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ACCESS TO JUSTICE CHARITY CHALLENGES MINISTRY OF JUSTICE COSTS AND FUNDING REFORMS

Leigh Day & Co have written to the Justice Secretary, Ken Clark, challenging the outcome of Ministry of Justice's ("MOJ") proposals for the reform of civil litigation funding and costs in England and Wales.

The formal [letter before claim](#) has been sent on behalf of the [Public Law Project \("PLP"\)](#), a national legal charity which aims to improve access to public law remedies, such as judicial review, for those whose access to justice is restricted by poverty or some other form of disadvantage.

In the letter PLP challenge the way in which the MOJ have handled the proposals for reform as they impact upon access to justice in public law.

The MOJ's proposals are said to be based upon the recommendations of Lord Justice Jackson's comprehensive [Review of Civil Litigation Costs](#) undertaken over a year long period, involving extensive consultation and aided by a team of expert assessors.

At that heart of those recommendations and of the MOJ's proposals is the decision to abolish the recoverability of Conditional Fee Agreement (CFA) success fees. PLP does not object in principle to such a move provided that it is introduced in conjunction with the balancing factors recommended by Jackson LJ.

In personal injury cases, which have generated the fear of a "compensation culture", the MOJ proposes to introduce other key reforms to balance the effect of the decision to abolish recoverability of CFA success fees. Chief amongst these is the introduction of costs protection, given to claimants who are not conspicuously wealthy, so that they do not face the risk of having to pay the substantial legal costs of defendant bodies in the event that their claim were to fail.

However, the MOJ has decided not to introduce this key countervailing factor in judicial review. With the result that the government, and other state bodies – unlike small businesses and insurers in personal injury cases - will be able to recover costs from the citizen who is unsuccessful in challenging it. The key balancing factors in the reforms have been abandoned for judicial review.

The net result is that there will be a significantly detrimental effect upon the ability of the ordinary individual, the representatives of civil society and the public interest to obtain access to justice in this constitutionally vital area.

PLP considers that it was not lawful, on the basis of perfunctory consultation and absence of any reasoned justification, for the MOJ to take such a radically different path from that recommended by Lord Justice Jackson. PLP also consider that the proposals themselves are unlawful in view of the UK's common law and international law obligations to ensure access to justice to the citizen.

Diane Astin, Director of PLP said: *“PLP is very disappointed that the MoJ are proposing to abandon important recommendations made by Lord Justice Jackson. Judicial review, as the MoJ recognises, is “a crucial way of ensuring that state power is exercised responsibly.”¹ PLP believes that the MoJ’s decision not to implement Lord Justice Jackson’s proposals on costs protection for most claimants in judicial review claims has not been thought through. The proposed changes are likely to have a seriously detrimental effect on the ability of individuals and groups to challenge unlawful conduct by public bodies. The proposals for judicial review should have been consulted on properly and we urge the government to withdraw them pending a thorough consultation on the likely impact on access to justice.”*

Jamie Beagent of Leigh Day & Co said: *“Access to justice is a fundamental right. The Ministry of Justice’s proposals will seriously hamper that right. To undermine a key means by which the public can access the constitutional court of this country without introducing the balancing reforms recommended by Lord Justice Jackson is unjustifiable and, unsurprisingly, the MOJ has been unable to provide any justification.”*

For any further enquiries:

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¹ Para 4.16 of the MoJ consultation paper on legal aid: *Proposals for the Reform of Legal Aid in England and Wales*.

The Public Law Project notes that the Ministry of Justice's Response indicates that in relation QOCS for judicial review, "the Government is not persuaded that the case for this has been made out at this stage." [para 27]