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## **PLP INTERVENTION RESULTS IN COURT OF APPEAL RULING THAT CLAIMANTS CAN RECOVER COSTS IN JUDICIAL REVIEW CASES THAT ARE SETTLED BEFORE TRIAL**

In *Bahta & Ors-v-Secretary of State for the Home Department* (<http://www.bailii.org/ew/cases/EWCA/Civ/2011/895.html>), a case in which PLP was granted permission to intervene, the Court of Appeal has caused a seismic shift in the costs rules in judicial review, that will fundamentally affect claimants and defendant public bodies alike. PLP's research on settlement of judicial review claims was cited by the court. In addition PLP's oral submissions were summarised, and largely followed by the court.

The effect of the judgment is to reverse the previously accepted approach to awarding costs in cases where a defendant public body concedes a judicial review claim before the case comes to trial. Previously, the courts had applied the case of *Boxall*, which established that the default position was for the courts to make no order for costs in such cases unless it was "plain and obvious" that the claimant would have gone on to win. In practice this was often an insurmountable hurdle for claimants.

The practical effect of *Boxall* was that public authorities often took a "wait and see" approach, declining to address allegations of wrong-doing and illegality when first alerted to them and forcing claimants to issue proceedings unnecessarily, safe in the knowledge that they could then change their minds and escape without any sanction in costs.

The Court of Appeal has now made it clear that where a defendant concedes a claim, then the presumption will be that the defendant must pay the claimant's costs. If the claimant has complied with the pre-action protocol for judicial review (by setting out his or her case in full before proceedings are issued, and allowing the defendant public body at least 14 days to put right what has gone wrong), but the defendant has waited until proceedings were issued before taking action to settle the claim, the burden on the defendant to displace the presumption that it should pay the costs of the claim will be especially heavy (see paragraph 65).

As Lord Justice Pill put it:

*What is not acceptable is a state of mind in which the issues are not addressed by a defendant once an adequately formulated letter of claim is received by the defendant. In the absence of an adequate response, a claimant is entitled to proceed to institute proceedings. If the claimant then obtains the relief sought, or substantially similar relief, the claimant can expect to be awarded costs against the defendant.*

Public Law Project received excellent pro bono representation from Leigh Day & Co Solicitors, and Tim Buley and Nathalie Lieven of Landmark Chambers.

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