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From: Matthew Fraser [redacted]
Sent: 22 October 2020 15:40
To: JudicialReview
Subject: Consultation Response - Matthew Fraser

Dear IRAL,

Thank you very much for conducting this thought-provoking review. My responses to the questions are as follows:

1. No.

2. No.

3. There is already some statutory intervention in the JR process: see e.g. section 31 of the Senior Courts Act 1981. In my view, JR does not require further statutory intervention. Statute would not add further certainty and clarity to JR, which is already sufficiently clear.

4. Yes. In my view there is no case for identifying certain decisions that should not be subject to judicial review. There should be no blanket exclusion of certain decisions. Instead, the need in some case to give sufficient judicial deference to administrative decision-making is something that should be factored into the court's consideration of a JR claim. The courts are very familiar with the approach of giving public bodies a margin of appreciation where appropriate.

5. Yes, the process is sufficiently clear. Importantly, if there has been an understandable failure to comply by a litigant in person, the court has the power to remedy this procedural error. This is an appropriate safety-valve to mitigate any lack of clarity in the rules.

6. Yes. The "promptly" rule with a 3 month deadline (for most decisions save e.g. for planning and procurement), and extensions of time where good reason is shown, strikes the right balance in my view.

7. No. In my view, the costs rules have sufficient flexibility to ensure a fair result in any given case. The Aarhus rules in environmental cases ensure access to justice on environmental matters, and the court is well equipped with procedural mechanisms (e.g. Cost Capping Orders) to reach the right result.

8. Yes. The court has the ability to award a sum for costs that is below the sum claimed, where the sum is considered disproportionate. The issue of standing should have no bearing on costs - they should be treated as distinct questions. Unmeritorious claims are refused permission, and costs are awarded subject to any limiting cap / rule. This is the appropriate way to treat them.

9. No. Existing remedies in JR are sufficiently flexible to cater for any necessary scenario. There is no additional remedy that should be established.

10. Nothing. The existing rules for pre-action conduct, including pre-action disclosure, are sufficient.

11. Yes, I have experience of settlement both before trial and at the door of the court. It happens reasonably often. I think this is because the reality of the hearing focuses the mind of all involved.

12. No. ADR is often unsuitable for JR. The need for JR to be a last resort, and the need for there to be no alternative remedy, forces claimants to explore alternative resolution before bringing a claim. If the time limit is impending, a claim can be issued protectively and then stayed pending negotiation.

13. Yes, I acted in the recent Aireborough v Leeds case on standing. I think the rules of public interest standing are not too lenient. In my view, standing should be broad for judicial review, to ensure access to justice and accountability. Wide standing rules are justified given that the focus of the court should not be on the claimant, but instead on the question of whether the public body has acted unlawfully.

Thank you,

Matthew Fraser

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