This is the response, of Lord Woolf to the call for evidence by the IRAL PANAL which reached me in the last week of September 2020 and which is dated 16th September 2020 and requires a response by 19th October of this year. The document commences with the general question:

"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?"

The document in the Introduction, indicates "the panel is particularly interested in any notable trends in judicial review over the last 30 to 40 years. Specifically, the panel is interested in understanding whether the balance struck is the same now as it was before and whether it should be struck differently going forward." It adds that would like to hear, particularly from people who have direct experience in judicial review cases. Here, for the record, I should make it clear that I have had this direct experience as the Treasury Junior, then as a High Court and a Court of Appeal judge and as a Law Lord, Master of the Roll and finally as Lord Chief Justice. This covered almost 30 years from 1974 to 2005. Also during this period I was involved with others in editing De Smith Judicial Review (4th to 8th editions) and giving many lectures on the subject. I also dealt with judicial review in my Access to Justice Report. However, my involvement ended in 2005.

During the period of my involvement in administrative law generally and judicial review; in particular, went through a remarkable period of growth and development. This was largely in the hands of the judiciary and was based on the historic jurisdiction of the courts that can be traced back to mediaeval times and depended upon the power of the judiciary to issue the prerogative writs to uphold justice.

Fortunately, it is clear from the document that the Secretariat have prepared dealing with the call for evidence that, at least at present, the enquiry is only concerned with specific issues they have identified. So I will deal in turn, with each of the four areas for enquiry identified by the Secretariat. To assist the reader, I will also identify the issues;.

Number one: whether the amenability of public law decisions to judicial review by the courts and the grounds of public law illegality should be codified by statute?

If this suggestion is accepted it could mean that judicial review could be transformed. In my view it would politicise the subject. It would mean that if a political party had a substantial majority in Parliament it would be able to undermine the protection the citizen has in the courts. Just how great was the impairment could depend on how entrenched the provisions codifying judicial turned out to be.

Unless adequate protection is provided the proposal should be firmly opposed. The advantage of the existing approach is that, reflecting its source, as part of the common law, judicial review evolves and adapts so as to meet the needs of the public for protection for the time being while so far as practical at the same time protecting the needs of public bodies to govern and carry out their responsibilities . Thus the present flexibility has enabled this country to avoid the rigidity of an entrenched constitution while providing the necessary protection for the needs of the executive.

Number two: whether the legal principle of non-justice ability requires clarification and, if so, the identity of subjects/areas where the issue of justiciability/non—justiciability of the exercise of a public law power and/or function could be considered by the Government.

As I understand the legal position, it is and has been reasonably clear that there is a presumption that “If the source of power is a statute” or subordinate legislation under a statute then clearly the body in question will be subject to judicial review. There must be some compelling reason for saying that the presumption is excluded. This is just the type of situation where clarity is best produced not by legislation but by decisions of the courts and I am unaware of any problem in practice.

Number three: Whether, where the exercise of a public law power should be justiciable:(i) then on which grounds the court should be able to find the decision to be unlawful,(ii) whether those grounds should depend on the nature and subject matter of the power and {iii} the remedies available in respect of the various grounds on which a decision may be declared unlawful.

In many cases, this question will be decided by the terms of the statute and the extent and nature of the departure from the statute involved This is linked to the sovereignty of Parliament since if the statute does not permit what has been done that will frequently answer the question. The extent of the deviation will also affect the result.

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Number four; Whether procedural reforms to judicial review are necessary, in general, to ”streamline the process”, and in particular: (a) on the burden and effect of disclosure in particular in relation to “policy decisions” in Government: (b] in relation to the duty of candour as it affects Government; (c) on possible amendments to the law standing; (d] on time limits for bringing claims, (e) on the principles which relief on the principles on which relief is granted for judicial review, (f) on rights of appeal, including on the issue of permission to bring J R proceedings and, (g) on costs and interveners.

Improvements in procedure are always possible and if they are practical and proportionate should be adopted. Candour on the part of the government is to be expected. A relationship has to be maintained between the procedural rules governing judicial review and the procedural rules of general application, so there should be sufficient harmony between them to avoid fruitless arguments as to whether the proceedings should be have been brought by judicial review or by an alternative process applicable to other civil proceedings.

The document prepared by the Secretariat next sets out a questionnaire addressed to government departments so I am not required to respond. I merely point out that answers could also be given by others, including practitioners in public law and readily available textbooks.

Section 2 deals with codification and clarity, and asks whether there is a case for statutory intervention in the judicial review process. To which the answer is of course that there is because it's true that codification would lead to certainty, but it is very much a matter of judgement as to whether this would lead to better or less satisfactory protection of the public. Codification would lead to rigidity and the loss of one of the great virtues of the present common law provision which is the ability for it to grow to match the needs of public bodies and above all the citizens of this country. My view is the balance sheet favours the present approach, but I realise it can be fairly pointed out that having been immersed in the present system I am not independent. In relation to which I note the title of this Inquiry is unusually described as "Independent" and I do wonder from whom it is meant to be "Independent ". Does it mean from the judiciary? I hope not, because it is my belief that they are truly independent and the virtues of judicial review are dependent on both their quality and the resources provided by the government to enable our present system of justice to function..

Section 3 deals with "Process and Procedure." The question is asked as to whether the current judicial review strikes the right balance . In my view, this question goes to the heart of the issue for the enquiry. I have reservations as to whether the Panel will consider my views any longer relevant, but in case they do I refer them to my book "The Pursuit of Justice" , chapter 1 which sets out my first Hamlyn Lecture under the title "A Question of Balance." In addition, I would refer to the handbook on judicial review prepared. Mr Justice Fordham. The seventh edition is about to be published and it demonstrates how, despite the vast volume of decisions on judicial review that are now available and despite all learning on the subject, it is possible to confine the guts of judicial review into a manageable package. In addition athough I'm conscious that a great many years have now elapsed since I personally was engaged in judicial review and an equally long period of time has also elapsed since I had any managerial role as to judicial review part of the perceived problem which

causes the government to contemplate drastic change is down to a lack of understanding on the part of practitioners, administrators and officials of the reasons why judicial review is structured as it is. Therefore, that it should at least be considered, if this has not already happened, exploring whether education could not play a role in improving the situation. To me it is ironic that while in the past, the complaint was made was that our system of judicial review was over protective of the administration, apparently now the opposite is being said. Conferences could be arranged to explain why it is said the pendulum has swung too far. If attendance was such that all sides were represented conferences consistent with the independence of the judiciary could be organised, and this could alleviate the present problems.