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CC: Michael.Odulaja@justice.gsi.gov.uk
statistics.enquiries@justice.gsi.gov.uk

Dear Sir/Madam,

Public Law Project: data relating to judicial review

The Public Law Project ("PLP") is an independent national legal charity which aims to improve access to public law remedies for those whose access is restricted by poverty, discrimination or other similar barriers. To fulfil its objectives PLP undertakes research, casework, training and policy work.

In our response to the Ministry of Justice's Judicial Review Consultation CP25/2012, submitted on 23 January 2013, PLP requested that the Ministry of Justice publish the data underpinning its proposals in order that consultees could make an informed and reasonable response to the consultation. At paragraph 7 of our consultation response, we stated:

"7. As with any consultation exercise, the proposals in the consultation paper clearly fall to be considered by consultees by reference to the evidence on which they are based. In this case, however, objective evidence justifying the proposals is conspicuous by its absence (whether because it does not exist or because the Government has chosen not to publish it). It is submitted that the lack of an objective evidence base for the proposals renders the consultation exercise flawed, and that in order to afford consultees a proper opportunity to submit an informed response, it will be necessary for the Government to publish the evidence-base for the proposals, and then allow a further period of engagement with consultees. These representations are made without prejudice to that contention."

No data was produced by the Ministry of Justice in response to this and no data was produced when the Government responded to the consultation, announcing that some of the proposals would be brought into force. The data is of fundamental importance because the reforms claim to be justified by statistical data. Without making the relevant statistical data available, the public could not meaningfully engage with the issues, which are of great public

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Date:

22 May 2013

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importance. In hindsight, PLP is of the view that the judicial review consultation process was tainted by unfairness because of the paucity of published evidence in support of the proposals.

PLP's concerns about the judicial review consultation are renewed and exacerbated by the current consultation, *Transforming legal aid: delivering a more credible and efficient system* CP14/2013 ("the legal aid consultation"), which also purports to rely on statistical data to justify the proposals it contains. This data is incomplete and a number of the cited statistics are misleading. Without this data, the Public Law Project cannot meaningfully engage with this consultation: it cannot assess the nature of the problem that the proposals claim to be directed to addressing, it cannot assess the proportionality of the proposals in addressing the alleged problem and it cannot assess whether the impact of the proposals (as set out in the accompanying impact assessments) can be rationally justified.

On 30 April 2013 PLP made a series of Freedom of Information Act requests to the Ministry of Justice in order to assist with its response to the legal aid consultation. Those requests are appended to this letter. At the time of writing, PLP has not received a response from the Ministry of Justice.

The purpose of this letter is to inform you that, having considered the issues in greater detail, PLP considers that it has not been afforded a fair opportunity to respond meaningfully to the legal aid consultation without further information.

Specifically, PLP requires the following information in relation to judicial review:

1. Statistical information on the legal aid funding of judicial review claims by non-nationals, including for each of 2007, 2008, 2009,¹ 2010 and 2011:
 - a. the total number of claims by non-nationals which were funded by legal aid (or government estimate thereof);
 - b. in how many of those claims an *inter partes* costs award was made (i.e., for LSC to recover its costs) (or any government estimate thereof);
 - c. the total number of those claims which failed at permission (please specify paper or oral if known);
 - d. the total number of those claims which went to substantive hearing and outcome;
 - e. any breakdown of those claims by name or category of defendant authority/department (or estimate if such exists).
2. Case progression statistics (overall) for each of 2008, 2009, 2010 and 2011. We have in mind the data are used in Figure 1 of *Judicial Review Statistics 2007-2011*, Ad-hoc publication, 18 April 2013 which provides this data for 2007.²

¹ PLP is aware that equivalent information is available for 2008-2009: the government response to the 2009 consultation stated at paragraph 3.52:

"In 2008-09 LSC estimates that 108 civil representation recipients were non-residents in the UK. Of this number 73 (67.6%) had applied from within the EU, and 35 (32.4%) had applied from outside the EU. Of the 73 applicants from within the EU, the vast majority are likely to be covered by European Legal Aid Directive (2002/8/ESC) of 27 January 2003, so this change will not affect them. There may be further clients who are listed for legal aid purposes under a UK address (e.g. c/o their solicitor), so the number of applications being made from outside the EU may be higher."

² Available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/190991/jr-adhoc.pdf

3. Case progression statistics for each of the Administrative Court statistical categories for each of 2007, 2008, 2009, 2010 and 2011.
4. Of the 515 cases in 2011/2012 that ended after permission was refused without recording a substantial benefit to the client (see paragraphs 3.66 to 3.68 of the legal aid consultation paper), what was the aggregate costs to the legal aid fund of these cases?
5. Of the 330 cases in 2011/2012 that ended after permission was refused but a benefit to the client was recorded (see paragraphs 3.66 to 3.68 of the legal aid consultation paper), how many of these cases made a claim against the fund in form CLAIM1? How many of these cases made a claim against the fund in form CLAIM2? What was the aggregate cost to the legal aid fund?

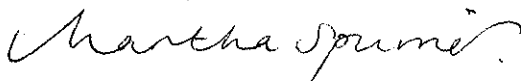
The information requested in (1) above is necessary to enable PLP and other respondents to assess the evidence the Ministry of Justice relies upon as to the proportionality of the proposal to introduce a residence test for civil legal aid (paragraphs 3.42-3.60 of the legal aid consultation paper). The information requested in (2)-(5) above is necessary to enable PLP and other respondents to understand the precise nature of the problem that the proposals on funding judicial review (paragraphs 3.61-3.79 of the legal aid consultation paper) are designed to address and whether the proposals are rationally connected to that problem and proportionate.

PLP is aware that the date for submission of responses is 4 June 2013. In light of the need for further information to be published by the Ministry of Justice so as to enable respondents adequately to address the proposals, PLP requests that the information be published urgently and in any event within 14 days, and that the deadline for responses be extended. Without the information requested and an extended deadline, we do not believe that we (and other respondents to the consultation) will have been afforded a reasonable opportunity to respond in a meaningful way. We are concerned that were the Government to proceed with the consultation in that way, the resulting unfairness would render the consultation unlawful. Accordingly, our request is based on an entitlement, for so long as the Government seeks to maintain that the consultation process is a fair one.

Please do not hesitate to contact us should you wish to discuss this in more detail. Please contact Martha Spurrier by email (m.spurrier@publiclawproject.org.uk) or by telephone (020 7243 1267).

Please acknowledge receipt of this letter at your earliest convenience and we look forward to receiving your views on the substantive concerns that we raise.

Yours faithfully,



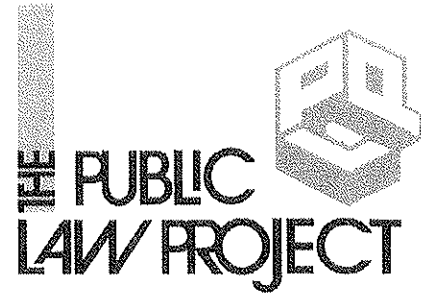
Martha Spurrier
Barrister, PLP Casework Team

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Also submitted online



Your ref:

Our ref:

Date:

30 April 2013

Dear Sir/Madam

Request for information under the Freedom of Information Act

We write to request access to information under the Freedom of Information Act ("the FOIA") in relation to the MoJ's recently published proposal for changes to legal aid for judicial review (Transforming Legal Aid: Delivering a more credible efficient system - <https://consult.justice.gov.uk/digital-communications/transforming-legal-aid>).

As a charity whose aim is to promote access to public law remedies (which includes judicial review) the proposal in respect of judicial review funding is of particular relevance to the Public Law Project and the information requested below will help inform our consultation response. We should be grateful for a response to the following questions and requests:

1. How have you calculated that paying legal aid providers only if permission for judicial review is granted will result in civil legal aid providers receiving approximately £1 million per annum less?
2. Of the 515 cases in 2011/2012 that ended after permission was refused without recording a substantial benefit to the client (see paragraphs 3.66 to 3.68 in the consultation document), what was the aggregate costs to the legal aid fund of these cases?
3. Of the 330 cases in 2011/2012 that ended after permission was refused but a benefit to the client was recorded (see paragraphs 3.66 to 3.68 in the consultation document), how many of these cases made a claim against the fund in form CLAIM1? How many of these cases made a claim against the fund in form CLAIM2?
4. Please provide a copy of any information considered and written material produced (including but not limited to reports, minutes, notes, memos, emails etc) by the MOJ in the preparation of the Impact Assessment and Equalities Impact assessment (Annex K).
5. In how many civil judicial review cases in each of the last three years (the years to be divided in whatever way the data is most readily accessible) did the court certify paper applications for permission as being Totally Without Merit? Please give any breakdown if

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known between those of such cases that were classified by the court as "Immigration and Asylum" and those that were categorised as "Other [categories of judicial review case]".

We are happy to receive this information in either electronic or hard copy form.

If we can help clarify this request or if you consider that the information requested will exceed the cost limit such that you are minded to apply the s 12 exemption, we should be grateful if you could provide advice and assistance so that we can refine our request.

As this information is requested to inform our response to the consultation which closes on 4 June, we should be grateful to receive a response as a matter of urgency, but certainly no later than the 20 working days provided for in the FOIA.

Yours faithfully

A handwritten signature in black ink, appearing to read 'C. Jennings', written over a horizontal line.

Clare Jennings, Solicitor
Public Law Project

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Email: c.jennings@publiclawproject.org.uk