11KBW

These responses have been prepared by and on behalf of *11 King's Bench Walk Chambers* ("11KBW"), many of whose members are experienced practitioners of public law. A substantial proportion of 11KBW members' public law work is conducted on behalf of public bodies (including central and local government).

Section 1 – 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?

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?

From this, we would appreciate your response to the following questions:

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?

1. In our experience, judicial review (principles and processes) do not seriously impede the proper or effective discharge of central or local governmental functions. We have not heard that they do from our governmental clients. We have not heard that they have stopped our governmental clients from doing the things that they want to. To the contrary, what we have been told on many occasions by our governmental clients is that making sure that decisions are compliant with judicial review principles has frequently improved their discharge of functions. It has, for instance, ensured that clients have thought broadly about the nature of their powers, and the relevant (and irrelevant) considerations for their decision-making.

2. We have also been told that the requirement to carry out consultation with local residents before certain decisions are taken has ensured that views and evidence that might not otherwise have been available to decision makers is taken into account, making for better informed decision-making. Furthermore, local government clients have intimated that consultation has benefited them by giving local residents the ability to participate in the decision-making process. This has often ensured that there is greater 'buy in' for the ultimate decision.

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)?

3. There is an increasing practice of claimants securing funding via crowdfunding. This form of funding is an important means to secure access to justice in the absence of legal aid for the vast majority of claimants. Some of the cases funded this way have been unmeritorious and have caused public authorities to incur unnecessary costs. There is some concern that there is no regulation of crowdfunding platforms. We recommend that research into the use of crowdfunding be carried out, and consideration be given to the appropriateness of regulation.

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?

4. As a general rule, we do not think that significant reform of the judicial review process is required. In those circumstances, we would say that there is no real case for statutory intervention in the judicial review process.

5. As for whether statute would add certainty and clarity to judicial reviews, this presupposes that further certainty and clarity is required. We consider that there is already certainty and clarity around the main principles of judicial review, and most judicial review cases involve the application of those principles to different factual situations. The cases turn on the facts, therefore, rather than the law, and so statutory intervention is not required to provide certainty or clarity.

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

6. Almost always, yes: it is clear what decisions and powers are subject to judicial review and which are not. The Courts have developed a set of principles which will generally

allow parties, and actors, to know whether certain decisions or powers are amenable to judicial review. These principles have evolved over time, and are responsive to changing circumstances in the political/administrative/regulatory landscape.

7. We do not consider that (save for Human Rights Act challenges) primary legislation should be subject to judicial review. We also consider that within the realm of national security, there will be decisions that ought not to be subject to judicial review, as these are matters with which the Courts do not have the skills to adjudicate.

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?

8. Yes. Each of these processes is clear, and the guidance issued by the Administrative Court is of great assistance.

Section 3 - Process and Procedure

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?

9. We consider that the current judicial review rules do strike an appropriate balance between the interests of potential claimants and the public interest in effective government and good administration.

10. Unlawful decision-making or action by public authorities is not effective government nor is it good administration - quite the reverse. The public interest is served by well-founded claims being adjudicated upon by the courts on their merits, without hindrance by overly technical procedural rules. There is also a public interest in avoiding the courts and parties being consumed unnecessarily in satellite litigation about procedural matters. However, there is also, undeniably, a public interest in such challenges being brought and considered promptly.

11. The rules currently provide that claims must be brought promptly and, in any event, not later than 3 months after the grounds to make the claim first arose (CPR r.54.5(1)). The requirement of promptness is primary - the 3 months provides a long-stop and many cases brought within 3 months will not be prompt, and permission to apply will be refused on that basis. Even if permission is granted, a court also has the further discretion to refuse to grant relief to an otherwise successful claimant on grounds of undue delay (where it would be likely to cause substantial hardship to, or substantial prejudice to the rights of, any person or would be detrimental to good administration) (Senior Courts Act 1981, s.31(6)). Conversely, the court also has a general case management power to extend the time in which to bring a claim beyond 3 months, though will only do so where appropriate. In our experience, the courts exercising discretions are generally very alive to the need for expedition in judicial review claims. Further our experience is that the court invariably finds capacity to deal with matters which require judicial decision making, even at very short notice.

12. The current rules provide the court with an appropriate degree of flexibility pragmatically to deal with the justice of a particular case. Where there are genuine reasons why a challenge needs to be brought well within the 3 months period (either because of prejudice to the public interest or to the interests of any third parties in the particular circumstances of the case or because of the type of case – e.g. challenges to school admission or exclusion decisions) the court can, and will, apply the promptness requirement. Conversely, where a claimant has a good reason for not bring their claim within 3 months the court has the flexibility to extend time in appropriate cases, having considered relevant matters, such as the strength of the claimant's case, the reasons for the delay, or the prejudice to the interests of the public authority, the public or third parties or to good administration.

13. We do not consider that there is a good argument to reduce the long-stop period of 3 months. The 3 months time limit is already substantially less than that for other types of claims (e.g. 6 years for most civil claims, 1 year for defamation and ordinary civil claims under the Human Rights Act 1998, 6 months for Equality Act 2010 claims in the county court). The time limit is in line with that for most claims to the employment tribunal.

Three months affords public authorities a considerable degree of protection from stale challenges.

14. It is important to draw a distinction between procedural time limits for ongoing litigation and limitation periods which limit a person's right to bring claim. There are some shorter procedural time limits e.g. deadlines for appeals from a lower court or tribunal's decisions (variously, inter alia, 28 days, 42 days or 2 months) Shorter limitation periods than the prompt/3 month rule are very rare and one is the special rule on reviews on planning matters (6 weeks). This recent change shows that Parliament has already considered, and rejected, the need to shorten judicial review time limits generally.

15. It is also important to recognise that a claimant in general judicial review proceedings is often embarking on proceedings from a standing start. Judicial review procedure is significantly front-loaded for a claimant – with their claim form they will also have to file not only detailed grounds of claim and a statement of fact, but also all the documentary evidence and witness statements that they intend to rely upon (save any that might be filed later in reply to the defendant's or interested parties' evidence). Once the decision or action that is to be challenged has occurred a claimant will need to go through some, or all of, the following steps: (1) identify that there is a decision or action of a public authority about which they are aggrieved; (2) seek to use any alternative means of resolving the dispute by other available means (e.g. statutory appeal procedures, complaints procedures, etc.) – indeed, a claimant who fails to do so may be refused permission to apply for JR on that basis; (3) identify and instruct legal representation (solicitors and potentially Counsel); (4) secure funding for the proposed litigation (both for their own costs and potentially the defendant's), e.g. seeking legal aid or insurance funding; (5) investigating the merits of their claim; (6) complying with the pre-action protocol by engaging in pre-action correspondence with the defendant; and (7) then prepare grounds of claim, statement of facts and all the supporting evidence.

16. Two of those steps, in particular, serve to further the public interest and effective administration. Allowing time for a claimant to use an alternative means of resolving a dispute and requiring the parties to engage in pre-action correspondence can resolve

disputes without litigation or, even if that is not achieved, may serve to narrow the issues and reduce the burden of the litigation on the court and on the defendant public authority. Some time must be allowed for such steps to be taken. Indeed, in our experience, defendant public authorities often find the 14 day deadline for responding to pre-action correspondence to be challenging.

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

17. The rules regarding costs in judicial reviews are well established and understood, and generally applied sensibly by the Courts.

18. This includes the application of cost-capping which has been increasingly adopted by the Courts in public interest-led litigation in recent years. The Courts have generally adopted a sensible approach to cost-capping, by setting reasonable reciprocal caps, so that a party which seeks to limit its exposure to costs if unsuccessful must at the same time be prepared to accept that it will be limited in its recovery of costs if successful.

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?

19. Generally, in our experience the costs of judicial review claims are proportionate to the decision being challenged/the issues in dispute.

20. Unmeritorious claims are ordinarily dismissed at the permission stage: whether on the papers (sometimes on the basis that they are 'totally without merit' – that is, that they are bound to fail[1]) or orally at a renewed hearing. Where permission is refused, the defendant is ordinarily entitled to its reasonable costs of preparing and producing the Acknowledgment of Service. This is the case even where permission is refused (often for the second time) at an oral hearing: the defendant is ordinarily limited to the costs of the Acknowledgment of Service and no more. In exceptional circumstances, the

[1] *Wasif v. Secretary of State for the Home Department* [2016] EWCA Civ 82

Administrative Court can award the defendant's further costs, including the costs of attendance at the oral hearing: see *R. (on the application of Mount Cook Land Ltd) v Westminster City Council* [2003] EWCA Civ 1346. The factors which the Court may consider in deciding whether the circumstances were exceptional include the hopelessness of the claim, and the persistence in it by the claimant after having been alerted to facts and/or of the law demonstrating its hopelessness.

21. We consider that this approach is generally effective, and there is no reason to treat unmeritorious claims differently. By applying the greater cost consequences to those cases which are truly hopeless, it serves warning on those are persisting with such cases, whilst at the same time not discouraging those claims which may genuinely and legitimately be perceived as having some chance of success.

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?

22. The starting point is, and must be, that, if the rule of law it to be properly maintained, a claimant who succeeds in establishing that a decision or act of a public authority is unlawful is entitled to some form of relief. There, is however, already a considerable degree of flexibility in the remedies available in judicial review.

23. First, a court potentially has a wide toolkit of remedies available to it to apply as the justice of the case demands: declarations as to the true legal position (which may assist a public authority to act lawfully in future); quashing orders to quash unlawful decisions (so that it has no legal effect); prohibiting orders to prohibit a public authority from acting in a lawful way; mandatory orders to order a public authority to act in a lawful manner; the power to substitute its own decision for that of a subordinate court or tribunal where there is only one legally permissible answer; injunctions (mandatory or prohibitory) to similar effect to mandatory and prohibitory orders; and the power to award damages for breaches of ECHR rights or for tortious acts and to order restitution and payments of sums due in consequence of unlawful acts or decisions.

24. Second, all the remedies that a court can grant in judicial review are discretionary. In exercising that discretion, the court can take account of relevant matters in each particular case, such as the illegality that it has found, the need to prevent that illegality being continued or repeated, the interests of the successful claimant, the extent to which a particular form of relief would have any practical effect, whether adequate alternative remedies were available to the claimant, the interests of the public or third parties who may have acted in reliance on the impugned decision, and the effect on good administration of granting relief.

25. Third, there are statutory provisions that permit or require a court to exercise its discretion to reflect the interests of third parties or good administration. Section 31(6)(b) of the Senior Courts Act 1981 permits a court to refuse relief where it considers that undue delay in bring a claim is likely to cause substantial hardship to, or substantial prejudice to the rights of, any person or would be detrimental to good administration. Section 31(2A)-(3F) of the Senior Courts Act 1981 requires the court, save in exceptional circumstances, to decline permission to apply or, if permission to apply is given, relief if it considers that it is "highly likely" that the outcome for the claimant would not have been substantially different if the illegality that it has identified had not occurred (subject to a residual power to grant relief if it is considered appropriate for reasons of exceptional public interest and the court certifies to that effect).

26. We can think of few (if any) cases where a supposed inflexibility in the remedies available has prevented the court from granting appropriate relief. In our experience, courts (rightly, from the perspective of the rule of law) in the overwhelming majority of cases grant some relief to a successful claimant. Consistent with their purely supervisory role the courts typically quash unlawful decisions and leave it to the decision-maker lawfully to remake the decision, rather than imposing decisions on them.

27. In view of our answer to the first limb of this question, we do not accept the premise of the second limb of the question.

28. We do not see a pressing need for additional or alternative remedies to be available to courts in judicial review. There may be some merit in simplifying the remedies (without limiting their application) so that mandatory and prohibitory orders are merged with mandatory and prohibitory injunctions respectfully, given their similar effect (although we recognise that, as the procedure of judicial review is categorized by reference to the availability of the prerogative remedies, this might create a classification difficulty). The absence of a monetary remedy for maladministration or unlawful administrative acts (without a corresponding tort or breach of the ECHR rights) is a gap in UK administrative law, but this raises rather wider issues. In particular, we do not consider that there should be any further legislative intervention to expand section 31(2A)-(3F) of the Senior Courts Act 1981. This is already a significant incursion against the rule of law principle that public authorities are to act lawfully and that unlawful decisions should not have legal effect. Further (and ironically given its original policy intent), these provisions require the court to go beyond a purely supervisory role and to step into the shoes of the decision-maker to try to determine what it would hypothetically have decided absent the illegality.

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

29. In our experience, sensible use of the Pre-Action Protocol for Judicial Review minimises the need for the claimant to proceed with judicial review.

30. For the claimant, in our experience, the most effective Pre-Action correspondence sets out the points in issue, and the reasoning, clearly and without embellishment; and seeks a realistic outcome. This will encourage the decision-maker to take the matter seriously, by enabling him/her to assess the realistic merits of the claim.

31. For the decision maker, in our experience, taking a realistic view of the merits of the potential claim from the outset, bearing in mind the costs and resources involved in defending judicial review proceedings, allows sensible decisions to be made about whether to defend the claim or seek to find ways of addressing the claimant's concerns

before judicial review proceedings are launched. The Pre-Action Protocol is thus a cost effective means of avoiding litigation and sustaining the rule of law without impeding due administrative action.

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?

32. In our experience, it is almost unheard of for there to be "door of the court" settlements. On the contrary, a high proportion of threatened judicial review claims end in settlement negotiated directly between the parties before proceedings have begun.

33. Consistent with the purpose of the Pre-Action Protocol for Judicial Review, settlement usually occurs at the pre-action stage. We find that pre-action letters often work effectively to focus the decision maker's mind and to convince the decision-maker to take legal advice, which can lead to a change to the challenged decision. The pre-action process often also leads to public bodies giving great clarity and reasons for their decisions, as well as disclosure, which can demonstrate to the claimant that there is no merit in a claim. In our experience, the pre-action process is highly effective, and we support its continuance in its current form. This is one of the factors that make judicial review a powerful and focussed means of assuring public bodies' compliance with the law.

34. As stated above, judicial review claims very rarely settle at the door of court. This is likely to be because the pre-action and permission stages offer sufficient opportunity for the parties to consider settlement, and a widespread understanding amongst public bodies, and public law practitioners, that legal costs should not expended unless it is genuinely appropriate to do so. If agreement has not been reached before the hearing, it is likely that both parties wish the court to determine the issue after informed consideration.

35. We do not know of any recent research on the frequency of settlement. The last study of settlement in judicial review of which we are aware was published in 2009.[2] It found that 60% of cases were settled or withdrawn in the pre-action phase, i.e. following a pre-action letter and prior to issuing proceedings. Ministry of Justice figures for cases in 2019 show that 27% of cases lodged before the Administrative Court in that year were withdrawn before reaching the permission stage, either because the case was settled or for other reasons.[3]

36. We encourage the IRAL to obtain empirical information on settlement in order to make properly informed decisions about whether reform is necessary.

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?**

37. Many judicial review claims are already resolved by informal negotiation between the parties, which is a recognised form of ADR. Formal types of ADR, such as mediation, are used more rarely in judicial review than in other civil litigation. Again, this underscores the effectiveness, including the costs effectiveness, of judicial review.

38. We believe that the current role played by mediation, generally in a limited type of judicial review claim (see below), is helpful and might be used more regularly by parties involved in some types of public law disputes. However, there are barriers to ADR, particularly for publicly funded litigants.

39. When considering the role of formal ADR in judicial review, it is important to appreciate that some public law disputes will not be suitable to resolution through ADR because:

    (i) The challenge is brought on a point of law, such as the interpretation or scope of a power, which may be best determined by a court;

[2] Varda Bondy and Linda Mulcahy, *Mediation and Judicial Review: An empirical research study*, Public Law Project (2009). Available at: https://www.nuffieldfoundation.org/sites/default/files/files/MediationandJudicialReview.pdf
[3] Public Law Project, Briefing on existing empirical evidence, (2020).

(ii) The claim raises issues of broader public interest, which cannot be resolved through the transactional process of mediation;

(iii) There is a need for a judicial precedent in order to guide future decision-making;

(iv) The claim concerns compatibility of legislation with the Human Rights Act 1998;

(v) The public body has a duty to apply its policies consistently and considers that it requires the Court's guidance before changing them.

40. More generally, there is a legitimate concern among public lawyers that a requirement for formal ADR could undermine the constitutional and supervisory role of the courts and stymy the broader positive effect of court judgments on decision-making by public bodies.[4]

41. We note that many public law disputes are subject to some other form of dispute resolution, such as an ombudsman scheme, which are treated as ADR by the courts.[5] In a case which has also been pursued before an ombudsman, there will be little appetite, and no requirement, to attempt another form of ADR in the judicial review proceedings. The same may be true of the numerous situations in which there is a statutory complaints mechanism.

42. While we regularly settle judicial review claims through direct negotiations between the parties, we only rarely undertake formal mediation. In our experience, it is extremely unusual for the Administrative Court to suggest that parties engage in mediation.[6] Mediation is usually undertaken in complex cases about provision of state support, such as cases involving social care packages, education provision, and complex commercial judicial reviews where the claimant is seeking damages. However, we note that in special educational needs cases, where mediation is compulsory before appealing to the SEND Tribunal, mediation does not appear to have reduced the volume of appeals.

[4] See Michael Supperstone, Daniel Stilitz and Clive Sheldon, 'ADR and public law', Public Law 2006, Sum, 299-319.
[5] See e.g. *R (Crawford) v Newcastle University* [2014] EWHC 1197.
[6] See e.g. *Clark v University of Lincolnshire and Humberside* [2000] 1 W.L.R. 1988.

43. In common with other forms of civil litigation, the existing judicial review procedures and cost rules strongly encourage ADR, whether informal or more formal.[7] However, there are a number of obstacles to formal mediation:

(i) The strict time limits for judicial review discourage the parties from using mediation before proceedings commence. It is difficult to obtain an extension of time from the Administrative Court on the basis that the parties were engaged in mediation. As a result, claims need to be issued before mediation is attempted. The parties will usually await the permission decision before applying for a stay in order to engage in mediation. However, as the parties will have already incurred costs, they will often prefer to continue to a hearing.

(ii) Publicly funded claimants are effectively prevented from obtaining legal aid in judicial review claims until after permission has been granted.[8] As a result, they are very unlikely to be willing to mediate before the permission stage as they would not be able to recover their costs.

44. We appreciate the benefits of mediation for certain types of public law case, but if the IRAL wishes to see wider use of mediation, it will need to address these barriers. That said, as stated above, we believe that less formalised dispute resolution acts as powerful means of resolving disputes in a cost effective manner.

45. We do not believe that it is necessary to amend the Pre-Action Protocol or the Civil Procedure Rules, which already make adequate provision for ADR, but as mediation remains uncommon in judicial review cases, it may be necessary to consider training for lawyers and the judiciary to encourage its use in appropriate cases.

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?

[7] CPR 44.4(3)(a)(ii) requires the court, in deciding the costs, to have regard to the conduct of the parties, including in particular: *"the efforts made, if any, before and during the proceedings in order to try to resolve the dispute."*

[8] Regulation 5A of the Civil Legal Aid (Remuneration) Regulations 2013

46. It is not uncommon for issues of standing to arise. We do not consider that the rules of public interest standing are treated too leniently by the courts.

47. The current test for standing is whether a claimant has a *"sufficient interest in the matter to which the application relates"* (section 31 of the Senior Courts Act 1981). The test has been interpreted so as to include those who have a direct and personal interest in the decision under challenge. It also includes "public interest" challengers, who might not have a direct and personal interest in the decision. This follows from the underlying principle that public law is not about rights, it is about the misuse of public power. A person or organisation without any particular stake in the issue or the outcome may wish and be well placed to call to the attention of the court to an apparent misuse of public power: see, for example, the observations of Sedley J (as he then was) in *R v Somerset County Council ex p Dixon* [1998] Env LR 111; see also observations of Lord Reed JSC in *AXA General Insurance Ltd v HM Advocate* [2011] UKSC 46, [2012] 1 AC 868, §§169-170.

48. We also note that the test for whether a claimant has standing to bring a claim for judicial review varies depending on the context. In a number of fields, the test for standing in judicial review claims is narrower than that set out above. For example:

    (1) First, the rules of "public interest standing" do not apply to claims that a public authority has acted unlawfully under section 6 of the Human Rights Act 1998 ("the HRA"). Section 7(3) of the HRA states that in such cases, the claimant must be a "victim" within the meaning of Article 34 of the European Convention on Human Rights. A claimant will usually need to show that he or she has been directly affected in some way by the decision under challenge in order to establish victim status. Non-governmental organisations acting in the public interest are unlikely to be regarded as "victims".

    (2) Second, the rules of "public interest standing" do not apply to procurement judicial review claims, i.e.in judicial review challenges to decisions by public authorities that are alleged to have breached the Public Contracts Regulations 2015. Standing in

such claims is confined only to those who could show that performance of a competitive tendering procedure might have led to a different outcome that would have had a direct impact on them: see, for example, *R (Wylde) v Waverley BC* [2017] EWHC 466 (Admin)

49. The Government consulted on proposals to reform the law of standing in 2013. The Government concluded at that time that no change to the law of standing was required, and that any concerns that had arisen about the cost consequences of public interest challenges could be addressed by amending the law relating to costs. Those amendments have been made and are being implemented in practice. We are not aware of any evidence that demonstrates that the amendments have not achieved the objective sought. Nor have members of 11KBW experienced any cases where the rules of public interest standing have resulted in the misuse of the judicial review process.

50. First, the permission stage acts as a filter to prevent unarguable claims proceeding to a substantive hearing. By definition, any claim that is granted permission raises an arguable case that the public authority defendant has acted unlawfully. Second, if there are any concerns about the costs of public interest claims, those concerns can in the first instance be addressed by way of an application for security for costs. The only circumstances in which a defendant's ability to recover costs is limited is if a judicial review costs-capping order is made under sections 88-90 of the Criminal Justice and Courts Act 2015 – Aarhus/agreement provided for by CPR44.45. Such orders are now placed on a statutory footing and can only be made in statutorily defined "public interest proceedings". Even when such orders are made, the public authority defendant is entitled to a reciprocal cost cap, thereby removing the risk of that authority having to pay the claimant's reasonable costs should the claim be successful.

51. In summary, therefore, we do not think that the rules of public interest standing are treated too leniently by the courts.

October 23rd 2020