

NEU Response to the Independent Review of Administrative Law- October 2020

The National Education Union (NEU) was formed by the amalgamation of the National Union of Teachers (NUT) and the Association of Teachers & Lecturers (ATL) on 1 September 2017. The NEU has over 450,000 members across the UK and is therefore the UK's largest education trade union. The NEU combines the expertise and experience of the NUT and the ATL to resolve workplace disputes, provide casework/legal support to our members, negotiate better terms and conditions, and campaign on issues that affect the teaching profession, lecturers, support staff, children and young people.

The NEU is an independent trade union, and is affiliated to the Trade Union Congress (TUC).

Judicial review proceedings (this includes serving a letter before action without the need to issue the claim) have been used by the NEU in the context of:

- Seeking greater transparency with regards to the Government's decision re-open schools during the COVID 19 lockdown in May 2020.
- Ensuring Ofsted considered consultation responses before rolling out its new inspection framework
- Ensuring a Local Authority acted lawfully with regards to its decision to allocate funding from the schools' delegated budget
- Ensuring a Local Authority did not unlawfully hold information on a teacher who was wrongly alleged to have safeguarding concerns

Please see the TUC's response, which has attached case studies with more details regarding the above matters.

These cases demonstrate how judicial review proceedings have a wide ranging impact on protecting our members' rights, and is an important aspect of the NEU's legal work.

The NEU strongly believes that the current judicial review process strikes the right balance between the rights of citizens to challenge the decisions of the executive and the need for effective and efficient government.

The NEU is strongly against any move to water down the rights of the individual citizen (or organisations representing them) or upset this delicate balance that has been built over many years and shaped by common law.

Judicial review is the only effective tool the judiciary has to hold the executive to account, and therefore ensure that there is a separation of powers in the UK's constitutional arrangements. The NEU is concerned that weakening the judicial review process will mean the executive having too much power and therefore undermining British democracy.

Further, judicial review is the cornerstone of Britain's widely respected principle of the rule of law, where an independent judiciary decides whether a public authority has acted unlawfully without fear or favour. The NEU is strongly against any move to undermine this principle and therefore damage Britain's international reputation. Undermining the independence or the ability of the judiciary to hold the executive to account is more akin to dictatorships than a modern liberal democracy like the UK.

The NEU submits that judicial review proceedings are an effective legal procedure for protecting the human rights of British citizens. As a trade union the most relevant rights are Article 6 (the right to a fair trial), Article 8 (the right to a private and family life), Article 11 (the right to freedom of assembly and association) and Article 14 (prohibition of discrimination). Any move to dilute the judicial review process will undermine the ability of individuals (and organisations representing them) to enforce those rights. For example, when challenging the Government who were withholding scientific advice and evidence with regards to the decision to re-open schools during the COVID 19 crises the NEU was defending its members right to life (Article 2) of the Human Rights Convention.

The NEU is strongly against any move to limit the scope of the judicial review process by limiting the grounds for bringing such a claim or denying access to justice.

The NEU submits that the Independent Review Panel should look at extending the time limit to bring such claims. The current 3 months is too short, and limits the ability of the Claimant to seek legal advice (which may avoid any unreasonable claims) and for the parties to agree an outcome without the need to issue a claim, which in turn saves costs and time.

In the NEU's experience of the current judicial review procedure, by challenging the executive/public authorities this has led to more transparency and better decision making. The NEU believes that this has been in the interests of the executive/public authority as well as our members, in that it has led to greater public confidence. For example, the Government's decision to re-open schools during the COVID 19 crises or a Local Authority retaking an unlawful decision which avoided costly litigation.

The NEU cannot think of any examples where the effectiveness or efficiency of the executive is adversely affected by the judicial review procedure. It would be useful to know what the Government is referring to?

The NEU sincerely hopes that this review is not an attempt by the Government to limit the scope/dilute or restrict access to the judicial review process as a reaction to developments such as the Supreme Court's decision in the Prorogation of Parliament decision in December 2019. It would be extremely disappointing if any decision to weaken or undermine the procedure is motivated by political expediency rather than the facts or evidence.

Further, we hope the Independent Review Panel is alive to the worsening rhetoric used by this Government against lawyers fighting for the rights of individuals and vulnerable groups, comments such as 'lefty lawyers' stopping the Government from deporting illegal immigrants even led to a recent hate crime. We hope the Independent Review Panel will bear in mind the hostile political environment and possible motivation for targeting the judicial review procedure, and therefore ensure the objectivity and integrity of this review.

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