



Ministry of Justice

**Reform of Judicial Review: Proposals for the provision and use of
financial information**

Submission by Coram Children's Legal Centre

September 2015

Coram Children’s Legal Centre (CCLC), part of the Coram group of charities, is an independent charity working in the United Kingdom and around the world to protect and promote the rights of children, through the provision of direct legal services; the publication of free legal information online and in guides; research and policy work; law reform; training; and international consultancy on child rights. Founded in 1981, CCLC has over 30 years’ experience in providing legal advice and representation to children, their parents and carers and professionals throughout the UK. CCLC’s Legal Practice Unit specialises in child and family law, education law, community care law and immigration and asylum law. CCLC operates the Child Law Advice Service (CLAS), providing free advice on family and education law, and the Migrant Children’s Project advice line. The Migrant Children’s Project at CCLC is a centre of specialist expertise on the rights of children subject to immigration control. As part of CCLC’s work to promote the implementation of children’s rights, CCLC has undertaken amicus curiae interventions in a number of significant cases, including in the European Court of Human Rights, the Supreme Court and the Court of Appeal, providing assistance to the court on matters of children’s rights and best interests.

1. Do you agree that a multiple choice declaration is appropriate? Please provide reasons.

We agree that a multiple choice declaration might be the least burdensome way for the courts to obtain information, and for claimants to provide it.

2. Do you agree with the government’s proposed approach at paragraph 52(a)-(e)?

The government’s proposed approach is set out at paragraph 51. We do not agree with the requirements for situations where there is ‘funding other than from the claimant’s resources or legal aid’ set out at (d) or with the requirements for situations where ‘the claimant is a corporate body that is unable to demonstrate that it has or is likely to have sufficient funds to cover liabilities arising in connection with the application for judicial review’ set out at (e). We note that a corporate body can include charitable corporate bodies.

We believe that there is no reason to ask for financial information about organisations or individuals who may contribute funding but would never be in line to pay costs as a third party funder. As noted at paragraph 20, in order for a funder to be ordered to pay costs ‘case law requires there to be a strong relationship between the party and the person who is funding their claim’ and ‘[d]oing no more than providing funding for the application will not be sufficient – the third party must be seeking to drive the litigation and to benefit from a potential remedy in the case’. Therefore it is inappropriate to seek information about any and all funding contributions over the threshold, when only those who meet these criteria regarding influence and benefit will ever be in line for a third party costs order. The assertion that ‘funding can be a strong indicator of that influence’ (paragraph 20) may not be true and does not provide sufficient justification. In the case of charities such as ourselves, funding may be granted where the charitable funder categorically has no role in directly steering the course of our work let alone driving any litigation we may engage in. The only benefit derived by the charitable funder would be very indirect in contributing to the furtherance of their charitable objectives. In consequence, we believe that the list should be amended from the proposal

so that disclosure is only required where funders are controlling or driving the litigation and would clearly and directly benefit from a potential remedy in the case. We believe this should be expressed as a direct financial benefit.

Furthermore, who is to be considered a 'contributor' and what counts towards the 'size of the contribution' is not clear. If Coram Children's Legal Centre were, as a charity, to be bringing an application for judicial review as the claimant itself, it is not clear who would need to be listed as a 'contributor'. Would all funding sources for the salaries of anyone working on the application need to be provided? Or would funding sources only count as contributions where funding was granted to the charity specifically to undertake the application for judicial review? In the latter case, funding may have been granted for a larger programme of work that included the application for judicial review and we may not be able to meaningfully differentiate the specific 'size of the contribution' towards the application for judicial review itself.

3. Do you agree that there should be no requirement for the claimant to provide their estimate of costs? Please provide reasons.

We agree that claimants in judicial reviews should not need to provide their estimate of costs. We agree that this would, as stated at paragraph 52, 'place claimants under too significant a burden to discharge, including where they are unrepresented, and delay proceedings'. At the point of the application for permission, as mentioned at paragraph 53, the claimant will not have a meaningful idea of the costs of the litigation; indeed, they will not even know whether the defendant intends to defend the proceedings. The progress of the litigation is unpredictable at this stage and thus an estimate of costs is unrealistic and would not be of assistance to the court, but would place an administrative burden on the claimant and the court.

4. Do you agree that the claimant should be under a duty to update the court as set out in paragraphs 59 to 61? Please provide reasons.

The duty to update the court is outlined at paragraphs 58 to 60. The extent of the duty is unclear from these paragraphs. If such a duty were to be imposed on claimants, it should be clear that the duty is limited to updating only on changes that would result in the multiple choice check list declaration being completed differently.

5. Do you agree that the financial information requirements and approach to service the government proposes should apply to all applications? Please provide reasons.

We do not agree that the financial information requirements should apply to all applications for judicial review. They should not apply to certain types of claimant, as mentioned at paragraphs 56 and 62. Specifically, we believe that charities and charitable grant-making bodies should not be subject to the financial information requirements. This is because, although they should not according to current jurisprudence have third party cost orders made against them, disclosure of information about members of trustee boards could result in these members being unwilling to support the charity's involvement in judicial reviews. Some members of trustee boards may be deterred by the possibility of being held personally liable for third party costs. It should be borne in

mind that exempting charities would not create any significant omission: only small numbers of charities bring judicial reviews and all registered charities' conduct, including in the conduct of litigation, is overseen by the Charities Commission.

If the financial information requirements do apply to all applications, we agree that the proposed approach to service – that financial information will be available to the court but not be made publicly available or provided to the defendant – should apply without exception.

6. Do you agree with the proposal for a single threshold expressed in monetary terms? If not, please provide reasons and, if possible, an alternative.

We do not agree with the proposal that simply providing an amount of funding above a specified threshold should trigger a disclosure requirement. As set out above, we believe that information should only be required to be provided where a third party funder exercises control over the litigation and will derive a benefit from it (which we believe should be understood as a financial benefit).

However, if the proposals were to be implemented, we agree that a single threshold expressed in monetary terms is more practicable than a percentage threshold based on estimated costs.

7. Do you have any data on typical legal costs in the context of judicial reviews or typical contributions to judicial reviews? Please provide details.

We are not in a position to provide accurate data on typical legal costs of judicial reviews or typical contributions. Each case varies and the pool of cases we have information about would be too small a sample from which to draw meaningful conclusions. The Ministry of Justice should consult with the Legal Aid Agency for data on legal costs and contributions in legally aided cases, which can then be used as an indicator for non-legally aided cases.

8. Do you agree with the proposed threshold of £1500? If not, please provide reasons and, if possible, an alternative.

As stated above, we believe that control and benefit must be present if the details of a third party funder are to be required. Simply having contributed over £1500 to the costs of bringing an application for judicial review is indicative of neither. We do not agree with the statement at paragraph 72 that 'a threshold of £1,500 will capture contributions which may be indicative of a degree of third party control of the claim'.

In our experience, the costs of judicial review in the legal aid context frequently amount to substantially more than £1500 – often in the tens of thousands of pounds, as reflected in the estimates provided at paragraph 69 of the consultation document. Therefore the £1500 seems to be a relatively low threshold.

If the proposals as outlined at paragraph 51 are implemented, however, we support the principle that small contributors are exempt. We would also wish to see exemptions for all charitable third party contributors irrespective of the size of their contribution.

- 9. Do you agree with the government’s proposal for a more detailed picture of the applicant’s finances on an application for a costs capping order than is required with an application for permission? Please provide reasons.**

We agree that an applicant for a costs capping order should be required to give the court the necessary information to obtain an accurate picture of available resources.

- 10. Do you agree that the applicant should not be required to provide supporting documents? Please provide reasons.**

We agree with this proposal. Documents need not be required.

- 11. Do you agree with the government’s proposal for the information on members which an applicant must provide when it is a corporate body unable to demonstrate that it is likely to have the resources available to meet liabilities arising in connection with the application for judicial review? Please provide reasons.**

We do not agree with this proposal because we do not accept that the court would need to consider ‘whether the claimant might seek further capital from its members if were to face costs at the end of the proceedings’ (paragraph 99). In the context of a public interest judicial review, we cannot see that it would be appropriate for members’ private funds to be considered. In our view, members’ information (name, address and interest/connection) should only be disclosed where the member has a personal role in controlling the litigation and a direct financial interest in any remedy. As outlined above, there could be an adverse impact on members of charities’ trustee boards in that they may not want the charity to bring a judicial review or they may be dissuaded from taking up or continuing in a role as a trustee if they perceive that they will have their personal information shared or they will be potentially at personal financial risk.

- 12. Do you agree that the financial information requirements and the approach to service which the government proposes should apply to all applications? Please provide reasons.**

We agree with the proposed approach but believe there must be room for cases where an applicant submits financial information to the court alone.

- 13. Do you agree with the assumptions and conclusions outlined in the Impact Assessment?**

We agree with the assumption that the benefit of a fair allocation of the costs of judicial review is difficult to quantify. We believe that the consultation insufficiently considers the unquantifiable

benefit of individuals and organisations not being deterred from bringing or contributing funding to applications for judicial review.

- 14. Please provide any empirical evidence relating to the proposals in this paper. We are particularly interested in the costs associated with engaging in the judicial review process, the burden that these requirements would place on claimants and information on costs awards in judicial review cases.**

Not applicable.

- 15. What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposed options for reform? Are there any mitigations which the government should consider? Please give data and reasons.**

We consider that individuals with protected characteristics are disproportionately likely to benefit from the remedy provided by judicial review. As stated at paragraph 119, children have greater reliance on state services and therefore greater reliance on mechanisms of redress when let down by those services.

- 16. What do you consider to be the impacts on families of each of the proposed options for reform? Are there any mitigations which the government should consider? Please give data and reasons.**

We consider the impact on families to be indirect. As a children's charity working in family law, we can conceive of situations where we would bring public interest litigation against unlawful decision-making that had implications for family life rights. As such, any deterrent effect on organisations such as ours bringing litigation could indirectly impact on the enjoyment of family life rights.

Please direct inquiries to:

Kamena Dorling

Head of Policy and Programmes

Email: kamena.dorling@coramclc.org.uk

Telephone: 0207713 2019

Coram Children's Legal Centre
48 Mecklenburgh Square
London WC1N 2QA