

## **BUAV Protective Costs Order**

The BUAV has become the first animal protection organisation to be granted a protective costs order (PCO). This was in the context of its judicial review against the Home Secretary arising out of its undercover investigation of primate neuroscience research at Cambridge University. The BUAV contends that the Home Secretary underestimated the suffering of marmosets (thereby distorting the cost:benefit assessment which lies at the heart of the regulatory regime) and that the arrangements for care were inadequate, particularly in the post-operative period, when marmosets were routinely left unattended for long periods overnight.

Because of the technical nature of the evidence and the novelty of the legal points raised, the case is expensive. The Home Office put their costs at up to £150,000. The BUAV said it could not afford to run the risk of costs of this magnitude and therefore applied for a PCO, offering to pay £20,000 (plus VAT) towards the Home Office's costs if it lost and to limit its own claim for costs to the same figure.

Mr Justice Bean granted the application on 31 January, substituting £40,000 for £20,000. The fact that the BUAV had sufficient reserves to meet a full adverse costs order was not a bar. The case will now proceed to a hearing, probably in the summer.

Only a handful of PCOs have been granted in judicial reviews. They are likely to become more frequent following the Court of Appeal's decision in *R (Corner House Research) v Secretary of State for Trade and Industry* [2005] EWCA Civ 192. An applicant (in practice an NGO) must show (*inter alia*) that the issues raised are of general public importance; the applicant has no private interest in the case; having regard to the financial resources of the parties and to the amount of costs that are likely to be involved it is fair and just to make the order; and if the order is not made the applicant will probably discontinue the proceedings and will be acting reasonably in so doing.

The decision is particularly important in the animal protection context because animals need an NGO to represent their interests in court. Unless NGOs can obtain costs protection in appropriate cases, they are likely to be deterred from litigating and alleged unlawfulness will then not be cured.