

ANTI-SLAVERY INTERNATIONAL'S RESPONSE TO THE MINISTRY OF JUSTICE'S CALL FOR EVIDENCE IN THE INDEPENDENT REVIEW OF ADMINISTRATIVE LAW

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INTRODUCTION

This response aims to highlight the use of judicial review in the anti-trafficking sector, and views on the government's proposals for reform. The response below documents Anti-Slavery International's (ASI) concerns and the importance of judicial review. ASI represents the interests of victims of trafficking and slavery and supports the role of public law and judicial review in upholding the rights of these individuals.

RESPONSE TO CONSULTATION QUESTIONS

SECTION 1 – QUESTIONNAIRE TO GOVERNMENT DEPARTMENTS

- 1. *In your experience, and making full allowance for the importance of maintaining the rule of law, do any of the following aspects of judicial review seriously impede the proper or effective discharge of central or local governmental functions? If so, could you explain why, providing as much evidence as you can in support?***
 - a. *judicial review for mistake of law***
 - b. *judicial review for mistake of fact***
 - c. *judicial review for some kind of procedural impropriety (such as bias, a failure to consult, or failure to give someone a hearing)***
 - d. *judicial review for disappointing someone's legitimate expectations***
 - e. *judicial review for Wednesbury unreasonableness***
 - f. *judicial review on the ground that irrelevant considerations have been taken into account or that relevant considerations have not been taken into account***
 - g. *any other ground of judicial review***
 - h. *the remedies that are available when an application for judicial review is successful***
 - i. *rules on who may make an application for judicial review***
 - j. *rules on the time limits within which an application for judicial review must be made***
 - k. *the time it takes to mount defences to applications for judicial review***
- 2. *In relation to your decision making, does the prospect of being judicially reviewed improve your ability to make decisions? If it does not, does it result in compromises which reduce the effectiveness of decisions? How do the costs (actual or potential) of judicial review impact decisions?***

- 3. Are there any other concerns about the impact of the law on judicial review on the functioning of government (both local and central) that are not covered in your answer to the previous question, and that you would like to bring to the Panel's attention?**

From this, we would appreciate your response to the following questions:

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?

The above aspects of judicial review do not impede the proper or effective discharge of central or local governmental functions. In previous trafficking cases, the above aspects of judicial review have been essential in ensuring that victims of trafficking have access to their legal entitlements, in preventing unlawful behaviour and holding public bodies accountable.

Judicial review has served to ensure that victims of trafficking can effectively be identified as such. The Claimant in *R (on the application of NM) v Secretary of State for the Home Department* [2017] EWHC 2798 (Admin) was able to use judicial review to expose the Home Office's breach of their own guidance on how to assess potential victims of trafficking's account of exploitation and consequently challenge their negative National Referral Mechanism (NRM) decision. In this matter, judicial review rectified wrongful decision-making rather than impeding the proper discharge of the Home Office's functions.

SECTION 2 – CODIFICATION AND CLARITY

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 above case highlights why certain matters, particularly matters that involve trafficking and modern slavery, must be subject to judicial review. NRM decision-making and the transparency and accountability of NRM decision making is frequently poor. It is important therefore, that judicial review remains a viable and accessible avenue for victims of trafficking to challenge such decisions. To remove the option to challenge government decisions or provisions of support in line with their legal obligations would greatly undermine checks and balances and access to justice for victims of trafficking.

Judicial review has played an important role in securing clarification from the Legal Aid Agency for all victims about their access to free immigration advice. It has also allowed victims to clarify their entitlement to support and material assistance and to secure the right to a reconsideration of NRM decision making submitted independently or by representatives of their choice.

SECTION 3 – PROCESS AND PROCEDURE

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?

We oppose shortening the current three-month time limit for bringing a judicial review claim. Victims of trafficking already find it difficult to access immigration advice and representation and there are frequently long delays outside of their control. Shortening the time-limits for bringing a claim would therefore be incredibly detrimental, further limiting and putting pressure on the amount of time victims

have to access legal advice. The majority of victims are not aware that they have a claim to bring until they access this advice.

To conclude, judicial review is essential in ensuring the victims of trafficking can challenge unlawful decisions and hold the government to account. We strongly oppose any reforms to the current judicial review process which will further limit access to justice for victims of trafficking and make it difficult to obtain redress. Anti-Slavery International are happy to provide more detail on this if required.