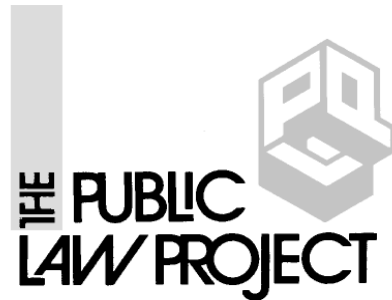


**The case of “Leach” and orders for costs
in judicial review proceedings**
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Published in *Human Rights & Public Law Line
News*



Following the changes to judicial review procedures introduced last year, there has been some concern as to whether these changes would affect the way in which the court approaches issues of costs at the initial permission stage. This is because this stage is now *inter partes*, with the defendant required by the new rules to participate.

The Court has always had the power to make orders for costs at the permission stage, (see section 51 Supreme Court Act 1981). Even under the previous regime, where an application for permission is refused, costs have been awarded in favour of the successful defendant: R v Personal Investment Authority Ltd. ex p Lucas Fettes & Partners [1995] OPLR 187. Nevertheless, most commentators took the view that the Practice Directions to the new Part 54, (PD 8.6), appeared to imply that this would be the exception rather than the rule. These state that where a defendant attends a permission hearing, the court will not normally make an order for costs against the claimant.

In Re Leach [2001] EWHC Admin 455, the Commissioner for Local Administration sought the costs incurred in producing his acknowledgement of service, following a claimant’s unsuccessful application for permission. Collins J decided that he was, and that this decision should be of general application. The amount awarded would normally be the costs incurred in dealing with the actual proceedings. The defendant would not be able to recover costs incurred in preliminary pre-litigation correspondence, though proceedings issued “out of the blue” would clearly necessitate more work and would be recoverable.

This decision has considerable implications on non-publicly funded litigants, as well as those who seek to persuade the Legal Services Commission of the merits of their case by trying to obtain permission first.