

**From:** Alex Ruck Keene [REDACTED]  
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**To:** IRAL  
**Subject:** Response to call for evidence

**Categories:** Submissions

Dear Sir/Madam

I respond solely to question 3 of the questionnaire, to draw the Panel's attention to the report of the Independent Review of the Mental Health Act 1983 which reported in December 2018 ([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/778897/Modernising the Mental Health Act - increasing choice reducing compulsion.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/778897/Modernising_the_Mental_Health_Act_-_increasing_choice_reducing_compulsion.pdf)), and, in particular, page 76, in which the Report Chair outlined that:

"At the moment the only way for a patient to challenge the decision of the [Responsible Clinician] and [Second Opinion Appointed Doctor] is a right to appeal treatment by way of Judicial Review, but we have reached a firm conclusion that it is simply inaccessible. It is both too difficult and too expensive."

The Chair, Sir Simon Wessely, and his Vice-Chairs recommended, in consequence, that "there should be a route of challenge to a single judge of the Tribunal, supported by non-means tested legal aid."

See further, for the reasoning underpinning this, the supporting materials at pages 203 and 204 ([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/778898/Independent Review of the Mental Health Act 1983 - supporting documents.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/778898/Independent_Review_of_the_Mental_Health_Act_1983_-_supporting_documents.pdf)).

The White Paper responding to the Review is anticipated. However, I would suggest that this serves as an example of a situation where (1) ECHR rights (in this case those contained within Article 8) mandate access to a court as part of the necessary procedural guarantees; and (2) the State has a choice as to whether to codify that route or let it lie to courts by way of judicial review. In such a situation, problems will arise where the route of judicial review is ineffective in practice, and I would suggest that there is, therefore, a choice as to whether to render the route effective or to provide another route to provide the necessary guarantees.

I would be happy to amplify this answer if required.

Yours sincerely

Alex Ruck Keene

(Note, I was the legal adviser to the Review, but this response is provided in a purely personal capacity)

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