Response by Southall Black Sisters to the Ministry of Justice Independent Review of Administrative Law panel's call for evidence in relation to judicial review.

"Does judicial review strike the right balance between enabling citizens to challenge the lawfulness of government action and allowing the executive and local authorities to carry on the business of government?"

26 October 2020

Introduction

1. Southall Black Sisters (SBS) is alarmed by the Government proposal to undertake measures to reform judicial review, supposedly to prevent 'unmeritorious judicial reviews' that 'stretch public services'.

2. In our view, such a proposal will effectively limit the very purpose and scope of judicial review. Little or no evidence has been presented to support the key presumption that underpins the proposal - that judicial review hinders the proper functioning of public bodies. On the contrary, The Bar Council has shown that applications for judicial review fell by 44% between 2015 and the end of September 2019.[1] We are concerned that the proposed reform will undermine the very utility of judicial reviews as a tool of accountability, at a time when public confidence and trust is very low due to systemic failings and unlawful actions on the part of public bodies.

3. Without judicial reviews, we cannot hope to create good governance or protect society from sliding into lawlessness and rule by militias or those who wish to avoid accountability. We cannot but take note of the political significance of the timing of these 'reforms', since they come at a time when access to justice through legal aid has been severely curtailed and the Government itself has mounted a sustained attack on 'activist' lawyers for defending the rights of vulnerable groups such as migrants; a response that has led to direct threats and violence against migrants and the lawyers who defend them. This is itself a clear warning sign of the slide towards authoritarianism.

The role of judicial review in the work of SBS

4. SBS is not a legal practice but throughout our 40 year history, we have worked very closely with lawyers to tackle race, sex and other forms of discrimination and barriers that black and minority ethnic women (BME) - who remain some of the most severely disadvantaged groups in society - experience in their day to day lives. SBS provides

[1] https://www.barcouncil.org.uk/resource/judicial-review-bar-council-reaction.html

advice, advocacy, counselling and support services to women who seek our assistance in the face of gender-based violence and related matters, and facilitates their access to key legal and welfare services that enable them to secure their right to freedom, equality and justice. We are concerned that the so-called reforms may lead to the subversion of key democratic principles and values that give life to the fundamental rights and freedoms of the most vulnerable BME that we work with.

5. Judicial review is fundamental to the work of SBS. Not only because it provides a key means by which to challenge the discriminatory and unequal treatment faced by BME when engaging with public bodies, but also because it is vital to our ambition to progress equality and to challenge institutional abuses of power and unaccountability more broadly. As the Black Lives Matter and the MeToo movements amongst many others have shown, there is still a significant amount of work to do to overcome entrenched socio-economic, race, gender and other forms of discrimination and inequality within our key institutions, including the law, education, welfare and health services. Numerous reports, reviews and inquiries including those in relation to the Hillsborough disaster, the Grenfell tragedy, the Windrush scandal, the Covid-19 pandemic, child abuse in religious settings and many others, testify to this chilling reality.

6. This response outlines the key role that judicial review plays in our work and highlights how it has improved service responses and outcomes for women that advance their right to fair treatment and equality of opportunity.

7. We wholeheartedly endorse the response of the Public Law Project to this consultation.

8. Over the last 40 years, SBS has had cause to bring judicial review proceedings in cases that raise issues of wider public interest or to support women to bring judicial review proceedings in cases where they have been treated unfairly and unlawfully. In cases where SBS has initiated the proceedings, we have always been recognised as a properly interested party.

9. We list below examples of judicial reviews that we have either been involved in or have initiated. They have been vital in enabling our vulnerable users to hold state bodies to account in contexts of abuse, violence and profound powerlessness. All too often, the women and children that we work with are denied essential life-saving services to which they are entitled and are frequently denied reasons for such refusals. Many are subject to opaque and humiliating processes that mask poor decision making and illegality. They frequently encounter failings by institutions to protect them or to treat them with dignity. They fail to comply with equality and human rights law; to

adopt processes that are fair and transparent; to fulfil duties of care and to promote a wider culture of equality and justice that creates the conditions that are likely to improve their life outcomes.

10. We have a very successful track record in challenging public bodies such as local authorities, the Home Office, the Ministry of Justice, Coroner's Courts and others for adopting unlawful, arbitrary, inconsistent and discriminatory approaches to issues of gender and race equality, in contravention of domestic and international law. However, what is particularly significant, as the examples below show, is that many of our cases do not proceed to court, mainly because a Pre-Action Protocol letter or the mere threat of judicial review is often sufficient to compel the relevant public body to reconsider its decisions (see for example the section on Section 17 Children Act 1989 cases highlighted below). This is in itself revealing, since what it tells us is that judicial reviews do not need to progress to fully fledged hearings before positive change is achieved. The mere prospect of a judicial review can lead to favourable outcomes for all concerned. They are vital to good governance and can have an immensely positive impact, raising awareness and improving both substantive and procedural forms of justice and state practices. This is particularly demonstrated by the successful outcome of a judicial review brought by users of SBS against Ealing Council in 2008/9 for its decision to withdraw funds for our specialist services (outlined below). It subsequently led to significantly improved decision making processes in the awarding of grants to local organisations by Ealing Council, and to demands from around the country to train local authority officers in their understanding of and use of the equality duty and equality impact assessments when assessing local need and making sound funding decisions.

11. In cases where we have proceeded to a court hearing, we have had positive outcomes. Our cases show that without our involvement in bringing claims for judicial reviews on behalf of our users or our interventions in relevant cases, we would not be able to fulfil the key principles that drive our advocacy service; namely to support marginalised women and give them a voice so that they can participate as equals in civil society. This is the real value of judicial review in our work.

12. As a front line organisation supporting women subject to gender-based violence and related issues, we rely on judicial review to ensure that public bodies protect vulnerable women subject to serious crimes or provide effective redress in accordance with their rights under the European Convention on Human Rights (ECHR), especially Articles 2 (right to life), 3 (right not to be subject torture, or inhuman or degrading treatment), 8 (right to respect for private and family life), 9 (right to freedom of thought, conscience and religion), 10 (right to freedom of expression) and 14 (right not

to be discriminated against) - especially in contexts where the majority of crimes are committed not by the state but by non-state actors.

Examples

Covid-19 pandemic

13. From the outset of the crisis, front line organisations like ours raised concerns about the impact of the lockdown measures on women and children subject to domestic abuse, announced on 23 March 2020. It was clear that the Government had not put into place a nationally co-ordinated crisis plan for abused women and children, or to prevent its occurrence. Yet, it was widely reported in other countries that women and children living in abusive homes faced greater danger during lockdown due to being trapped in the home with their perpetrator(s). In the UK, between 23 March and 12 April 2020, the number of recorded killings in the UK rose from a weekly average of two deaths per week to an average of five deaths per week; a total of 16 killings within a three-week period[2]. Within days of the lockdown, the police also noted a sharp increase in domestic abuse cases[3] and women's organisations reported a dramatic spike in reports of domestic abuse.[4] Despite the Government's acknowledgment of this risk, it had singularly failed to take immediate measures to protect women and children, by for example, ensuring the availability of and access to additional safe accommodation and support services.

14. In April 2020, in the face of growing reports of domestic abuse and related homicides involving women and children, SBS initiated judicial review proceedings against the Government for its failure to respond to the increase in risk for domestic abuse survivors during lockdown. Our judicial review was also driven by the fact that the Government had failed to respond to our demands to launch a scheme to accommodate women in hotels and hostels across the UK,[5] similar to that which was developed for street homeless people. In our pre-action protocol letter, we argued that the consequence of the failure to do so was an increased risk of harm and potential death for victims of domestic violence, in breach of their rights set out in the ECHR. We pointed out that the failure to provide adequate accommodation affected victims of domestic abuse (who are disproportionately women) and constituted unjustified sex discrimination. We also submitted that the lockdown also had a particularly disproportionate impact on women from BME, migrant and working-class

[2] https://www.theguardian.com/society/2020/apr/15/domestic-abuse-killings-more-than-double-amid-covid-19-lockdown

[3] https://www.theguardian.com/society/2020/apr/24/charges-and-cautions-for-domestic-violence-rise-by-24-in-london

[4] https://www.bbc.co.uk/news/uk-england-52755109

[5] https://southallblacksisters.org.uk/wp-content/uploads/2020/04/Letter-to-Rt-Hon-Rishi-Sunak-MP-from-SBS-and-Compassion-in-Politics-9-April-2020.pdf

backgrounds, since they had the least financial means to leave an abusive relationship.

15. The judicial review did not however proceed to a hearing because on 2 May 2020, in direct response to our Pre-Action Protocol letter, the Government immediately announced a funding package of £76 million to support 'the most vulnerable in society', which included safe accommodation and community-based services for survivors of abuse, as well as support for other victims of harm and vulnerable children.[6]

Suicide and domestic violence

16. We have used the judicial review process to bring public scrutiny to bear on decisions within the inquest system in relation to women who are known to have suffered domestic abuse and have or are alleged to have died by suicide. Our aim is to seek an examination of the abusive circumstances of their deaths which we believe to be of wider public interest. Amongst South Asian women for instance, suicide rates are up to three times the national average, and many of these are related to their experiences of abuse and oppression within their marriage and families.[7] We have initiated judicial review proceedings in our own right or on behalf of the families of women who have died in highly suspicious circumstances and in a variety of contexts: for example, where there has been a failure on the part of coroners to hold an inquest or to investigate a suicide that may have in fact been murder made to look like suicide; or to embark on a proper inquiry into the circumstances of such deaths that are strongly linked to gender based violence. We have made submissions to show that such responses represent a failure of the state to inquire fully into a suspected deprivation of life, in circumstances where it is not the state but private individuals (i.e. husbands, partners and extended family members) that are at fault and need to be held accountable. We set out below an example of a 1999 case that involved judicial review proceedings brought by SBS. Its significance lies in the fact that the issues that SBS sought to raise were of public importance. The very process of bringing the judicial review led to greater public awareness about the link between suicide and domestic abuse, which coroners in subsequent inquests have taken into account.

Nazia Bi and her 2 year old daughter, Sana, died in suspicious circumstances, in a locked bedroom in Bradford on 18 March 1999. Her husband, who was also her first cousin, was subsequently charged with her murder. Moments before her death, Nazia had made a call to the emergency services and said "my husband burned me, please help me". On 10 March, Nazia had informed the police she was due to leave her husband, alleging that she had been forced into the marriage

[6] https://www.gov.uk/government/news/emergency-funding-to-support-most-vulnerable-in-society-during-pandemic

[7] Siddiquii H and Patel M (2010) Safe and Sane, Southall Black Sisters Trust, pp.66

and had been subjected to domestic violence by her husband and her brother. In the weeks before her death, Nazia had made plans to obtain a divorce and to move away from the matrimonial home. She had contacted a number of community and domestic violence organisations to obtain support and help in separating from her husband. Following the death of Nazia and Sana, her husband married one of the key witnesses, who claimed that Nazia had informed her that she was going to fake her suicide.

At the murder trial, the prosecution argued that there was insufficient evidence to pursue a criminal case against her husband, due to the inadmissibility of evidence such as the telephone call to the emergency services. As a result, the trial was halted. Key witnesses, whose credibility was contested, were never cross-examined and there was no full and effective finding as to the cause of the deaths.

In March 1999, the coroner in the area opened inquests into the deaths of Nazia and Sana but adjourned these until after the conclusion of the criminal proceedings. In December 2001, the coroner confirmed his view that: "it is not necessary…to resume the inquest". As a result, SBS brought a judicial review at the High Court in respect of a) the coroner's decision not to hold an inquest to investigate Nazia's 'suicide' which he justified on the basis that her family, including her husband did not want it, and b), the coroner's refusal to acknowledge SBS as an interested party representing the wider interests of domestic violence victims. Regardless of the outcome of the criminal proceedings, it was submitted that an inquest into the case was not bound by the rules on criminal evidence and that an inquest could take account of a number of issues including Nazia's wider history of domestic violence. SBS also submitted that as a BME women's organisation, with many years of experience supporting women subject to abuse, we would be able to provide expert knowledge on the significance of cultural and other considerations that can result in the murder of South Asian women in particular (often by fire), that are made to appear like suicides.

We submitted that the coroner's decision represented a failure of the state to inquire fully into the circumstances of her death in which Nazia's husband and possibly her family that were at fault.

17. The High Court rejected our substantive arguments for reasons to do with the right of a coroner to exercise his discretion. It was felt that as a judicial investigation at the criminal trial had already taken place, the coroner was within his rights not to resume the inquest. Nevertheless, the High Court did recognise SBS as a properly interested party in such cases. This was essential in laying the foundations for the need to ensure a more forensic examination at inquests in future cases. Our purpose in initiating such a judicial review is not to simply enable the women and families involved to achieve some semblance of justice, but to raise issues of wider public importance that can lead to key changes in law and policy on preventing violence against women and girls

and ending discriminatory practices towards BME women. Through such interventions, we have created greater public awareness about the links between suicide and domestic abuse within coroner's courts; improved the use of expert evidence on domestic abuse and cultural contexts and obtained appropriate public policy recommendations from coroners to prevent such deaths from occurring in the future.

Social Services and Section 17 Children Act failings

18. A key focus of our work is supporting abused, vulnerable migrant women with children who have insecure immigration status and are subject to the No Recourse to Public Funds (NRPF) condition in immigration law. Such women often arrive at our doors in a state of utter desperation and destitution because they find themselves unable to access the welfare safety net that is available to other abused women in our society. Many have no choice but to remain trapped in abusive relationships or to seek support for themselves and their children from local authorities under Section 17 of the Children Act 1989. Section 17 imposes a general duty on every local authority to safeguard and promote the welfare of children within their area who are in need. However, in reality, when abused migrant women approach social services to seek support under Section 17, they often encounter formidable barriers and often hostility. Our extensive casework has highlighted some of the most common themes to emerge in women's encounters with social services: outright refusal to assist women and children, failure to provide reasons for such refusals; failure to undertake risk assessments; unlawfully providing immigration advice although social workers are not accredited by the Office of the Immigration Services Commissioner (OISC) to do so; attempting to mediate with abusers for the purpose of returning women and/or their children to their abusive partners; threatening to only accommodate children and not their mothers; failing to take proper account of the needs of children; failing to undertake risk assessments or to follow proper procedures; insisting that women and children return to their country of origin irrespective of the circumstances and risks involved; forcing women to return to originating boroughs where they face risk; making inappropriate and judgemental comments and harassing women to pursue options that place them and their children in danger or work against their interests.

19. The decisions enacted by local authorities clearly conflict with their duties under the Children Act 1989, as well as gender and race equality principles and with rights enshrined in the ECHR including Articles 8 and Article 14. However, in our view, these decisions not only violate women's human rights but also subject them to secondary trauma and victimisation that place them at further risk of harm. Without the use of judicial reviews to obtain state support, the most vulnerable women would be left at the mercy of their perpetrators who are likely to manipulate their destitution and

powerlessness to maintain absolute control and to abuse with impunity. It is against this backdrop of blatantly unlawful practices that occur on an almost daily basis, that we are compelled to write to local authorities warning them of legal action if they do not discharge their duties as they are required to do under Section 17 of the Children Act 1989. For example, in a three month period from July to September 2019, on behalf of our users, we were compelled to instruct legal (community care) practitioners on 18 occasions to write to local authorities (mainly Ealing but also Hounslow and Hillingdon), threatening judicial review proceedings for refusing to provide assistance or adequate assistance to homeless and destitute women and children. The figures provide a snapshot of the frequency with which we have to resort to legal assistance in order to compel social services to provide an adequate response to abused and destitute women and children. In all of these instances, the local authority concerned backed down following the threat of judicial review and provided women and children with safe accommodation and basic subsistence support. What is clearly evident from this experience is that local authorities appear to deliberately frustrate women's access to their services until the point at which legal action is about to commence.

20. More broadly, in the face of such frequent threats of judicial review, we have noted a discernible improvement in the response of Ealing social services in particular. Legal letters threatening judicial review have dropped to around two a month on average although in most cases, SBS still has to involve the director of social services to obtain an adequate and timely response to the cases that are referred.

21. Needless to say, pursuing local authorities to meet their obligations under the law incurs needless human and economic costs: women endure significant delays and trauma whilst local authorities attempt to defend their often indefensible action at huge legal expense. In addition, costs are often borne by organisations like ours who have to meet the accommodation and subsistence needs of the women concerned, pending the outcome of judicial review proceedings. These costs are never recovered.

Legal aid and access to justice

22. When legal aid cuts were first proposed for immigration non-detention cases in 2010,[8] the Government insisted on going ahead with the proposal despite detailed submissions by us and others setting out its impact on the most vulnerable groups. SBS had no choice but to bring judicial review proceedings against the Secretary of State for not giving proper weight to the Government's own policies and commitment

[8] See the policy decision reached by the Secretary of State to remove non-detention immigration from the scope of legal aid, published in the response to the consultation on *Proposals for reform of Legal Aid in England and Wales* (15 November 2010)

to protect women with insecure immigration status from domestic abuse. Our concern was that the legal aid cuts would threaten the lives of the many abused BME with insecure immigration status with whom we worked and would undermine the very purpose of the Domestic Violence (DV) Rule (2002) in immigration law. The DV Rule was introduced precisely to enable abused migrant women on spousal visas to apply to remain in the UK indefinitely if their marriage breaks down due to domestic abuse. We argued that the proposal meant that such women would no longer be able to obtain legal aid for legal advice and representation to make such applications under the DV Rule. It therefore undermined a key plank of the Government's own action plan on protection from violence against women. It also breached the UK's equality legislation, as well as international law and standards on violence against women.

23. Crucially, the users of SBS were not in a position to bring a judicial review claim given that the proposals had not at that point been implemented and so had not directly impacted them. SBS was therefore compelled to contemplate judicial review proceedings and sent a Pre-Action Protocol letter to the Secretary of State. The response was positive. An important concession was made in Parliament in respect of access to legal aid for women with insecure immigration status who come to the UK on spousal visas but who face domestic abuse.[9] The following extract is from the parliamentary debate on 19 July 2011, when in Committee, the Government announced that it 'intended to bring forward an amendment to the legal aid bill in relation to cases arising under the Domestic Violence Rule, so that it remained within the scope of civil legal aid'.

    Mr Djanogly: My hon. Friend [Ben Gummer MP] makes a good point. The matter of including cases brought under the immigration domestic violence rule in the scope of civil legal aid was raised a great deal during the consultation, and we considered the point carefully. Although we accepted that the applicants in such cases were vulnerable, we did not think, on balance, that legal aid was required, essentially because the applications, similar to other immigrant applications, were paper-based. We recognised that people might need assistance with obtaining the required documentary evidence, but we considered that such assistance need not be specialist legal assistance funded by legal aid.

    After further consideration, however, we accept that such cases are unusual. There is a real risk that, without legal aid, people will stay trapped in abusive relationships out of fear of jeopardising their immigration status. The type of trauma that they might have suffered will often make it difficult to cope with such applications. We also appreciate that people apply under great pressure of time, and access to a properly designated immigration adviser is a factor. We intend to table a Government amendment to bring such cases into scope at a later stage.

[9] See http://www.southallblacksisters.org.uk/downloads/sbs-legal-aid-challenge.pdf

The survival of specialist services and the struggle for racial equality

24. Arguably, one of the most high-profile judicial reviews that SBS embarked on concerned our challenge to our local authority for attempting to institute a funding regime that ended support for specialist services for BME women. This decision in turn adversely impacted on the rights of BME women who depended on our service as their life line.

25. The background to this case[10] is that in 2007, Ealing Council terminated an existing funding agreement with SBS because it was switching to a commissioning based regime of funding for generic services for male and female victims of domestic abuse. We submitted that the new proposals for domestic violence services failed to take account of the unequal social, economic and cultural context which makes it difficult, if not impossible, for BME women to access outside help or seek information about their rights. Despite a detailed and comprehensive response from SBS setting out considerable evidence of the impact of the decision on BME women, and in the absence of a properly conducted equality impact assessment, the Council proceeded with its plans, compelling SBS users to institute judicial review proceedings.

26. The judicial review proceedings focused on two main concerns: the failure of the Council to adhere to equality duties as set out in its own policies and equality law; and deficiencies in the decision-making process. In particular, we outlined the ways in which the Council had failed to have regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between persons of different racial groups, pursuant to the Race Relations Act 1976. We also submitted that the Council had also failed to have regard to the Equality Act 2006 and a similar duty in relation to gender equality. In sum, we maintained that the Council had failed in its duty to assess the impact of its funding policies on the promotion of race and sex equality, and had failed to act lawfully and fairly at all times.

27. At a hearing at the High Court on 17 and 18 July 2008, Ealing Council was eventually forced to withdraw its defence after it became increasingly evident that it had made fundamental errors in making the decision to move to a commissioning regime of funding without carrying out a proper equality impact assessment. Throughout the hearing, Lord Justice Moses, the presiding judge, did not hesitate to hide his displeasure at the way in which the Council had conducted itself and was in fact close to regarding the Council as having conducted itself in 'bad faith'.

[10] R (on the application of Kaur and Shah) v London Borough of Ealing [2008] EWHC 2062 (Admin)

28. There were many notable outcomes to this case. Firstly, in his judgment, Lord Justice Moses reiterated a substantive notion of equality and the significance of public bodies carrying out equality impact assessments at the formative stage of the decision-making process. Secondly, in the months and years that followed, there was a discernible improvement in the quality of Ealing Council's policies and processes regarding the funding of domestic abuse services in the locality, including better consultation processes. Thirdly, the case led to numerous requests for SBS to train local authority officers across the UK in how to assess local need and carry out equality impact assessments in relation to the provision of services in their areas to ensure compliance with equality law and policies..

29. This example highlights how judicial reviews can be a positive tool for improving the quality of decision making within public bodies; that benefit not just service users but also the very people making decisions. The judicial review had a ripple effect across the country which led to better decision making processes across local governments everywhere. This is the strength and value of what was achieved through the judicial review process.

The struggle for gender justice

30. Whilst groups like SBS have made significant advances in challenging gender discrimination and inequality, especially in South Asian communities, by promoting a rights-based approach to meeting the needs of BME women, increasingly, we find ourselves defending the equality gains that we have previously won. Since the late 1980s, we have been witness to a political and ideological climate dominated by the ascendency of fundamentalist and ultra conservative forces in all minority religions. Those forces have successfully normalised a deeply patriarchal set of values which often include a high level of control of girls and women, and the suppression of dissent and difference. The new sexual order that is being shaped involves the increasing practice of gender segregation and sex stereotyping, which exacerbates the inequalities faced by an already marginalised group of women. It will have a lasting and highly detrimental impact on very impressionable young children, in particular girls. For these reasons, we have been compelled to bring judicial review proceedings in cases where fundamentalist and ultra conservative forces attempt to curtail women's rights by infiltrating key spaces such as law and education. Often with the support of public bodies, these forces have sought to impose gender segregation or policies that are compliant with their religious beliefs as defined by them. Needless to say, these policies are regressive insofar as they inherently discriminate against women, sexual and other minorities within minorities. The following are two examples where SBS has used judicial reviews to uphold the very concept of gender equality in the face of religious fundamentalist attempts to curtain equality of opportunity for women and girls:

Universities UK

31. On November 22 2013, University UK (UUK) a governing body for universities published a guidance document titled "External speakers in higher education institutions." Its aim was to help universities consider the various issues that arise when inviting external speakers to appear on campus, including the issue of gender segregation. But the guidance in effect amounted to an endorsement of the practice of gender segregation. It was a move that prompted SBS to challenge UUK by way of a Pre-Action Protocol letter on the grounds that it would have had a disproportionate impact on women from cultural and religious backgrounds who already struggle to assert their right to gender equality in education, freedom of expression and the right to participate in public life.

32. In our Pre-Action Protocol letter, we pointed out that the guidance contravened gender equality and human rights law. By allowing gender segregation at public university events, we submitted that the UUK was not only failing to respect its legal obligations, but also violating domestic and international law. The UUK had failed to undertake a balancing exercise when taking account of Articles 9 and 10 of the ECHR concerning the qualified right to manifest religious beliefs and freedom of expression against Article 14 of the ECHR concerning non-discrimination. We submitted that the law requires public bodies such as UUK and the universities it is advising to undertake a balancing act: a speaker's Article 9 and 10 rights must be balanced against the rights of those attending meetings not to be discriminated against under Article 14, and to receive information without interference under Article 10. We also set out how the UUK guidance breached the public sector equality duty under the Equality Act 2010 insofar as it failed to give due regard to the need to eliminate discrimination and harassment of women, or the need to advance equality of opportunity, when the guidance was prepared and then issued.

33. As a consequence of the Pre-Action Protocol letter, UUK withdrew its guidance and subsequently drafted new guidance in consultation with the Equality and Human Rights Council that made clear that gender segregation in university events that are not acts of religious worships is unlawful. In a context where there has been increasing attempts by fundamentalists of all hues to promote gender segregation in public life, far from being a benign development, it is at its most basic, an attempt to create laws and policies based on stereotyped and sexist ideas about women and gender relations.

Law Society and Sharia compliant wills:

34. In May 2014, SBS became concerned after learning that the Law Society had issued a practice note on Sharia succession rules that suggested that solicitors dealing with

clients from Muslim backgrounds could be guided by such rules when preparing valid wills. The note advised solicitors to take account of Sharia principles without acknowledging that they are in fact highly contested on the basis that they discriminate against women and children. The note had been drafted with reference to conservative if not fundamentalist Muslim 'experts' understanding of Sharia, but there was no reference to having consulted minority women's organisations that work on issues of gender discrimination. It said:

"… illegitimate and adopted children are not Sharia heirs…The male heirs in most cases receive double the amount inherited by a female heir… Non-Muslims may not inherit at all…a divorced spouse is no longer a Sharia heir…"[11]

35. Our written concerns about the practice note were communicated to the Law Society but there was no adequate response. Eventually, we were compelled to set out our threefold concerns in a Pre-Action Protocol letter. We stated the following: Firstly, the note encouraged solicitors to apply different and discriminatory laws of intestacy to Muslims or those deemed to be Muslim; secondly, we were concerned about the failure of the Law Society to meet its equality duty under the Equality Act 2010 and thirdly, it was evident that there had been a failure to properly consider the differences of opinion as to the interpretation of Sharia principles amongst Muslims and a failure to consult with appropriate women's groups, especially Muslim women, given the controversy.

36. As a direct result of the Pre-Action Protocol letter, in July 2014, the Law Society withdrew its discriminatory practice note. This outcome was vital in ensuring that legal institutions do not discriminate against those who are the most marginalised in our society and to encourage an equality and human rights compliant legal culture. It also helped to create awareness of the detrimental impact of fundamentalist ideologies on not just women, but also civic culture and engagement.

Conclusion

37. There can be no doubt that the examples provided in this submission are all instances of judicial review or the threat of judicial review challenges that have had immensely positive outcomes. They have helped to advance progress on race and gender equality or to defend progress that has already been made in these and other equality areas. They have taken on significance precisely because there are no other effective mechanisms for mounting such challenges. We have usually embarked on judicial reviews only when all other routes for representation and negotiation have failed. This is especially evident in the Section 17 Children Act 1989 challenges which show that

[11] https://southallblacksisters.org.uk/news/the-solicitors-regulatory-authority-withdraws-its-endorsement-of-the-law-societys-discriminatory-practice-note-on-sharia-wills/

social services frequently fail to reconsider their decision until compelled to do so by the threat of legal action. Even then we do not undertake judicial reviews lightly given the cost and resource implications involved for organisations like ours.

38. Significantly, as the above examples show, none of the challenges to decision making by public bodies that we have undertaken have threatened national security, nor hindered or impeded the working of public bodies including the Government. On the contrary, we submit that they have been essential in giving voice to the most marginalised and powerless in our society and in encouraging integration and civic engagement. They have also been critical in clarifying the law, improving access to justice, achieving substantive equality and in promoting a concept of citizenship that enhances rather than diminishes the quality of democratic governance.

Southall Black Sisters

26 October 2020