



THE JACKSON REVIEW OF CIVIL LITIGATION COSTS – FIXED RECOVERABLE COSTS

RESPONSE OF GARDEN COURT CHAMBERS

1. Garden Court Chambers was founded in 1974 and is now a multi-disciplinary set consisting of 185 barristers. We are committed to providing the highest quality of advice and representation to our lay and professional clients. The lay clients served by Chambers are typically the most marginalised and socio-economically disadvantaged members of society.
2. Our lay and professional clients are among those who are most likely to be affected by Lord Justice Jackson's recommendations and changes to the current costs regime. We are concerned to ensure that any changes promote access to justice for our lay clients and allows their legal representatives to secure their rights.
3. The recommendations in Jackson LJ's review affect three of our practice teams – Civil Liberties and Human Rights, Public Law and Housing – in different ways. Each team has considered the report and will be working together over the coming weeks and months to protect and promote access to justice. We will be considering the best way to contribute to the MOJ consultation that will follow this report.

CIVIL LIBERTIES AND HUMAN RIGHTS

4. The Civil Liberties and Human Rights team welcomes Lord Justice Jackson's recognition of the wider constitutional importance of this work and the complexity of the issues arising out of it. We simply would not be able to defend the civil liberties and fundamental rights of our clients and hold the State to account for abuse and malpractice under the proposed regime of fixed recoverable costs.

5. While we welcome the report's suggestion that these cases will "*seldom be suitable*" for the new intermediate track,¹ clarity and certainty about what costs regime their case will be considered under is vital. We will be urging the Government to implement the report's recommendation by adopting a rule which would exclude all civil actions against public authorities from the intermediate track.

6. Maya Sikand, commenting on behalf of the Civil Liberties and Human Rights team, said:

"Although Lord Justice Jackson has recognised that our work will rarely be appropriate for fixed recoverable costs, our clients will still struggle to secure access to justice. The reduction in eligibility for legal aid and the removal of recoverable success fees has left them without the means to fund their challenges and without protection from adverse costs orders. If the Government is serious in its stated commitment to access to justice, then they must introduce a scheme of Qualified One Way Costs shifting for all claims in civil actions against the state as a matter of urgency."

7. Members of the Garden Court Civil Liberties and Human Rights team worked closely with the Police Actions Lawyers Group in drafting submissions to Lord Justice Jackson. We are pleased that those submissions proved decisive in persuading the judge that fixed recoverable costs would be inappropriate for these cases.

PUBLIC LAW

8. The Public Law team is pleased to see that Lord Justice Jackson has stressed the importance of judicial review ("JR") as a vital part of our democracy and the need to promote access to justice in JR proceedings.

9. However, we were disturbed to see that the Government Legal Department appear to believe that there is no problem with access to justice in JR and that the current regime is working satisfactorily. Lord Justice Jackson was right to reject that view. It does not reflect the reality and the practical difficulties our clients have in securing funding for JR or the scale of *pro bono* work that their lawyers take on in the public interest.

10. The team is disappointed to see that the report recommends the adoption and extension of the so-called "Aarhus Rules". It is clear from the report that Lord Justice Jackson has only made this recommendation due to the Government's refusal to contemplate Qualified One Way Costs shifting ("QOCS") in JR proceedings.

¹ Lord Justice Jackson proposes a new track for money claims valued between £25,000 and £100,000, provided that they meet certain allocation criteria connected with complexity – the length of trial and number of experts, for example

11. Stephanie Harrison QC commented that:

“While implementing the Aarhus rules for all JR cases is better than the status quo, it doesn’t go far enough. There is a real crisis in securing access to justice for claimants. Most of our clients will struggle to raise the proposed adverse costs cap of £5,000 and applying to reduce that cap may generate costly and time consuming satellite litigation.

We need substantive reform and the Government should accept Lord Justice Jackson’s original recommendation: that JR should be subject to QOCS.”

12. In addition to drafting submissions to Lord Justice Jackson², members of the Public Law team were also part of the “Westgate working group” and helped draft the resulting report.³

HOUSING

13. The Garden Court Housing team is concerned that the proposed caps on recoverable costs are set at too low a level for housing disrepair cases and other housing related cases. Many of our clients are caught in a “David and Goliath” battle with their well-resourced landlords and capping their recoverable costs will either handicap their solicitors’ efforts to represent them or leave them out of pocket if they win.

14. The Housing team’s submissions to Lord Justice Jackson pointed out the paramount importance of recovering costs at full *inter partes* rates for a legal aid practice to remain viable.⁴ This does not appear to have been recognised by Lord Justice Jackson’s recommendations and implementing fixed recoverable costs would represent yet another blow to the most marginalised and vulnerable members of our community.

15. Liz Davies said that:

“Inadequate remuneration will lead to inadequate representation. These are cases which need robust and fearless litigators in order to do justice to our clients. A vulnerable individual simply won’t have the resources to fight a protracted battle with

² <http://www.gardencourtchambers.co.uk/wp-content/uploads/2017/08/Garden-Court-Chambers-Written-sub-and-case-studies-from-the-Public-Law-Team-Jackson-Review-FRC.pdf>

³ https://www.judiciary.gov.uk/wp-content/uploads/2017/07/Appendix_16_Review-of-Civ-Lit-Costs-Supp-Report-FRC.pdf

⁴ <http://www.gardencourtchambers.co.uk/wp-content/uploads/2017/08/Garden-Court-Chambers-Written-submissions-from-the-Housing-Team-Jackson-Review-of-FRC.pdf>

an intransigent local authority or private landlord. That cannot be right when all they are trying to do is get the safe, habitable accommodation guaranteed to them by law.”

CONCLUSION

16. Effective access to legal representation and to the courts to vindicate rights is critical to the rule of law and to our democracy. The recent Supreme Court judgment in *R (Unison) v Lord Chancellor* [2017] UKSC 51, delivered on 26 July 2017, makes that abundantly clear. It is a landmark decision concerning the constitutional right of access to justice and the rule of law. Garden Court Chambers hopes that the strong message from that case will be heard by the MOJ, along with Lord Justice Jackson’s review on issues relating to civil actions against public authorities and public law cases. The particular position of tenants bringing claims against their landlords must be re thought. This is not the time to be weakening the means by which landlords are held to account for the provision of unsafe and inadequate housing.