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From: The Legal Company [redacted]
Sent: 21 October 2020 07:53
To: IRAL
Subject: Independent Review re Judicial Review

Categories: Moved to CfE(S)

21 October 2020

Dear Sirs,

SUBMISSION

I am a legal advisor at The Legal Company. We receive numerous enquiries regarding Judicial Review on a daily basis, though we exclude immigration cases as we are not regulated to advise in relation to these. I hope, therefore, to offer to you a measured view of the current position and some respectful suggestions for improvement.

1. There are potentially three routes when presented with a potential ***'judicial review***.' If not a judicial review, in planning it can be an application to the Planning Court or a Statutory Appeal. Whilst the distinction between JR and Planning appears entirely clear, there is still room for further definition. What is planning and what is not can be not as obvious as one might assume. As to the distinction between Statutory Appeal and a Planning JR, it can more frequently be most confusing. There might be justification for all Applications to be submitted on the same form, and the Court to allocate the case, as the criteria are so similar in each case.

2. The proliferation of litigants in person makes this area of law for the Administrative Court most challenging. There are some immediate traps. Does the Claimant have locus standi? Who can be challenged? But, most complex of all: on what basis can you challenge a decision that is made by a public body acting in the public domain? Similarly, what do you actually hope to achieve by bringing such a claim?

3. We advise many litigants in person and the perception is often that merely a 'wrong' decision justifies intervention by the High Court. Clearly, in reality, the benchmark is much higher. This is the conundrum of an equitable remedy where the judge, quite rightly, has a wide discretion as to whether to intervene and allow a review, or not. One cannot be too rigid but a guide as to its restrictions would be most helpful to those litigants in person. The question I rhetorically ask is: ***Could anyone in their right mind, in these particular circumstances, ever have come to that decision?*** Even then, I concede that it becomes, by its' nature, subjective. To revisit the criteria that justify a review might be beneficial. The term ***'unreasonable***' (Wednesbury) is ill-defined and nebulous. Even applying the word ***'perverse***' does not assist a litigant in person. The more clear the guide, the more likely it will be to exclude hopeless cases at source. This is of vital significance.

3. Another area ripe for consideration is the clarification of the party whose decision can be challenged - particularly when it is not a public body, in the normal sense of that term. By way of example, I refer to a fostering agency. Amenable or not amenable to JR? The more guidance at the outset, the better in my opinion. This is an area that causes real confusion.

4. As to process, there need to be time limits placed upon the disposal of initial Applications for Permission. That initial process needs to be speeded up but, similarly, there should be restrictions placed upon what is submitted at the outset. The Court, I fear, is presented, with rambling histories from litigants in person, and possibly practitioners too, going well beyond the initial consideration of permission. That needs to be looked at seriously as justice delayed is justice denied. The JR Form itself can be improved upon so as to make it easier to state briefly and succinctly why the Claimant believes the decision being challenged is unlawful/irrational/unreasonable etc.

5. The Emergency Process (N463) is confusing and needs streamlining. It is accompanied by the N461 Application but includes suggested time limits for various stages of the procedure. This is not necessary. It should merely state the outline the case and the reasons for regarding it as an emergency. The Court then, of its own volition, can decide on any abridgments. It does not also necessarily require the entire JR Application at that stage, though the judge can call for it. The less paperwork, the speedier the process.

6. The ethos behind this remedy is to provide a check and balance in respect of public decisions. Rather like freedom of information requests, it can easily attract serial litigants. It is for this reason that claims ought to receive a speedy and robust response, based on minimum paperwork. One cannot close the door on those who wish to challenge any such public body, but the Court ought to be able, at the earliest stage, to treat a claim as vexatious and totally without merit, before ever involving the Defendant and their potential Points of Dispute.

7. In terms, therefore, as follows:

(i) Define more clearly what the criteria are and what the remedies are likely to be considered;
(ii) Make the Form N461 itself more comprehensive, and avoid supporting documents at the outset;
(iii) Encourage a speedy initial decision (ex parte without notice if clearly without merit);
(iv) Simplify the emergency process;
(v) Do not limit the right to challenge per see, but define more clearly the only bases upon which the Court will review a decision;
(vi) Let the Court allocate the case which should be presented on a standard form.

I hope this is helpful to the committee and I wish you all well and safe.

Judicial Review is a vital and cherished element of the English Legal System and must be treasured but not let loose - like a virus!

Yours truly

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