

Response to IRAL call for evidence on Judicial Reviews

Section 1

1. None of the aspects mentioned impede the proper or effective discharge of the Council's functions. The Council can still exercise its functions irrespective of the threat of judicial review although the prospect of proceedings may cause the Council to exercise their powers in a different way.
2. The prospect of the Council being challenged by way of judicial review focuses the decision maker's mind on the ways in which it makes its decisions and leads to more robust decisions. It is important that the public can see that the rule of law is being upheld and that there is an avenue of challenge available should it be felt that the decision is not correct. In dealing with challenges the Council generally defends the decision provided there are grounds to do so. If it is not clear the Council will consider the prospects of success versus the cost of defending the proceedings but will almost always defend its decision.
3. There are none.

Section 2

4. There is no need for statutory intervention in the judicial review process adding a statutory process could inadvertently remove some of the avenues of challenge available which would undermine public confidence that the rule of law is being upheld.
5. It is clear what decisions/powers can be subject to challenge by judicial review as it is a remedy of last resort. There should not be any decisions that are exempt from being challenged as this would undermine public confidence. Given that judicial review is a remedy of last resort any removal or curtailing of the right to bring proceedings would have a devastating effect on democracy in the United Kingdom.
6. The process for judicial review is set out comprehensively in the Civil Procedure Rules and there are numerous guides to assist those who want to bring proceedings.

Section 3

7. Yes any shorter a time period would not allow a Claimant time to take legal advice and prepare a claim and any longer would leave the decision maker in limbo and not able to implement their decision.
8. The rules regarding costs strike the right balance.
9. The costs being claimed as a result of bringing judicial review proceedings if not agreed can be challenged via the costs assessment process. The issue of costs would then be assessed by the Court who will make a decision as to the reasonableness of what is claimed. This is the best way of ensuring that the costs claimed are proportionate. The issue of standing should not be dealt with by the

panel and should continue to be determined by the Courts on a case by case basis. Any attempt to set a specified test for standing is likely to exclude Claimants wholesale which would undermine public confidence that the rule of law is being upheld. The rules for unmeritorious claims should not be treated differently as doing so may discourage Claimants from challenging decision makers.

10. The remedies available to the Courts following judicial review are proportionate and allows them to balance the case and the rights of both parties as they have discretion over what remedies if any they award. It is not considered that there are any other additional remedies that would be beneficial.
11. In order to minimise the chances of a judicial review the decision maker can follow the necessary legislation and procedures to can ensure that the decisions they make are legally sound. A Claimant can minimise the need to bring proceedings by engaging in pre action correspondence with the decision maker to try and resolve the issue without the need to issue a claim at Court.
12. The Council has experience of settling claims either at the stage of receiving a pre-action letter or in the initial stages when a claim is received. Where a claim has been defended there has been no settlement 'at the door of the court' settlement at this stage can be avoided by ensuring that those claims that should be settled are done so early prior to the parties incurring costs.
13. No, judicial review is a remedy of last resort and any attempts to remove the right to bring a claim should be strongly resisted. ADR would simply water down the provisions of judicial review which would make it difficult to bring a challenge.
14. The issue of standing is one that very rarely arises, the vast majority of Claimants only bring claims in respect of issues that affect them.