

Reform of Judicial Review

Request for further views on the provision of financial information to other parties



A response by the Association of Personal Injury Lawyers

August 2016

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation with a 20-year history of working to help injured people gain access to justice they need and deserve. We have over 3,500 members committed to supporting the association's aims and all of which sign up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives and academics.

APIL has a long history of liaison with other stakeholders, consumer representatives, governments and devolved assemblies across the UK with a view to achieving the association's aims, which are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

Any enquiries in respect of this response should be addressed, in the first instance, to:

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Introduction

APIL is a membership association, working to ensure that people injured through the negligence of others have access to justice. As such, we have an interest in the proposals in this paper as a potential claimant, third party funder or intervener in judicial review proceedings. We maintain that the requirements in the Criminal Courts and Justice Act 2015, are likely to deter organisations and individuals with valid claims from making applications for fear that their supporters may inadvertently find themselves liable for the opposing parties' costs. We do, however, welcome the decision to increase the threshold for contributors to have to provide their names and addresses, from a contribution of £1,500 to £3,000.

We believe that the claimant's financial declaration and additional information should be filed with the court, as required by s 85 of the Criminal Justice and Courts Act¹, but rather than it being served on the defendant at the same time as the claim form, it should be released to the defendant if and when an adverse costs order is applied for.

Q1) 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.

Q2) 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.

The information provided to the defendant should be limited to the details of the funding arrangement that the claimant has in place, to allow the defendant to assess who is to be liable to pay their costs should it be necessary. Any more detailed information about the applicant's finances – above the financial declaration and the relevant names and addresses of contributors – should not need to be provided, as this will effectively act as a means test for applicants wishing to judicially review.

In relation to when the financial declaration should be served on the defendant and interested parties, the answer surely lies in section 86 of the Criminal Justice and Courts Act itself, which governs the use of information about financial resources. S 86(1) states that the section applies "when the High Court, the Upper Tribunal or the Court of Appeal is determining by whom and to what extent costs of or incidentals to judicial review proceedings are to be paid." The financial information is used only at the point where it needs to be determined by whom and to what extent the costs of the proceedings should be paid. There is no reason why the defendant should have access to this information until this point, and even then, perhaps only if an adverse costs order needs to be made. The information should be filed with the court along with the claim form, and only released to the defendant at that later stage, where they are entitled to know what the claimant can and cannot pay.

¹ S 85 (1) requires that the applicant provides the court with any information about the financing of the application that is specified in rules of court for the purposes of this paragraph.

Q3) 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?

We agree that the general rules should apply. CPR 5.4 C(1) provides that members of the public may freely obtain copies of statements of case, but 5.4C(1)(a) goes on to state that they may not freely obtain “any documents filed with or attached to the statement of case, or intended by the party whose statement it is to be served with it”. The financial declaration and additional information will fall into the category of “any documents filed with or attached to the statement of case”, and as such should not be made freely available to the general public.

Q4) 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.

We do not have views on this question.

Association of Personal Injury Lawyers

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