Public Law Project

The Public Law Project's submission to the Ministry of Justice's consultation 'Extending Fixed Recoverable Costs in Civil Cases: Implementing Sir Rupert Jackson's Proposals'

June 2019

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Introduction

The Consultation

On 28 March 2019 the Ministry of Justice launched a consultation entitled 'Extending Fixed Recoverable Costs in Civil Cases: Implementing Sir Rupert Jackson's Proposals'[1] (the "Consultation Paper").

This document is the Public Law Project's (PLP's) submission to the consultation.

Background to the Consultation

The Consultation Paper addresses Sir Rupert Jackson's proposals made in his report from 31 July 2017 entitled 'Supplemental Report-Fixed Recoverable Costs'[2].

In short summary, Sir Rupert Jackson had been asked by the Lord Chief Justice and the Master of the Rolls to carry out a 2nd review (further to his 1st review in 2009/2010) of civil litigation costs. His review was assisted by fourteen assessors and involved

[1] https://consult.justice.gov.uk/digital-communications/fixed-recoverable-costs-consultation/supporting_documents/fixedrecoverablecostsconsultationpaper.pdf

[2] https://www.judiciary.uk/publications/review-of-civil-litigation-costs-supplemental-report-fixed-recoverable-costs/

consideration of detailed written and oral submissions. PLP made detailed oral and written submissions to Sir Rupert Jackson's review[3].

Sir Rupert Jackson dealt with judicial review at Chapter 10 of his report where he confirmed his view of the special role of judicial review in our constitution, the importance of access to justice, the limited availability of legal aid, and noted that his previous recommendation for QOCS for all judicial reviews had not been formally accepted or rejected.

Sir Rupert Jackson came to the following conclusions in relation to judicial review:

> *(i) Even though many JR cases fall into a standard pattern, costs are too variable to permit the introduction of a grid of FRC.*
> *(ii) CCOs are of little practical value, because the procedure for obtaining such orders is too cumbersome and too expensive. The criteria for granting CCOs are unacceptably wide and the outcome of any application must be uncertain. Also, that outcome will not be known until too late in the day.*
> *(iii) There would be merit in extending the Aarhus Rules, suitably amended, to all JR claims. The fact that most JR cases fall into a standard pattern makes it possible to set default figures as caps, even though it is not practicable to draw up a grid of FRC.*
> *(iv) The discipline of costs management should be available in larger JR claims, at the discretion of the court.*

Chapter 6 of the Consultation Paper addresses Sir Rupert Jackson's recommendations on judicial review. PLP works to promote access to public law remedies and these submissions focus solely on the judicial review proposals in Chapter 6 of the consultation, in line with PLP's remit and expertise.

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[3] Including our published written submissions https://publiclawproject.org.uk/wp-content/uploads/data/resources/253/170130-fixed-costs-recovery-review-PLP-submissions-FINAL_index.pdf and also a contribution to the Westgate Report, which can be found at Appendix 16 of the final Supplemental Report.

PLP's work

PLP is an independent national legal charity which aims to improve access to public law remedies for those whose access is restricted by poverty, discrimination or other similar barriers. Within this broad remit PLP has adopted three main objectives:

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

Uniquely for an organisation of its kind, PLP undertakes research, policy initiatives, casework and training in order to achieve its charitable objectives. Research projects carried out by PLP have focused on both the judicial review process and various aspects of alternative dispute resolution, and were often conducted in collaboration with academics specialising in public law at various universities. PLP's work has, over the years, played a part in the formation of government policy and legal reform. For example:

(1) In 1995 PLP published *Judicial Review in perspective: Investigation of the trends in the use and operation of the Judicial Review procedure in England and Wales*.

(2) Since then, PLP's completed research projects include *Third Party Interventions in Judicial Review: An Action Research Project*, (2001), which was followed by the insertion of CPR Rule 54.17, which sets out the procedure for third party interventions in the Administrative Court; *The Impact of the Human Rights Act 1998 on Judicial Review* (2003); *The Dynamics of Judicial Review* (2009) (which considered the resolution of public law challenges before final hearing); *Designing redress: a study about grievances against public bodies* (2012) and, most recently, *The Value and Effects of Judicial Review* (October 2015).

(3) In October 2015, PLP also published, together with the Bingham Centre for the Rule of Law and JUSTICE, *Judicial Review and the Rule of Law: An Introduction to the Criminal Justice and Courts Act 2015, Part 4*. In a foreword to that report, The Rt Hon Lord Woolf CH, commending the report, commented that:

> "It is helpful that its guidance is the product of three bodies, the Bingham Centre for the Rule of Law, JUSTICE and the Public Law Project, whose record demonstrates their commitment to justice. Their involvement means that this publication can be expected to be treated with the greatest of respect."

PLP's lawyers provide advice and representation acting for disadvantaged individuals and interest groups via civil proceedings (chiefly judicial review), and also complaints and Ombudsman schemes. Our cases are often brought on public interest grounds, where there is no or little financial value to the claimant. We have often made third party interventions in proceedings brought by others to raise matters of public interest, particularly in relation to questions of access to justice and costs (including costs protection). In addition to casework, we run a vibrant events and conferencing programme.

PLP undertakes and publishes empirical research, and engages constructively with policy issues impacting the public law/access to justice landscape. PLP continues to be particularly concerned by the absence of evidence-based policy in costs reform and is currently actively working on this issue. We have recently undertaken a detailed initial assessment of the evidence gaps in understanding the financial barriers in the use of judicial review[4]. PLP is currently working to build a detailed empirical research base to fill those gaps.

PLP has been involved in a number of important cases concerning access to the court, particularly for disadvantaged members of society. Specific examples include:

- The establishment of guidelines for the exercise of the jurisdiction to grant a Protective Costs Order (*Corner House Research v Secretary of State for Trade and Industry* [2005] EWCA Civ 192; [2005] 1 W.L.R. 2600) (As Third Party Intervener)
- The circumstances in which a costs order should be made where judicial review proceedings are disposed of by consent pre-permission (*R (Bahta) v SSHD* [2011] EWCA Civ 895; [2011] C.P. Rep. 43) (As Third Party Intervener)

[4] https://publiclawproject.org.uk/wp-content/uploads/2018/05/Financial-Barriers.pdf

- The availability of judicial review of a decision of the Upper Tribunal (*R (Eba and Cart) v Upper Tribunal* [2012] 1 AC 710) (as Third Party Intervener)
- The correct application of the 'second appeals test' in CPR 52 to appeals from the Upper Tribunal in asylum cases (*JD Congo v SSHD* [2012] 1 W.L.R. 3273) (As Third Party Intervener)
- Confirmation that legal aid regulations providing for no payment to be made for work on judicial review proceedings unless permission is granted were *ultra vires (R (Ben Hoare Bell and others) v Lord Chancellor [2015] EWHC 523 (Admin)*) (As Solicitors).
- Supreme Court ruling that the imposition of a 'residence test' for civil legal aid would be *ultra vires* (*R (PLP) v Lord Chancellor [2016] UKSC 39*) (As Claimant).
- The High Court finding that the Lord Chancellor had not sufficiently considered individuals with protected characteristics when tendering for housing law legal aid *R(oao Law Centres Federation Ltd t/a Law Centres Network) v The Lord Chancellor [2018] EWHC 1588 (Admin)*
- Currently acting for Medical Justice in their judicial review of the removal windows policy by which the Home Office removes immigration detainees without notice abrogating the constitutional right of access to justice (*R (Medical Justice) v Secretary of State for the Home Department CO/543/2019)*

Consultation Response

4. Do you agree with the proposal for costs budgeting in JRs with a criterion of 'whether the costs of a party are likely to exceed £100,000'? If not, what alternative do you propose?

No – not on the current evidence available.

Please state your reasons.

The core issue of principle with costs budgeting concerns whether the cost of budgeting (in terms of time, effort *etc.*) is worth the gain (in terms of controlling costs *etc.*). In civil procedure, it is largely still seen as an experiment. In many ways, the proposed rule for judicial review is an unusual use of costs budgeting as it is usually used less in high-value civil cases.

PLP considers that costs budgeting could in principle play a role in increasing access to judicial review as could give the parties greater certainty as to their potential costs exposure at an earlier stage of the case. This might allow litigants of modest means to make a more realistic assessment of whether they can afford to meet any potential adverse costs liability.

However, PLP does not support the proposals in the consultation paper for two main reasons:

(i) PLP supports evidence-based policy reform. There is not presently a sufficiently sound evidence base to support the proposal to introduce costs budgeting for 'heavy' JRs, or to determine whether the threshold of £100,000 of likely costs is set at the appropriate level.

(ii) that the stage at which it is proposed that costs management orders would be made means that it is at minimum highly questionable whether the time and expense involved by the introduction of this additional procedural step would be justified by the likely benefits.

PLP recommends that before deciding whether to proceed with this proposal:

(i) The Government must undertake, or commission, further research to better understand the number of cases in which costs exceed £100,000, and the range of costs above that level, across all judicial review proceedings and not only those in which the Government Legal Department is instructed.

(ii) The Civil Procedure Rules Committee should be asked to prepare and consult on draft rules so that the issues surrounding the workability of the proposed timetable for making costs management order can be addressed in the light of experience of both claimants and defendants.

(iii) The Government should, as recommended by Sir Rupert Jackson, carry out a small scale pilot of cost budgeting in order to better understand the costs and benefits of introducing this additional procedural step.

If the Government decides to proceed with this proposal then PLP recommends that:

(i) Costs management orders should be discretionary (as proposed) and only made on the application of one of the parties (rather than of the court's own motion). The parties will necessarily have a fuller knowledge of the case and whether a costs management order is likely to be beneficial or to create unnecessary additional work.

(ii) The party applying for a costs management order should include proposed directions for the filing and exchange of budgets, and any costs management hearing, so that the Court can understand when deciding whether to make a CMO what impact this is likely to have on the progression of the case.

(iii) Once the research is obtained on the number and nature of cases in which costs exceed £100,000, evidence-based consideration will need to be given to setting any threshold for costs management orders at a level where the costs of budgeting produce sufficient gain, and further consultation undertaken. .

Lack of evidence to support impact assessment

The consultation paper suggests that it is unnecessary to pilot the proposal because "It is unlikely to apply to many JRs (less than two dozen per annum)" (para 3.5 of

Chapter 6). The impact assessment published alongside the consultation paper states that “In 2017/18, there were only 16 JRs with total costs (excluding VAT) exceeding £100k” (para 55). The government released statistics on this following an FOIA request lodged by PLP (which was itself based on data referred to in the Impact Assessment). These are the categories of data released, which the Ministry of Justice received from the GLD:

> *Excluding VAT (VAT is generally recoverable by the client department so not claimed from opponents)*
>
> - *2015/2016: 4 cases (ranging from £112k – 853k)*
> - *2016/2017: 21 cases (£107k – 888k)*
> - *2017/2018: 16 cases (£104k – 295k)*
>
> *Including VAT*
>
> - *2015/2016: 5 cases (ranging from £100k – 986k)*
> - *2016/2017: 26 cases (£102k - 1.048M)*
> - *2017/2018: 18 cases (£105k – 347k)*

PLP believes this data to be inadequate to assess the potential impact of a costs budgeting rule. The data appears to be incomplete as it is GLD data alone. There are many other cases not involving GLD (for example, cases against regulators such as OFCOM and OFGEM, and those against local authorities). In complex public interest litigation, commercial, regulatory, procurement and planning judicial reviews, costs of either party routinely exceed £100,000. PLP has reason to believe that the impact of the proposed rule on judicial review would therefore be much be much greater than suggested. Even if the above data is correct, it is still the case that the introduction of costs budgeting in cases with costs above £100,00 could potentially have a significant impact on the cases it applies to, and in determining if they should be brought in the first place.

Timing of CMOs and costs/benefits

The consultation paper proposes that the court have discretion to make a CMO at the stage of granting permission (para 3.3). The parties would then have 21 days to serve budgets; they would then be required to discuss and seek to agree budgets; if not agreed there would then be a costs management hearing.

The nature of judicial review proceedings is such that claimants are required to frontload their work on the case. Thus by the time the permission application is considered, claimants will have filed the evidence on which they wish to rely, as well as detailed grounds of claim, statutory and policy materials relied on and a bundle containing all relevant documents. The duty of candour places a heavy onus on claimants to ensure that they have investigated all relevant facts as fully as practicable before applying for permission. Thus by the time that a CMO is made, claimants are likely to have incurred the substantial majority of their costs. Insofar as the intention behind the proposal is to control claimants' costs, PLP therefore questions whether it is likely to add anything to the process of detailed assessment.

These proposals also need to be considered alongside the standard directions which are given in judicial review proceedings when permission is granted. These normally require the Defendant(s) and any Interested Party to file and serve Detailed Grounds of Defence and any evidence on which they wish to rely within 35 days of the order granting permission. This means that if the proposal is adopted, the process of preparing, exchanging and seeking to agree budgets would have to be carried out at the same time that the Defendant(s) and any Interested Party are undertaking the substantive work to respond to the claim.

Not only would this increase the amount of work required of Defendants and Interested Parties during this period (and thus increase the likelihood of those parties needing to seek an extension of time for responding to the claim, thus prolonging the proceedings), but by the time that the budgets are agreed or a costs management hearing held, the majority of the costs in the proceedings will already have been incurred by all parties.

On the other hand PLP can understand that in many cases it would be neither workable nor proportionate to make a CMO before permission has been granted. Indeed, PLP considers that it may be difficult in many cases to predict the likely costs of either party with any certainty even at the permission stage. Before permission, all that a Defendant is required to do is to file Summary Grounds of Resistance. These are only required to identify reasons why permission should be refused. The Defendant is not required to put forward its substantive defence at this stage. It is not uncommon in PLP's experience for defendants to advance their substantive defence only at the stage of filing Detailed Grounds of Defence, or for their case to change substantially between the Acknowledgement of Service and the Detailed Grounds of Defence. It is also the case that Defendants may provide evidence and disclosure at the time of filing their Detailed Grounds of Defence which substantially changes the complexion of the case and results in significant further work being required by all parties. The Claimant will not be able to predict that further work at the stage of serving a costs budget if this is required to be done 21 days after permission is granted.

PLP notes that the consultation raises the prospect of future reform to immigration judicial review, particularly by way of a "bespoke FRC regime." While PLP appreciates that the Ministry of Justice is not inviting views on this issue at present, we recognise in the context of the present consultation paper (and the proposals it makes about judicial review) that this signals the continuation of a long-term policy trend towards treating immigration case as a distinct part of the judicial review system. While there may be legitimate case management reasons for this, we urge caution in creating further differentiation without justification. We also urge that any proposal is based closely on available empirical evidence. Detailed data on immigration judicial review costs, and other parts of the process, will be available in a forthcoming Nuffield Foundation report on the immigration judicial review system. We suggest that any proposals are formulated with a holistic view of the entire experiences of parties in the Upper Tribunal.

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5. We seek your views on the proposals in this report otherwise not covered in the previous questions throughout the document.

The preliminary indication of the Government (Chapter 6 of the consultation paper, para 2.1-2.4) is that it will not consult on implementing Sir Rupert Jackson's recommendations to extend the Aarhus rules to all judicial reviews, or any other proposals to address the access to justice difficulties caused by costs in judicial review, such as the 2010 recommendation to introduce a form of Qualified One Way Costs Shifting ('QOCS'). PLP's view is that it is essential that it does so. As Sir Rupert Jackson has highlighted, judicial review is both a constitutional safeguard and a mechanism for the consideration of specific grievances. It serves neither of these purposes if it is inaccessible. If, once the consultation responses are considered, the Government decides not to consult on the wider issues raised in this response and decides not to implement Sir Rupert Jackson's recommendations for judicial review, we invite it to make that clear in the consultation response.

Sir Rupert Jackson's *Final Report,* published in 2009, proposed some straightforward changes to the costs rules in judicial review. In particular, he concluded that QOCS is "the right way forward." He offered six clear reasons for this:

(1) it is the simplest and most obvious way to comply with the UK's obligations under the Aarhus Convention in respect of environmental judicial review case;

(2) it is undesirable to have different costs rules for environmental judicial review and other judicial review cases;

(3) the permission requirement is an effective filter to weed out unmeritorious cases, therefore two way costs shifting is not generally necessary to deter frivolous claims;

(4) it is not in the public interest that potential claimants should be deterred from bringing properly arguable judicial review proceedings by the very considerable financial risks involved;

(5) one-way costs shifting in judicial review cases has proved satisfactory in Canada;

and

(6) the protective costs orders regime is not effective to protect claimants against excessive costs liability as it is expensive to operate and uncertain in its outcome because, in many instances, the protective costs order decision comes too late in the proceedings to be of value.

Sir Rupert Jackson further suggested that to "strike the right balance as between claimant and defendant in judicial review proceedings," claimants should no longer be able to recover a success fee in claims funded by a contingency fee agreement, and that any success fee must in future be a private matter solely between the claimant and the claimant's solicitor.

The Government response to Sir Rupert Jackson's recommendations was published in March 2011. It announced that Sir Rupert Jackson's proposal for QOCS had been accepted but only for the time being in relation to Personal Injury cases, while a decision had been taken to end defendants' liability for success fees in all contingency fee agreement cases. The result was that the balance between judicial review claimants and defendants shifted in favour of the defendant, as the ending of defendants' liability for success fees under conditional fee agreements meant that claimants had to pay success fees themselves.

More recently in relation to QOCS for JR[5], the Government noted the risks of "shifting of costs back to defendants, an overall increase in costs and the potential for prolonging rather than settling litigation" and said that it would "wish to be satisfied that these risks have been addressed before considering the case for extending costs protection further".

Sir Rupert Jackson published his *Supplementary Report* in July 2017. As noted above, this report again emphasised judicial review's special constitutional role, and therefore the importance of ensuring access to judicial review. It found that there was merit in extending the Aarhus Rules, suitably amended, to all judicial review claims. Sir Rupert

[5] https://www.gov.uk/government/publications/post-implementation-review-of-part-2-of-laspo

Jackson concluded that "if QOCS in JR is not acceptable, the Aarhus Rules should be extended to all [judicial review] claims."

The Government are yet to make a decision on extending QOCS to judicial review. In the meantime, these latest proposals from the Ministry of Justice are based on a view that "because costs capping orders and legal aid are available for JRs…we do not consider there to be an access to justice issue in respect of non-Aarhus JRs."

There is no clear evidence base for this initial view (see our answer to Question 6). In coming to this view, the Government has apparently disregarded the detailed and evidence-led work undertaken by Sir Rupert Jackson who found that there are concerns about access to justice and the constitutional role of judicial review. PLP draws particular attention to the following from Chapter 10 of the 2017 Supplemental Report:

(a) Paras 1.4 and 1.5 where Sir Rupert discussed the limited availability of legal aid and the costs of JR proceedings. He noted, in respect of legal aid, that "*the financial limits … are strict and many deserving claimants of modest means do not qualify for assistance*" (§1.4) and, in respect of the costs of JR proceedings, "*many (but by no means all) claimants are of modest means are deterred from pursuing claims because of the adverse costs risk*" (§1.5).

(b) Para 3.2 where Sir Rupert said he considered that Aarhus Rules "*should be extended to all JR claims*" and described this as "*necessary in order (a) to increase access to justice and (b) to promote the public interest*".

(c) Para 3.4 where Sir Rupert said that "*overall, in my view, this proposed reform will promote access to justice. It will strike the right balance between (a) the need to protect the public purse and (b) the need to hold public authorities to account*".

Sir Rupert Jackson's review took 8 months to complete, took in over 140 responses and involved public debate and engagement. In comparison, it seems that the Government has spoken to its own lawyers in the Government Legal Department and

indicates it will not take the issue any further. A sustained refusal to consult on the recommendations and the wider access to justice deficiencies will be indicative of a closed mind to both Sir Rupert Jackson's proposals and the mounting evidence that there is an access to justice problem in judicial review.

The reliance on the existence of CCOs and legal aid as mitigation for any access to justice difficulties is also misplaced.

CCOs are only available once permission is granted (so claimants have to already have committed to the risk of costs exposure). CCOs are only available in public interest cases.[6] In addition, claimants must still be willing to take significant – albeit certain- financial risks (for example exposure up to £5,000 costs cap) which is prohibitive for many claimants[7]. As noted in our submissions to Sir Rupert Jackson's review, ATE insurance is generally not available in judicial review. Although there is very little research on crowdfunding, PLP notes that it is not suitable or viable in many cases e.g. if the issue will not attract popular interest, the claimant does not have the capacity or support to run a public funding campaign etc.

There are widespread difficulties with the availability of legal aid nationwide (including in the public law category)[8], as well as serious, widespread and evidenced concerns that the means thresholds are so low that even poverty hit families do not qualify for legal aid[9]. Those who have a claim for judicial review which does not satisfy the public interest test for a CCO, persons of modest means who are financially ineligible for legal aid or cannot find a legal aid lawyer to take on their case, and those with public interest cases but unable to take a significant financial risk at the pre-permission stage before a CCO can be granted, do not currently have meaningful access to judicial review.

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[6] As confirmed in R (We Love Hackney Limited) v London Borough of Hackney [2019] EWHC 1007 (Admin) https://www.bailii.org/ew/cases/EWHC/Admin/2019/1007.html

[7] See our report on the Criminal Justice and Courts Act 2015 at chapter 4 for a more detailed analysis of the difficulties arising from CCOs https://publiclawproject.org.uk/wp-content/uploads/data/resources/211/Judicial-Review-and-the-Rule-of-Law-FINAL-FOR-WEB-19-Oct-2015.pdf

[8] E.g. https://www.lawsociety.org.uk/policy-campaigns/public-affairs/parliamentary-briefing/legal-aid-deserts/ and https://www.bbc.co.uk/news/uk-46357169

[9] For example see detailed research undertaken by The Law Society on this issue https://www.lawsociety.org.uk/support-services/research-trends/legal-aid-means-test-report/

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6. Do you have any evidence/data to support or disagree with any of the proposals which you would like the government to consider as part of this consultation?

In indicating that it will not consult on existing access to justice difficulties, extending QOCS or Sir Rupert Jackson's more recent proposed reforms to the cost rules in judicial review, the Ministry of Justice shows a highly selective view of the existing evidence base on costs. PLP's position is that establishing a sound evidence base for costs reform is essential and gathering of robust data on this issue is a required next step. In the meantime however, the main flaw in this consultation paper is the Ministry of Justice's treatment of the evidence already available.

The Ministry of Justice offers the following basis for its decision:

> *Sir Rupert's recommendation is intended primarily to enable access to justice, rather than to control costs. The Government Legal Department (which oversees most government litigation, including JRs), queried what the evidence base was that had given rise to this concern and urged caution when they met Sir Rupert during his review.*

There are multiple problems with this position and the underlying interpretation of the available evidence:

(1) In comparison to the range and depth of Sir Rupert Jackson's consultation with stakeholders, the reliance solely on the views of the Government Legal Department is limited and – depending on what was discussed (see below) – potentially seriously misplaced;

(2) The minutes of this meeting or the evidence otherwise presented at the meeting referred to are not in the public domain (they are currently the subject of an

FOIA request by PLP). This means that a policy decision of constitutional importance is effectively being founded upon an evidential black box;

(3) PLP has been told, following an FOIA request by PLP, that the extent of the quantitative evidence the Ministry of Justice holds on costs is as presented in our response to Question 4. As raised in our response to Question 5, there is a much wider evidence base available, much of which Sir Rupert Jackson drew upon for his review. This seems to have been ignored by the Ministry of Justice. PLP presented this evidence and relevant data sources in *Financial Barriers to Accessing Judicial Review: An Initial Assessment* (Public Law Project: London, 2018)[10], and would be willing to meet to discuss the evidence available if required;

(4) To the extent that there is a lack of evidence for policymaking in this area, the Ministry of Justice has taken a decision to interpret that gap in favour of the *status quo* and against Sir Rupert Jackson's reasoning and recommendations. At the very least, if the Ministry of Justice is to adopt this position on the basis of a lack of evidence then it should be coupled with a commitment to better evidence collection (something which is ripe for consideration in view of the HMCTS Transformation project and the increase in the use of technology in the Administrative Court); and

(5) This decision seems to reduce the issues to something simple quantifiable and does not give sufficient recognition to the constitutional significance of judicial review.

Overall, the Ministry of Justice must engage, with an open mind, with the full range of evidence already available. If it is to maintain its position, then it must be coupled with a commitment to better evidence collection.

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[10] https://publiclawproject.org.uk/resources/3142/)

7. What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposed options for reform?
Please state your reasons.

As explained in our answer to Question 5, judicial review is largely inaccessible to many due to financial disincentives and this has impact on individuals with protected characteristics. The Government's refusal to accept there is an access to justice issues has equalities impacts in this respect.

Conclusion

PLP was established to ensure those marginalised through poverty, discrimination or disadvantage have access to public law remedies and can hold the state to account. Currently significant sections of society are prevented from accessing judicial review because of the significant financial barriers, including our poor and marginalised beneficiaries, but also people of modest means (the 'Just About Managings'). The existence of Costs Capping Orders and legal aid facilitates access to judicial review for some. However, the evidence which exists indicates that for many potential claimants redress for unlawful decision making by public bodies is a distant reality. This justice gap needs to be properly explored and understood before it can be fixed. It presents a serious threat to the integrity and transparency of our democratic system because of the important role that judicial review plays in preventing the abuse of power. Meaningful access to the courts and judicial review are essential to ensuring that public bodies obey the law.

PLP is gravely concerned that the Government is giving insufficient priority to the principle of access to justice and the constitutionally important function of judicial review. Our constitutional public law principles and access to the courts need active protection and support from the Government if they are to survive. PLP urgently calls on the Government to undertake much needed research to better understand the nature of the costs barriers so that sensible, evidence-based policy reform can be effected.