

Government re-thinks presumption on third party interveners in judicial reviews

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In September last year, the Justice Secretary launched a consultation entitled ' *Judicial Review: Proposals for further reform* ' to examine proposals in six areas aimed at reducing the burden of Judicial Review. Having considered the responses, the Government published its response to the consultation earlier this year.

In particular, the Government looked at the approach towards the award of costs against parties who choose to intervene in proceedings and whether it could be strengthened i.e. if a party chooses to make an application to the court rather than being requested by the court to intervene (usually an intervener would ordinarily expect neither to pay nor to receive costs to or from a party). The Government decided that it would introduce a presumption that interveners would be responsible in principle for their own costs and those costs arising to the parties from their intervention.

Judicial review claims often raise wider issues of public interest that go beyond the parties directly involved. For example, many cases affect disadvantaged, vulnerable or marginalised groups whose interests are represented by charities who intervene to provide expert knowledge/information to the court. It is therefore not surprising that the proposed presumption caused significant concern for many charities involved in advocacy work for their beneficiaries. A general presumption that an intervener would be responsible for the increase in costs resulting from its intervention could be a serious barrier to action if charities were to face substantial costs. The Government, however, appears to be thinking about this matter again:

'Those who intervene in a case to make arguments or adduce evidence can certainly add value to the proceedings, but we think it right that they should face the financial consequences of their decision to intervene. However, having listened to arguments in the other place we are persuaded that there may be a case for some modification of the provisions and we look forward to considering possible amendments'

It is hoped that the proposed presumption is amended since, in most cases, the role of the intervener is to assist the court in understanding the broader legal and policy context in which the immediate issues arise. Intervention is, of course, at the discretion of the court which can refuse participation if it considers that it will add no value and can control the level of intervention in other ways such as restricting the evidence and submissions made by interveners.