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RESPONSE TO THE MINISTRY OF JUSTICE'S CALL FOR EVIDENCE IN THE INDEPENDENT REVIEW OF ADMINISTRATIVE LAW (IRAL)

23 OCTOBER 2020

A. INTRODUCTION

HSF is a leading global law firm which has a dedicated and established public law team across multiple jurisdictions, most notably the UK and Australia. We have been advising in the field of public and administrative law for many years on a wide variety of cases and matters. Unlike many other public law practitioners, we regularly act for all parties in judicial reviews (claimants, defendants, interested parties and interveners). We have a wide ranging client base covering individuals, public bodies, corporates and non-profit organisations and have experience of judicial review across many different sectors. We believe this broad perspective enables us to consider the questions put forward in the Call for Evidence objectively without prioritising the interests of any one particular group.

For the reasons given below, we consider that the current mechanism for judicial review and wider administrative law functions well and does not need to be subject to any major reform. We address the particular aspects of the law below in further detail.

In general, while we have sought to address each question in the Call for Evidence separately, we would note that reform to one area of public and administrative law (especially where it is substantive reform) risks unintended consequences to other areas (for example, statutory appeal processes). Indeed, this overarching concern is highlighted in the notes to the Government's Terms of Reference published on 31 August 2020 (**ToR**).

It is notable that there has been no discussion about whether there will be a consultation on any changes or reform proposed by the IRAL. Given the fundamental importance of many of the issues contained in the ToR and in the Call for Evidence, it is clear that many organisations and individuals would want to seek to feed in their views on any specific proposed changes. While we acknowledge the distinguished credentials of those appointed to the panel to review such reforms (**the Panel**), we would urge that any concrete proposals are subject to a fair consultation including with those who would be directly impacted by such reform and those who would be able to offer views based on their experience of practising in the area and may be able to offer insight on any potential unintended consequences that may result. We would further suggest that any such consultation gives a longer time period for response given the complexity and significant constitutional implications of any reform.

B. SECTION 1 – COMMENT ON QUESTIONNAIRE TO GOVERNMENT DEPARTMENTS

1. In your experience, and making full allowance for the importance of maintaining the rule of law, do any of the following aspects of judicial review seriously impede the proper or effective discharge of central or local governmental functions? If so, could you explain why, providing as much evidence as you can in support?

a. judicial review for mistake of law

b. judicial review for mistake of fact *c. judicial review for some kind of procedural impropriety (such as bias, a failure to consult, or failure to give someone a hearing)*

d. judicial review for disappointing someone's legitimate expectations

e. judicial review for Wednesbury unreasonableness

f. judicial review on the ground that irrelevant considerations have been taken into account or that relevant considerations have not been taken into account

g. any other ground of judicial review

h. the remedies that are available when an application for judicial review is successful

i. rules on who may make an application for judicial review

j. rules on the time limits within which an application for judicial review must be made

k. the time it takes to mount defences to applications for judicial review

2. In relation to your decision making, does the prospect of being judicially reviewed improve your ability to make decisions? If it does not, does it result in compromises which reduce the effectiveness of decisions? How do the costs (actual or potential) of judicial review impact decisions?

3. Are there any other concerns about the impact of the law on judicial review on the functioning of government (both local and central) that are not covered in your answer to the previous question, and that you would like to bring to the Panel's attention?

1. **Are there any comments you would like to make, in response to the questions asked in the above questionnaire for government departments and other public bodies?**

   The above questions appear to assume that judicial review can be directly contrary to the objective of public bodies and government departments to properly and effectively discharge their functions when taking decisions. However, the key objective behind judicial review is to ensure that government departments and public bodies are able to properly and effectively discharge their functions, according to the law. Judicial review holds such bodies accountable when discharging their functions, rather than, as stated in the questions, impeding such bodies. Judicial review is therefore a mechanism for determining whether any given decision is lawful. If a decision has been held unlawful following a judicial review of it, we do not believe that could be termed a serious impediment to the proper or effective discharge of central or local governmental functions, as the questions above suggest.

   While we recognise that the system should be designed so as to avoid unmeritorious claims being brought which may overburden public bodies or stand in the way of legitimate policy implementation, this must also be balanced with the interest of all citizens to ensure that public bodies' actions can be effectively held to account, where such actions are unlawful. This reinforces not just the rule of law, but also effective governance by the very bodies who may be subject to review.

   We also note that the above questions have been asked only of governmental bodies and public bodies. We believe there would be merit in asking corresponding questions to other potential defendants and claimant organisations. Obtaining such views we believe, would assist the Panel when considering the question of where the balance lies between ensuring judicial review is not overly burdensome and facilitating access to justice.

2. **In light of the IRAL's terms of reference, are there any improvements to the law on judicial review that you can suggest making that are not covered in your response to question (1)?**

   One specific area which may benefit from consideration and clarification is the position on expert evidence within judicial review. Expert evidence is increasingly used, particularly in commercial and regulatory judicial reviews of which we have significant experience, but the rules around such use are often unclear.

C. SECTION 2 – CODIFICATION AND CLARITY

3. Is there a case for statutory intervention in the judicial review process? If so, would statute add certainty and clarity to judicial reviews? To what other ends could statute be used?

Currently, the substantive law behind judicial review, such as the grounds for bringing a claim, generally stems from the common law. On procedural aspects, legislation such as s31 of the Senior Courts Act 1981 simply regulates the judicial review procedure, rather than being the source of the substantive law.

We do not believe that placing the substantive law of judicial review on a statutory footing would promote clarity and accessibility in the law, or increase public trust and confidence in judicial review, as queried in one of the notes to the ToR. The reasons for this are outlined below.

Firstly, we do not believe that there is any lack of certainty with regards to the current grounds of judicial review which are generally well understood by experienced public law practitioners. In fact, we believe that were the grounds to be codified into statute, this could give rise to further litigation over the meaning of such legislation. For example, attempting to define and codify the ground of irrationality could give rise to the risk of ambiguity over the meaning of that word and how it is to be applied in the particular legislative and factual context facing the court in a given case. Indeed, rather than promote clarity the codification would likely give rise to further uncertainty over what the particular words of the statute meant.

Secondly, there is a real risk that including, for example, a list of grounds in statute could stultify the adaptability of the law over time or cause it to fail to keep pace with modern developments. Given the nature of judicial review as a mechanism which must be able to cater for a wide range of contexts and circumstances, the common law provides a system which the courts have been able to use to carefully develop the law to respond to the issues which have arisen on their facts. The possibility of codification raises questions over whether any statutory wording will place limitations on the courts' ability to adapt the law to meet new contexts, compared with the arguably greater scope afforded to it under the common law. Any codified grounds of review may suffer from having a lack of guiding principles or objectives such as principles of good government and the separation powers as well as an absence of fundamental rights considerations, which have underpinned the evolution of these grounds in the common law to date. Any legislation which risks placing a limit on the courts' ability to use judicial review as a mechanism to ensure compliance by public bodies with the rule of law would be concerning. The grounds of review embody principles that have been developed by the judiciary in the proper discharge of its function of providing an essential and impartial check on the executive and holding it accountable. Therefore, any limitation on the courts' ability to do this should therefore be resisted, even if this were not the intended effect of codification.

There would also be possible uncertainty over the extent to which previous common law cases would apply if, for example, there were a debate over whether it was consistent with the interpretation of any statute which codified judicial review principles

Practically speaking, it is unclear to us how the grounds of judicial review could be codified in any effective or meaningful way. The current grounds of judicial review are not siloed, and many overlap with each other, though in our experience, that has not been to the detriment of certainty. If for example, a high level approach to codifying the existing grounds of judicial review was taken and any legislation simply set out each principle, we do not believe much benefit would derive from that approach since the grounds of judicial review are already clear to prospective parties alike. Alternatively, if an approach was taken which sought to detail further what each ground of judicial review entails, we believe this would fall victim to the risks highlighted above, namely: (i) the risk of losing the nuance of principles already developed over decades by the courts; (ii) the risk of losing the existing flexibility of the courts to adapt to new circumstances should they arise in the future; and (iii) the risk of further satellite litigation over statutory interpretation.

The ToR also require the Panel to consider whether substantive public law should be codified into statute and, in particular, the law on the amenability of public law decisions to judicial review by the courts and the grounds of illegality. We would oppose this for the reasons highlighted above. The determination of which decisions and powers are subject to judicial review is based on legal principles which the courts have carefully developed over a long period of time and is often a highly fact specific decision not suitable for the rigid application of set rules. As with the case in relation to codifying substantive public law discussed above, there is a risk of unintended consequences occurring if Parliament seeks to codify this area, by creating ambiguity or limitations where they did not previously exist. We also discuss further the issues of justiciability raised by the ToR and Call to Evidence, below.

4. Is it clear what decisions/powers are subject to Judicial Review and which are not? Should certain decision not be subject to judicial review? If so, which?

We believe that there is no need to change the current law on which decisions are subject to judicial review or not, and that this area of the law is currently sufficiently clear.

The notes to the ToR refer, in the context of justiciability, to what is described as a historical distinction between the questions of whether: (i) a power has been exercised outside its scope (which has traditionally been subject to judicial review); and (ii) whether a power has been unlawfully exercised even if it is within its scope (which the notes to the ToR describe as not traditionally subject to court intervention). Notably, they highlight the Government's apparent dissatisfaction at how "*over the course of the last forty years (at least)*" this distinction has "*arguably been blurred by the Courts*" and argue that unlawful exercise of power is now treated the same as a decision taken out of the scope of power and therefore considered null and void, questioning whether this is the right approach. However, cases such as *Associated Provincial Picture Houses Ltd. v Wednesbury Corporation [1948] 1 KB 223* which established *Wednesbury* unreasonableness and was dated over 70 years ago, show that in fact the courts have been grappling with questions of unlawful exercise of power (and not just decisions exercised outside the scope of the power) for a long time.

The ToR in this context seem aimed at cases such as *R (Miller) v The Prime Minister; Cherry and ors v Advocate General for Scotland [2019] UKSC 41*, in which the Supreme Court found that the Prime Minister's advice to Her Majesty to prorogue Parliament for an extended period was unlawful and void. In our view (having acted for an intervener in the case) the judgment represents an orthodox application of public law principles. Insofar as there is a concern that the court is reviewing the exercise of prerogative powers it should be borne in mind that courts have considered judicial reviews of the prerogative long before the prorogation of Parliament case. Indeed, the Supreme Court in *Miller* cited *Council of Civil Service Unions v Minister for the Civil Service [1985] AC 374* where Lord Roskill noted that (subject to certain exceptions) he was unable to see any reason why the fact that the source of the power was prerogative, as opposed to statutory, should deprive a citizen of the right to challenge the manner of the exercise.

Issues of justiciability typically involve a court considering whether it has the expertise to reach a judgment on the issue in question. We would therefore consider it surprising if this question were taken away from judges who are in our view, best-placed to consider this particular question and where appropriate have shown willingness to defer to the expertise of the executive where such expertise is greater than that of the court's. The courts, when determining judicial review cases, are concerned with whether a particular decision is unlawful, either because it is outside the scope of the relevant power or because it has been exercised unlawfully within the scope of this power. In either case, the question is whether the power has been exercised unlawfully. We would stress, of course, that it is a fundamental principle in judicial review case law, that just because a court would have reached a different decision to the decision-maker, that does not mean that the decision is necessarily unlawful. This is a principle which we see well understood and applied by judges at all levels in judicial review cases who accord appropriate respect to democratically accountable decision-makers. Therefore, if the executive (through its current majority in Parliament) were to be able to decide which types of powers are not justiciable and should not be subject to judicial review i.e. powers or decisions which could not even be reviewed for unlawful exercise of power, this would be tantamount to the executive effectively determining the lawfulness of its own decisions for certain categories of decisions. This would be a concerning limit on the courts' constitutional function of providing an independent check on the executive and would seriously undermine the proper separation of powers.

We would not support any proposed reform in this area which would have the consequence of excluding the courts' jurisdiction over matters where the courts have exercised a supervisory jurisdiction over the decisions of the executive for centuries in accordance with their proper constitutional role. This would, in our view, be unacceptable from the perspective of the rule of law. We note in this regard the fact that attempts to oust the jurisdiction of the court through ouster or privative clauses have been legally ineffective in the past.

5. Is the process of i) making a Judicial Review claim, ii) responding to a Judicial Review claim and/or iii) appealing a Judicial Review decision to the Court of Appeal/ Supreme Court clear?

We believe that the processes of making a judicial review claim, responding to a claim and appealing such a claim are sufficiently clear, according to our experience working with a wide range of parties in making claims, responding to them and also being involved in appeals to the Court of Appeal and Supreme Court.

D. SECTION 3 - PROCESS AND PROCEDURE

General comment on judicial review procedure

The notes to the ToR consider the "*number of procedural issues of possible concern that have been raised over the years*" and the opportunity to review the general machinery of judicial review as part of this "*comprehensive assessment*" of judicial review. We would note that in 2012 - 2013, the Government consulted on various proposals for reform of judicial review "*to stem the growth in applications for judicial reviews*" and implemented a number of procedural changes to judicial review following those consultations.

We believe that those reforms have achieved their goal of reducing the number of judicial review claims brought by filtering out unmeritorious claims and reducing delays.

The general direction of reform of judicial review in previous years therefore appears to have been to seek to make claims harder from a procedural perspective. We do not believe there is any need for further reform along these lines. Indeed, further reform would risk tipping the balance of the judicial review system such that claimants' ability to properly seek review of public bodies' decisions is curtailed unduly, giving rise to serious concerns over access to justice.

6. Do you think the current Judicial Review procedure strikes the right balance between enabling time for a claimant to lodge a claim, and ensuring effective government and good administration without too many delays?

We believe that the current balance struck between enabling time for a claimant to lodge a claim and ensuring effective government and good administration is acceptable and does not need to be changed. The Government's 2013 consultation on judicial review included a reduction in the time limits for bringing claims in planning matters and procurement cases to 6 weeks and 30 days respectively.

We do not believe that these specific time limits or the general "promptly and in any event three months" time limit for bringing a judicial review claim, which are already very short by comparison to other litigation limitation periods, need to be amended. The time limit for bringing a claim must allow for parties to take adequate advice in order to make an informed decision as to whether to bring a claim, and to have time to better understand its position through pre-action correspondence. We would also note that certain parties such as those who require legal aid, might particularly suffer from any reduction in the general time limit, and therefore that it would be likely that any reduction in the time limit would hinder access to justice particularly for those who may need to secure funding for their claim.

We consider that the current "promptly and in any event within three months" time limit, although tight, allows parties adequate time to engage in the Pre-Action Protocol, which can often flush out the issues and the likely merits of the claim. In our experience it is not uncommon for pre-action correspondence to resolve matters without the need to file a judicial review claim and a preferable outcome for both parties being reached instead, in accordance with the overriding objective. It is therefore in our view beneficial to reducing the number of claims being brought if parties are allowed sufficient time to engage in the Pre-Action Protocol and correspond before being required to file a claim. On the contrary, a shorter time limit would risk claimants having to file a claim without having adequate time to sufficiently negotiate the issues or to properly understand their own position. For advisers such as ourselves, the current time limit enables us to advise our clients as to how to properly inform their own position before pursuing a claim and also to advise clients (defendants and claimants alike) as to how to clarify the issues through compliance with the Pre-Action Protocol, with the aim of avoiding the need for a claim to be filed if possible. Any reduction in the time limits would therefore be detrimental to our ability to provide considered advice in these respects. This would be counterproductive to the aims of ensuring that claims are properly brought and that the resources and time of both the Administrative Court and public authorities is preserved where possible.

7. **Are the rules regarding costs in judicial reviews too lenient on unsuccessful parties or applied too leniently in the Courts?**

8. **Are the costs of Judicial Review claims proportionate? If not, how would proportionality best be achieved? Should standing be a consideration for the panel? How are unmeritorious claims currently treated? Should they be treated differently?**

This response relates to both questions 7 and 8 above.

We do not believe that the current costs regime is too lenient for unsuccessful parties or is applied in that way by the courts. As with other procedural reforms, we would urge the Panel to consider carefully reforms which would risk increasing the costs of judicial review and in turn impair access to justice for parties who have a proper claim.

In our experience the potential costs of judicial review (and particularly the costs risk in an unsuccessful claim) already provide a significant deterrent to bringing a claim for many litigants (both individuals and organisations).

We note that along with other procedural reforms to judicial review, costs is one area which was reformed in 2014 by the introduction of cost capping orders, which allow for the possibility of a limit or cap on the liability of a party to pay another party's costs in judicial review proceedings in limited circumstances. We believe that current costs of judicial review claims are generally proportionate.

In addition we note that s87 of the Criminal Justice and Courts Act 2015 introduced reform which appeared to be aimed at deterring interveners by increasing the likelihood of circumstances where they would be at risk of adverse costs orders. According to that provision, the High Court or Court of Appeal cannot order a party to judicial review proceedings to pay an intervener's costs unless there are "*exceptional circumstances*" that make it appropriate to do so. Furthermore, the provisions ensure that where an intervener has: (i) in substance acted as a principal party to the proceedings; (ii) not been of "*significant assistance*" to the court; (iii) provided evidence which has not been necessary for the court to consider; or (iv) behaved unreasonably, then the court must order the intervener to pay costs of the relevant party as a result of the intervener's involvement unless there are "*exceptional circumstances*". In addition to this, the operation of s88(4) means that an intervener cannot seek a costs capping order to try and limit costs which may be awarded against them.

We believe that these provisions introduce potentially significant costs liability on interveners. In our experience, the majority of interveners provide the courts with invaluable assistance and will in most cases bear their own costs, and there is no need for further reform. Indeed, we would suggest that the rules introduced in s87 be reconsidered so as to avoid deterring helpful interventions.

9. Are remedies granted as a result of a successful judicial review too inflexible? If so, does this inflexibility have additional undesirable consequences? Would alternative remedies be beneficial?

We do not believe that the current remedies which a court can grant as a result of a successful judicial review are too inflexible. We note that the courts have a wide discretion with regards to remedies which can be granted, and that the options available include quashing orders, prohibiting orders, injunctions, mandatory orders and declarations. In our experience, these orders have been sufficient to address the wrong identified by clients where they have been successful in a judicial review.

We note again the recent reform of this area in the form of an amendment to s31 of the Senior Courts Act (by s84 of the Criminal Justice and Courts Act 2015) aimed at restricting relief; in cases where the court considers it "*highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred*" then it must refuse to grant relief.

Prior to this amendment, the question of whether to grant relief or not was at the court's discretion, however, this general discretion has now been removed by requiring that the court "must" refuse relief where the provision is engaged. Further, under the previous common law test, the court's discretion over whether to grant relief was only triggered where the court found that it was "inevitable" rather than "high likely" that the outcome would have been the same. Finally, the previous test required courts to consider refusal only if the outcome would have been the "same" rather than "not substantially different".

Although the courts have been careful in their use of s31 and shown what we consider to be appropriate restraint in speculating on what the outcome for the claimant would have been in different (i.e. lawful) circumstances, this reform does provide a mechanism to ensure that minor procedural defects do not result in a public body retaking decisions which it would have made any way if done legally, tipping the balance in favour of defendants. We do not believe that further reform which would curtail the discretion of the courts to grant remedies should be undertaken.

We would note the importance of ensuring that remedies should be available for those who bring meritorious claims; for the purposes of upholding good public administration and accountability, the process by which a decision has been taken can be just as important as the substance of the decision itself.

10. What more can be done by the decision maker or the claimant to minimise the need to proceed with judicial review?

In our view the pre-action process is crucial in minimising the need to proceed with judicial review, hence our reluctance above to see any shortening of the time limits for filing claims which would inevitably impact the ability to fully engage in the pre-action process. Unfortunately there are occasions when parties do not adequately follow the Pre-Action Protocol and we have had experience of letters before claim being sent very close to the end of the 3 month period for judicial review with replies sought within unreasonably short timeframes. Whilst this cannot always be avoided, given the extremely urgent nature of some cases or other circumstances which may mean that a party was not able to send the relevant correspondence earlier, we consider that the need for proper compliance with the protocol should be emphasised by the courts.

In addition, we note that the ToR included a question on whether reform is needed in relation to the duty of candour "*particularly as it affects Government*" but that the duty of candour is not addressed specifically in the Call for Evidence. We therefore address this subject here as we believe that the current rules on the duty of candour should not be reformed and can serve a purpose in minimising the need to proceed with judicial review. It is important in this regard that following compliance with the duty of candour the parties reassess the need to continue with the proceedings if appropriate, for example where clear evidence has been produced dealing with the Claimant's concerns.

Under the current position, parties to judicial review proceedings are not subject to any general disclosure duty (in contrast to the position in civil or criminal claims). Instead, parties are subject to the duty of candour and can make applications to the court for specific disclosure if necessary. Practically speaking, we acknowledge that this duty is often more burdensome on the decision maker who will likely have the greater proportion (if not all) of the relevant material and documentation which relates to the decision being challenged. Nonetheless, we do not believe that limiting or restricting the duty of candour or its scope would benefit any party to judicial review in any way.

Firstly, the duty of candour is designed to ensure that issues and relevant evidence can be flushed out, thereby minimising the issues that would need to be considered by the court and also potentially increasing the likelihood of settlement. In the absence of any general disclosure obligation it is important that this duty is upheld and not restricted. In fact, any restriction on this duty which could cause parties to doubt that the appropriate information is "*out in the open*" could result in further applications for specific disclosure, which would have time and costs implications for the parties and place an additional burden on the Administrative Court.

Further, we do not believe that any constraints on the scope of the duty of candour would result in any less administrative burden on public bodies. This is because in any event, judicial review is only one route by which a public body may be required to disclose information. The Freedom of Information Act 2000 and Environmental Information Regulations 2004 already mean there is a duty on a public authority to retain, review and potentially disclose material and information that it has. The duty on public authorities therefore to consider whether to disclose certain information is one which would not be removed by curtailing the duty of candour, as it already exists in other legislative frameworks. These frameworks were designed to promote the public interest in transparency over decisions and accountability. These objectives become even more important in a judicial review context to ensure that the court can fairly and justly determine the claim.

11. Do you have any experience of settlement prior to trial? Do you have experience of settlement 'at the door of court'? If so, how often does this occur? If this happens often, why do you think this is so?

In our experience settlement is not a common occurrence in judicial review claims. This is not surprising given that: (i) judicial review claims are not money claims; (ii) there is a strong public interest element in many judicial review claims; and (iii) often a public body is unable, as a matter of vires, to reverse a decision it has made even if it wished to avoid litigation. Where settlement does take place in our experience it is more common at an earlier stage of the proceedings (e.g. after a permission decision) rather than 'at the door of the court'.

12. Do you think that there should be more of a role for Alternative Dispute Resolution (ADR) in Judicial Review proceedings? If so, what type of ADR would be best to be used?

We note that the judicial review Pre-Action Protocol already provides that parties should consider the availability of ADR. In our experience, pre-action correspondence for example in the form of a letter before claim and subsequent correspondence, is often able to clarify and flush out the issues at hand. Often at the stage where a party is considering judicial review proceedings, they will already have exhausted other meaningful avenues of engaging in negotiation such as going through complaints procedures.

In our experience, formal methods of ADR would not be suitable to many of the situations which our clients face. This is for numerous reasons. Firstly, the time limits to bring a claim may preclude the opportunity to pursue such methods, especially in the types of urgent situations which often become the subject of judicial review claims. Secondly, the object of many potential claims will be to quash a decision taken by a public authority where a claimant believes there are reasons that such a decision has been taken or executed wrongfully. Where the position is therefore presented as more of a binary question of, for example, whether a decision was legal or not and whether it should therefore be quashed/and or retaken, that may not leave much room for negotiation, as opposed to, for example, a civil claim which may relate to the amount of damages that should be paid. Thirdly, given that parties to judicial review span across a wide spectrum of individuals, public authorities, corporations and charitable organisations, there is often a power imbalance that exists between the given parties to a judicial review, which could adversely affect any formal ADR negotiations. In addition to this point, formal ADR procedures could be just as costly for the parties involved as proceeding to judicial review. Finally, we would note that the private nature of ADR methods would not facilitate the objectives of transparency to the wider public which is an important constitutional function of judicial review.

13. Do you have experience of litigation where issues of standing have arisen? If so, do you think the rules of public interest standing are treated too leniently by the courts?

As codified in s31(3) of the Senior Courts Act 1981, the test for standing to bring a claim in judicial review is that a person must have “sufficient interest in the matter to which the application relates”. In our experience, this test has worked well to enable parties who have a direct interest and/or would be directly impacted by the decision being challenged, to bring a claim as well as allowing claims from e.g. NGOs that have an interest in the matter. The test allows the courts to refuse claims by “mere busybodies” whilst still allowing organisations to bring claims on issues of broader application and interest. This latter point is crucial in the context of judicial review given the public interest in ensuring accountability of decision making.

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