



Public Law Project response to the Post-Implementation Review of Part II of Legal Aid, Sentencing and Punishment of Offenders Act 2012

About PLP

The Public Law Project ('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 strategic priorities in our plan for 2017-2022:

- Promoting and safeguarding the Rule of Law during a period of significant constitutional change.
- Working to ensure fair and proper systems for the exercise of public powers and duties, whether by state or private actors.
- Improving practical access to public law remedies.

PLP undertakes research, policy initiatives, casework and training across a range of public law remedies.

Background: the supplementary report

This is PLP's response to the Ministry of Justice's Post-Implementation Review of Part II of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO"). The reforms implemented by Part II LASPO were based on some of the recommendations made by Lord Justice Jackson in his 2010 Review of Civil Litigation Costs. Among the recommendations not implemented by Part II LASPO were Lord Justice Jackson's proposals for the introduction of Qualified One Way Costs Shifting to judicial review proceedings.

In November 2016, Lord Justice Jackson announced a further review to consider the extension of his previous recommendations on fixed recoverable costs. In January 2017, PLP made submissions to Lord Justice Jackson on the applicability of fixed recoverable costs in judicial review proceedings. Our submissions, which include information about the costs of judicial review proceedings, are attached to this response.¹ Lord Justice Jackson also obtained and considered extensive data about litigation costs which is described in detail in his Supplemental Report and its appendices.²

¹ They are also available on our website at: <https://publiclawproject.org.uk/resources/plps-submission-to-lord-justice-jacksons-review-of-fixed-recoverable-costs/>

² <https://www.judiciary.uk/wp-content/uploads/2017/07/qualified-one-way-costs-supplemental-report-online-2-1.pdf>



Response to questions asked

We have only addressed below those questions in relation to which we have some experience or evidence to supply. As PLP's work is primarily concerned with public law, rather than private law claims, we do not have detailed evidence of the impacts of many of the reforms made by Part II LASPO.

Section 46 abolished the recoverability of after the event (ATE) insurance premiums (except in relation to clinical negligence expert reports). Qualified One Way Costs Shifting (QOCS) was introduced in its place in personal injury claims. In your experience what have been the impacts of this reform?

QOCS does not exist outside personal injury claims. Our response to this question considers the impact of the non-recoverability of ATE insurance premiums outside personal injury, and specifically in relation to judicial review claims.

ATE has always been difficult to secure for judicial review claims. The non-recoverability of ATE insurance premiums means that it is now almost impossible to obtain ATE insurance in the majority of judicial review claims.

PLP has made enquiries about the availability of ATE insurance for judicial review claims. We were advised by an insurer that it is only rarely available, and only where the merits of the claim are clear. We were also advised that the minimum premium would be 35% of the cover required, even in a claim where the prospects of success were above 80%. For example, for cover of £250,000, the minimum premium would be £90,000, payable up front. Cover would normally only be available after permission had been granted. For practical purposes, ATE insurance is therefore unavailable to almost all claimants in judicial review proceedings.

As set out in the submissions attached to this response, PLP's view is that the extension of QOCS to judicial review proceedings would enhance access to justice for claimants of moderate means. In the alternative, we support Lord Justice Jackson's recommendations in his July 2017 report for the extension of the Aarhus Rules to all judicial review proceedings.³

Section 55 reformed Part 36 offers to settle. The statutory change introduced by LASPO Part 2 was primarily that where defendant fails to beat a claimant's offer, the claimant's recovery should be enhanced by 10%. In your experience, what have been the impacts of this reform, and the regulations made under it?

PLP's experience is that the changes to Part 36 have helped to encourage early settlement. The incentive on defendants to settle early has been beneficial.

³ Chapter 10 of the Supplemental Report, which should be read together with the recommendations in the Westgate Report, to which PLP contributed, which is [at Appendix 16](#).