

LIBERTY80

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

Criminal Justice and Courts Bill – ping pong in the House of Commons 13 January 2015

“No difference” principle

Clause 64 of the Bill would allow a public authority to avoid accountability via a judicial review if it can argue that it is *“highly likely”* that its own unlawful behaviour made *“no difference”* to the outcome for the individual applicant. Amendment 97-102B (Reason 102B) inserted by the House of Lords allows this test to remain in place, but provides that judges may allow judicial reviews to proceed in these circumstances if it is in the public interest to do so. The amendment in lieu proposed by the Government would only allow judges to intervene in cases of *“exceptional public interest”*.

Judicial review is the mechanism by which individuals and organisations hold the state accountable to the law in the public interest. It is therefore perverse for the Government to limit access to judicial review to those cases of *“exceptional”* public interest. This approach turns the Rule of Law on its head. The Government’s amendment in lieu will have significant implications for affected individuals; it will also encourage public bodies to act with disregard for the law, leading to a much poorer delivery of public services.

Provision of financial information

Clause 65 would require those bringing a judicial review to provide information about the *“source, extent and nature”* of their financial resources before a claim can proceed. This extends to information about those who are, or who are likely, to contribute funds to help another person bring a claim. Clause 66 allows those revealed to be providing financial assistance to claimants to be liable for costs. Amendments 103- 106 (Reason 106D) by the House of Lords would give judges discretion to allow a judicial review to proceed without this information being provided to the court. The Government’s amendment in lieu would require court rules to set a financial threshold. If an individual or organisation contributes an amount above this threshold, information about their contribution will have to be provided.

Clauses 65 and 66 will have a chilling effect on judicial review, subjecting the courts and individuals to a bureaucratic disclosure exercise before the claim can proceed and opening their supporters up to intrusive and unfair costs. When it is claimed that a public authority has acted unlawfully, it is for the court to decide whether information about the funding of the claim is relevant and necessary. On this point of principle, the Government amendment affords no discretion to the courts and continues to create a significant obstacle to those seeking to hold the state to account. In practice, the Government amendment offers little benefit - judicial review costs vary greatly and change over the course of the claim and there are significant discrepancies in wealth between those who bring and support cases. A single, arbitrary threshold will not provide any semblance of a fair and workable system.

Secure Colleges

Clause 29 establishes the Secure College, a titan prison for children. The Bill also grants a power for the use of force against children detained in secure colleges for the purpose of enforcing good order and discipline. Amendment 74(Reason 74B) made by the House of Lords would place a bar in primary legislation on boys under fifteen and all girls being detained in a Secure College. The

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Government's amendment in lieu would require a statutory instrument to be passed before these categories of children could be detained in a Secure College.

Secure colleges are untried and untested. All evidence suggests that smaller, well-staffed, facilities produce the best rehabilitative and educational outcomes. Given the particular risks to the physical and mental safety, health and wellbeing of younger children and girls, it is difficult to understand why the Government is not willing to accept that further primary legislation should be required before they can be detained in the Secure College system.