

**EVIDENCE TO THE INDEPENDENT REVIEW OF
ADMINISTRATIVE LAW PANEL BY THE AUTHORS OF *DE
SMITH'S JUDICIAL REVIEW***

1. This evidence is submitted by Sir Jeffrey Jowell QC, Ivan Hare QC, Catherine Donnelly SC and Lord Woolf of Barnes, as authors of *De Smith's Judicial Review* (now in its 8th edition) 2018¹ ("de Smith").
2. We shall consider some but not all of the questions raised by the Panel, concentrating on those where we feel that the book and our personal experience in practice can make a contribution.

Questions posed in the Introduction

3. We note from paragraph 1 of the introduction that you are inviting submissions on challenges to executive action, without mention of administrative action more generally. This reflects the words used in paragraph 1 of your Terms of Reference. De Smith's book was initially called "*Judicial Review of Administrative Action*", which included the review of the powers of all public officials (or, as expressed these days, a "public authority", or persons whose "functions are of a public nature"²). Since the Panel is reviewing "administrative law", we are therefore assuming in our comments that there is no wish to apply different standards of legal accountability to the executive and that, which is important, all

¹ Plus two Supplements, one in 2019 and one in 2020. De Smith himself authored the first three editions (1959, 1968 and 1973). After his death in 1974 John Evans (later Mr Justice Evans of the Court of Appeal of Canada) edited the 1980 edition. Harry Woolf and Jeffrey Jowell then substantially reworked the book in its 1995 edition and were joined in the 2007 edition by Professor Andrew le Sueur, and for the 2013 and 2018 editions by Ivan Hare and Catherine Donnelly.

² See eg section 6 of the Human Rights Act 1998.

those exercising public functions will remain subject to the same standards of legal accountability.

4. Paragraph 1 of the Introduction asks whether the balance struck is “the same now as it was before”. We consider that issue in

Chapter 1 of de Smith in the following passages:

- a. In **paragraphs 1-007 and 1-012** we indicate how, when the first edition of de Smith was published in 1959 there was a “zone of immunity” from legal challenge surrounding a great deal of action by public authorities. This was not always so, but during the first half of the twentieth century a number of what de Smith called “conceptual barriers and disfiguring archaisms” were erected by the courts to protect public officials from challenge during two world wars, when firm and urgent decisions were required for existential reasons. This attitude carried over into the creation of the welfare state in the 1940’s, for a slightly different reason, namely, as said by Aneurin Bevan when introducing the National Health Service, to prevent “judicial sabotage of socialist legislation”³. The prevailing judicial ethos was expressed by a former Chief Justice who said in 1962 that courts should be “handmaidens of public officials” (see **paragraph 1-016**).
- b. The rowing back on judicial review during that period is outlined in de Smith in different parts of the book. In respect of discretionary power in general, the conferment by Parliament of broad discretion was interpreted as a signal that the discretion

³ Hansard, 23 July 1946, HC Col.1983

was infinite and unconstrained (see the brief history of judicial attitudes towards discretionary power at paragraphs 5-006-18).

The provision of a fair hearing was for many years inhibited by the requirements that it was only available in a “judicial” setting, and concerned the deprivation of a “right” (see Chapter 6). Clauses seeking to reduce or deny judicial review were often upheld (see paragraphs 4-06-31).

5. Writing at the end of the 1950s and therefore still in the era of restricted judicial review, de Smith considered judicial review to be “sporadic and peripheral” (see paragraph 1-012). However, once the “conceptual barriers and disfiguring archaisms” were removed by the well-known cases of the 1960s⁴, and once the procedures were simplified in the 1980s, it was inevitable that applications for judicial review would increase, as individuals were no longer content passively to accept decisions that were unfair or arbitrary or without respect for Parliament’s intent. The overall result was that judicial review’s purpose was no longer primarily to shelter the administration, but more broadly to further the rule of law and to protect the citizen from the unlawful exercise of state power.
6. Nevertheless, based on various studies and the government’s own figures of the low success rate of applications for judicial review (see paragraphs 1-50-51), our administrative process has surely still not descended into “a succession of justiciable controversies” (paragraph 1-012) as is shown by the relatively low

⁴ Such as *Ridge v Baldwin* [1964] AC 40; *Padfield v Minster of Agriculture, Fisheries and Food* [1968] AC 997; and *Anisminic v Foreign Compensation Commission* [1969] AC 147.

incidence of successful applications for judicial review (see **paragraphs 1-050-51**). This is due partly to the various safeguards in the application for judicial review (“AJR”) procedures (see **Chapters 16 and 17**) and partly because the articulation of the “grounds” of judicial review as set out by Lord Diplock in the *GCHQ* case in 1985⁵. As high level as these grounds may be (review for “legality”, “procedural propriety”, “rationality” with the possibility of the development of “proportionality”), they confirmed a set of principles falling short of merits review which also greatly enhanced the quality of administrative decision-making⁶.

Codification

7. It is well known that codification may have the benefit of providing better access to the rules governing any area of law. This can be helpful to potential applicants, to their legal advisors and to public officials. However, that aim is difficult to achieve in relation to judicial review for a number of reasons. First, the grounds of judicial review have to apply to the entire range of reviewable administrative action. This covers the immense variety of exercises of public power: from national planning to local licensing; from immigration to welfare and to public procurement and from central government to a parish council. The very breadth of administrative law therefore means that the principles

⁵ *Council for the Civil Service Unions v Minister for the Civil Service* [1985] AC 374, 410.

⁶ As shown in the government’s own document for civil servants, *The Judge Over Your Shoulder: A Guide to Good Decision-Making*, Government Legal Department, latest edition 2018. **Para. 1-064** of *de Smith* refers to the relationship between judicial review and the quality of decision-making.

of judicial review must be stated at a high level of generality to ensure that their application can be matched appropriately to the particular context in which they arise in a given challenge.

Secondly, codification also involves an assumption that the common law grounds will not need to develop further in the future in response, for example, to the proliferation of new forms of public power or the recognition of legitimate further interests of citizens which require protection from encroachment by public authorities. Lord Diplock regarded the development of administrative law as the greatest achievement of the judiciary during his career. We consider it would be regrettable if current and future judges were prevented from contributing responsibly to that development. A third concern about codification is that it can lead to an increase in litigation about what are the precise limits of the codified definition. This form of satellite litigation is a common feature of codified systems and leads to wasted costs and delays for cases of real substance. The history of attempts to codify the UK's criminal law illustrates this dilemma. Codification can also take different forms, some more flexible than others.

8. There is also the question of the level of generality at which any code should be set. For example, each of Lord Diplock's high level "grounds", set out in paragraph 6 here above, could be further codified into more specific grounds, such as those set out in your Questionnaire to Government Departments at page 6, section 1 at a – k ('mistake of fact', 'irrelevant considerations' etc.). At **paragraph 1-001** we summarise a much longer list of specific grounds of review. Australia and Trinidad set out such a string of specific

grounds in their judicial review statutes. How far should the code go? Which grounds might be omitted? When would a new ground qualify for inclusion (eg through the gradual judicial acceptance of a right to be provided with the reasons for a decision)?

9. The South African example provides an example of the dangers of codification. Its post-apartheid 1996 Constitution sets out, at section 33, the “right to just administrative action”, which is defined as the right to administration that is “lawful, reasonable and procedurally fair” (a direct borrowing of the Diplock grounds)⁷. It then requires national legislation to be enacted to give effect to those constitutional rights. The national legislation then enacted (The Promotion of Just Administration Act 2000 “PAJA”) sets out a list of specific grounds of judicial review similar to but more extensive than set out in your questionnaire, leaving it open to apply further grounds. The statute defines “administrative action” as any action or decision which “adversely affects rights” on the part of any “organ of the state” or any “exercise of public power”. However, excluded from the definition of “organ of state” is executive action.
10. Drawing on that experience, we see how the constitutionalisation of judicial review in South Africa endorsed and entrenched its existence under the high level Diplockian grounds, but how codification of the specific grounds diminished its potential content. The courts found a way around the exclusion of executive

⁷ Adding too the right to written reasons for decisions.

action by employing the rule of law (specifically written into the Constitution as a “founding provision”). In the UK the right to judicial review is accepted as a central feature of the rule of law as a constitutional principle⁸. Committing that right to statute could well enhance its legitimacy and accessibility and enhance its reach. However, it could also provide an opportunity to diminish its content (as was done under the South African Act) and in any event render it more vulnerable than it is under the common law to the vagaries of politics and to future erosion by a sovereign Parliament⁹.

11. Given those dangers, therefore, we firmly believe that the codification of the amenability of public law decisions and the grounds of public law illegality should not now be done.

Justiciability

12. We deal with this issue in **paragraphs 1-034-49, and in paragraphs 11-005-11**¹⁰ where we divide the issue into those limits on the courts’ competence which are inherent in (a) its constitutional role, and (b) its institutional capacity.
13. In summary, the constitutional limits of courts arise out of the democratic principle of separation of powers, where Parliament debates and enshrines in legislation the policy formulated by the

⁸ *R (Privacy International) v Investigatory Powers Tribunal* [2019] UKSC 22; *R (on the application of Jackson v Attorney General)* [2005] UKHL 56; [2006] 1 AC 262 at [102].

⁹ Even if the courts treated it as a “constitutional statute” – a concept accepted in *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5. This is a similar question to whether the content of a “British Bill of Rights” would be more or less extensive than the European Convention on Human Rights.

¹⁰ See also, Jeffrey Jowell, “What decisions should judges not take”, in M. Andenas and D. Fairgrieve (eds.) *Tom Bingham and the Transformation of Law* (2009). *de Smith* also deals with justiciability in the context of procedural fairness in **paragraphs 7-024-31**.

executive and the courts fulfil the role of interpretation of the scope of legislation and the application of legal and constitutional principle. It is not for judges therefore to make utilitarian calculations of social economic or political preference (such as whether a new airport should be built or whether Trident warheads should be abandoned). The sensitivity of the courts to these issues is illustrated by a recent decision considering whether the pension age of women could be raised to the level of men and then raised once more.¹¹ The Court of Appeal held that the matter was not for them to decide on the ground that it involved “macroeconomic policy”.

14. However, the courts may have a secondary constitutional function even when a policy issue is in dispute. They are entitled to decide whether the decision, albeit the subject of which is a matter of policy, is within the scope of the relevant power or duty conferred on the decision-maker or was improperly made, or made with an ulterior motive or for an improper purpose.
15. An example is *Miller v Prime Minister*¹² where the Supreme Court held that the prorogation of Parliament by the Prime Minister was unlawful. Although this case was seen by some as judicial interference with the political system, it applied standard and familiar judicial review principles. Lady Hale for a unanimous Court noted that “although the court cannot decide political questions, the fact that a legal dispute concerns the conduct of

¹¹ *Delve and Glynn v Secretary of State for Work and Pensions* [2020] EWCA Civ 1199.

¹² *R (Miller) v Prime Minister; Cherry v Advocate General* [2019] UKSC 41.

politicians, or arises from a matter of political controversy, has never been sufficient reason for the courts not to consider it”.¹³

16. The courts’ institutional limits arise when it is not possible for judges to formulate objective standards which can be applied within the limits of the forensic process. This may be because the discretion is properly exercised on very broad grounds or where the limits of the gathering and testing of evidence in court cannot yield a clear answer.¹⁴ The adversarial nature of a judicial hearing also imposes limits on the courts, especially in relation to allocative or polycentric problems (see paragraph 1-044).
17. Fundamentally, this is not an area which requires legislative reform: the courts have consistently revealed themselves to be well-aware of both the constitutional and institutional limits on their powers and have shown no desire to extend their reviewing function into areas outside their proper function or their institutional competence or expertise.¹⁵
18. Again here, however, allocative decisions might be subject to judicial review where irrelevant matters were taken into account or where the decision offends a fundamental constitutional principle, as in the UNISON case¹⁶ where the sharp rise in court fees was held to preclude effective access to justice and thus to offend the rule of law.

¹³ At [31]. See also [52]. It was held that the sovereignty of parliament as a constitutional principle would be undermined if the executive could prevent the powers of parliament from being exercised for as long as it pleased. The Prime Minister also failed to justify his decision by failing to provide the Court with reasons for the prorogation.

¹⁴ *R. (on the application of Conway) v Secretary of State for Justice* [2018] EWCA Civ 1431, at [189].

¹⁵ *R. (on the application of Lord Carlisle) v Secretary of State for the Home Department* [2014] UKSC 60; [2015] A.C. 945, at [49].

¹⁶ *R.(UNISON) v Lord Chancellor* [2017] UKSC 51.

19. We do not believe that it is possible to clarify in any code or other document the different elements of justiciability as outlined above. Context is all here, and the potential contexts are many. The nature of judicial review, as opposed to appeal, in any event does not permit review of the merits of a case as if the court were the primary decision-maker¹⁷. But even the categories of non-justiciability mentioned above may inevitably be interpreted in different ways. An apposite illustration of this arose in the Belmarsh prison case¹⁸ where, following the terrorist events of 2011 the government sought to introduce detention without trial for foreign suspects. To do this it sought to derogate from the European Convention on the ground that there was a “public emergency threatening the life of the nation” which Lord Bingham, for the majority, held to be a “pre-eminently political question” and one which admitted of no “objective challenge”. However Lord Hoffmann, (who in earlier cases had held that matters involving national security were normally not for the courts to determine because of their lack of expertise¹⁹) held that the events of 2011 did not amount to a threat to the nation’s life, which he interpreted as including its entire cultural fabric, including its attachment to the values of civil liberty. And despite the “political” nature of the decision, the majority held that the

¹⁷ We are puzzled by Lord Sumption’s characterization of the issue in *Privacy International* (above note) as “merits review” whereas the substance of the claimant’s complaint was simply whether the issue of a warrant was lawful under the terms of the governing statute.

¹⁸ *A v Secretary of State for the Home Department* [2004] UKHL 56.

¹⁹ See *Rehman v Secretary of State for the Home Department* [2001] UKHL 47. See Jeffrey Jowell, “Judicial Deference and Human Rights: A Question of Competence”, in P. Craig and R. Rawlings (eds.) *Law and Administration in Europe: Essays in Honour of Carol Harlow* (2005), p.67

discriminatory nature of the power offended the principle of equal treatment²⁰.

20. Nor do we believe that it is desirable for the executive or legislature to set out the parameters of justiciability. No government is ever pleased by challenges to its exercise of power, but any instruction as to what issues the courts could not determine on the basis of justiciability risks offending the separation of powers and the rule of law. Justiciability is a matter best for the courts to determine, with due respect to the relative functions of government in the area of policy and with due deference where the government's institutional capacity is greater than their own.
21. There will always be cases that some will consider too activist or too restrained, but it is a mark of a mature and functioning democracy that the Executive accepts judicial decisions which define the legal scope of its powers and the judiciary respects the extent to which the Executive must be free to formulate and implement its policies within the law.

Grounds of review

22. Since our responsibility for *de Smith* in 1993, the development of four specific grounds have in particular been significant: the notion of legitimate expectation (see **Chapter 12**) providing both a procedural and substantive right, proportionality (at least in its

²⁰ See also *Bank Mellat v HM Treasury* [2013] UKSC 39, where Lord Sumption cautioned against the courts involving themselves in the question of financial sanctions against Iran but nevertheless held, with the majority, that the relevant measures were not a rational or proportionate response to the aim of hindering Iran's nuclear ambitions.

structured sense in a human rights context as discussed in **paragraphs 11-073-86**), the duty of consultation (see **paragraphs 7-054-7-057**) and the duty to give reasons (see **paragraphs 7-088-7-116**). We shall not adumbrate here on the legitimate expectation, except to say that it is not in our view controversial, and indeed is based on the same principle governing the accepted private law concept of estoppel. Proportionality is more controversial, and we shall deal with that in the context of the notion of substantive review, and then proceed to consider the duties of consultation and to give reasons.

23. In respect of substantive review, when writing the 5th edition in 1995 we were particularly struck by the fact that previous editions had devoted only a few pages to *Wednesbury* unreasonableness²¹. It was generally at that time considered to be an exceptional head of review, because judicial review was only about “how decisions are reached”, rather than the substance of decisions, which could only be impugned if they were “perverse” or “absurd” (see **paragraphs 11-02-21**). . Perhaps it was Lord Diplock’s acceptance of the ground of “irrationality” in *GCHQ* which endorsed the fact that judicial review also concerns review of the substance of decisions. After an exhaustive search we discovered that many cases were decided on their substance, under various heads of review such as mistake of material fact, lack of evidence, illogicality or irrationality of reasons, excessive vagueness or uncertainty, or simply where the decision was unnecessarily oppressive..

²¹ Based on the formulation in *Associated Provincial Picture Houses v Wednesbury Corporation* [1948] 1 KB 223.

24. As a result, we produced a new chapter, on **Substantive Review and Justification (Chapter 11)** which sets out these grounds and, importantly, shows that they do not involve merits review, and by no means always require that the decision-maker act in a “manifestly” unreasonable way, as required under the *Wednesbury* formulation. Some of them approximate disproportionality as employed in the interpretation of Convention rights and European Union Law although they are rarely, if ever, so described.
25. Because these substantive grounds keep within the discipline of judicial review, rather than appeal, and because they operate within the discipline of justiciability, as described above, we do not feel that they need curbing in any way. However, we felt it important to reveal substantive review for what it is, namely, a set of standards that regulate the processes and impact of official decisions, not for the purpose of second-guessing the primary decision-maker, but in order to constrain the abuse of power.
26. Should proportionality be recognized as a separate “ground” of review? As indicated above, proportionality in its non-structured form is already applied, although not often by that name, for example where a decision is unduly and unnecessary invasive of common law rights or interests (see **11-069**) and where there is a failure fairly to balance different (and perfectly relevant) considerations (see **11-075 – 86**)²². In due course the courts might want to recognize proportionality specifically in those contexts,

²² See eg. Lord Sumption’s approach in *Bank Mellat*, note 20 above.

but for the moment we do not see an urgent need either to require or to forbid the courts do so by legislation²³.

27. With respect to the duty of consultation, it is obvious that such a duty will have a positive impact on the quality of public decision-making, by allowing for the incorporation of a range of perspectives to be taken into account by the decision-maker. The courts have assessed compliance with this duty, as we note, by applying, “*an intensely case-sensitive analysis*” and accepting that “*the consultation has to be fair, but it does not have to be perfect, since with the benefit of hindsight, it will no doubt often be possible to show that a consultation could have been carried out rather better*” (at **paragraph 7-055**). It appears to us that the courts have proven themselves in this context, as elsewhere, to be capable of drawing an appropriate balance between participation rights and the exigencies of public decision-making.
28. Regarding the duty to give reasons, there is still no general duty to give reasons for an administrative decision,²⁴ and the position in law is perhaps best summarised as being that “*the common law is moving to the position whilst there is no universal obligation to give reasons in all circumstances, in general they should be given unless there is a proper justification for not doing so*”.²⁵ The arguments in favour of a duty to give reasons are clear (see **paragraphs 7-089–7-096**)

²³ See Jeffrey Jowell, “Proportionality and Unreasonableness: Neither Merger nor Takeover”, in H. Willberg and M. Elliott, *The Scope and Intensity of Judicial Review*, (2015) p.41..

²⁴ *Dover DC v Campaign to Protect Rural England (Kent)* [2017] UKSC 79; [2018] 1 W.L.R. 108 (see also for a detailed consideration of the circumstances in which a duty to give reasons arises in the planning context).

²⁵ *Oakley* [2017] EWCA Civ 71; [2017] 2 P. & C.R. 4 at [30]. This reflects the position adopted by the Irish Supreme Court in *Mallak v Minister for Justice, Equality and Law Reform* [2012] IESC 59; [2012] 3 I.R. 297 at [74]. It has also been held in Ireland that where rights are affected it can no longer be seriously doubted that administrative bodies have a duty to give reasons: *Deehan v State Examinations Commission* [2016] IEHC 213 at [15].

and we would welcome a general duty to give reasons in respect of all decision-making for three particular reasons. First it inhibits arbitrariness. Secondly, the process of justification improves the quality of decision making and thirdly, it may make a decision more acceptable to the affected person, often thus precluding legal challenge.²⁶ However, it is clear from the case law that the courts have proceeded incrementally in respect of the development of the duty to give reasons, as with their development of other grounds of review. This reinforces the point already made as to the importance of entrusting the courts with the development of the grounds of review.

29. In this regard also, we have answered your question above about possible codification of the grounds of review and repeat our doubts here both about the possibility of including all the different specific grounds in any one code, and about the desirability of so doing. In answer to your question about which grounds the courts “should be able to find a decision to be unlawful”, we again caution against any instructions on this matter, by the executive or legislature, either to increase or reduce the grounds presently employed through the incremental development and wisdom of the common law.

Process and Procedure

²⁶ Professor Etienne Mureinik, the late South African constitutional lawyer, who contributed much to their post-apartheid constitution, describes a move from “a culture of authority” to “a culture of justification”. Etienne Mureinik, “A Bridge to Where? Introducing the Interim Bill of Rights” (1994) SAJHR 31.

30. Under the sub-heading, **Legislative Reform of Procedures** (see 15-074-101), we outline the history of legislative reform of the adjectival law governing what we now call judicial review. At 15-075, we say this:

As a matter of principle, the underlying test for all reforms to judicial review procedures is that they should maintain or enhance the ability of the courts to review the legality of the exercise of public power. This is fundamental to upholding the rule of law and protecting individual rights. There are further procedural elements to the normative assessment of any proposed reforms: that they should be based on adequate and objective evidence and should be preceded by an appropriate period of consultation.

31. We proceed to articulate a “strong impression” that some of the most recent reforms to the judicial review procedure (including those contained in the Criminal Justice and Courts Act 2015) were motivated principally by central government hostility towards judicial review and were based either on no objective evidence or an entirely inadequate evidential basis. In this respect we make three further comments on procedural reforms generally.

32. First, the 2015 reforms were introduced without taking into account the major reduction in the caseload of the Administrative Court which was bound to follow the transfer of most asylum and immigration cases to the Upper Tribunal. In light of this reduction (from more than 15,000 applications in 2014 to 3,400 in 2019), there can be no resource-based case for introducing further restrictions on access to the Administrative Court for those matters which remain within its jurisdiction.

33. Secondly, it is of the utmost importance that any procedural reforms have the informed consent of the senior judiciary whose task it will be to enforce them. The decision to proceed with aspects of the 2015 reforms in the face of judicial hostility proved pointless since the judges retained the exclusive power to interpret and apply the new restrictions.
34. Thirdly, and to a greater extent than in other areas of civil procedure, central government stands to be the principal beneficiary of any further restrictions on access to judicial review since it is (especially through the Ministry of Justice and Home Office) the most frequent defendant to judicial review proceedings. This should encourage great caution on the part of the Executive before the introduction of further restrictions which are bound to tip the balance further against the vindication of the rule of law and the protection of individual citizens against the state.

Standing

35. One specific matter of procedure which is raised in the Panel's questions is that of public interest standing. As a result of the decision of the House of Lords in *Inland Revenue Commissioners v National Federation of Self-Employed and Small Businesses*,²⁷ standing in domestic public law has ceased to exist as a matter distinct from the merits of the challenge (save in the case of the meddlesome busybody) since it is now considered along with the entire legal and

²⁷ [1982] AC 617.

factual context of the case. As a result, there are few, if any, reported cases in which the challenge is found to be meritorious, but the claim is rejected on grounds of standing.²⁸ Any restriction of public interest standing would therefore have to overcome the constitutional point we identify at **2-004**:

To deprive a person of access to the courts because of lack of standing can raise issues of constitutional significance. At its heart is the question whether it can ever be right, as a matter of principle, for a person with an otherwise meritorious challenge to the validity of a public authority's action to be turned away by the court on the ground that his rights or interests are not sufficiently affected by the impugned decision. To put this another way, if a decision which is otherwise justiciable is legally flawed, should the court prevent its jurisdiction being invoked because the litigant is not qualified to raise the issue? To answer "yes" to these questions presupposes that the primary function of the court's supervisory jurisdiction is to redress individual grievances, rather than that judicial review is concerned, more broadly, with the maintenance of the rule of law.²⁹

36. In fact, it is clear that the current approach to public interest standing has greatly benefitted the principled development of public law and has enabled the judicial control of unlawful action which did not have a greater impact on any single citizen than on the public at large.

Other procedural matters

²⁸ The case of *In the matter of an application by the Northern Ireland Human Rights Commission for Judicial Review (Northern Ireland)* [2018] UKSC 27 was an anomaly because of the restricted statutory definition of the NIHRC's standing.

²⁹ See further, Ivan Hare, "The Law of Standing in Public Interest Adjudication", Ch.22 in M. Andenas (ed), *Liber Amicorum in Honour of Lord Slynn of Hadley: Vol.II Judicial Review in International Perspective* (2000).

37. The Panel is invited to have regard to the discussions of the relevant principles concerning remedies and costs in **Chapter 18** and at Paragraphs **16-091-102** respectively.

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17 October 2020