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## **Ministry of Justice Consultation on Judicial Review reform and financial information**

**Medical Justice, 15 September 2015**

MEDICAL JUSTICE is a small charity that facilitates the provision of independent medical advice to those detained in immigration removal centres (IRCs). The organisation was established in 2005 and achieved charitable status in 2009. Medical Justice is the only organisation in the UK that arranges for independent volunteer doctors, midwives and psychologists to visit men, women and children in immigration detention. We reach more than 600 detainees with physical and mental health problems a year. Medical casework evidence informs our research and we work to identify and highlight developing trends and ongoing issues with healthcare in detention.

### **Our participation in litigation:**

Because Medical Justice is the only organisation dedicated to providing independent medical assessments to detainees, we have unique access to information about detainees' health and the conditions of healthcare in immigration detention. We frequently provide witness statements to assist the court with information derived from our casework, and refer our clients to legal representatives when this is appropriate.

Cases where Medical Justice has participated in judicial review litigation as claimant and intervener include the following cases, but the lawyers acted *pro bono* in all of the cases:

1. We initiated a claim against the Secretary of State for the Home Department in 2009 to ensure access of independent medical practitioners to immigration detainees. The Secretary of State conceded the matter without the need for it to proceed to a permission decision. A protective costs order was issued in this case.
2. In 2010 we brought a Judicial Review of the Home Secretary's policy to remove individuals without notice (*R (Medical Justice) v SSHD* [2010] EWHC 1925 (Admin), upheld on appeal: [2011] EWCA Civ 269; [2011]). As a result the policy was quashed. A protective costs order was issued in this case.
3. We intervened in challenges to immigration detention by people who had been diagnosed with HIV (*R (MD (Angola) v SSHD* [2011] EWCA Civ 1238).
4. In the context of the detention of the mentally ill, Medical Justice, jointly with Mind, was granted permission to intervene in the Home Secretary's appeal to the judgment of Singh J in *R (HA) v SSHD* [2012] EWHC 979 (Admin). The Home Secretary abandoned her appeal shortly before the hearing. Medical Justice, jointly with Mind, then intervened in the recent case of *R (Das) v SSHD* [2014] EWCA Civ 45 where the Court of Appeal gave guidance on the meaning of the Home Secretary's policy on the detention of the mentally ill. The Supreme Court has recently granted Medical Justice permission to intervene jointly with Bail for Immigration Detainees in a forthcoming appeal in relation to similar issues listed for January 2016 (*O v SSHD*).

We have provided witness evidence in other claims. However, by far the most substantial number of judicial reviews, in which we are involved, concern individual claimants or appellants relying upon a medico-legal report prepared by one of our volunteer medical experts.

We are providing a response to this consultation because of the potential impact that changes to the judicial review process and funding may have on our work. However we have focused on answering the questions of most relevance to our experience.

### **The use and provision of financial information (Questions 1-5)**

#### Q3 Requirement to provide an estimate of costs

We agree that the claimant should not have to provide an estimate of the cost upfront: since the claimant usually has limited information about how the defendant intends to defend the claim, it is difficult to accurately estimate costs at this stage.

#### Q4 Proposal that claimant should update the court

Imposing additional burdens on individual or NGO claimants will serve as a barrier to bringing/pursuing such proceedings. It will increase the costs of proceedings and create additional admin for the court so delaying proceedings.

### **Proposal 2: financial information threshold**

#### Q6 Do you agree with a single threshold expressed in monetary terms

This section concerns specified financial information which claimants will need to provide to the court when making an application for permission for Judicial Review. In the case of corporate bodies who are unable to show that they can cover any costs arising from the litigation themselves, this includes names, addresses and other information on anyone who has contributed funding (above a proposed threshold of £1500) to the litigation. The stated purpose of the proposal is to enable the court to better consider whether to make a Third Party Cost Order.

However, it is not clear how the proposal would aid in achieving its stated aim: For a cost order to be made against a third party, the party "*must be seeking to drive the litigation and to benefit from the potential remedy*" – contributing funding above a specific threshold is unlikely to reveal whether a party does seek to drive the litigation or benefit from the remedy. For example if Medical Justice were in the fortunate position of having a wealthy benefactor able to contribute to financing a judicial review, we would not expect them to be involved in the decision-making in the case.

It is unclear from the proposal whether trustees and members of charities would be personally liable for costs. We are concerned that this uncertainty would discourage individuals from volunteering as trustees or members for charities. It may also place trustees and members into conflict with their charity where litigation is in the interest of furthering the charity's objectives. Grant-making bodies may be discouraged from funding charities who engage in litigation.

#### Q8 Do you agree with the threshold of £1500

The threshold appears very low. It would probably not cover the cost of disbursements (court fees and expert fees) in an ordinary unlawful detention judicial review.

### **Proposal 3: costs capping orders**

Q9 Proposal that an application for costs capping requires the claimant to provide financial info

We do not disagree with the proposal that organisations should be required to provide sufficient financial information to enable the court to apply relevant criteria when deciding on whether to grant a cost capping order.

Q 12 Proposal that a corporate body should provide info re members

We strongly disagree with the proposal that details of members, including their addresses should be provided and that these should be disclosed to the court as well as to the Defendant.

Charities and membership organisations often have large numbers of members with varying degrees of involvement with the organisation. Having to provide their details would interfere with their privacy. This proposal is likely to discourage individuals from joining an organisation as members, since at the time of their joining it would not be clear who their personal details may have to be disclosed to in future. It can be challenging to attract members to give time and resources to charitable organisations.

### **Equality impact**

Q 15 What are the equality impacts on individuals of the proposals for reform and what measures could be taken to offset them?

The majority of Medical Justice's client group have a protected characteristic- due to long term health needs/disabilities, their race, sexual orientation or gender. The potential impact of the reforms is to make it more difficult to access the judicial review process to ensure they are treated lawfully. We consider that justification has not been provided for the proposed reforms which will have a disproportionate impact on those deprived of their liberty who fall within these groups.

### **For further information please contact:**

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