

Open letter to Fiona Rutherford – Director, Access to Justice, MoJ
James Wrigley – Head of Civil and Family Legal Aid Policy, MoJ
Jane Harbottle - Interim CEO Legal Aid Agency

URGENT: COMMUNITY CARE JUDICIAL REVIEW LEGAL AID – DELEGATED FUNCTIONS AND WORK AT RISK

The Coronavirus Act 2020 and the regulations made under it has made major changes to the legal landscape of the UK in an unprecedented way. In addition to restrictions on movement and civil liberties, on 31st March and 1st April the Government removed statutory duties to assess and provide care to adults and provided local government with wide discretionary powers in respect of provision of social care.

At present, legal aid providers can only use delegated functions to grant funding certificates for judicial review claims under homelessness provisions. They are still subject to the regulations where, if they are refused permission by the court, they are not paid for the work they have done. Even in normal circumstances these conditions are serious inhibitors of the ability of those in need of care to obtain legal redress when things go wrong.

It is our submission that in these extraordinary times, upholding the rule of law and individual rights is essential and that, given the radical changes to care provision for the most vulnerable on society, swift and unencumbered access to justice via judicial review is essential.

While the motivation behind the recent changes is understood, equally it is crucial that the authorities also ensure there are no barriers to obtaining legal redress if the provisions cause unintended and disproportionate hardship.

Accordingly, we ask that the Ministry of Justice and the Legal Aid Agency in these extraordinary times consider the following:

- (1) The restoration of delegated powers to solicitors to fund urgent judicial review claims for challenging community care, Children Act 1989 and Asylum Support decisions given the risk to life which is present in the pandemic and the need for urgent action by solicitors;
- (2) To reduce the effect of any inhibition of the “permission at risk” regulations for legal aid providers for issuing claims by suspending the operation of the regulations which mean should the court not grant permission the provider is not paid.

Given the changes to the duties to provide social care combined with restrictions on movement, we consider these are necessary and urgent.

We want to emphasise, there is nothing in our proposals ((1) and (2)) that infringe the government’s new measures. Judicial reviews do not require the parties to attend court and the government’s social distancing measures are maintained. Our proposals are, however, essential to ensure that the rule of law is upheld, the vulnerable are protected and that access to the Courts is preserved.

Yours sincerely

Simon Mullings and Marina Sergides (co-chairs) for Housing Law Practitioners Association

Nimrod Ben Cnaan for Law Centres Network

Chris Minnoch for LAPG

Tim Baldwin Barrister Garden Court Chambers