EQUALLY OURS Equality and human rights for us all

Independent Review of Administrative Law questionnaire

Introduction

Equally Ours (formerly the Equality and Diversity Forum) is the national network of organisations committed to making a reality of equality and human rights in people's lives. Our members include Age UK, Mind, Stonewall, the TUC, the Runnymede Trust, Child Poverty Action Group, the Traveller Movement, the Fawcett Society and Disability Rights UK.

We all deserve effective access to justice and a fair hearing. Judicial review is a vital and necessary tool for good and effective government and policy-making.
Many of our members use judicial review as a necessary tool to ensure public authorities apply the law properly in decisions affecting the people who they represent.

We believe that judicial review should reflect the following key principles:

Access to justice: everyone should have effective access to the justice system, in order to challenge decisions affecting them. To be effective, everyone must have access to justice in practice, meaning that, for example, there should be enough time for applications to be lodged and those lacking financial means should not be excluded from the court system.

Rule of law: the rule of law and our fundamental rights lie at the heart of who we are in the UK. In a democracy, everyone must act in accordance with the law. That means public bodies of all kinds, including the government. Judicial review is often the prime mechanism for ensuring that compliance happens in practice.

Parliamentary sovereignty: public bodies (including the government) must comply with the laws set out by parliament. It is the job of the judiciary to ensure that is what happens.

Good governance: judicial review ensures the accountability of government, which means better standards of governance and more efficient, higher quality decision-

making. The Panel's terms of reference and call for evidence falsely posit judicial review as opposed to good effective government.

Our members would emphasise that many of the cases they pursue seek to uphold statutory duties in both the Equality Act 2010 and the Human Rights Act 1998.

1.**Are there any comments you would like to make, in response to the questions asked in the above questionnaire for government departments and other public bodies?**

Good and effective government and policy-making is lawful, reasonable, transparent and accountable. Judicial review plays a vital role in this and protects people from unlawful decisions that cause harm. It is a safeguard to our democracy and a pre-requisite for good governance and government.

It can also help clarify the law, helping public bodies to carry out their duties effectively and lawfully. Sometimes, judicial reviews are taken out by public bodies themselves.

The questionnaire makes the premise that judicial review 'seriously impedes the proper or effective discharge of central or local government functions' and may result 'in compromises which reduce the effectiveness of decisions.' We do not agree with the characterisation.

Accountability and transparency are a central tenet of parliamentary democracy. The essential aim of judicial review is providing recourse for an individual or individuals if a public body has acted unlawfully.

It is vital that people are able to challenge the decisions and actions of public bodies and that everyone has effective access to justice and a fair hearing.

In ensuring that the law is followed, judicial review can enhance the effectiveness of decisions and discharge of functions.

An example is the following case:

RF v SSWP [2017] EWHC 3375 (Admin)

This case was a challenge to the introduction of the Social Security (Personal Independence Payment) Regulations 2013. These regulations meant that people with serious mental health conditions, who were unable to plan or undertake a

journey because of overwhelming psychological distress, received fewer points in the PIP assessment and were only entitled to a lower level of support, if any. The Claimant argued that:

- The regulations were in breach of Article 14 of the ECHR (protection from discrimination) and were therefore unlawful
- The regulations were incompatible with the purpose of the primary legislation they were made under (Welfare Reform Act 2012)
- The Department of Work and Pensions' (DWP) failed to consult before making the regulations and this was unlawful

Evidence was supplied by Mind on the lack of consultation by the Secretary of State on key issues and they provided expert evidence from a consultant psychiatrist and several case studies which showed how people with certain mental health problems would be badly affected by the changes in legislation

The case progressed to a full hearing in which the High Court found that the regulations were unlawful. The decision to introduce the regulations was "manifestly without reasonable foundation", was "blatantly discriminatory" against people with mental health problems, and that the SoS had not adequately consulted before introducing the regulations. The High Court quashed the regulations.

On 19 January 2018, the Secretary of State announced that the judgment would not be appealed.

On 30 January 2018, the Minister for Disabled People, Health and Work confirmed that the DWP would be reviewing 1.6 million PIP claims following the judgment.

2.In light of the IRAL's terms of reference, are there any improvements to the law on judicial review that you can suggest making that are not covered in your response to question (1)?

The Panel will be examining the 'duty of candour'. The Administrative Court Judicial Review Guide requires parties to 'ensure that all relevant information and all material facts are put before the court'.' Parties must therefore 'disclose any information or material facts which either support or undermine their case'. The guide makes clear that compliance with the duty of candour is 'very important'.

Public bodies have been known to not make relevant information available and even to redact documents presented in evidence.

It is essential that claimants have access to all relevant information and material facts so that they are able to fully understand which factors played a part in the body making its decision. As previously stated, accountability and transparency are central tenets of our parliamentary democracy.

The Panel ask many questions but seem to omit what impact judicial review has on the complainants. To them it is about changing real life circumstances – in their view – for the better. Decisions can have a material impact on their lives and futures.

One case taken up by IPSEA (Independent Provider of Special Educational Advice) involved the failure of a school to admit a 17-year-old student to its sixth form despite being named in her Education, Health and Care ("EHC") plan.

The local authority was legally obliged to ensure that the provision set out in her EHC plan to meet her special educational needs was delivered in accordance with s42 of the Children and Families Act 2014. A pre-action protocol letter was sent to the school and the local authority. A negative response was received and IPSEA referred the client on to a legal aid provider who issued a judicial review claim. The claim settled resulting in the student's admission.

Despite missing 6 months of education while the claim was pending, it still gave the student the chance to continue her education with the necessary support, which could provide her with options for the rest of her life.

Section 2 –Codification and Clarity

3.Is there a case for statutory intervention in the judicial review process? If so, would statute add certainty and clarity to judicial reviews? To what other ends could statute be used?

This refers to the long-standing debate about codification. Whatever decision the Panel makes, it is essential that judicial review remains accessible to all citizens, who should be able to maintain their right to challenge the government or any other public body, if their actions are unlawful.

4.Is it clear what decisions/powers are subject to Judicial Review and which are not? Should certain decision not be subject to judicial review? If so, which?

The government has asked the Panel to consider that judicial review 'is not abused to conduct politics by another means'.

The effective functioning of politics within a democracy requires all involved to follow the same set of basic rules, set out in law. The Courts provide an essential oversight of these rules, a role that becomes even more important in the context of an unwritten constitution such as we have in the UK. For that reason alone, extreme caution should be exercised in seeking limits on people's ability to challenge government's actions. This will be the case with this government and indeed all future governments. No government should be above the law.

5.Is the process of i)making a Judicial Review claim, ii) responding to a Judicial Review claim and/or iii) appealing a Judicial Review decision to the Court of Appeal/ Supreme Court clear?

The procedural rules relating to these issues are found in the Civil Procedure Rules.

The 2020 Administrative Court and Judicial Review guide is comprehensive and helpful, this year even including a section on Covid-19 measures. The forward by Rt Hon Dame Victoria Sharp DBE notes: 'It covers all the stages of a claim for judicial review. Good practice is identified and pitfalls foreshadowed.'

While individuals may be constrained in their ability to make a claim through lack of access to legal advice or funds, the processes as they stand are clear. This review presents an opportunity to address those constraints and ensure that every individual can have access to justice through judicial review.

Section 3 -Process and Procedure

6.Do you think the current Judicial Review procedure strikes the right balance between enabling time for a claimant to lodge a claim, and ensuring effective government and good administration without too many delays?

The time limit for making a claim is already very short, especially if the claimant find that they have to use some of that time identifying a third party who could help them pursue their challenge and provide them with access to legal advice. Three months is a very limited time frame to present a claim, when it already encompasses the pre-action protocol of sending a letter to the proposed defendant, allowing a reasonable time for response and, where appropriate, engaging in dialogue to identify a solution that could avoid legal action.

There is an additional burden within this time frame of providing all evidence and relevant material with the claim. The type of unlawful decisions that our members deal with include failures to meet statutory duties – such as to provide sufficient care

or school places – that in themselves place significant burdens on those affected. Even with the support of an advice agency or charity this can make it extremely difficult to pursue the very legal action that would enable them to access the services and support that they need.

Any reduction in the time frame would inevitably result in fewer people having access to justice and hinder their ability to hold the government or other public bodies to account. If the government or public bodies are to be effective, then they must act in a lawful manner and judicial review ensures that they do.

7.Are the rules regarding costs in judicial reviews too lenient on unsuccessful parties or applied too leniently in the Courts?

Costs represent for most people, an insurmountable barrier to bringing a judicial review. As well as that, the risk of having to pay costs to the state if they lose, is a substantial disincentive to make a claim. This is also true for smaller charities who would want to represent people they support, but could be prohibited by lack of funds if they had to pay costs.

Access to legal aid is means-tested and extremely limited. This means that many people with low incomes miss the financial eligibility level and are excluded from access to justice.

As is well known, legal aid has suffered extensive cuts since 2013 so that even those eligible cannot always find a public law lawyer to assist them. These include geographical barriers which can only inhibit government plans for 'levelling up' communities who have been marginalised and excluded.

Any system which excludes people from access to justice by means of cost cannot be considered reasonable or fair – particularly when it disproportionately affects people who are already disadvantaged by discrimination and inequality.

Being able to access good legal advice and advocacy is an essential lifeline for many people. It means that everyone has the chance of a fair hearing regardless of their circumstances.

8.Are the costs of Judicial Review claims proportionate? If not, how would proportionality best be achieved? Should standing be a consideration for the panel? How are unmeritorious claims currently treated? Should they be treated differently?

Re claims, see question 7.

Re standing, see question 13.

Re unmeritorious claims, claimants should always have access to lawyers who can advise them as to the merits of the claim. Access to legal aid is therefore crucial. As stated before, government cuts have severely restricted access to legal aid. A good lawyer would always advise a client if their claim was not of merit.

Evidence suggests that an effective and rigorous 'sifting' system is already in place, as evidenced by the number of claims which are removed from the system. Only around 20% of claims which reach the permission stage are approved to move to a full hearing. While many of the remaining 80% will have been withdrawn because the case has been settled and the decision-making corrected, the volume refused permission strongly suggests that the court is already applying a high bar for granting permission to seek judicial review.

It is also not clear how claims could be separated into 'good' or 'bad' cases at the earliest, or early stages. There is a real danger that a decision to do so could result in claimants being treated in a discriminatory manner.

9.Are remedies granted as a result of a successful judicial review too inflexible? If so, does this inflexibility have additional undesirable consequences? Would alternative remedies be beneficial?

There are six remedies available to a successful claimant in judicial review proceedings, all of which are listed in sections 31(1) and 31(4) of the Senior Courts Act 1981 as well as CPR Part 54.

The remedies granted by the court will reflect the specific nature of the claim and what is sought by both claimant and defendant. This flexibility gives sufficient lee way for ensuring that different solutions can be found for different situations and circumstances.

The majority of remedies are designed to ensure that decisions made by public bodies are lawful.

10.What more can be done by the decision maker or the claimant to minimise the need to proceed with judicial review?

Many claimants feel that recourse to judicial review is the only way they are going to get public authorities to listen to them and reconsider decisions that are causing

harm. The previous case taken forward with the assistance of IPSEA is a good example.

It involved the failure of a school to admit a 17-year-old student to its sixth form despite being named in her Education, Health and Care ("EHC") plan. The school and the local authority ignored the complaints from the student's family and so a pre-action protocol letter was sent. With the threat of legal action pending, the claim settled before the final hearing and the student attended the school. Without having recourse to judicial review, it is likely the school and the local authority would have continued to ignore the student's right to attend that school. If the school and local authority had responded positively in the first instance, there would have been no need to start judicial review proceedings.

This example highlights how the need for judicial review could be reduced if public bodies responded to grievances rather than ignoring them in the first instance.

The availability of judicial review can act as a strong incentive to public bodies, but too often unlawful decisions remain until legal action is initiated.

Stronger messages from government about the importance of fully meeting statutory duties and other legal obligations (including the Equality Act 2010), complying with the rule of law and engaging constructively with complainants would help shift the onus away from legal action and onto solutions.

There may also be a need for clearer guidance to some public bodies on the full extent of their legal duties and other enforcement bodies, such as Regulators, Inspectorates and Ombudsmen could play a more significant role in identifying and remedying patterns of unlawful decision making before individuals find they have to resort to legal action.

11.Do you have any experience of settlement prior to trial? Do you have experience of settlement 'at the door of court'? If so, how often does this occur? If this happens often, why do you think this is so?

It is common for cases brought before the court to 'drop out' before formal permission to proceed is considered. Generally, these cases are settled at this earlier stage. The public body often settles as it acknowledges the merits of the case (and can see the likelihood of losing). This is very common with cases brought against local authorities who do not have a 'costs chest' available to settle cases that they would very likely lose.

This early resolution can be seen as an illustration of the merits of judicial review in not wasting government and public bodies resources and time. It illustrates an aspect of the accountability of our governance systems and should be viewed as a success in upholding our unwritten constitution and access to the rule of law and our rights as citizens.

12.Do you think that there should be more of a role for Alternative Dispute Resolution (ADR) in Judicial Review proceedings? If so, what type of ADR would be best to be used?

To be effective both parties must be committed to engage meaningfully to reach a compromise. This is not always possible when the defendant is a public body where an admission of wrong-doing may be made.

ADR may not always be appropriate as disputes about questions of law can only be resolved by the courts. It is a route that can only be pursued if both parties know that recourse to the courts will follow if mediation doesn't work. The power imbalance between a public authority and an individual, especially where that individual relies on the services provided by that authority, can also undermine the effectiveness of ADR.

13.Do you have experience of litigation where issues of standing have arisen? If so, do you think the rules of public interest standing are treated too leniently by the courts?

Equally Ours' members use public interest claims to protect the rights of individuals, and their members and networks on a regular basis. They provide access to justice for those who would not normally undertake a legal challenge. They play a vital role in holding the government and public bodies to account, so that people in vulnerable circumstances can have their rights protected.

The government has made it clear that it believes issues of standing can equate to the judiciary doing 'politics by other means'.

Attorney-General Suella Braverman has written of the need to 'retrieve power' from the judiciary, and warned that 'if a small number of unelected, unaccountable judges continue to determine wider public policy, putting them at odds with elected decision-makers, our democracy cannot be said to be representative.'

Judicial review allows individuals to hold the government to account for unlawful decisions. It is an important plank in our unwritten constitution, which helps to uphold core principles including the separation of powers and the rule of law.

The terms of reference for the Panel and statements by ministers would seem to indicate a desire by government to limit public interest standing in judicial review cases. However, rather than attempting to block the exercise of anyone's right to challenge it, the government should have confidence in its own decisions being lawful.

Most claims for judicial review involve individuals – they do not bring their claims to conduct 'politics by other means.' They are generally trying to remedy a situation which they regard as unfair or wrongful treatment that is causing harm. Judicial review can be used as a last resort by people whose fundamental rights have been abused, sometimes leading to a life or death situation.

Public interest standing is limited by the courts so that inappropriate parties are excluded. It is granted to organisations, charities and others usually when no individual victim or more appropriate claimant can be identified.

Bringing a judicial review is difficult and people often need the support charities and others provide. Charities can also contribute important evidence to make sure decisions are informed by the best possible information.

Charities and other organisations can represent individuals who are directly affected by government or local authority decisions but cannot bring a claim for financial or other reasons. It is a safety net for ordinary people with little or no experience of the law.

Judicial review is a vital means of challenging the decisions and actions of public bodies. Courts would not be able to do so if claims do not come before them. Public interest claims are subject to the same rules and procedures as all other claims and can only be brought if they are challenging the lawfulness of decision-making.

Public interest claims can also save the courts time and money. A single public interest claim could reduce the need for multiple claims. Organisations taking a public interest claim will often have legal resources and professional and technical expertise to help the courts reach their decision, whereas an individual would not normally have access to this.

Case studies

The following case studies have been submitted to Equally Ours and appear as they have been submitted. They illustrate the importance of providing access to justice by taking cases of standing.

DSD and NVB v Metropolitan Police

John Worboys, known as the 'black cab rapist' committed more than 100 rapes and sexual assaults committed more than 100 rapes and assaults on women in his cab between 2002 and 2008. He used identical methods over many years but, despite many women reporting him to the police, a catalogue of police failings including not taking the women seriously, not collecting evidence or CCTV information, and failing to search Worboys' home, meant he was not caught and was left to continue his horrific offences.

The Metropolitan Police, supported by the Home Office, sought to challenge the High Court's landmark ruling which established that the police have a duty under the Human Rights Act to investigate serious violence against women, and when they fail to meet this duty they can be held accountable in the courts.

The End Violence Against Women Coalition (EVAW), NIA, Rape Crisis England & Wales and Southall Black Sisters (SBS) – four women's groups, intervened in a Supreme Court case where the Met Police and Home Secretary tried to argue that the police cannot be held to account when they fail to investigate serious crimes adequately. In February 2018, the Supreme Court ruling made clear that the police must investigate rape properly to ensure human rights are protected.

End Violence Against Women Coalition v CPS

The End Violence Against Women Coalition (EVAW) instructed the Centre for Women's Justice in a case against the Crown Prosecution Service (CPS) alleging it had changed its policy and practice on decision-making in rape cases.

EVAW Coalition Director Sarah Green said:

"We have felt compelled to bring this case because it is very clear from Government data, and from what women on the frontline are experiencing, that the bar has been raised on charging in rape cases – leaving women denied justice and dangerous offenders getting away with it.

"Last year there were almost 60,000 reports of rape to the police but less than 1,800 men charged and less than 1,000 convictions. This amounts to the effective

decriminalisation of rape and we must now have the court's view on whether key management decisions, policy and practice at the CPS are violating women's human rights to protection and justice.

"We have to take this case – it is a matter of the highest public interest – we need our courts to step in now and adjudicate on what is right and wrong. We are a very small charity and we are overwhelmed by the donations to our crowdfund and the many people who have shared our messages – this indicates the public concern about this matter. We are here for every woman and girl who has sought, is seeking or will seek justice in the future."

Centre for Women's Justice Director Harriet Wistrich said:

"The CPS are fighting this case aggressively. They deny they bare any responsibility for the fall in prosecutions, instead blaming the police and changes in disclosure since the Liam Allen case. At no stage have they shared the huge concerns underlying our challenge that more rapists are getting away with it and victims are being denied justice. Instead, they say that there is no basis for our challenge and that EVAW, a small women's charity, should pay all their costs incurred so far.

"We need to remember why women who report rape to the police take the decision to do so – it is often for the sake of others and to try and stop other women being hurt. We are completely failing to honour this when our system so drastically fails women. Cases we have compiled as supporting evidence in this case include a woman who was held prisoner and threatened with a knife; a woman who was told that she left too much time before reporting which would be viewed negatively in court; and a woman who was repeatedly raped by her abusive husband and had a recording of one of the incidents".

The Judicial Review against the CPS for their failure to prosecute rape was initiated in June 2019, a permission hearing took place March 17th 2020. Permission for a full hearing was not granted, EVAW are awaiting a date for the appeal hearing.

RNIB

The High Court has ruled that the Government's provisions for blind and partially sighted people to vote are unlawful, and fail to allow blind and partially sighted people to vote independently and in secret.

RNIB supported the case by providing an expert witness statement and highlighting our research on people's experiences of voting – our latest report on this issue "Turned Out 2017" found that only one in four blind and partially sighted voters felt the current system let them vote independently and in secret. A previous report we

published ("Turned Out 2016") showed that almost two thirds of those who did not vote said they would have done, if it had been more accessible.

The case was brought by Rachael Andrews and focused on the use of the Tactile Voting Device (TVD) at elections. A TVD sits over the ballot paper and is supposed to allow a blind or partially sighted person to select the candidate they want to vote for.

However, even though the device allows someone to select a box to put their mark in, it cannot tell the person the name of the candidate they are putting their mark against. This requires a companion, or a member of polling station staff, to read out the list of candidates, and where the candidate is in the list on the ballot paper. Rachael argued successfully that she is not able to make an independent and secret vote using only the TVD, and therefore it is not fit for purpose.

We are delighted with the ruling. The Government must now urgently develop an alternative to the TVD, to enable blind and partially sighted people to cast their vote in a truly independent and secret way in the next elections.

The ruling comes just a day after local council elections in many areas of England and across Northern Ireland. We have been contacted by many blind and partially sighted people through our social media pages who have described their poor experiences at the polling station, demonstrating even further just how important this ruling is.

Leigh Deigh represented Rachael in court and have more details of the case on their website.

Child Poverty Action Group

Jackson & Ors v SSWP [2020] EWHC 183 (Admin)
The claimants in this case were two fathers whose partners had died. Both had children with their partners. Because they were not married, they were unable to claim bereavement support payment, which is paid to spouses and civil partners only, regardless of whether there are children. CPAG argued that this discriminated against the children, as compared to children of a married couple, and that the children's rights under Article 14 of the ECHR, read with Article 8, were breached.

The High Court issued a Declaration of Incompatibility in respect of the legislation that caused the discrimination (s30(4)(a) of the Pensions Act, read with s30(1)). This judgment was handed down on 07/02/20 but the SSWP has not taken any action to amend the legislation in a way that would comply with ECHR. The department had stated that a Remedial Order will be issued, which will eliminate the

discrimination, but the details of the order, including when to expect it, are not known.

National Aids Trust

PrEP (pre-exposure prophylaxis) is a medication which is highly effective at preventing people without HIV from acquiring the virus. It has the power to drive progress towards the goal to end new HIV transmissions by 2030.

In 2014, NHS England set up a working group, including National AIDS Trust (NAT), tasked with examining the cost effectiveness of the drug and developing a commissioning proposal. After 18 months, NHS England abandoned the process declaring it didn't have the legal power to pay for PrEP as responsibility for commissioning HIV prevention lay only with Local Authorities. NAT disagreed and we decided to challenge their decision at judicial review.

Having been a member of the NHS England working group, as well as a powerful and established voice in the HIV sector, we were best placed to bring a judicial review.

NAT challenged the decision at judicial review and won (August 2016). The judgement stated that NHS England was wrong and there is no legal impediment to them funding PrEP. NHS England decided to appeal. We defended the judgement in the Court of Appeal and in November 2016 the court ruled in our favour, confirming the initial ruling.

The judgement stated that whilst it was *permissible* for NHS England to fund PrEP, its provision was not *required*. Therefore, since then NAT have been undertaking policy and campaigning activities to ensure the judgement results in PrEP for everyone who needs it, via a nationally commissioned programme.

In December 2016 NHS England announced that it would fund a major new clinical trial of PrEP. The trial had 26,000 places across the UK (initially 10,000, followed by an expansion to 13,000 and then 26,000 places). In March 2020, the Secretary of State for Health Matt Hancock announced that PrEP would be routinely commissioned in England from April 2020. Routine commissioning was further delayed by the COVID-19 pandemic, but it is now being rolled out across England.

Committee on the Administration of Justice

Following the 2006 St Andrews Agreement a legal duty was introduced on the Northern Ireland Executive under section 28E of the Northern Ireland Act 1998 (as

inserted by section 16 of the Northern Ireland (St Andrews Agreement) Act 2006). This duty reads as follows:

1. The Executive Committee shall adopt a strategy setting out how it proposes to tackle poverty, social exclusion and patterns of deprivation based on objective need.

2. The Executive Committee - a) must keep under review the strategy; and b) may from time to time adopt a new strategy or revise the strategy.

There is therefore a clear statutory duty on the NI Executive to adopt a strategy setting out how it proposes to tackle poverty, social exclusion and patterns of deprivation *and* to base that strategy on objective need.

In our challenge we submitted that the devolved administration has failed to deliver on this obligation as there has been no identifiable strategy to implement this. We also noted that the concept of 'objective need', placed for the first time on a statutory footing, is intended to reduce in its entirety the scope for discrimination between persons in need, by tying the allocation of resources to neutral criteria that measure deprivation irrespective of community background or other affiliation.

There have been however in our view concerted efforts to digress from this principle –as evidenced in the Participation and Practice of Rights (PPR) 'Equality Can't Wait' report[1] on the Department of Social Development's 'fundamental review of the social housing allocations policy'.

In response to our application for judicial review the NI Executive submitted that the duty is being met through a combination of an endorsement of Lifetime Opportunities: government's anti-poverty and social inclusion strategy for Northern Ireland, other commitments in the Programme for Government and actions across departments monitored through the Delivering Social Change framework.

Before the restoration of the devolved institutions in 2006 the direct rule administration did adopt the strategy entitled Lifetime Opportunities: government's anti-poverty and social inclusion strategy for Northern Ireland. In November 2008 the devolved executive agreed to adopt the 'broad architecture and principles' of Lifetime Opportunities but did not adopt the strategy per se, nor has there in fact been any identifiable successor strategy.

[1] http://www.pprproject.org/ppr-launch-housing-inequality-report

The Court held that the Executive had acted unlawfully. The devolved administration must therefore now introduce an anti-poverty strategy, and base it on objective need. This strategic litigation challenged for the first time the Government's failure to implement a rights-based policy as required by one of the Agreements forming part of the peace settlement.

Article 39

In 2018, Article 39 lodged a judicial review application with the High Court challenging the Government's decision to allow escort officers working for the private contractor GEOAmey to inflict pain on children during their journeys to and from secure children's homes. Staff working *within* secure children's homes are prohibited from using such techniques, which Department for Education statutory guidance states can never be proportionate.

Article 39 also challenged the lack of legal protection for children from being physically restrained simply to follow orders when they are under the control of escort officers, including when they attend hospital appointments or family funerals. In 2008, the Court of Appeal declared that restraint for good order and discipline within secure training centres are a breach of children's right to protection from inhuman and degrading treatment or punishment.

Represented by Dan Squires QC and Tamara Jaber from Matrix Chambers and Mark Scott from Bhatt Murphy Solicitors, Article 39's legal challenge was only made possible through a crowdfunding appeal, which elicited 196 donations.

Following the application, the Justice Minister announced that Charlie Taylor, the then Chair of the Youth Justice Board, had been appointed to lead a review of the authorisation of pain-inducing restraint on children detained in young offender institutions and secure training centres, and during escort to these prisons and secure children's homes. *The Charlie Taylor Review was the first time Ministers had commissioned a stand-alone investigation of the deliberate infliction of pain on vulnerable children and this only happened as a direct result of the legal challenge.* The case was stayed pending the Charlie Taylor Review and an inquiry by parliament's Joint Committee on Human Rights.

The review's report made 15 recommendations, the majority accepted by the government, including that the core restraint syllabus will be amended to ensure that prison staff and escort custody officers are no longer authorised and trained to inflict pain on children. (Separate self-defence techniques will be taught which involve the infliction of pain though only for extremely grave incidents where no alternative response is available). The policy change was implemented during

children's journeys to and from custody from summer 2020, and changes to training for staff working within child prisons are expected from early 2021.

Mind

Hossein & Ors v SSHD [2016] EWHC 1331 – Mind provided witness evidence

This was a test case where the Claimants' asserted they were representative of the issues faced generally in on the lawfulness of the "Detained Asylum Casework" process established by the Detention: Interim Instruction policy (DII). The Claimants included victims of torture who had corresponding medical reports (known as Rule 35 reports), a victim of trafficking and one who had a complex forced marriage immigration claim.

The Claimants' position was that 'the purported flexibility in the DII time scales does not address the particular needs of protected groups.' The Claimants' highlighted as examples, the complexities in cases of those with mental illness and for victims of sexual violence.

Mind provided a witness statement raising concerns about the immigration detention screening policy and process for people with mental health problems.

The Secretary of State for the Home Department (SSHD) conceded in the proceedings that the victim of trafficking had been unlawfully detained.

In judgment, the SSHD was found to have breached s149 of the Equality Act 2010 in failing to have due regard to her public sector equality duty in considering asylum claims in detention.

The claimants' other challenges - that there is inherent unfairness in the DII and that fairness is not explicitly stated in the policy – were rejected. The outstanding claims for unlawful detention were also rejected.