

Criminal Justice & Courts Bill: Part 4
A briefing for The House of Lords Report Stage, October 2014

Judicial Review proposals – the impact on children and young people

“Once a matter is in court, the more important the subject, the more difficult the issues, the more help we need to try and get the right answer... interventions are enormously helpful”

Baroness Hale of Richmond, “Guarding the Guardians”, October 2013

Part 4 of the Criminal Justice & Courts Bill 2014 proposes significant restrictions on the procedure for judicial reviews brought or supported by charities in the public interest. If passed, it is likely that children’s charities and NGOs will be deterred from bringing or supporting cases to change, develop and clarify the law. This is because the Bill introduces strong financial deterrents to organisations seeking to litigate in the public interest:

- The Court will be restricted in its power to grant an order limiting costs liability for organisations wishing to bring cases.
- The Court will be obliged to order ‘interveners’ to pay for any work done by another party arising from their involvement.

This short briefing demonstrates what is at stake for children and young people by summarising key public interest challenges that have been instrumental in ensuring children and young people’s voices are heard in our Courts.

Further information about the Bill and amendments is available in a joint NGO briefing¹.

“How could trustees reasonably agree to support an intervention when it could result in losing tens of thousands of pounds or more in costs, jeopardising, in some cases, the existence of small charities?”

Lord Carlile, House of Lords, 30/6/14

About JustRights

JustRights is a coalition of charities founded by Children’s Rights Alliance for England, The Howard League for Penal Reform, Law Centres Federation and Youth Access. We are working towards a legal system that provides ready access to high quality independent legal advice and representation for all children and young people, whenever they need it. JustRights campaigns in the interests of children and young people (not lawyers!).

www.justrights.org.uk Twitter: [@JustRights1](https://twitter.com/JustRights1)

¹ See <http://www.publiclawproject.org.uk/resources/category/18/policy-briefings-and-consultation-responses> and <http://www.howardleague.org/transforminglegalaid/> for more information

Examples of important public interest challenges where organisations have supported children and young people's rights

The following examples illustrate the critical role of NGOs with specialist experience intervening in litigation to assist the Court in cases that raise issues of wider public interest.

R (NXT and Others) v Secretary of State for the Home Department (Children's Commissioner intervening) [2011] EWHC 969 (Admin)

The **Children's Commissioner** intervened in this case about the on-going detention of a mother under immigration powers while her three children were in separate private fostering arrangements. The intervention focused on the need for the Home Office to give appropriate weight to the best interests of her children when it decided to detain their mother. The Court, noting on several occasions how helpful the intervention of the Children's Commissioner was, held that the mother's detention became unlawful when it became apparent the Secretary of State couldn't deport her within a reasonable timeframe. This was because a parenting assessment had to be carried out, which could not happen whilst she remained detained. The intervention of the Children's Commissioner enabled the Court to understand that this case was *'not unique, and that the circumstances in which such detention continues has caused considerable concern'*. It stated that the intervention of the Children's Commissioner illustrated that *'the case raises wider public issues affecting children and families justifying the intervention of the court to review in the general interests of good administration in an important area affecting fundamental rights.'*

The Queen (on the Application of OP) v Secretary of State for Justice and others [2014] EWHC 1944 (Admin)

Just for Kids Law intervened in this important case about the rights of vulnerable defendants to be supported by registered intermediaries in criminal cases. The Court ruled that denying defendants use of registered intermediaries, when these were available to victims and witnesses, would result in *'inequality of arms'* and the *'risk of unfairness'*. Through its involvement, Just for Kids Law provided evidence and argument to ensure that the decision will provide vulnerable children and young people who go through the criminal courts equal access to the government's intermediary scheme. Evidence shows that 60% of such young people have a communication disability and a third have special educational needs.

R (on the application of HC) v Secretary of State for the Home Department v The Commissioner of Police of the Metropolis [2013] EWHC 982 (Admin)

This case, brought by Just for Kids Law, and supported by **Coram Children's Legal Centre** and the **Howard League for Penal Reform** as interveners, secured a change in the law to require 17 year olds at the police station to be offered appropriate adults in line with other children. The Court noted that many important arguments were contained within the interveners' submissions.

R (on the application of SO) v London Borough of Barking & Dagenham v Secretary of State for the Home Department [2010] EWCA Civ 1101

The Children's Society intervened in this case which provided important guidance about the kind of support available to children 'leaving care' and the interplay between the children's provisions and the asylum support provisions.

R (on the application of The Children's Rights Alliance for England) v Secretary of State for Justice and ors [2013] EWCA Civ 34

This important case, brought by the **Children's Rights Alliance for England** (CRAE), considered whether the Secretary of State was under a duty to inform children who had left a secure children's centre that they may have been the subject of unlawful restraint so they could obtain redress. The charity was granted standing because the whole point of the case

was that the children affected were not in a position to litigate as they did not know they might have a claim. The charity was granted a protective costs order to limit its costs liability. It is unlikely that this small expert charity would have been able to bring the claim without such protection.

JC and RT v CCC [2014] EWHC 1041

Just for Kids Law intervened in this case which concerned whether anonymity protection available to children and young people in criminal proceedings is indefinite or expires on a child's 18th birthday. The case has great significance for a huge number of young people, including defendants, victims and witnesses, who are at risk of their lives being turned upside down on their 18th birthday if personal and sensitive information from a criminal trial suddenly becomes public. In this case the intervention from Just for Kids Law was especially important as it was the only party in the proceedings that was able to provide a broad perspective on this important issue, since the Old Bailey, the Defendant in this case, had chosen not to be represented.

The Queen (on the Application of the Howard League) v Secretary of State for the Home Department and the Department of Health [2003] 1 FLR 484 [‘The Children Act case’]

This wide-ranging and important case was brought by **The Howard League for Penal Reform** at the charity's own expense over a decade ago. In the current climate, the charity would not be able to bring such a case without costs protection. In this case, the Howard League challenged the legality of the Secretary of State's policy guidance on the treatment of children under 18 years of age held in Young Offender Institutions. The Secretary of State had asserted that the Children Act 1989 did not apply to such children. The Court did not agree. As a result, children in prison were not offenders to be treated differently from children in the community, but children who were entitled as a matter of law to full rights under the Children Act 1989. This case has created a sea change in the way children in prison are dealt with, reflected in a raft of policies and references to the case in government guidance. Since the judgment, the case has been cited in over 20 other cases and has become a key case in the interpretation of children's rights.

Comment

The overall effect of these proposals will be to suppress legitimate challenge, limit judges' discretion to act in the public interest and shield public agencies from effective oversight. This will have a highly damaging impact on children and young people's access to justice and, thus, their safety and wellbeing. JustRights has previously evidenced how **highly vulnerable children and young people at risk of abuse and exploitation are being disproportionately affected by the Justice Secretary's legal aid plans.**² Those worst affected include: homeless young people; sexually exploited children; young people with mental health problems and learning disabilities; children affected by care proceedings; children in care and care leavers; trafficked children and young people; and young refugees and asylum-seekers.

² http://justrights.org.uk/sites/default/files/Legal_Aid_-_Child_Protection_Implications_sept_2013_FINAL.pdf

*****Action you can take*****

- Peers concerned about children and young people should:
 - Attend Report Stage in the House of Lords, October 20th/22nd/27th 2014
 - Support amendments tabled by Lord Pannick and others
 - Raise these issues at Report Stage and Third Reading in the House of Lords
- MPs are urged to raise concerns about the impact of these proposals on children and young people in preparation for the return of the Bill to the House of Commons

The JustRights campaign on legal aid is supported by:



the Howard League for Penal Reform

YOUTH Legal & Resource Centre

Other JustRights supporters include:

Catch 22 | Confederation of Heads of Young People's Services | Coram Children's Legal Centre | Coram Voice | Independent Academic Research Studies | Kids Company | National Youth Agency | Streetlegal | The Cabin (the UK's only CAB for young people) | Young Minds |