



## Response to Ministry of Justice Consultation

### Reform of judicial Review: Request for further views on the provision of financial information to other parties

August 2016

#### Introductory and general remarks

This set of proposals follow an earlier public consultation, stemming from reforms enacted in the Criminal Justice and Courts Act 2015 to increase transparency in the judicial review process. The CJC responded to the earlier consultation (<https://www.judiciary.gov.uk/wp-content/uploads/2011/03/response-to-moj-consultation-regarding-reform-of-judicial-review.pdf>) and the comments made in that response should be read in conjunction with this one.

The CJC is very concerned that this proposal goes a great deal further than the earlier proposals, and changes the scope fundamentally. Specific concerns are set out in more detail below.

#### Answers to specific Questions

- 1. Do you agree with the proposal to serve the financial declaration and any more detailed financial information on the defendant and interested parties at the same time as the claim form? We would welcome your views on whether there may be exceptional circumstances when the court should be able to direct that some or all of this information is not served on the defendants and other parties.*

No, for the reasons set out below.

First, requiring an applicant to provide information on their funding to defendants and other parties absent a requirement that defendants and other parties provide details of their funding arrangements to applicants is a fundamentally unprincipled breach of the principle of equality of arms.

Secondly, the proper means to enable a defendant to manage their litigation caseload and costs liability effectively is through the application of the present costs budgeting and management provisions in the CPR to judicial review proceedings. The use of cost budgeting would require both applicants and defendants, and where appropriate third parties, to exchange details concerning their expected litigation expenses, thus: (i) properly promoting equality of arms; (ii) ensuring that the position in judicial review proceedings concerning the provision of costs information was consistent with that taken in Pt 7 multi-track proceedings, and did not rest on the proposed unprincipled approach set out in the Consultation paper.

2. *Are there any alternative approaches available as to the stage in the proceedings when the financial information is provided to defendants and interested parties? If so, please describe them briefly and provide your reasoning.*

As noted in the answer to the previous question, the use of cost budgeting as a means to secure the provision, and equally effective, management of costs in judicial review, is an effective alternative to the proposal.

3. *Do you agree that it is appropriate not to allow this information to be provided to the general public under CPR 5.4C (1) and to leave any decision on this to the discretion of a judge on application?*

Yes.

4. *We would welcome views on our assessment of the impacts of the further proposals set out in Part B on equality or the family test. We would particularly welcome any evidence or data to support those views.*

The CJC has, in previous consultation responses on judicial review, stated that it is difficult to consider the impact when detailed records on court users are not available. The clear link between ethnic minority and religious minorities being affected by reforms to judicial review in the numerous asylum and immigration cases is manifest. However, as the paper notes, most such proceedings do not qualify for protective costs orders and are unlikely to qualify for the cost capping provisions.

The CJC agrees with the view that a number of groups with protected equality characteristics (e.g. people with disabilities, older people) will have greater interaction with public services and therefore may be more likely to seek judicial review processes.