacting heavily on local services, that I pulled together a small group of people to discuss the establishment of a national public law resource. The idea was not new, but the impetus was. The diminishing role of the state as provider and the move towards self-reliance, the privatisation of many public services, and the rapid growth in public law, all served to highlight the need for effective legal services in the public sphere. We wanted to establish a creative, strategic legal resource that could apply its skills not only to achieving the direct enforcement of individual rights but also to achieving wider change. We quickly gained the support of lawyers and legal services agencies, the wider voluntary sector, academics, local government bodies, trades unions and community groups. Having seen the Project grow from conception to birth 10 years ago, and from there to its current strength, I am delighted to be writing now in its 10th anniversary year.

As with any developing organisation, we have needed to pause at times to reflect and reorganise to ensure that we are responding effectively to increasing demands. We have done so successfully, without losing sight of our original objectives and the reasons for our existence. Lawful public decision-making, accountability and access to redress are vital to any democratic society.

This is not to say that the challenges have remained the same. The world in which PLP works is not the same as the one in which it was formed 10 years ago. This year will see the long-awaited implementation of the Human Rights Act 1998, which will change the face of public law forever, creating rights and protections not previously known in our domestic courts. It is also the year in which the Community Legal Service has been launched. It arrives with a scheme for publicly funded legal services which has started to recognise the public interest in challenging public wrongs, a recognition which PLP has sought for many years.

However, these opportunities will not translate into real benefits for those facing discrimination and disadvantage unless there is equality of arms when challenging public authorities on whose decisions their very essentials of life and livelihood may depend. At PLP, we are concerned that the restrictions on the provision of legal representation in the Community Legal Service may generate greater inequalities. Access to effective public law remedies, and to expert legal advice and representation in their use, is as essential as it was 10 years ago, but it remains, as yet, an objective that PLP will continue to strive for, rather than the reality for many.

I would like to take this opportunity to thank the many people who have supported PLP over the years not only financially, but with generous donations of their time and energy. I hope you will stay with us through our second decade.

The first 10 years
the work of the Public Law Project

In the absence of effective and accessible mechanisms of legal accountability, the exercise of power by central and local government, and the many other bodies charged with governmental functions, goes unchecked, and the democratic process is fundamentally undermined. The Public Law Project (PLP) seeks to tackle the barriers to effective accountability for those who are excluded from the processes by which that accountability is maintained. Uniquely, for an organisation of its kind, PLP combines casework, empirical research, policy initiatives and training to achieve its objectives. The measure of the value of any of its work must be whether it offers real benefits to those facing discrimination and disadvantage. After 10 years, it is perhaps the right time to reflect on our work to date.

Early Steps: Identifying the problems

PLP's earliest project, carried out jointly with the University of Essex, and funded by the Nuffield Foundation, was the first major study of access to and the use of judicial review.[1] The first findings, published in 1993, were used by the Law Commission in its comprehensive review of the judicial review procedure. The study found a relatively small number of applications outside the "core areas" of immigration, housing and crime, and asked why there were so few challenges in so many key areas of governmental activity affecting vital rights and interests? It concluded that:

"...[H]owever accessible judicial review may seem in purely legal and procedural terms, other factors such as its geographical location, the availability of funding or of expert legal advice and assistance, or the perceived formality of the procedure continue to provide barriers to its use."

This work provided a springboard for many of PLP's subsequent initiatives.

Moving on: Tackling the problems

Improving access to expert legal advice

With the assistance of donations from the legal profession, PLP employed its first project solicitor in 1993. Early casework focused on community care, an area in which judicial reviews were virtually unknown. Limited expertise meant that disabled people did not have access to the means of challenging unlawful decisions that determined the provision of vital services. Development work in this area was partly funded by the Legal Aid Board for participation in research by the Policy Studies Institute into alternative methods of legal service delivery.

A guide, *Challenging Community Care Decisions*, was produced to assist both disabled people and their advisers. PLP accepted a number of complex and test case referrals. What has become known as the Gloucestershire case[2] reached the House of Lords in February 1997. It raised the key question: to what extent are social services authorities permitted to take their own financial resources into account when assessing the needs of a disabled person?

The community care cases referred to PLP often involved aspects of health service provision, yet another underdeveloped area of public law, which was specifically identified as such in the judicial review research. A successful application to the National Lottery Charities Board brought funding for the project *The NHS — Know Your Rights*. PLP's NHS advice line ran for two years from July 1997 and generated enquires about a range of problems ranging from GPs striking off patients from their registers, to refusals to provide various kinds of treatment, and refusals to provide access to medical records and other vital information.

As PLP has become more widely known for its high level expertise in public law, the demand for its services across all areas which impact on the disadvantaged has increased rapidly. The breadth of our work is evident in the range of our recent judicial review cases in the fields of debt, social security, immigration, community care and mental health. One of PLP's Project Solicitors, John Halford, reviews casework at PLP over the past year

in more detail and looks at what we hope to achieve with our current initiatives (page 6).

Funding legal advice and representation

Legal costs are the biggest deterrent to the use of judicial review, and, for many, access is dependent on the availability of public funding. For this reason, PLP has actively campaigned over many years for reforms to the Legal Aid scheme.

That scheme has been abolished this year with the implementation of the Access to Justice Act 1999, which introduced a new system for publicly funded legal services. Solicitors and not-for-profit agencies can now only provide advice and assistance if they have a contract to do so with the Legal Services Commission. The number of contracted "suppliers" overall represents a drastic reduction on the number of solicitors firms undertaking Legal Aid work under the old scheme. The implications for accessing legal advice are of serious concern. PLP continues to work in this area, participating in fora which allow opportunities for critical, but constructive, debate, and responding to consultations on various aspects of the new developments. This will continue to be a priority for us for some time to come.

Litigating in the public interest

The reforms do have some positive aspects. Under the old Legal Aid system a particular concern was the way that "public interest" cases were treated within the scheme. Cases which raise issues which impact not only on the individual, but on a whole sector of the population, have enormous potential for protecting rights and for increasing and improving access to justice. This is of particular significance for vulnerable groups, such as elderly people, who are much less likely to be in a

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position to undertake litigation themselves. In conjunction with other members of the Public Interest Litigation Group, which it convened, PLP proposed a ring-fenced Public Interest Fund within the Legal Aid scheme. This proposal was given serious consideration by the Lord Chancellor's Department and the Legal Aid Board, and representatives from both attended a seminar on the proposal organised jointly with the Law Society, and other organisations, in April 1998. Although the proposal for a separate fund was eventually rejected, public interest cases have been given a degree of priority under the new Funding Code which provides the framework for Community Legal Service funding decisions.

The Legal Services Commission, successor to the Legal Aid Board, is to be advised on the funding of public interest cases by the Public Interest Advisory Panel, a proposal welcomed by PLP in its detailed response to the consultation on the new Funding Code last year. We were pleased to be invited to nominate a member of that panel and we will be watching its development with considerable interest.

Lack of funding deters organisations

However, as matters currently stand, public funding is not available to organisations who wish to apply for judicial review themselves on behalf of their client groups, even though, in doing so they are acting not in their self-interest, but in the public interest. This can mean that wrongs go unremedied, because there is no individual willing or able to bring the challenge. Sometimes the respondent public authority settles each individual case in the hope of preserving its policy, which it will then apply to others in the same circumstances. Public interest challenges brought by organisations against the unlawful policy itself are vital in these circumstances. The potential of this practice was one of the issues explored at the conference, *Litigating in the Public Interest*, organised by PLP in 1996. PLP has sought to turn the theory into practice by acting for voluntary sector organisations in a number of cases, for example: Help the Aged (charging elderly people for residential care); the Immigration Law Practitioners Association (reforms to the procedure for applications for leave to remain); and a Community Health Council (independent inspection of nursing homes).

The main obstacle to the development of this practice is the risk the organisation faces of being ordered to pay costs if they are unsuccessful. PLP acted for Amnesty International UK and The Redress Trust in an application for a protective costs order to counter this risk. The application was heard jointly with one made independently by the Child Poverty Action Group. This established that the court had the power to make such orders, although it refused to do so in either of these cases.[3]

In addition to bringing cases as applicants, non-governmental organisations may also intervene in public interest cases brought by others. Third Party Intervention is a process by which such organisations can represent the interests of groups who

will be affected by the outcome of the proceedings, but who are unrepresented in them. Third party interventions are extremely rare in this country, although well established in other jurisdictions such as Canada. PLP has taken a leading role in developing this innovative practice. In 1995, jointly with JUSTICE, PLP convened a working party chaired by (the then) Mr Justice Laws. Their report, *A Matter of Public Interest*, made recommendations for reforms to assist its development. PLP has recently been awarded a grant by the Nuffield Foundation to undertake an action research project to investigate and develop the practice. Our researcher, Deana Smith explains this project in more detail (page 12).

Formality of Litigation – the Alternatives

The perception that judicial review is a formal and complex process is undoubtedly a barrier to its use. In fact it is, procedurally, quite straightforward. PLP has sought to tackle the misperception through its educational activities. The PLP publication, *Is it Lawful?*, aims to explain judicial review to the lay person. In addition to establishing a regular and popular national two-day training course in the practice and procedure of judicial review, PLP has also responded to many requests to provide tailored training for particular organisations. We are now seeking to extend our educational activities. Our new training and development officer, John Kruse, was appointed earlier this year, with the assistance of funds from the National Lottery Charities Board. He looks at the work to date and our plans for the future (page 15).

Judicial review is only one of many public law remedies. For many individuals the courts are a frightening prospect or are not a practical option. Alternative remedies such as complaints systems and ombudsmen schemes have an essential role to play in ensuring public authorities are held to account. In his 1996 report of his review of the civil justice system, Lord Woolf recommended that judicial review be conserved as a remedy of last resort. The alternatives such as complaints procedures and ombudsmen schemes should be exhausted first.[4]

PLP has a number of concerns about an "ultimate rung" strategy of this kind, particularly where there are real questions as to the effectiveness of the alternatives available. Some of these concerns were addressed at PLP's 1997 conference on alternative dispute resolution in the public law field, *Alternatives to courts: Obligation or Option,* which Lord Woolf addressed as the keynote speaker.

PLP has sought to improve the effectiveness and accessibility of alternative remedies in a number of ways. Putting such procedures under the spotlight of empirical research is an effective means of exploring how improvements could be made. This was the approach taken in the evaluation of the NHS Complaints procedure. Henrietta Wallace, PLP's researcher on the project outlines on page 11 the main findings of the research and how they have been used in an effort to achieve changes for the benefit of patients.

Mechanisms for the provision of feedback from those who represent users of alternative remedies is also invaluable. The Local Government Ombudsman is one of the most commonly used public law remedies. Following a PLP seminar in 1996, reviewing the Local Government Ombudsman scheme, PLP initiated the establishment of an annual forum of consultation between voluntary sector organisations, with experience of user problems, and the Commissioner for Local Administration, which has now met on four occasions. It provides an opportunity for the LGO to report on initiatives and to receive comments on the effectiveness of the scheme from those who are in close contact with its users.

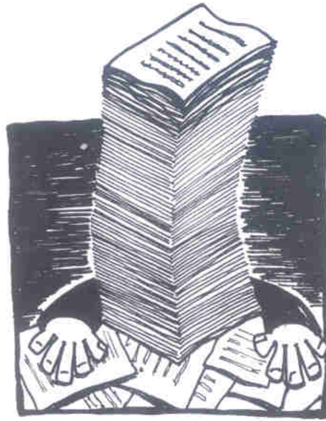
It is important that alternatives to the courts are used appropriately and effectively. We are very pleased to have been invited to join the Advice Services Alliance working group developing training in the use of alternative dispute resolution.

Notes

1 L. Bridges, G. Meszaros, and M. Sunkin (1995) Judicial Review in Perspective Cavendish
2 R v Gloucestershire CC ex p Barry [1997] 2 All ER 1
3 R v Lord Chancellor ex p CPAG [1998] 2 All ER 755
4 Lord Woolf Access to Justice July 1996

The Future

Already this year we have seen a radical overhaul of publicly funded legal services, in October the Human Rights Act 1998 will come into force and, before the year is out, there will be changes to the procedural rules for judicial review. In the last few weeks alone, we have received consultation papers on reforms to the main ombudsmen schemes, on a review of the tribunal system and on proposals to make the social services complaints procedure more effective. Although appearing far removed from the daily decision-making which determines the grant of a welfare benefit, or the refusal of a community care service, all will impact eventually on those who stand to gain or lose in the most fundamental of ways by such decisions. There remains work to be done and one can only wonder what the next 10 years will bring.



Casework

PLP has adopted a litigation strategy which priorities cases which have implications far beyond the individual or organisation applying to court. We aim to be proactive, identifying issues where improved access to public law remedies, judicial review in particular, would most benefit disadvantaged groups in society. Our advice work is targeted at 'first tier' community groups, advice agencies and other solicitors in order to build local knowledge of public law remedies and practical experience of their use.

Public interest litigation

Rights vs. resources

As mentioned in the introductory section, PLP has continued to develop its work in the fields of community care and, more recently, health law. A persistent theme is the tension between, on the one hand, the legal framework for provision of services by the state and, on the other, the limited resources available. Often this manifests itself in a denial of basic social rights.

For example, section 117 of the Mental Health Act 1993 imposes a duty jointly on health authorities and social services authorities to provide after care services to people who have been detained for treatment. The duty continues until the health authority and social services authority are satisfied that the individual is no longer in need of the service. Around the country different local authorities took differing approaches to whether they could charge for residential after care. PLP initiated a test case against two local authorities which maintained that they could. The High Court held that the section establishes a free-standing duty to provide services, for which there is no power to charge. The local authorities appealed, but the Court of Appeal upheld the High Court decision. The case has implications for thousands of people all over the country.

If anything, resources have an even greater impact upon decisions in the health sector and patients have no directly enforceable statutory rights to health care. Over the last two years, PLP has nevertheless explored how far health decisions are subject to public law principles, partly through our work on the complaints procedure discussed elsewhere in this report, but also through litigation. For example, we acted for a severely autistic ten-year-old girl who suffers from double incontinence. Last autumn, her father was informed that her supply of disposable nappies from the NHS Trust would be reduced, a decision the Trust acknowledged was wholly "finance driven". A complaint was unsuccessful and his local community health council referred the case to PLP. A letter before action pointed out the defects in this decision. There had been no consultation on the change in policy, it amounted to a ceiling on treatment for reasons which had nothing to do with clinical need, and ignored national guidance. The Trust agreed to amend its policy (potentially benefiting 3000 users of the incontinence service) and to reassess the client's needs. Unfortunately, that assessment was also flawed and very much at odds with the views of the child's doctors. Again judicial review was threatened. The Trust ultimately settled the case by agreeing to provide the original quantity of nappies. Similar cases include a challenge to a Health Authority's policy on referring patients for treatment outside the NHS, and judicial review of a Trust's over-rigid interpretation of its clinical management policy. Both were settled in our clients' favour.

The right to know

The lack of substantive rights to health care means that transparent and open decision making by administrators and health care professionals represents a critical check on simple mistakes and, in extreme cases, abuse of power.

For example, two of our clients suffer from debilitating allergy conditions which manifest themselves as a chronic intolerance to many foods and substances occurring in everyday life. In 1996, they were referred to a private hospital that specialises in treating this problem. The Health Authority refused to fund the treatment, however and they challenged this using the complaints procedure. At an early stage, the patients asked to see reports that the Health Authority had commissioned about the effectiveness of the treatment sought, along with results of a survey of other health authorities that funded treatment at the hospital, internal policies and criteria for funding referrals. The Health Authority refused. All these documents were said to be 'confidential'.

We brought judicial review pro-

ceedings arguing that the reports were health records (to which there is a statutory right of access) and that the patients' right to a fair hearing of their complaint subject to the principles of natural justice had been violated. Permission was granted for the judicial review to proceed by a judge, after which the Health Authority disclosed the reports and other documents. These revealed that one doctor had expressed no opinion at all and another considered the patients' problems to be psychological, despite having never met them. The Health Authority has since accepted the patients are entitled to an independent clinical assessment of their needs. PLP aims to incorporate the lessons learned from this and other similar cases taken during the year into a future publication dealing with the new rights to access health information introduced by the Data Protection and Human Rights Acts passed in 1998 and the Freedom of Information Bill, when implemented.

Opaque decision making is, however, not a problem exclusively confined to the NHS. In *R v Calderdale Council ex parte Houghton* our client successfully challenged a local authority's four-stage appeal procedure for determining the charges to be paid for community care in the home by people receiving benefits. At the third stage of the procedure, she won her appeal leading to a reduction in charges, yet at the fourth the original charge was restored. No explanation was given for either decision. Permission for judicial review was granted, primarily because of the lack of proper reasons for the ultimate decision. The local authority then settled the case on the basis that it would re-hear the appeal, revise its guidance and introduce a considerably simplified appeals procedure benefiting all of its residents receiving home care. Other successful judicial review challenges to decision making processes have led to an appeal being granted to the Social Security Commissioners from a Social Security Tribunal which did not explain why it had disregarded medical advice, and to the Home Secretary's unlawful delay in determining an application to revoke a deportation order.

The other side of the coin of transparent decision making is proper consultation by public bodies before services they provide are withdrawn or changed. PLP is often asked to advise groups and voluntary organisations on their rights to be consulted on issues as diverse as grant cuts, charging for residential care, closure of respite facilities and cuts in nursery opening hours. We aim to consolidate our experience later this year in the form of a publication aimed at groups seeking information about what the law requires when public bodies consult.

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Matching rights with remedies

Perhaps our most cutting edge casework has been the head-on challenges we have mounted to the barriers that prevent disadvantaged groups effectively accessing the courts and other public law enforcement machinery. Unsurprisingly, given the nature of this work, our success has been mixed.

In *R v Lord Chancellor ex parte Lightfoot* the requirement of paying a deposit towards the costs of the Official Receiver, which prevents people in serious debt from becoming voluntarily bankrupt, was challenged as breaching the fundamental common law right of access to the courts. There are many who have no escape from interminable indebtedness, with all the stresses on health and family life that this brings, except bankruptcy. For those who do not have the £250 deposit even this route is closed off to them. The challenge was unsuccessful in the courts here, though we are now petitioning the European Court of Human Rights.

Our challenge to the Lord Chancellor's failure to provide Legal Aid for complex social security appeals raising questions of EC law had a happier outcome: it was conceded that there was power under the Legal Aid Act 1988 and the Access to Justice Act 1999 to fund such cases, albeit wholly outside the normal schemes. As a result an appellant before the Social Security Commissioners received publicly funded representation for the first time in June this year.

The EC Law dimension enabled the Lord Chancellor's Department to be confronted directly with the provisions of Article 6 of the European Convention on Human Rights, prior to its incorporation later this year.

Advice work

Although the number of cases we can litigate is relatively small, we supplement this with advice through two help lines.

The first is supported by the National Lottery Charities Board and is primarily targeted at those who provide advice to the public, but without a contract to do so with the Legal Services Commission. This includes, for example, local advice centres, advocacy networks for older people or people with learning difficulties, and community groups of many kinds.

The second, the Human Rights and Public Law Line, is open to other solicitors and agencies with a Community Legal Service contract. The service is provided jointly with Liberty and is operated under a pilot contract with the Legal Services Commission, which is exploring alternative methods of delivery of legal services. The service offers consultancy and training support on a second tier basis to front line advisers, and acceptance of complex case referrals. In the first six months of this new service we have dealt with queries on matters as diverse as the lawfulness of DVLA policy on acceptable identity documents for processing driving licence applications by asylum seekers, the susceptibility of educational institutions to judicial review and retrospectivity in changes to time limits in the Civil Procedure Rules.

The Future

PLP has expanded its casework services considerably since Stephen Cragg, our first solicitor, began work in 1993. By 1997 we had three lawyers, Hamish Arnott, who now heads the Prisoners' Advice Service, Jean Gould, now the convenor of Tyndallwoods public law team, and Karen Ashton. Nick Sheppard, who joined PLP in 1998, is now a legal officer to the Social Security Commissioners. The casework team presently consists of Karen Ashton, Conrad Haley and John Halford. Their work is complemented in-house by legal research volunteers, and externally by specialist barristers who donate their time and expertise *pro bono*. Both invaluable contributions have helped to ensure PLP's casework has had an impact beyond what one would normally expect of an organisation of this size. Yet demand for PLP services still outstrips what we can provide. We have been forced to rethink carefully our use of limited resources. We need more caseworkers, but expansion is not the only answer. Our priorities this year are to develop a sound outward referral network, in combination with improving our support services to front line advisers through consultancy and training.

This year also brings the Human Rights Act, which will impact upon all aspects of our casework. We are anxious, though, to ensure it does not overshadow them: many important social rights are outside the Act's scope and common law principles will remain the main tool for their enforcement. The Act's prohibition on actions by representative groups make our work on public interest interventions all the more critical and we are also keen to develop alternatives to litigation in the new human rights context, since for many recourse to the courts will remain only a theoretical option. PLP has a unique contribution to make to what is perhaps the greatest challenge posed by the Act – ensuring the rights it introduces will be truly practical and effective.

Policy and research

Whilst we aim to respond to key policy initiatives by government which impact squarely on our objectives, our own initiatives are currently based on empirical research projects. Policy and research have never been seen as distinct types of activities at PLP. Research is generally undertaken to explore and develop policy proposals. Such initiatives, developed in this way, can be extremely effective in influencing agenda and reform.

Our two most recent projects are the evaluation of the NHS complaints procedure, completed earlier this year, and the current action research on the practice known as third party intervention in judicial review.

Evaluating the NHS Complaints Procedure

In July 1997, the Public Law Project received funding from the National Lottery Charities Board to carry out the first, independent, national evaluation of the operation and effectiveness of the NHS complaints procedure, introduced in April 1996. PLP's aim was to evaluate the procedure from the perspective of health service users, looking at issues of fairness and independence and complainants' satisfaction with both the handling and outcome of their complaint.

Data was collected from UK wide surveys of Community Health Councils, NHS Trust and Health Authority convenors, and chairs of Independent Review Panels, and from in-depth interviews with complainants, health services personnel and health councils.

The project also benefited from the input provided by the invitees to a conference in March 1999, chaired by Polly Toynbee. It was attended by over one hundred key stakeholders from the health, consumer and legal sectors. The discussion raised awareness among a wide range of interest groups of the current problems with the complaints procedure, and ideas and comments were fed into the conclusions and recommendations of the complaints research. What was striking was the degree of consensus across both patient and professional groups about the need for reform and also positive comment and debate about PLP's proposed improvements for the procedure.

The report, *Cause for Complaint?*, was launched in September last year at a seminar addressed by Claire Rayner, President of the Patients Association. The report received widespread coverage in the national and specialist press. Four of its key recommendations were as follows:

Reform of local resolution in primary care

- As a matter of priority, the Department of Health (DoH) should reform local resolution in primary care to enable users to complain directly to an officer who is independent of the practice concerned and who has responsibility for overseeing investigation of the complaint.

Proposals for complaints which raise serious questions about performance

- The DoH should develop a framework for 'fast-tracking' complaints which raise serious questions about performance, conduct or competence which puts patients at risk.

Proposal for the reorganisation of the independent review process

- The DoH should establish independent regional complaints centres which are responsible for handling complaints which fail to be resolved at local resolution.

Demonstrating the accountability of the NHS and its staff

- In primary care, health authorities should be given authority actively to monitor complaints handled under practice-based complaints procedures.
- At independent review, panel reports should be able to recommend that disciplinary action be considered.
- The disciplinary process should be made more transparent and complainants should be routinely informed of the outcome of disciplinary action.

This research has proved timely. It has reached the public domain just when there is unprecedented concern about the accountability of the NHS and its clinicians. The research was submitted to the Health Select Committee as part of its investigation into adverse clinical incidents and outcomes, and was published as an annex to their report which similarly recommended urgent and radical reform.

Third party intervention in judicial review

This 'action research' project follows previous work reported in *A Matter of Public Interest* published by PLP together with JUSTICE in 1996. Funded by the Nuffield Foundation, this project aims to develop the legal practice and procedures for making third party interventions in judicial review applications that raises issues of public interest.

Judicial review cases increasingly deal with fundamental moral, social, economic and policy matters. They often raise important issues of public interest that go beyond the personal interests of the parties involved in the litigation. Consequently there is growing recognition by the judiciary of the need for specialist information and expertise to assist the court's decision-making; thus enhancing the legitimacy and authority of its decisions.

Third party interventions are a method by which an organisation that is not otherwise involved in judicial review proceedings may submit specialist information or expertise to the court. They have a particularly important function in public interest cases affecting vulnerable or disadvantaged groups whose interests may otherwise be unrepresented.

There are two methods by which a non-litigant may bring information before the court, as illustrated by the two examples opposite.

In the first example, the RCN presented argument that was independent of the parties to the litigation, whereas in the second, PLP acted as a sort of expert witness to one of the parties. The project is interested in both methods of "intervening", although the first more properly represents a true "third party intervention".

Third party interventions by public interest groups are relatively common in many other jurisdictions. In this country they are beginning to be used more widely to represent the interests of others affected by a decision. However a number of factors currently inhibit the further development of third party interventions:

- No publicly-accessible register of pending judicial review cases exists. Thus the public interest issues involved cannot be identified at a sufficiently early stage in proceedings and organisations must instead rely upon informal networks.
- Many organisations have no in-house legal expertise and little, if any, experience of litigation. As a result, they are unaware of the possibilities for submitting interventions.
- There are no express procedures for making third party interventions in support of an application for judicial review. This means that many organisations, particularly those without access to legal expertise, do not know how to go about intervening in a case.

The project aims to address these factors by identifying civil judicial review cases that have public interest implications and investigating the potential for third party interventions in these cases, including the difficulties encountered. The findings and recommondations to support and develop the practice of making interventions in the future will be published in a report including recommendations to support and develop the practice of making interventions in the future. In addition, a practical guide will be produced for voluntary sector organisations wishing to make public interest interventions.

Case example 1: ex parte Coughlan:

This case raised a question of whether a chronically disabled patient should receive nursing care as a social service from her local authority, for which she would be means tested for payment, or whether the care should be provided free of charge by the NHS. The Royal College of Nursing made an intervention to argue two points that were relevant to this issue:

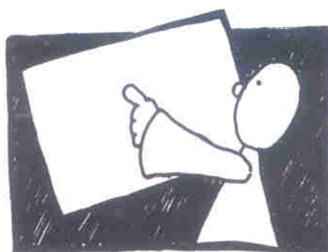
a) that nursing care should be provided free of charge by the NHS to patients in nursing homes as it is to those in hospitals or their own homes; and

b) that the respondent health authority was wrong in law to distinguish two types of nursing care, one of which was the responsibility of local authorities rather than the NHS.

Although the intervention was in support of the applicant, the issues raised by the RCN also affected the interests of the nursing profession which would otherwise have been unrepresented.

Case example 2: ex parte Witham:

This case concerned the removal of exemption or remission of court fees. It was challenged on the ground that persons on low incomes were effectively denied access to the courts in proceedings where legal aid is unavailable. The Public Law Project provided evidence by way of an affidavit (witness statement) in support of the applicant. This gave examples of various categories of cases where individuals on low incomes had been prevented from going to court, often with potentially serious consequences. In giving judgment that the removal of the exemption or remission infringed the constitutional right of access to the courts by barring poorer people from them Laws J referred to PLP's evidence of the wide-ranging impact of the increased fees. By bringing this issue before the court, PLP had therefore assisted and influenced its decision.



Education and outreach

Education and outreach are important parts of PLP's development strategy. They are effective ways of promoting our services to a wider audience. They also help us make contact with those working with disadvantaged groups and enable us to keep up to date with developing problems and needs.

Training

PLP has been fortunate to receive a two-year grant from the National Lottery Charities Board to enable it to employ a Training & Development Officer for two years. This work started at the beginning of January 2000 with a brief to organise and revitalise PLP's education and outreach work.

Education and outreach is important to PLP's overall objectives. The work enables us to encourage and support local solicitors and advisers in developing expertise in public law. As such, it is an essential part of our developing second tier support role. However, it also allows us to develop links with potential client groups and also with other public law specialists.

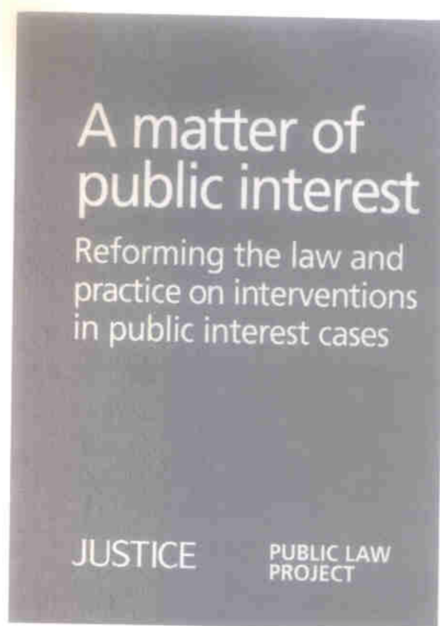
In the past, PLP established a reputation as a training provider through the range of events it organised, including lectures, seminars, conferences and courses, and written materials on various topics. Our current aim is to arrange a more strategic and extended programme of events, develop written and IT materials over the next two years, and to explore whether the training post can become self-funding.

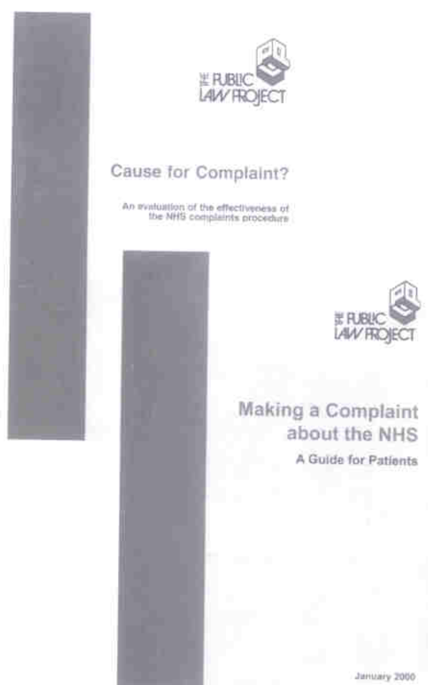
In the past year we have provided training for a number of very different audiences on a variety of subjects. These have included:

- *Advocacy before social service complaints panels* for an advocacy network for older people.
- *Judicial review in the Community Care Context* for Citizens' Advice Bureaux in the North East, and for a solicitor network in the South East.
- *Human Rights and NHS Services* for law centre practitioners.

Contact has been made with voluntary sector organisations to explore their training needs, and this is ongoing. This has generated a large number of requests for training and conference presentations and we are currently developing materials on various topics in order to meet these immediate needs. It will also provide us with a "bank" of training materials on which we can base the development of our own full year's training programme within the next 12 months.

It is not surprising that many practitioners are looking for good practical training in anticipation of the Human Rights Act coming into force on 2 October this year. The Legal Services Commission is jointly funding PLP and Liberty to run a series of subsidised courses, around the country, which take a practical approach to the Act. They are proving so popular that an additional session had to be arranged within the first few weeks of being advertised. This work is part of that undertaken under the pilot contract with the Legal Services Commission for the provision of a second tier support service in public law and human rights.





THE PUBLIC LAW PROJECT

Is it lawful?

A Guide to Judicial Review

by
Brigid Hadfield,
Stephen Cragg,
Jane Winter

Publications

Another important part of education and outreach is written materials. These reinforce, or sometimes replace, face-to-face training sessions, and allow detailed treatment of particular subjects. PLP has a tradition of producing publications linked to both its casework and its research. This pattern is set to continue. Our popular introduction to judicial review, *'Is it lawful?'*, is being rewritten and updated for publication later this year.

So far in 2000 we have produced two new publications. The *NHS complaints guide* builds upon *Cause for Complaint*, the influential and successful report on the evaluation of the NHS complaints procedure, by providing practical advice to those dealing with the system. It has proved to be very useful, and has been enthusiastically received by patients, FPCs, health trusts and practitioners. An example of this is the fact that it has been incorporated into a training CD ROM for CHC chief officers. We also issued an updated and amended version of our 1992 *Model code of practice for bailiffs employed by local authorities.* This was done as a response to the review of bailiffs' law conducted for Lord Chancellor's Department by Professor Jack Beatson QC and in order to stress that since 1992 only superficial change has occurred that has failed to address the faults identified in the 1992 code.

Articles are another useful way of offering information and updating to practitioners, and also to generate interest in areas of work which do not often attract attention. Recent published pieces include:

- *Reform of bailiffs' law*, an article promoting the reissued model code of practice and commenting upon the current bailiffs' law review, in summer 2000 edition of *Quarterly Account* (journal of the Money Advice Association).

- *Introduction to the Human Rights Act*, a short survey of the 1998 Act and of the European Convention on Human Rights forthcoming in *The Adviser* magazine. Subject specific pieces will follow, such as Human Rights & Money Advice.

- *Rights and Resources in the New NHS* in Legal Action, June 2000.

- *A Right to Representation*, examining access to funding from the Legal Services Commission for hearings before the Social Security Commissioners, in Legal Action, July 2000

- Other articles and information briefings are planned.

Web site

A new contribution to our educational and outreach initiatives is our planned web site. The site will be up and running in late Autumn this year and will offer basic advice and information, allow visitors to order publications or places on training courses and provide regular updates on public law and the work of PLP. The site will primarily offer a permanently accessible source of information about public law issues (the first on the web), and a new outlet for our publications and training services. However, we hope that it will eventually provide a new source of contact with advisers and the public to enable us to keep track of developing trends and issues.

Publications list

New in 2000

Making a complaint about the NHS: a guide for patients
Written by Henrietta Wallace and published in January 2000, this comprehensive guide for users tells people about the NHS complaints procedure and gives advice and tips about how to get the most out of the process to achieve a satisfactory response. The guide also gives advice about other routes for redress when the complaints procedure cannot deal with the issues in question.

■ There is no charge for this guide, but please send an A4 SAE with 57p stamp per copy.

Local authority bailiffs' code of practice
The code of practice was drawn up in 1992 by a working party of representatives from a large number of national and local voluntary consumer organisations and advice services. The document recommends a model complaints procedure and code of practice on local authorities' use of bailiffs in the enforcement of community charge and council tax. It was updated and reissued in May 2000 with an amendment sheet that includes changes to the council tax legislation since 1992 and PLP's response to the review of bailiffs' law by Professor Jack Beatson QC.

■ The revised code is available for £2.75, inclusive of postage and packing.

Other publications

A matter of public interest: Reforming the law and practice on interventions in public interest cases.
This publication is a report of a working party, convened in 1996 jointly by PLP and JUSTICE to examine and make recommendations on interventions in public interest litigation. The working party, chaired by Mr. Justice Laws, comprised of members of the judiciary, leading academics and senior practitioners in the public law field. The report focuses on two issues: the ability of individuals, groups and organisations to litigate in their own name in public interest cases and the possibilities for intervention as a third party in such cases. It includes a number of important recommendations backed by a set of new court rules. This is essential reading for anyone with an interest in public interest litigation.

■ The report is available for £5.00 including postage.

Is it lawful? A guide to Judicial Review
Written in 1994 by Brigid Hadfield, Stephen Cragg and Jane Winter, this text is an introduction to the subject of judicial review, this booklet is designed to assist voluntary sector workers and advisors in identifying potential judicial review cases and understand the judicial review procedure.

■ We are currently in the process of producing a new edition of the guide, but the old edition is still available for £5.00 inclusive.

Review of the Local Government Ombudsman (LGO)
In June 1996 a seminar was convened by PLP to bring together voluntary organisations, legal practitioners, advice agencies and Local Government Ombudsmen to discuss the LGO system and its future. The aim of the seminar was to ensure that the user perspective was fully taken into account in the review process.

■ That review process has now reached the stage of consultation and we still have available Volume I – the Report of Proceedings (free) and Volume II – the Background Papers (£5.00 + £1.50 p&p).

Cause for Complaint? An evaluation of the effectiveness of the NHS complaints procedure
This report by Henrietta Wallace and Linda Mulcahy presents the results of the first national evaluation of the effectiveness of the NHS complaints procedure, which was introduced in April 1996. The research was conducted from the perspective of users and looked at issues of fairness, independence and user satisfaction with the process. A need for far reaching reform of the complaints procedure is identified to make it more effective in holding the NHS to account.

■ The report was published in 1999 and is available free: please send A4 SAE with £1.41 p&p per copy.

Funding and staff

The Public Law Project (PLP) gratefully acknowledges the generous financial support received in the recent past in the form of grants and charitable donations from firms of solicitors, barristers' chambers, other organisations and individuals.

PLP extends thanks to all those who have generously given time and expertise, whether in the form of pro bono advice, participation in our education and outreach events, or in some other capacity, in order to assist us in achieving our aims.

Grants

The Joseph Rowntree Charitable Trust
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The Nuffield Foundation
Two Garden Court Chambers

Other support

Birkbeck College
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Health Service Journal
Jessica Kingsley Publishers
Jordans Publishing
Lovell White Durrant Solicitors
Oxford University Press
Rowe & Mawe Solicitors
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The Rt Hon Lord Justice Stephen Sedley
Mark Shaw
Keir Starmer
Peter Thornton QC
Alan Wilkie
David Wolfe

Finance

The Public Law Project's accounts are audited annually and copies are available on request.

Project consultancy and Pro bono legal work

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John Kruse Training and Development Officer (from January 2000)
Deana Smith Researcher (from August 1999)
Henrietta Wallace Researcher (to March 2000)

Volunteers

We are grateful for the dedication and service of our volunteers. The following individuals have provided us with invaluable assistance with administration, research and policy and casework during the past year:

Tim Baldwin
Laura Collignon
Valerie Flemming
Claire McCann
Mary Mason
Joanna Swiecka
Kathryn Tulip
Nicolas Rouquette
Rosie Garai
Ade Lawal
Isabel Portilla
Meriem Parkes
Frances Meyler

Management committee

Lee Bridges is a Professor and Director of the Legal Research Institute at the School of Law, University of Warwick and a member of the Legal Services Consultation Panel. He was Research Director of the Public Law Project until 1994 and has been responsible for a number of pieces of empirical research on judicial review.

Stephen Grosz is a partner at London solicitors Bindman and Partners, who specialises in public and administrative law and the European Convention on Human Rights. He is a member of the JUSTICE Council, and a Governor of British Institute of Human Rights. He is co-author, with Peter Duffy QC and Jack Beaston QC, of Human Rights: The 1998 Act and the European Convention (Sweet & Maxwell 2000) and has contributed a chapter on privacy in a Practitioner's Guide to the Impact of the Human Rights Act (Hunt & Singh eds., Hart Publishing, to be published later this year).

Kate Markus (Chair) is a barrister at Doughty Street Chambers specialising in public law. She previously worked for many years at Brent Community Law Centre and was Chairperson of the Law Centres Federation. She is a former member of the Legal Aid Board. She has been involved in the development and promotion of public legal services policy for many years and currently chairs the Bar Council Working Group on the Community Legal Service. She is also a regular contributor to journals on public law and is a part- time Employment Tribunal Chairperson.

Genevra Richardson is Professor of Public Law at Queen Mary and Westfield College, University of London. Member of Mental Health Act Commission 1987-93, Chair of Independent Inquiry into Care and Treatment of Darren Carr 1996-7, Chair of Expert Committee established to advise ministers on the Reform of Mental Health Legislation 1998-9, book review editor of Public Law from 1992. She has published widely in the areas of public law, criminal justice and mental health.

Linda Mulcahy is an Anniversary Reader in Law at the School of Law, Birkbeck College. She is a former research consultant at The Public Law Project and presently Chair of the Socio-Legal Studies Association. She has published widely in the areas of administrative law and law and medicine.

Clive Grace is Chief Executive to Torfaen County Council and is Honorary Secretary of the Society of Local Authorities Chief Executives and Senior Managers. He was a Director of Law and Administration at the London Borough of Southwark, Head of Legal Branch at the Inner London Education Authority, Parliamentary Policy Adviser and Law Centre worker. Former Chair of the Advice Services Alliance, he has been involved in legal services development since the early 1970s.

Patrick Lefevre is a founder member of the first publicly funded law centre in the UK and consultant adviser there since 1972. He has been involved in the development of policies concerning the future of legal services and has written extensively on the subject.

Melvin Coleman (Treasurer) is a Chartered Accountant and is the Finance Director of Amnesty International UK section. He was Director of Finance at the Engineering Industry Training Board and Head of Finance at the Consumers' Association. He is a founder member of the first publicly funded law centre in the UK and former Treasurer of the National Council for Civil Liberties.

Richard de Friend, Director of the College of Law in London since 1998, became a member of the College's Board in 1999. He was educated at University of Kent, LSE and Yale Law School and was called to the Bar in 1992. He taught Public Law at the University of Kent from 1973 till 1995, was Head of Kent Law School from 1985-90 and Pro Vice Chancellor from 1993-1998. He is an occasional member of the Social Security Appeals Tribunal, is currently a Governor of Mid Kent College and the Kent Institute of Art and Design, and has been a member of the Public Law Project's Management Committee since it was first established.

Dave Perry is a Research and Development Officer who previously worked for the Legal Services Trust. He was a Management Development Advisor for the Federation of Independent Advice Centres and Management Committee member and Treasurer of the UK's first Law Centre in North Kensington. As member of the Executive Committee of the Law Centres Federation he was Treasurer from 1989-1992 and a member of Advice Services Alliance Legal Services Working Party.

The Public Law Project thanks Management Committee members, who, over a long period of time, gave their support but resigned in the last year:
Hilary Kitchen (February 1999)
Tess Gill (June 2000)