### 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 that govern the exercise of power by public bodies.

'Public law is not at base about rights, even though abuses of power may and often do invade private rights; it is about wrongs – that is to say, misuses of public power.' – Sedley J in R v Somerset CC ex parte Dixon

#### What are public bodies?

There are many public bodies of various kinds who take decisions every day affecting 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 services complaints procedure; and
- Ombudsman schemes: such as the Local Government Ombudsman, and the Parliamentary Commissioner for Administration.

#### Why is public law important?

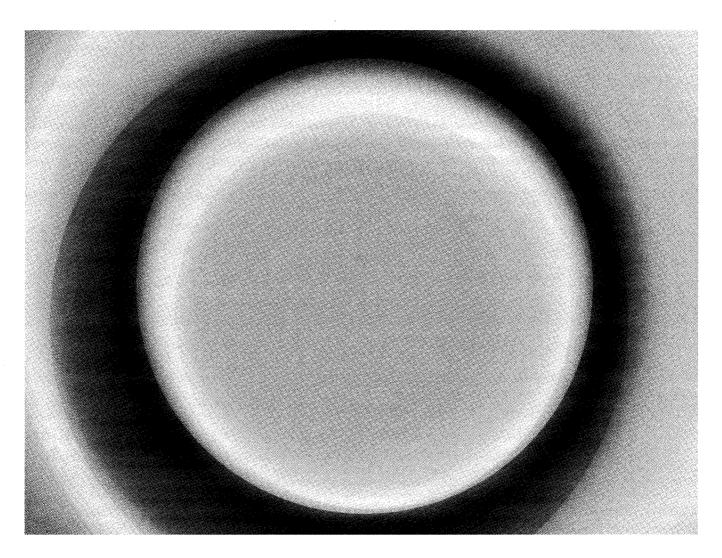
Public law remedies are the means by which public authorities can be held to account. In the absence of effective and accessible mechanisms of accountability, the exercise of power by central and local government, and the many other public bodies, may go unchecked.

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 to improve access to justice for the disadvantaged.

### www.publiclawproject.org.uk

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# Introduction By Lord Justice Brooke

If the Public Law Project did not exist, someone would have to invent it — quickly. This brochure tells a fine story of achievement since PLP first emerged from its cradle to help the Law Commission with invaluable research data when I chaired it in 1993. And throughout its life it has been worrying away at the obstacles that hinder the attainment of justice and high quality decision-making in the sphere of public law.

That so many obstacles exist is not surprising. A generation ago public law was not recognised as a discipline in its own right, and since October 2000 human rights jurisprudence has been complicating things still more for the uninitiated.

Access to justice is still tantalisingly difficult to achieve. For too many individuals and small organisations the cost of seeking justice is simply terrifying.

We are learning fast that many problems can be resolved inexpensively through internal review, or mediation, or through the good offices of an Ombudsman. But there will always be a role for the courts to play – in explaining and enforcing the law, and where other methods of dispute resolution have failed.

I was sorry when the Government rejected the Law Commission's recommendation that a successful litigant in a public interest challenge should recover costs out of central funds. Over the last year or two, and often aided by excellent PLP research, the courts have been finding new ways of mitigating some of the difficulties. Cost capping and protective costs orders in appropriate cases are surely here to stay.

But there is still a long way to go. Without PLP helping things along as a disinterested centre of excellence the way would be even longer. It deserves all the support we can give it.

Lord Justice Brooke is Vice-President of the Civil Division of the Court of Appeal

### Chair's Foreword

Kate Markus

Chair, Public Law Project management committee

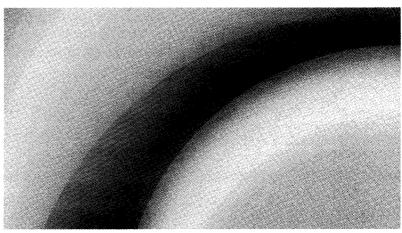
The diminishing role of the state as provider and the move towards self-reliance, the privatisation of many public services, and the rapid growth in public law, all serve to highlight the need for effective legal services in the public sphere. Thus, in the late 1980s I pulled together a small group of people to discuss the establishment of a national public law resource that could apply itself not only to achieving the direct enforcement of individual rights but also to achieving wider change. The group quickly gained the support of lawyers and legal services agencies, the wider voluntary sector, academics, local government bodies, trade unions and community groups - support that has continued to grow to this day. Fifteen years on, PLP's primary objectives remain as they were at its inception: increasing the accountability of public decision-makers, enhancing the quality of public decision-making and improving access to justice.

This is not to say that the legal landscape, and the challenges we face within it, have remained the same. We have continued to find new ways to achieve our objectives, adapting and responding to changes in the law, public administration and legal services funding.

One of the biggest challenges in the last five years has been the implementation of the Human Rights Act. This followed much anticipation of the effect it would have on litigation and the impact in practice on people's rights. Building on the excellent relationship between PLP and the Administrative Court Office, and using innovative research and data gathering methods, our study The Impact of the Human Rights Act on Judicial Review identified a number of lessons to be learned from the use of the HRA and the judicial response to this in the first years of the Act. Since the publication of this study, we have seen our research department go from strength to strength, with its findings cited widely amongst the academic and legal community.

PLP's casework continues to play a vital role in remedying public law wrongs and developing the law and procedure more generally. We have continued to litigate a number of significant issues in which we have established important principles of law that will have a wide impact in the future (see the Casework section for more detail).

Training also plays a key role in enabling us to achieve 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. Having established ourselves on the legal conference calendar with our successful annual Judicial Review training





PLP is a national charity, founded to improve access to public law remedies.



conference, we are now further developing this arm of the organisation – see page 16 for more details.

In all this work, we seek to maximise access to justice for those for whom it is most difficult. In pursuit of this objective we are pleased to assist the Legal Services Commission to direct its resources where they can have greatest effect, through our contribution to the Public Interest Advisory Panel and our continued provision of the Specialist Support Service. It is also sometimes necessary to speak out against proposals by the LSC or the Department for Constitutional Affairs. This was the case when we organised and coordinated the response on behalf of public law practitioners to the LSC consultation paper on the future of legal aid, and we continue to discuss the future of legal aid with Ministers.

This short summary is only a taste of the significant work carried out by PLP, more details of which can be found in this report, all of which is due to the hard work, support and commitment of those working for and associated with the organisation. 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 am soon to stand down as Chair of PLP, having fulfilled this role from the beginning, but I leave feeling deeply proud of what we have accomplished and looking forward to seeing the achievements of the organisation for many years to come.

# The First 15 Years: the Work of the Public Law Project 1990 - 2005

The Public Law Project seeks to tackle those barriers hindering access to public law remedies, and which therefore exclude groups and individuals from the processes by which the accountability of central and local government, and the many other bodies charged with governmental functions, is maintained. Through its pursuit of this aim, PLP has adopted the objectives of increasing the accountability of public decision-makers, enhancing the quality of public decision-making and improving access to justice. Uniquely for an organisation of its kind, PLP combines casework, empirical research, policy initiatives, and training, to achieve these objectives.

Early steps: identifying the problems

PLP's earliest project, carried out jointly with the University of Essex, was the first major study of access to and the use of judicial review.¹ The initial 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

One of the key aspects of PLP's work is to improve access on a national level to specialist legal advice on public law. Below is a selection of the areas in which we have pursued this goal.

#### Community care

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. PLP participated in research by the Policy Studies Institute into alternative methods of legal service delivery, and produced a guide, *Challenging Community Care Decisions*, to assist both disabled people and their advisers.

PLP also accepted a number of complex and test case referrals. What has become known as the *Gloucestershire* case<sup>2</sup> reached the House of Lords in February 1997. It raised the key question of the extent to which social services authorities should be permitted to take their own financial resources into account when assessing the needs of a disabled person. A second House of Lords case in 2002 decided that local authorities were prevented from charging for any aftercare services provided under section 117 of the Mental Health Act 1983.<sup>3</sup>

#### NHS

The community care cases referred to PLP often involved aspects of health service provision, and for this reason, PLP instigated the project *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, access to medical records, and other vital information.

#### **Human Rights Act**

In 2000, PLP set up the Accounting To All project, operating an advice line and delivering training courses on the Human Rights Act 1998 and its impact on areas of social welfare law. This project ran for 2 years and resulted in important test cases being brought, which explored the extent to which the new Act could assist in the development of public law safeguards.<sup>4</sup> At the same time, PLP was awarded a grant to examine the way in which the new Act has impacted generally upon judicial review (see page 13).

#### Second tier consultancy

As PLP has become more widely known for its high level expertise in public law, the demand for its services, across all those areas which impact on the

<sup>1.</sup> L. Bridges, G. Meszaros, and M. Sunkin (1995) Judicial Review in Perspective, Cavendish

<sup>2.</sup> R v Gloucestershire CC ex p Barry [1997] 2 All ER 1

<sup>3.</sup> R v Manchester City Council Ex parte Stennett, R v Redcar and Cleveland Borough Council, Ex parte Armstrong & R v Harrow London Borough Council, Ex parte Cobham [2002] 2 AC 1127.

<sup>4.</sup> For example, Beeson v Dorset County Council [2001] EWHC Admin 986, [2002] EWCA Civ 1812

disadvantaged, has increased rapidly. In response, PLP has had to cut back its direct advice services to the general public and concentrate on providing second tier consultancy. As well as being a provider of specialist public law advice and training to all Community Legal Service holders of the Specialist Help or General Help with Casework kite marks (under contract to the Legal Services Commission), PLP has developed a number of other initiatives in response to specific demands on its services.

#### Corporate accountability

The Corporate Accountability Project arose in 2004 from an increasing number of referrals received by PLP from the Centre for Corporate Accountability's (CCA) work-related death advice service. CCA provides advice, research, and advocacy services for members of the public on issues arising from work-related deaths, and accidents in the workplace. The cases they refer to PLP are those in which they need specialist public law advice, usually relating to a decision — or failure — by a public body, such as the Health and Safety Executive. As a result of our joint work, we believe that the HSE has improved in terms of both its decision-making and the transparency of its processes.

#### Partnership working

PLP has also developed a successful partnership-working strategy, targeting resources to deal with specific public law problems in local areas, and raise awareness of public law remedies. The strategy involves joint working with local advice agencies and comprises a mixture of casework, training, campaigning and litigation. An example of this aspect of our work is a national training programme on the public law aspects of debt and money advice, which we undertook with nonsolicitor agencies such as CABx and community groups in 2005.

# Funding legal advice and representation for individuals

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.

The Access to Justice Act 1999 introduced a new system for publicly funded legal services. Solicitors and not-for-profit agencies can now only provide such services if they have a contract to do so with the Legal Services Commission in the requisite area of law. PLP proposed that public law should be a discrete category alongside others, such as housing and employment, and, following extensive campaigning, this proposal was accepted by the Commission. This has resulted in a greater awareness of public law as a specialism amongst practitioners and has undoubtedly resulted in an increase in access to this area of the law.

PLP also played a major role in the development



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.



of the Commission's Specialist Support Service, designed to enable solicitors and advisers working within the Community Legal Service to access specialist advice on complex matters from experts in their field. PLP has been a provider of specialist public law advice and training since the service started as a pilot in 2000. This has further raised awareness of public law principles and remedies amongst solicitors and advisers, better equipping them to provide advice to their clients.

The legal aid reforms also changed the way in which 'public interest' cases were treated within the scheme. Cases that raise issues which impact not only on the individual, but also 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 position to themselves undertake litigation. In conjunction with other members of a public interest litigation group, which it convened, PLP proposed a ringfenced 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. 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. As part of the new arrangements, the Legal Services Commission is now advised on the funding of public interest cases by a Public Interest Advisory Panel, to which PLP nominates a member.

Nevertheless, the number of contracted 'suppliers' overall represents a drastic reduction in the number of solicitors' firms undertaking Legal Aid work under the old scheme, and this number continues to fall. Commission expenditure on civil legal aid is coming under greater and greater scrutiny, as are the ways in which legal services are being delivered. PLP led and co-ordinated a response to a major consultation initiated by the Commission in 2004 on behalf of public law practitioners nationwide, meeting with Ministers and with members of the team responsible for the recent Fundamental Legal Aid Review. PLP continues to be actively engaged in consultations over changes to publicly funded legal services, and this issue will continue to be a priority for us.

PLP has also re-established a group for public

lawyers working within national campaigning NGOs, so as to act as an information exchange, debating forum, and voice for lawyers in this sector.

# Funding legal advice and representation for organisations

Public funding is not currently 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 selfinterest, 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. In these situations, public interest challenges, brought by organisations against the unlawful policy itself, are vital. The potential of public interest challenges 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 in a number of cases for voluntary sector organisations such as Help the Aged, the Immigration Law Practitioners Association, a Community Health Council, Leicester advice agencies, the Refugee Legal Centre and Values into Action.

#### **Protective Costs Orders**

The main obstacle for organisations bringing public interest challenges is the risk of being ordered to pay costs if they are unsuccessful. PLP has sought to develop the practice and jurisprudence of the Protective Costs Order to try and counter this risk. Thus, in 1998, it acted for Amnesty International UK and The Redress Trust in an application for such an order. 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.<sup>5</sup>

In 2004, the Refugee Legal Centre instructed PLP to act for it in proceedings against the Secretary of State for the Home Department. The defendant refused to renew an earlier undertaking that the RLC would not be pursued for its costs – a position of which the Court of Appeal was highly critical, indicating that it would look favourably on granting a Protective Costs Order for the substantive appeal. The defendant subsequently consented to a protective order in favour of RLC, removing all potential liability for costs.<sup>6</sup>

The case was notable for the fact that the Court of Appeal expressed its desire to explore fully the whole issue of protective costs, but had been prevented from doing so following the defendant's

concession. However, it did not have to wait long for its opportunity. In the matter of *R* (*Corner House Research*) *v Secretary of State for Trade & Industry*, PLP intervened as an interested party to make submissions in support of the claimant's application for a Protective Costs Order, which the Court of Appeal granted. The issue of Protective Costs Orders is now well and truly back on the legal agenda. As a result of our work on these cases, PLP is part of a working party chaired by Lord Justice Maurice Kay, examining the whole issue with a view to recommending changes to the Civil Procedure Rules.

Accounting To All resulted in important test cases which explored the extent to which the Human Rights Act could assist in the development of public law safeguards.



#### **Third Party Interventions**

As was demonstrated in the Corner House case, non-governmental organisations such as PLP 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. Until recently, Third Party Interventions were 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. The report from this group, A Matter of Public Interest, made recommendations for reforms to assist the development of Third Party Interventions. PLP subsequently undertook an action research project to investigate and develop the practice (see page 13).

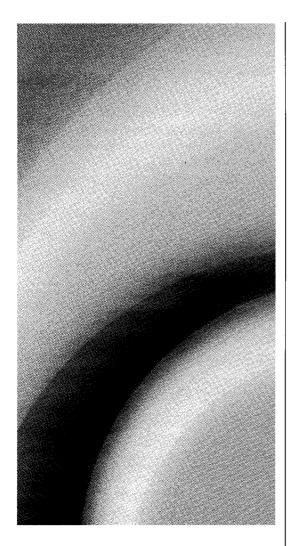
#### Formality of litigation – the alternatives Tackling misconceptions of judicial review

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. This misconception is something that PLP has sought to tackle through its educational activities, such as the publication, *Is it lawful?*, which aims to explain judicial review to the lay person, and a popular national annual conference on the practice and procedure of judicial review, entitled *Judicial Review — Trends & Forecasts*. In addition, PLP has responded to many requests to provide tailored training for particular organisations, and, in partnership with the University of Essex, PLP is

<sup>5.</sup> Rv Lord Chancellor ex p CPAG [1998] 2 All ER 755

<sup>6.</sup> Refugee Legal Centre v Secretary of State for the Home Department [2004] EWCA Civ 1239 and [2004] EWCA Civ 1296).

<sup>7. [2005]</sup> EWCA Civ 192



undertaking a study on the effect of the recent reforms to judicial review procedure, initiated by the so-called 'Bowman Reforms', which will report in early 2007.

#### Alternative public law remedies

Judicial review is only one of a range of 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 the civil justice system, Lord Woolf recommended that judicial review be conserved as a remedy of last resort, to be used after the alternatives, such as complaints procedures and ombudsmen schemes, had been exhausted first.<sup>8</sup>

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 available alternatives. Nevertheless, such alternatives do have their place as a part of a public law 'tool kit', and PLP has sought to improve the effectiveness and accessibility of alternative remedies in a number of ways.

PLP has held two major conferences on

alternative dispute resolution in the public law field – in 1997 and 2004 – with Lord Woolf and Lord Justice Maurice Kay as keynote speakers. PLP is now actively pursuing funding for a research project to examine the efficacy of mediation as an alternative to judicial review.

Putting such procedures under the spotlight of empirical research is also an effective means of exploring how improvements could be made. This was the approach taken in the evaluation of the NHS Complaints procedure (see page 14).

Mechanisms for the provision of feedback from those who represent users of alternative remedies are also invaluable. The Local Government Ombudsman (LGO) is one of the most commonly used public law remedies. Following a PLP seminar in 1996, reviewing the LGO scheme, PLP initiated the establishment of an annual forum of consultation between voluntary sector organisations with experience of user problems. 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.



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#### The future

Improving access to public law remedies will continue to be a main focus for PLP. As well as responding to the Legal Services Commission's July 2005 proposals on legal aid, which will affect an individual's access to the legal system, we will continue to work to influence further the development of Protective Costs Orders. We will also be maintaining and developing our advice and consultancy services on public law issues in general. One of the specific focuses for our casework will be advising voluntary sector groups on decisions involving their funding. There appears to be a real need for advice in this area, so much so that funding is being sought for a specific project on this (see the casework section for further information). Additionally, we are seeking to further develop our research arm by establishing a rolling programme of projects, independent of, but dovetailing with, our developing conference programme.

### Casework and Advice

PLP's litigation strategy prioritises 'test cases' which have implications beyond the individual or organisation involved. In particular, we aim to identify issues where improved access to public law remedies would most benefit disadvantaged groups in society. The second strand of cases that we take on are those that fulfil a training/development aim (see below). Our advice work is targeted at 'first tier' community groups, advice agencies, and other solicitors, with the aim of building knowledge of public law remedies, and practical experience of their use.

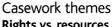
#### Test cases

PLP defines 'test cases' as those which either establish a new point of law (by changing or clarifying the law), or which involve the application for the first time in a particular area (legal or geographic), of a point of law developed elsewhere. Therefore, whereas the test case has traditionally been seen as concerned purely with the identification of new points of law, PLP also runs test cases which are designed to apply existing points of law that appear to be underused in a particular context or locality.

PLP has found that a successful casework strategy is not just about winning legal arguments in court. There have been too many examples of the government changing the law in order to reverse court victories, to make this a sufficient basis on which to build a strategy. Publicity, education, and keeping public bodies aware of their powers and duties, can be equally important reasons for bringing a case as victory on a legal point.

#### **Training/Development cases**

PLP also runs cases which have a training and developmental role for advisers from other agencies, which are referred to us through our Specialist Support Service telephone advice line (see page 16 for more details). These cases involve leading advisers through the initial assessment of a case, through to trial or other conclusion. This shows advisers the ways in which public law can be used, by involving them in the process, sharing the documents and correspondence generated, and enabling them to observe the proceedings. Such cases also keep PLP's solicitors in touch with dayto-day matters of practice and procedure, and contribute to the ultimate objective of holding public bodies accountable for their actions.



#### Rights vs. resources

A persistent casework 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. PLP has continued to develop its work on the fairness of resource allocation in the fields of community care, health law, access to justice, and the allocation of funding by public bodies to the voluntary sector.

#### **Community Care**

Section 117 of the Mental Health Act 1993 imposes a duty, jointly, on health authorities and social services authorities, to provide aftercare services to many people who have been detained for assessment or 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. Until PLP brought a test case in 2002, different local authorities around the country took differing approaches in regard to whether they could charge for residential aftercare. PLP's test case challenged two local authorities who maintained that they could charge. The High Court, however, rejected their argument that Section 117 was simply a gateway to other means by which services could be provided. Instead, the Section was held to establish a direct duty to provide such services free of charge. The decision was appealed but eventually upheld by both the Court of Appeal and the House of Lords.9



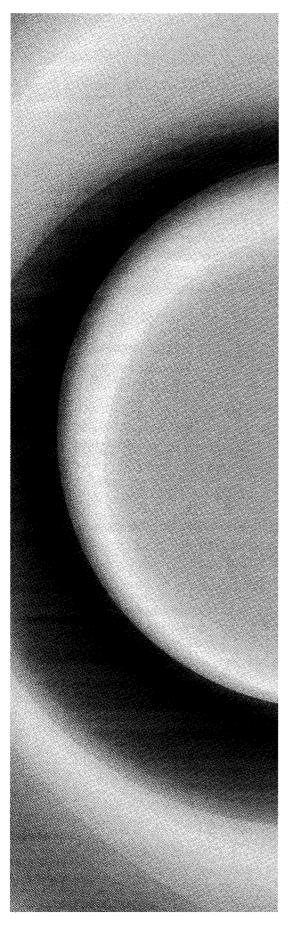
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#### Health law

Resource pressures have possibly an even greater impact upon NHS decisions in the health sector, and patients have no directly enforceable statutory rights to health care. PLP has nevertheless explored to what degree 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 disabled woman who was placed in wholly unsuitable accommodation, whilst

<sup>9.</sup> R v Manchester City Council Ex parte Stennett, R v Redcar and Cleveland Borough Council, Ex parte Armstrong & R v Harrow London Borough Council, Ex parte Cobham [2002] 2 AC 1127





waiting for an argument between the local social services and health authorities to be resolved. Both authorities baulked at the cost of meeting the extensive nature of her needs, each placing the funding responsibility upon the other. The matter was resolved only once judicial proceedings against both authorities had been commenced, with funding agreed for her accommodation and support needs, and £10,000 damages for breach of her human rights.

The recent European Union law case of Bobezes that PLP ran established that statistical evidence was not necessary to prove indirect discrimination on the grounds of nationality.



#### Access to justice

The right of access to the court has been a part of the common law for many years, and this right has been bolstered by Article 6 of the European Convention on Human Rights. PLP played a major role in the Witham case<sup>10</sup>, providing evidence which helped the court decide that the imposition of court fees, without the discretion to reduce them in cases of poverty, was unlawful. PLP also successfully challenged the Lord Chancellor's failure to provide Legal Aid for complex social security appeals: it was conceded that there was power under the Legal Aid Act, and the Access to Justice Act 1998, to fund such cases, albeit wholly outside the normal schemes. As a result, an appellant before the Social Security Commissioners received public funding for the first time in June 2000.11

PLP was not so successful in seeking to introduce an independent element into the social services complaints procedure, although succeeding at first instance.<sup>12</sup> That the issue of resources lay behind the refusal of the court to insist on additional procedural safeguards in first tier social welfare dispute resolution, was confirmed by the House of Lords some months later.<sup>13</sup>

# Social exclusion and disadvantaged groups

PLP has been involved in a number of cases where members of disadvantaged groups have been assisted in using public law remedies to combat social exclusion. For example, people from abroad often fall foul of rules requiring evidence of identity before being provided with a benefit or other entitlement. This is because the decision maker demands forms of evidence more generally possessed by the indigenous population, and refuses to consider other, equally valid, evidence. Thus, in a number of cases taken on by PLP, persons

<sup>10.</sup> R v Lord Chancellor ex parte Witham [1998] QB 575

<sup>11.</sup> CF/3662/1999

<sup>12.</sup> Beeson v Dorset County Council [2001] EWHC Admin 986, [2002] EWCA Civ 1812

<sup>13.</sup> Begum v Tower Hamlets LBC [2003] 2 WLR 388 [2003] UKHL 5 - not a PLP case.

from abroad were denied subsistence social security benefits as the authorities had refused to issue them with National Insurance numbers, and those who wished to work were being denied driving licences. PLP threatened litigation, and coordinated other organisations and advice agencies in responding to the problem. All cases were settled in the clients' favour and proceedings were not necessary. The issue has now been largely resolved.

Other cases that PLP has worked on in this area have involved the refusal to approve a gay teacher for employment on 'suitability' grounds (case settled in the client's favour), and a proposed judicial review of a decision refusing entry clearance to a same sex partner outside the immigration rules and extant policy (also settled favourably with clearance being granted).

The recent European Union law case of *Bobezes*<sup>14</sup> that PLP ran, established that statistical evidence was not necessary to prove indirect discrimination on the grounds of nationality, where the discrimination could be shown by application of common sense – i.e. where the discrimination was 'self evident'. This now makes proving the existence of indirect discrimination considerably easier, as statistical evidence may simply not exist, and the government has conceded that this principle applies in domestic discrimination cases involving indirect discrimination.

#### Defending the voluntary sector

One of PLP's main focuses since 2004 has been advising voluntary sector groups and their service users over cuts to grant funding. Early work in Leicester, on behalf of the local law centre and other advice agencies, did not result in litigation, but ensured that the law centre did not suffer funding cuts which would have otherwise threatened its continued existence. However, in the matter of *Capenhurst and others*, PLP was instructed by the service users of 6 other voluntary groups, and successfully challenged the funding cuts imposed by Leicester City Council<sup>15</sup>. All groups subsequently had funding restored.

Further work has been undertaken in Burton-on-Trent, Sheffield, Plymouth, Kettering, Lincolnshire, Walsall, Manchester and Cardiff. In the most part, litigation has not proved necessary. Once the various groups had received advice on the public law duties of fairness and consultation imposed upon their funding authorities, most have been able to change or vary the decisions of those authorities. In the *R* (Keating) v Cardiff Local Health Board case which PLP ran, however, the service users of a welfare benefits advice and advocacy service judicially reviewed the decision of the Local Health Board (LHB) to withdraw funding from it. The LHB conceded that the process of withdrawing



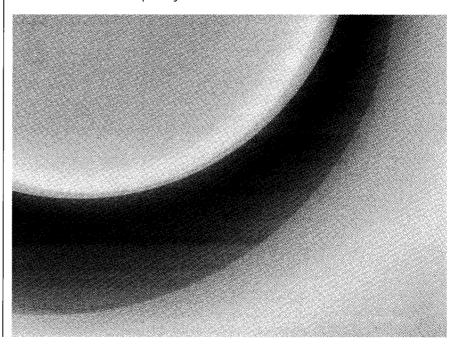
The Human Rights and Public Law advice line is open to all solicitors and agencies with a Community Legal Service franchise.



funding from a group it had funded for a number of years was unfair, but nevertheless maintained that it had no power to fund the service in the first place. The judge, at first instance, upheld the position of the LHB, but his decision was overturned by a unanimous Court of Appeal<sup>16</sup>. The agency has now been awarded a contract to provide the service for a further 3 years.

#### Advice work

PLP supplements its litigation with telephone advice and consultancy. The Human Rights and Public Law Line is open to solicitors and agencies with a Community Legal Service franchise (see page 16 for details). In the five years of providing this 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, susceptibility of educational institutions to judicial review, school closures, retrospective changes to time limits in the Civil Procedure Rules, the lawfulness of innumerable local authority policies, benefit delays and overpayments, litigation tactics, access to information, grounds for judicial review, alternative remedies, availability of public funding, costs, and many more.



<sup>14.</sup> Secretary of State for Work and Pensions v Bobezes [2005] 3 All ER 497

<sup>15.</sup> R (on the application of Capenhurst and others) v Leicester City Council [2004] EWHC 2124 (Admin)

<sup>16.</sup> R (Keating) v Cardiff Local Health Board 6th July 2005 the Court of Appeal reversed the decision of Moses | [2005] 3 All ER 1000

### **Policy and Research**

Policy and research are integral, and integrated, parts of PLP's activities. Research is undertaken to explore and develop policy reform proposals, and policy initiatives often stimulate the need for new areas of research. Similarly, the insights and expertise gained through the organisation's casework, advice, and training work, are also utilised in its policy initiatives and research work, and vice versa.

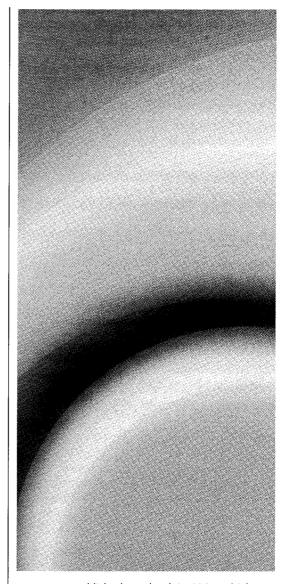
In recognising the need to ground reform in independent and rigorous research, the organisation has been, perhaps uniquely, at the cutting edge of action based research that brings together academics, practitioners, and policy makers, to address central issues concerned with access to justice. To this end, we have undertaken a number of major investigations that have received national attention and have played a part in policy formation and legal reform. In this we were fortunate to have obtained generous financial assistance from the Nuffield Foundation which has funded the research projects mentioned in this section except where otherwise stated.

Our programmes were developed in accordance with our aim of improving access to public law remedies for those most in need of it. Accordingly, our projects have focused on the judicial review process and various aspects of alternative dispute resolution (ADR). In both these areas, PLP has responded to government initiatives, initiated discussions and carried out important empirical research studies.

#### The Judicial Review process

Over the years, PLP has explored the problems associated with citizens' access to judicial review against government and other public bodies, and has been responsible for providing a comprehensive, empirical database on the operation of the judicial review procedure in England and Wales.

Judicial Review in Perspective, Investigation of the Trends in the Use and Operation of the Judicial Review Procedure in England and Wales (1993), conducted jointly with the University of Essex, was PLP's first major action research study, and it set the scene for subsequent seminal empirical research projects on various aspects of judicial review. The study provided a picture of the volume and nature of applications for judicial review, and the processing and determination of those applications. A revised and expanded version of the

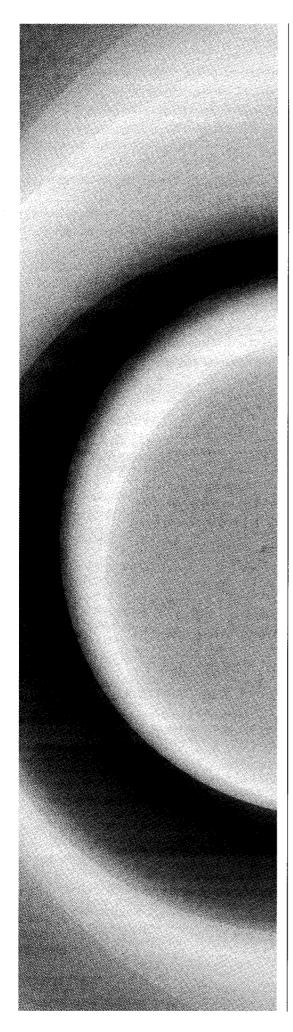


report was published as a book in 1995, which was the most comprehensive empirical study ever conducted on the workings of the judicial review procedure, and has been continuously cited by academics and policy makers since its publication. In addition to the wide policy and academic interest this research attracted, it also stimulated further research on judicial review, namely studies of access to, and the use of, judicial review, in



Research is undertaken to explore and develop policy reform proposals, and policy initiatives often stimulate the need for new areas of research.





Northern Ireland and Scotland.

In 1996, PLP convened a working party jointly with JUSTICE to examine and make recommendations on interventions in public interest litigation. The working party, chaired by Mr. Justice Laws, was constituted of members of the judiciary, leading academics, and senior practitioners, in the public law field. The resulting report, A Matter of Public Interest, focused 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.

Following the publication of A Matter of Public Interest, PLP designed and carried out an action study research, Third Party Interventions in Judicial Review, to investigate the potential for third party interventions in civil judicial review applications raising public interest issues. The findings of this project were published in a report which identified the main factors which inhibit third party interventions by public bodies, in addition to the practical barriers of expedition, settlement, and withdrawal of claims - namely lack of knowledge of relevant cases, lack of knowledge about how to intervene, and the risk of liability for costs together with recommendations for overcoming these barriers. The report also included a public interest checklist and an information pack for

Over the years, PLP has explored the problems associated with citizens' access to judicial review against government and other public bodies.

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interveners.

Our 2003 project, *The Impact of the Human Rights Act 1998 on Judicial Review*, drew much from the methodologies and experience acquired in the course of the previous studies, and built on the important links established with the Administrative Court, academics and practitioners. This empirical research study considered the incidence of Human Rights Act claims in judicial review proceedings and compared the outcome patterns of HRA and non-HRA cases. The report of this study was launched at a conference attended by practitioners, academics and senior members of the judiciary and chaired by Lord Justice Sedley, and its findings have been widely cited in academic publications in the UK and abroad.

In 2005, PLP, in partnership with the University of Essex, embarked on a project on the permission stage of the judicial review procedure. This study was designed to assess the effects of the reforms of the judicial review process, introduced in October 2000, following the Bowman Committee report. The Bowman proposals were intended to encourage early settlement, improve the information available to judges at permission

stage, and improve their ability to manage cases. The research examines whether the reforms have achieved their goals of focusing the parties' minds on the issues at an early stage and promoting settlements. It also looks at the effects of the reforms in the permission stage on access to justice. This project is expected to conclude in January 2007, and lead to a better and empirically based understanding of the part played by the permission stage in our public law system.

#### ADR

In 1996, PLP convened a seminar to bring together voluntary organisations, practitioners, and advice agencies, to discuss the Local Government Ombudsman (LGO) system, in order to ensure that the user's perspective was fully taken into account in the second stage of the review of the LGO that was occurring. A report was then submitted to the review process. The seminar was the first meeting of its kind, bringing the LGO into direct dialogue with groups representing and advising users and complainants.

In 1997, PLP received National Lottery funding to carry out the first independent national evaluation of the operation and effectiveness of the NHS complaints procedure introduced in April 1996. The report was published in 1999 and identified a need for far reaching reform of the complaints procedure. This research was submitted to the Health Select Committee (HSC) as part of its investigation into adverse clinical incidents and outcomes, and was published as an annex to the HSC report. PLP's report was instrumental in bringing about subsequent reforms that made the complaints procedure more effective and competent.

High profile conferences on ADR were organised by PLP in 1997 and 2004. Building on the success of these, in 2005 we carried out a research pilot on mediation and judicial review. The study explored how best to establish a much-needed independent evidence base for investigating the value and the limits of the use of mediation to resolve such public law disputes in the context of judicial review in the Administrative Court. The pilot confirmed the absence of relevant empirical data despite the intense interest and debates surrounding the issue, and the urgent need for such data.

Funding is now being sought to enable PLP to pursue a research programme on the use of mediation in public law, and we will continue to contribute to the understanding of the issues around this area, at both a practical and policy level.

Legal aid and other policy initiatives In addition to our policy work focusing on judicial review procedure and ADR, PLP regularly submits responses to consultations and policy proposals on aspects of legal aid, as well as other government policy proposals which fall within areas relevant to

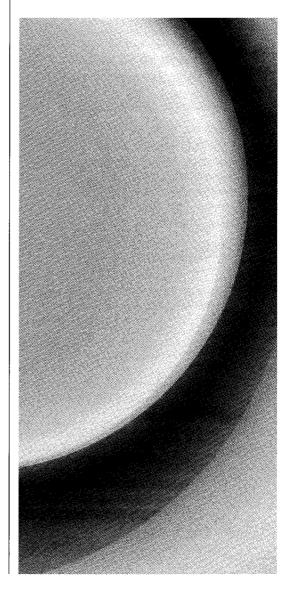


our objectives. These have included a response to the consultation paper on review of financial conditions for legal aid (1991) and a submission to the Lord Chancellor's Department's fundamental review of expenditure on legal services (1994). In 1997 we prepared a submission to the Middleton

PLP's report was instrumental in bringing about subsequent reforms that made the NHS complaints procedure more effective and competent.



Review on Civil Justice and legal aid on behalf of a group of voluntary sector legal organisations who were concerned to see provisions made to improve access to justice for those bringing or supporting proceedings in the public interest. In 2004, PLP once again was instrumental in organising discussions and in drafting a joint response from public law practitioners to the Legal Services Commission consultation paper, *New Focus for Civil Legal Aid*. The document attracted 66 signatures from leading public law practitioners and was widely quoted in other responses submitted to the LSC.



### **Training and Conferences**

Training is a key part of PLP's development strategy. The more we can increase awareness and expertise about how to best use public law remedies, the more effectively we can achieve our core goal of increasing access to justice.

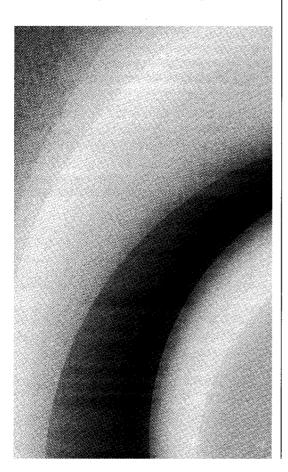
Training

PLP's training work takes different forms, but it all has the same end goal: to raise awareness of public law remedies, and to enable solicitors and non-legally qualified caseworkers and advocates to maximise their effective use.

#### In-house training and telephone advice

PLP's solicitors carry out in-house training on a range of public law-related areas, with the aim of encouraging and supporting solicitors and advisors to develop expertise in public law. Over the past 15 years we have worked with a variety of organisations carrying out training on topics ranging from advocacy in social service complaints procedure to running a judicial review case.

We also operate an advice line for Human Rights and Public Law (tel: 0808 808 4546) for solicitors



and agencies with a Community Legal Service contract. The service offers consultancy and training support, on a 'second tier' basis, to front line advisers. Complex cases can also be put forward for referral to PLP via this channel. The line is open on Tuesday and Thursday 10.00am — 1.00pm and on Monday and Wednesday 2.00pm - 5.00pm.

#### LSC-funded training

PLP carries out ongoing training under its specialist support contract with the Legal Services Commission. This arm of our training programme enables us to offer public law training to organisations with an LSC contract for specialist help or general help with casework. As this service is funded by the LSC, there is no charge for training

The more we can increase awareness and expertise about how to best use public law remedies, the more effectively we can achieve our core goal of increasing access to justice.



to the trainee or organisation.

#### Conferences

PLP has established itself as an expert provider of public law training events, with its conferences on alternative dispute resolution in 1997 and 2004, and its annual *Judicial Review – Trends & Forecasts* conference. We are currently developing a more extended programme of conferences, focusing on different areas of public law. We see this as an opportunity to develop our partnerships with potential client groups and other public law specialists, and to meet the public law training needs of the people and organisations with whom we work.

Information on training and events currently being offered by PLP is available at www.publiclawproject.org.uk

If you would like further information, or would like to book training, or suggest an area for training that we are not already covering, please contact the training department.

### **Publications**

The impact of the Human Rights Act on judicial review: An empirical research study (2003)

This report was conceived from the need to monitor and gauge the effects of the Human Rights Act 1998. Judicial review was considered to be a key jurisdiction for identifying and tracking cases which raised human rights issues in light of the duty imposed on public bodies to act compatibly with rights under the European Convention on Human Rights. This report sets out the results of that study. £6.00.

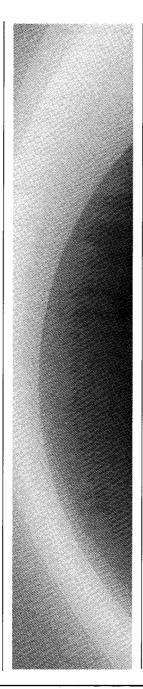
## Third party interventions in judicial review – an action research study (2001)

The final report on the third party interventions research project describes the process and outcomes of this action research study by PLP. It investigates the potential for third party interventions in civil judicial review applications that raise public interest issues, particularly examining the factors inhibiting interventions and making recommendations to overcome these barriers. The report includes a public interest checklist and an information pack for interveners. Free.

## *Is it lawful? A guide to judicial review* (2nd Edition: 2001)

First written in 1994, this book has been substantially revised to take account of the Human Rights Act, the new Civil Procedure Rules, and recent case law developments. It provides an overview of the principles of public law and a brief procedural guide to applying for judicial review. £6.00.

Local authority bailiffs' code of practice (2000) 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. £3.00.

#### A matter of public interest: Reforming the law and practice on interventions in public interest cases (1996)

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, was 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. £5.00.

# Review of the local government ombudsman (LGO) (1996)

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. We still have available Volume I – the Report of Proceedings. Free.

# Funding and staff

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PLP extends thanks to all the busy practitioners, academics and members of the judiciary who have generously given time and expertise, whether in the form of pro bono advice, participation in our conferences, or in some other capacity, in order to assist us in achieving our aims.

We would also like to give particular mention to PLP's management committee, past and present, and to each of the volunteers who have worked with us over the years. Finally, thanks must also go to the work of PLP's founders and staff, who have made the project what it is today.



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