MINISTRY OF JUSTICE: JUDICIAL REVIEW: PROPOSALS FOR REFORM

Response from Humanists UK, April 2021

ABOUT HUMANISTS UK

At Humanists UK, we want a tolerant world where rational thinking and kindness prevail. We work to support lasting change for a better society, championing ideas for the one life we have. Our work helps people be happier and more fulfilled, and by bringing non-religious people together we help them develop their own views and an understanding of the world around them. Founded in 1896, we are trusted to promote humanism by over 85,000 members and supporters and over 100 members of the All Party Parliamentary Humanist Group. Through our ceremonies, pastoral support, education services, and campaigning work, we advance free thinking and freedom of choice so everyone can live in a fair and equal society.

We have extensive experience supporting individuals in bringing forth judicial review claims and intervening in the cases of others. Our success rate in such claims is very high, with notable successes including a series of reproductive rights cases in Northern Ireland and a challenge against DfE guidance implying that religious education could exclude all teaching of non-religious worldviews. Our commitment to human rights and judicial review has seen us organise a coalition over the last year of more than 190 charities, trades unions, human rights organisations, and religion or belief groups in opposition to any weakening of the Human Rights Act or judicial review. Signatories include the Samaritans, the RNIB, Shelter, Save the Children, the Wildlife Trusts, the Joint Council on the Welfare of Immigrants, the End Violence Against Women Coalition, and many more besides. We are submitting the statement and all its signatories as an annex to this consultation response.

SUMMARY OF OUR RESPONSE

In March 2021, the Government-appointed Independent Review of Administrative Law (IRAL) published its findings into the operation of judicial review. Despite its alarmingly broad terms of reference, the panel produced a refreshing, measured report and found that judicial review was, for the most part, well functioning and not in need of reform. Except for its analysis underpinning the abolition of Cart judicial reviews, most of the IRAL's recommendations were sensible, evidenced, and practical reforms which we support. Indeed, we believe the IRAL was right to doubt the wisdom of radically altering judicial review, and we endorse its view that the judiciary respects our constitution's separation of powers when reviewing the legality of executive conduct.[1]

It is therefore regrettable the Government has chosen to disregard the learned scepticism of its panel, and commence a further consultation on proposals it did not recommend. Further, it is disappointing that the Government seems to either have misunderstood or wilfully to be misrepresenting the conclusions of its appointed panel's report. In particular, we would like to draw attention to the fact that the IRAL did not say 'that there is a growing willingness to accept an expansion of the remit of judicial review' nor that 'courts were increasingly considering the merits

[1] Lord Faulks et al, '*The Independent Review of Administrative Law*', (2021). Available at: https://www.gov.uk/government/consultations/judicial-review-reform

of government decisions themselves, instead of how those decisions were made'.[2] By making these claims the Government not only risks undermining trust in the integrity of its policy-making, but also belittles the findings of its independent panel.

Judicial review is an essential safeguard against the misuse of public power. It enables ordinary citizens to obtain redress when they have been subjected to unlawful decisions, and ensures that public authorities are held to account when their conduct exceeds their lawful authority or abuses fundamental rights guaranteed by the law. In this way, judicial review serves to underpin many of the core constitutional principles and values embedded within our legal culture, notably the rule of law. Although we support a few relatively minor proposals within this consultation, we are concerned that their cumulative effect risks seriously hampering the effectiveness of judicial review and undermining its capacity to secure justice and accountability. We therefore urge the Government to reconsider its proposals.

In brief, our views are as follows:

- In principle, we support the introduction of suspended quashing orders, provided they remain a discretionary remedy. In very rare circumstances, we believe the application of immediate nullity can be inequitable and therefore this remedy would be appropriate. However, we are concerned a wider application of this remedy would serve to disable claimants from achieving restitution, deter citizens from challenging unlawful conduct, and encourage reckless executive behaviour;
- We encourage the Government to abandon its commitment to abolishing Cart judicial reviews. The IRAL reached an erroneous conclusion on Cart because it used flawed data, failed to appreciate the wider benefits of Cart, and overlooked the vital function the threat of Cart performs in securing out-of-court settlements. However, if the Government decides to push ahead with these reforms anyway, we recommend that claimants should be allowed to highlight procedural errors or irrationality in the original ruling when lodging a second fresh submission to the Home Office;
- We have several reservations about the application of prospective only remedies, and advise against their introduction. In particular, we are concerned about their potential to deny claimants remedies, deter judicial review proceedings, and induce a blasé mentality within public bodies towards potentially unlawful conduct;
- Courts should be encouraged to determine whether a case falls within such exceptional circumstances by having regard to the number of people that would be affected if a decision was declared *ultra vires* and the severity of impact that delaying or suspending that declaration would have upon the people affected;
- We strongly object to the creation of a presumption or mandatory rule regarding suspended quashing orders (or prospective only remedies). In our view, the severe risks associated with these remedies necessitate that they remain a discretionary and exceptional option. Further, we believe mandating their use or creating a series of rebuttable presumptions would serve

[2] See Joshua Rozenberg's blog post '*Faulks defends judicial review*' (2021), available at: https://rozenberg.substack.com/p/faulks-defends-judicial-review

to undermine legal certainty. In the event that suspended quashing orders (or prospective only remedies) are introduced, we believe a vital safeguard that should be introduced alongside them is the ability for claimants to appeal;

- We object in the strongest possible terms to the Government's proposals on ouster clauses; if enacted as currently envisaged, we fear they would curtail legal accountability, scrutiny, and oversight for the majority of issues within judicial review. Nevertheless, if the Government were determined to pursue this inadvisable course of conduct, we recommend the number of factors that can be considered within its 'safety value' should be increased, and a means of political accountability specifically for the use of ouster clauses should be devised;
- We support the removal of promptitude from judicial review. In our experience, the requirement of lodging a claim 'promptly' serves only to create unnecessary legal uncertainty and to penalise claimants for factors that are often outside their control. This said, we do not believe the removal of this criterion should impede the courts' ability to extend the three month deadline;
- We support the extension of the three month deadline in which to lodge claims for judicial review. Judicial review is a 'front loaded' process and therefore its narrow three month window often causes difficulties for claimants: trying to comply with the pre-action protocol (which takes at least 2 weeks), struggling to obtain expert advice, struggling to collate evidence, or successfully applying for legal aid. Beyond this, we also support a specific extension for claims based on human rights abuses, which are by their nature likely to be ongoing;
- In principle, we support enabling parties to extend the time limits for judicial review via mutual agreement. In our experience, practices like this already occur through artificial means, but crucially leave claimants with little protection. This said, we would be hesitant for this mechanism to become the norm, as we fear it could enable defendants to create undue delays;
- We oppose the mooted requirement for parties to identify organisations or wider groups to assist their litigation. In our view, this requirement would confuse the duty of a third party intervener, lead to confusion and potentially waste the court's time on redundant arguments, and prove administratively unworkable in practice; and
- We support encouraging the Civil Procedural Rules Committee to investigate the inclusion of a formal right of reply within the pre-action protocol.

RESPONSE TO CONSULTATION QUESTIONS

1. Do you consider it appropriate to use precedent from section 102 of the Scotland Act, or to use the suggestion of the Review in providing for discretion to issue a suspended quashing order?

Yes. Under the precedent from the Scotland Act 1998 or the IRAL's recommendation, a suspended quashing order would be a discretionary remedy that allows the courts to declare a public

authority's conduct to be unlawful, but not immediately render it null and void. The temporary suspension would be for a specific period of time or conditional on certain criteria being fulfilled.

In our view, it is easy to imagine situations in which the immediate application of nullity fails to serve the public interest. For example, if someone was unwittingly provided social housing on an unlawful basis, we do not believe it would be a just outcome to immediately revoke their tenancy. In such circumstances providing a public authority with additional time to put alternative measures in place would be desirable. Alternatively, we recognise that the courts are sometimes reticent to issue quashing orders, out of concern for their potentially severe consequences, and instead opt to provide claimants with weaker remedies such as declarations.[3] Thus, if the ability to suspend the effect of their decisions was enough to overcome these hesitations, we believe suspended quashing orders could counter-intuitively lead to claimants accessing stronger forms of redress.

However, we emphasise that in our view suspended orders should be exceptional and we would propose that in every case the court should state its reasons for using the procedure.

2. Do you have any views as to how best to achieve the aims of the proposals in relation to Cart Judicial Reviews and suspended quashing orders?

Cart

Ordinarily permission decisions of the Upper Tribunal cannot be challenged via judicial review. The case of *R (Cart) v The Upper Tribunal*[4] introduced an exception to this rule, by establishing that the Upper Tribunal's decisions – if reached due to an error of law – can be judicially reviewed and potentially quashed by the High Court and Court of Appeal. In its report, the IRAL recommended discontinuing this procedure, and its recommendation was accepted by the Government.

In its response to the IRAL, the Government indicated that its principle aim is administrative efficiency.[5] However, viewing reforms to Cart through this prism alone would be a mistake. Scrapping Cart judicial reviews would not only represent a devastating blow to the rights and freedoms of migrants in our country but also raise the very real prospect of endangering vulnerable refugees' lives. Thus, we strongly urge the Government to reconsider its position.

The core of the supposed argument against Cart judicial review is economic: there are allegedly too few successful cases relative to the number of applicants to justify its existence. However, there are three fundamental problems with this perspective. First, this view confuses a critical difference between public and private law litigation. Unlike private wrongs, the regulation and control of public

[3] See for example, *R (Hurley and Moore) v Secretary of State for BIS [2012] EWHC 201 (Admin)*, where the High Court chose to issue a declaration in lieu of exercising its discretion to quash the decision because of the inconvenience it risked posing.
[4] *R (Cart) v The Upper Tribunal [2011] UKSC 28*
[5] Ministry of Justice, '*Judicial Review Reform: The Government Response to the Independent Review of Law*', (2021). Available at: https://consult.justice.gov.uk/judicial-review-reform/judicial-review-proposals-for-reform/supporting_documents/judicialreviewreformconsultationdocument.pdf-1

power is of equal interest to everyone in society, because it is of equal benefit to them. When public authorities comply with the law they make more effective decisions, improve confidence in ordinary people's ability to secure justice, and minimise the need for costly litigation. Yet none of these benefits was considered by the IRAL or the Government when they claimed that the costs of Cart judicial reviews were 'disproportionate'.[6] Thus, the economic balancing act reached by the Government is ill-informed.

Second, the above analysis assumes that the only positive benefit of Cart judicial reviews is the proportion of applicants who successfully quash Upper Tribunal decisions. However, this misunderstands the vitally important function they perform in securing out-of-court settlements. A striking example of this is the case of Mohamed Aly, which we supported. Mr Aly is an Egyptian apostate from Islam, an active member of Humanists UK and an outspoken advocate for freedom of religion or belief. In 2020, he successfully secured asylum in the UK on the basis of his non-religious beliefs, after his prominent activism made him a target for arrest, persecution, and violence in Egypt. Importantly, even though Mr Aly had initially been refused permission to remain by the Upper Tribunal in 2019, the threat of Cart hanging over the Home Office meant his lawyers were able to reach an out-of-court settlement enabling him to remain. Thus, even though a successful application was not brought, Cart nevertheless served to promote the interests of justice. Indeed, the circumstances of Mohamed Aly's case make plain the importance of maintaining Cart reviews: if he had been unable to secure an agreement with the Home Office – which would have been virtually impossible without Cart – he would have faced the very real prospect of threats upon his life. Given this, we were particularly alarmed by the blasé manner in which the Government acknowledged abolishing Cart 'may cause some injustice'.

Finally, the Government's analysis is unconvincing because it is based on a statistical inaccuracy. As Joe Tomlinson and Alison Pickup from the Public Law Project have persuasively demonstrated, the critical claim that only 0.22% of Cart judicial reviews succeeded is based upon a dubious assumption that all successful Cart reviews will be reported in BALILII or Westlaw. However, this is plainly false. Cart reviews are purposely designed to be streamlined and 'it is unusual for the Upper Tribunal or Secretary of State to request a hearing… [therefore] it would be highly unusual for this process to be reported or for there to be any judgement to be found on databases such as BAILLI or Westlaw'.[7] But in any case, even if the figures used by the IRAL were correct, the central thesis that only 0.22% of claims succeed is only true because the IRAL divided the 12 known cases of success by the total number of applications for Cart (5,502). Yet given that the Government's own figures show that the outcome of these 5,502 cases is only known in 45 instances, the actual assessment should be 12/45; this gives a significantly higher success rate of 26.7%, prompting questions as to why this figure has not yet featured within the Government's analysis.

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[6] *Ibid*

[7] Joe Tomlinson and Alison Pickup, '*Putting the Cart before the horse? The Confused Empirical Basis for Reform of Cart Judicial Reviews*', Constitutional Law Association (2021). Available at: https://ukconstitutionallaw.org/2021/03/29/joe-tomlinson-and-alison-pickup-putting-the-cart-before-the-horse-the-confused-empirical-basis-for-reform-of-cart-judicial-reviews/

In short, we strongly advise against the Government pursuing the abolition of Cart judicial reviews. If it did so, it would be making a serious policy decision based on poor economic assessments and ill-informed statistics. Further, it would risk fundamentally meddling with decisions that have life or death consequences. Nevertheless, if the Government was determined to push ahead with these reforms, we think it would be sensible for claimants to become capable of highlighting procedural failings or irrationality when lodging second fresh submissions to the Home Office.

Suspended quashing orders

As noted above, we recognise that in principle there may be some circumstances in which the provision of a suspended quashing order serves the interests of justice. Namely, circumstances where an immediate order of nullity would be inequitable e.g. where it would entail hardship for those who had legitimately relied upon a certain interpretation of the law. Nevertheless, it is important to stress that we would expect these circumstances to be exceptional and rare. Thus, we firmly believe this remedy, if enacted, must be discretionary and exceptional.

If suspension became routine it would materially damage access to justice. The consequence would be to deny claimants the remedies (albeit maybe only temporarily) that from their perspective are arguably the most important aspect of judicial review. Indeed, given that these proposals would not ease the significant financial burdens associated with bringing a judicial review,[8] the risk of a court suspending its judgment would be likely to operate as a substantial disincentive for ordinary citizens to challenge unlawful behaviour. Moreover, aside from the fundamental injustice of denying a claimant their remedy, it follows that if suspended remedies deterred claimants from challenging unlawful conduct, then overall accountability would also be severely curtailed. As the title of the Government's guidance on judicial review for local authorities *Judge over your shoulder* epitomises, one of the undisputed benefits of judicial review is the effect it has upon decision-making. Indeed, the threat of knowing that unlawful conduct can be challenged via the courts consistently leads to better decision making. Consequently, if public bodies (including the Government) were no longer concerned about litigation arising from their conduct, or knew that the immediate consequences would be at worst minor, we are concerned they would become more prone to careless decision-making.

In view of the above, we strongly advise against suspension of quashing orders as anything other than a discretionary tool for exceptional use for stated reasons. Further, we believe if they were introduced successful litigants should be entitled to challenge the adequacy of a decision maker's compliance with the ruling as part of a continuation of the existing legal process and to obtain further orders for specific compliance without incurring the financial or administrative burdens of beginning a claim afresh. Additionally, in the event a litigant objects to suspension, we think consistent, rational, and fair decision making would require granting claimants a right of appeal if they win on their substantive case but lose on the issue of remedies.

[8] In our experience a claim will cost at least £40,000.

3. Do you think the proposals in this document, where they impact the devolved jurisdictions, should be limited to England and Wales only?

No response.

4. (a) Do you agree that a further amendment should be made to section 31 of the Senior Courts Act to provide a discretionary power for prospective-only remedies?

No. We have several reservations about the use of this reform (see below) and therefore strongly recommend against its introduction.

First and foremost we are concerned that whereas questions 1 and 2 were limited to reforming 'quashing orders', the ambit of this question seemingly encompasses all remedies under judicial review. One reason why this is significant is that, while sometimes suspending a quashing order could be appropriate, we cannot envisage circumstances justifying prospective damages.

Aside from this, the risk of prospective-only remedies is two-fold. First, to a far greater extent than suspended quashing orders, making a remedy only applicable for the future undermines a claimant's access to justice. This is because whilst a suspended remedy will at least theoretically lead to the provision of restitution at some point (albeit a later date than preferred), prospective remedies unambiguously do not right the wrong complained of by the original claimant. Thus, prospective remedies violate the fundamental principle of judicial review that someone who endures unlawful treatment is entitled to a remedy. Further, while suspended quashing orders would disincentivize some claimants, prospective-only remedies would deter far more from bringing actions: claimants would have to fund the prohibitive costs of a judicial review without any guarantee of a remedy at the end. Moreover, prospective-only remedies would create a prisoner's dilemma situation in which any potential claimant would see advantage in holding off in the hope that another might initiate an action. The result might well be that questionable decisions went unchallenged.

This in turn, leads to the second major drawback of prospective only remedies: reckless decision-making. If it was unlikely unlawful conduct would be challenged, or if challenged that the effects of the impugned acts would anyway remain valid, public bodies would clearly have less need to worry about the lawfulness of their decisions. As noted above an important facet of judicial review is that it encourages better decision-making in the first place. For example, following our proposed challenge against the exclusion of a humanist representative from the SACRE[9] in the Vale of Glamorgan, it was apparent that other local authorities sought to learn from the Vale of Glamorgan's mistake by correcting their own policies. Had it been the case that our challenge had no immediate effect, it is hard to see why other local authorities would have felt compelled to improve their own policies. Put simply, prospective remedies are unattractive because they risk promoting a culture of bad decision-making.

[9] A statutory local body responsible for overseeing religious education (the Standing Advisory Council for Religious Education or SACRE).

Aside from these major risks, from a constitutional standpoint, we fear prospective only rulings might blur the separation of powers. The key analytical distinction between the legislature and judiciary has always been that the former makes law, and the latter applies it. If, however, the courts became capable of issuing rulings that would only apply in the future, we think they would in effect be making legislative decisions in all but name. To the extent the Government is therefore concerned by the perceived over-politicisation of the judiciary, it should be conscious that its reform would dramatically exaggerate this perceived problem further.

For the reasons set out above, whilst we in principle support the introduction of prospective only remedies as a discretionary measure, we warn strongly against its wider use within judicial review. Moreover, in the event a prospective-only ruling is given, we believe two essential safeguards should be introduced: courts should be required to state their reasons and claimants should be allowed to appeal.

4. (b) If so, which factors do you consider would be relevant in determining whether this remedy would be appropriate?

As noted above we do not think a prospective remedy should be introduced. However, if the Government decided to push ahead with this reform anyway, we think it should be confined to exceptional circumstances and used on a discretionary basis. In our view, such exceptional circumstances should be determined with regard to: (1) the number of people that would be affected by declaring a decision ultra vires; and (2) the severity of delaying said decision or making it prospective alone upon the people affected.

Given the potential risks identified above, we believe prospective only remedies must remain genuinely at the discretion of the courts. Consequently, we do not believe the judiciary should have their discretion fettered through a list of advisory factors or statutory presumptions. Rather, we think they should be capable of codifying a set of guidance through case law.

5. Do you agree that the proposed approaches in para 68 (a) and (b) will provide greater certainty over the use of Statutory Instruments, which have already been scrutinised by Parliament? Do you think a presumptive approach (a) or a mandatory approach (b) would be more appropriate?

We are opposed to both approaches – see above.

6. Do you agree that there is merit in requiring suspended quashing orders to be used in relation to powers more generally? Do you think the presumptive approach in para 69 (a) or the mandatory approach in para 69 (b) would be more appropriate?

No. We believe there is no merit in requiring suspended quashing orders (or prospective only rulings) to be used more generally. We especially object to the suggestion there should be a presumption in relation to their use, or that the courts should be mandated to use them in some circumstances.

According to the Government, the main attraction of a presumptive or mandatory approach to suspended quashing orders (or prospective rulings) is an increase in legal certainty. However, whilst enhanced legal certainty is often a desirable outcome in public law, it is overly simplistic to assess the merits of the Government's proposal through the prism of certainty alone. Judicial review is founded upon the principle of the rule of law in our country, and in turn a critical component of it is the requirement for all Government decisions to be made lawfully. Suspended quashing orders (and prospective rulings) violate this principle, because they enable the effects of unlawful legislation to remain valid after being declared ultra vires. Put another way, they violated the rule of law because they enable – even encourage – the Government to legislate in a manner effectively outside the law. We firmly believe the erosion of the rule of law cannot be justified, and therefore advise the Government not to place suspended quashing orders (or prospective only rulings) on a presumptive or mandatory basis.

Aside from this, we also think introducing a mandatory requirement to use this remedy could actually have a detrimental impact upon legal certainty. This is because, as we have frequently noted, the most important aspect of judicial review for claimants is the ability to obtain a remedy. Thus, anyone who currently brings a judicial review presumably does so in the strong expectation that if they win substantively, they will in turn be given a remedy. Suspended quashing remedies undermine this predictability, because even if the Government mandated their use, it would still be at the discretion of the courts to determine how long a remedy was suspended for; in other words, claimants would still be uncertain how long the unlawful conduct would be capable of having valid effects. Alternatively, it is almost inconceivable that if the Government mandated the use of these remedies, that the courts would sacrifice their duty to protect the rights of citizens. Accordingly, since primary legislation mandating the courts to act in a particular way still requires interpretation, it could be expected a series of common law exceptions and loopholes would be devised in response to the Government's demands; these would in turn also create uncertainty.

Moreover, if the Government were to introduce a requirement for a presumptive approach, then it necessarily follows a series of exceptions to the rule could also be devised. Granted in time these exceptions may become codified through case law, but they will be uncertain at the beginning and the Government will have therefore created short-term uncertainty which currently does not exist.

More generally but very importantly the mere knowledge that the Government was willing to embrace and hold to unlawful decisions would fatally undermine legal certainty and the citizen's secure reliance on the rule of law.

7. Do you agree that legislating for the above proposals will provide clarity in relation to when the courts can and should make a determination that a decision or use of a power was null and void?

No. With respect, this question is unnecessary because it is based on a flawed premise: it assumes that introducing suspended quashing orders or prospective only remedies requires wholesale reform for the rules on nullity. It does not, and thus there is no need for enhanced clarity.

As Professor Mark Elliot has rightly pointed out,[10] judicial review remedies are discretionary. In other words, it is up to the courts to decide what justice demands depending on the unique facts of an individual case. Consequently, it would be entirely possible for the courts to decide that the unique injustice a decision might cause necessitates a suspended order. That this is possible is patent because the courts already do it. In *R (Rockware Glass Ltd) v Chester City Council*[11] an order for an industrial plants permit was temporarily suspended due to the disproportionate effect of closing down the plant. Equally, in the case of *R v Bow Street Magistrates' Court exp Mitchell*[12] a magistrates' costs order was quashed and remitted on the condition of a claimant giving an undertaking that the full disclosure of his financial position would be given to the magistrates.

Radical reforms to the law of nullity could have serious and irreversible unintended consequences for our wider legal system. Given that such reform is unnecessary, we do not agree with the premise of this question that reforming nullity is necessary to achieve such clarity.

8. Would the methods outlined in paras 85-95, or a different method, achieve the aim of giving effect to ouster clauses?

Irrespective of whether the Government's proposals would create an effective ouster clause, there is a logically prior question that needs to be addressed: is it desirable to create ouster clauses in the first place?

Desirability of ouster clauses

An ouster clause is a statutory rule which is designed to prevent courts from performing their normal adjudicatory functions in relation to specific legislation. The prototypical example of an ouster clause is found in the case of *Anisminic*.[13] This case concerned an Act of Parliament which established the Foreign Compensation Commission (FCC) to deal with compensation claims from people whose property was damaged/lost in fighting abroad, and the validity of its attempt to curtail judicial oversight of the FCC's rulings. The ouster clause itself was section 4(4) of the Foreign Compensation Act 1950 which stated that 'the determination by the Commission of any application made to them under this Act *shall not be called in question in any court of law*' (emphasis added). In

[10] Mark Elliot '*The legal status of unlawful legislation: Salvesen v Riddell [2013] UKSC 22*' Public Law for Everyone (2013). Available at: https://publiclawforeveryone.com/2013/04/25/the-legal-status-of-unlawful-legislation-salvesen-v-riddell-2013-uksc-22/ ; Mark Elliot, '*Judicial review reform I: Nullity, remedies and constitutional gaslighting*' (2021). Available at: https://publiclawforeveryone.com/2021/04/06/judicial-review-reform-i-nullity-remedies-and-constitutional-gaslighting/

[11] *R (Rockware Glass Ltd) v Chester City Council [2007] Env LR 32*

[12] *R v Bow Street Magistrates' Court exp Mitchell [2000] COD 282*

[13] *Anisminic Ltd v Foreign Compensation Commission [1969] 2 AC 147*

other words, the statute unambiguously tried (albeit unsuccessfully) to prevent the courts from determining the lawfulness of the FCC's rulings.

Aside from the attempting to totally oust the supervision of the courts (e.g. an *Anisminic*-like clause), it is also possible for an ouster clause to take less extreme forms. For example, Professor Mark Elliot cites[14] the cases of *Evans*[15] – which concerned the legality of the Attorney General's veto power over the disclosure of Freedom of Information Act requests – and of *Unison*[16] – which concerned the legality of tribunal fees for the Employment and Employment Appeal Tribunals – as two examples of quasi-ouster clauses. The purpose of these clauses was (he suggested) either to enable a non-judicial authority (in *Evans* a Government Minister) to dispense with a judicial decision it disagreed with or to impede the exercise of the court's judicial functions.

In our view, ouster clauses are not desirable because they cut against the very fabric of judicial review and many of the core principles underlying the UK's constitution. First, they strike against the rule of law, because in their most extreme form they enable public authorities to act without any form of legal accountability. For example, had s4(4) in *Anisminic* been valid, it would have been impossible for ordinary citizens to challenge the legality of the FCC's compensation rulings. Second, they impinge upon the separation of powers, as they enable Parliament (or realistically the Government) to protect its own interpretation of what is lawful by outlawing challenge, thereby carving out areas of official decision-making from basic principles of legality and accountability. Ouster clauses intrude upon the traditional adjudicative territory reserved for the courts and are an affront to the separation of powers. Finally, we oppose ouster clauses because they implicitly weaken Parliament's sovereignty. Indeed, as Lord Carnwath has rightly argued,[17] Parliament's supreme authority rests upon the proposition that no other body can create law. Thus, in order to prevent statutory bodies from creating a form of 'local law' – namely a body of legal interpretations which are invalid but applied nevertheless – it is necessary for the courts to be able to examine allegedly unlawful determinations of decision-makers. This and this alone ensures the consistent application of Parliament's law, and consequently Parliament's sovereignty.

<u>Orthodox view of ouster clauses</u>

Given the proceeding points, the orthodox view of English law has always been that whilst it is theoretically possible for Parliament to devise an effective ouster clause, it is extremely difficult for this to be accomplished in practice.[18] Broadly speaking, this is because the courts fear an absence of judicial scrutiny undermines the protection of fundamental rights (chief among them the right of access to justice). Thus, in a manner akin to the principle of legality, there is a strong interpretive

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[14] Mark Elliot, '*Through the Looking-Glass? Ouster Clauses, Statutory Interpretation and the British Constitution*', Chris Hunt, Lorne Neudorf and Micah Rankin (eds), Legislating Statutory Interpretation: Perspectives from the Common Law World (Carswell, 2018). Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3097074

[15] *R (Evans) v Attorney General [2015] UKSC 21*

[16] *R (UNISON) v Lord Chancellor [2017] UKSC 51*

[17] *R (on the application of Privacy International) (Appellant) v Investigatory Powers Tribunal and others [2019] UKSC 22*

[18] Andrew Le Sueur, *Public Law: Text, Cases, and Materials*, Edn 2, Oxford University Press (2013)

presumption that unless Parliament uses sufficiently clear language, ouster clauses are not effective. Indeed, this was the basis upon which *Anisminic* and recently *Privacy International* both circumvented a punitive ouster clause.

It is worth noting that prior to *Anisminic*, the law governing this field was significantly more confused because it also relied upon a distinction between reviewable 'jurisdictional errors' and non-reviewable 'errors of law'. According to this distinction, when decision-makers made flawed decisions outside the scope of their authority (e.g. an employment tribunal deciding someone's asylum status) it was appropriate for the courts to disapply an ouster clause. However, when a decision-maker made a flawed decision but one nevertheless still within its legal powers (e.g. an employment tribunal fettering its discretion) ouster clauses would be effective.[19] Anisminic rightly removed this distinction from the law, by holding that any error of law made by a public authority was in fact a jurisdictional error and thus reviewable by the courts.[20]

Are the Government's proposals desirable?

No. Under the Government's proposals, the arbitrary and technical distinction described above and abandoned by *Aninismic* would be reintroduced, and ouster clauses would be significantly expanded. The Government's proposals effectively seek to invert the orthodox understanding of English law.

In particular, we are concerned by the Government's plans to shrink the concept of jurisdictional errors – in other words, errors in which ouster clauses cannot prevent scrutiny – and shift almost all of the traditional issues in judicial review into the territory of non-jurisdictional errors. Under the Government's proposals ouster clauses would only become ineffective when either: (1) a wholly exceptional collapse of procedural fairness had occurred, or (2) a pre-*Anisminic* error had occurred (e.g. a tax tribunal trying to make a homicide conviction). By contrast, vitally important issues such as the principle of legality or the traditional grounds for judicial review (illegality, rationality, procedural fairness, legitimate expectations, and proportionality) would become non-jurisdictional errors of law i.e. potentially immune from scrutiny.

As Professor Mark Elliot has rightly warned 'redrawing the distinction thus between lack of power and mere wrongful use of power would have far-reaching effects. The vast majority of reviewable

[19] According to Thomas Adams the main reason this distinction persisted within English law until Anisiminc was that the 'jurisdictional divide' enabled courts to show a degree of deference. For example, he argues 'By classifying an error of law as non-jurisdictional the court allowed itself the room to both disagree with the administration's interpretation of its power—to hold it to be in error— but nonetheless to uphold the latter's judgment as controlling—because not subject to correction on jurisdictional grounds.' See Thomas Adams, 'A Puzzle from Anisminic', Admin Law Blog (2017). Available at: https://adminlawblog.org/2017/03/20/tom-adams-a-puzzle-from-anisminic/

[20] In particular, Lord Reid recognised that in 'many cases where although [a] tribunal has jurisdiction to enter [an] inquiry' it may do 'something in the course of the inquiry which is of such a nature that its decision is a nullity.' Crucially, such circumstances included the situation where the relevant body had 'misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it.' In other words, in these situations a public body makes a jurisdictional error. *Ibid*

errors, having been reconceptualised as evidence merely of wrongful use rather than absence of power, would:

- 'no longer constitute jurisdictional errors;
- 'no longer engage the doctrine of nullity (thereby enhancing the capacity of unlawful acts to produce legal effects);
- 'no longer be vulnerable to collateral challenge (i.e. challenge in private law or criminal proceedings, thereby raising the prospect, e.g. of people being convicted of criminal offences under unlawfully-made secondary legislation);
- 'no longer be reviewable at all if an ouster clause existed and (as would be likely) was interpreted as permitting review only in respect of jurisdictional errors as distinct from errors evidencing mere wrongful use of power.'[21]

Those who support the Government's proposal would likely argue that the extreme implications mentioned above would not arise given the Government's proposed 'safety value'. This would be a legislative provision which guided the courts on how to interpret ouster clauses: namely, courts should not give effect to ouster clauses in 'exceptional circumstances'. However, this is a very weak argument. Professor Mark Elliot has suggested 'it appears to be envisaged that the "safety valve" provision may, in the first place, apply only to errors that would constitute jurisdictional errors in the attenuated sense envisaged by the Government.'[22] Which, put simply, would mean the safeguard – if effective at all – would apply only to the Government's new dramatically shrunken list of jurisdictional errors, and not the wide-ranging and more important non-jurisdictional errors. Thus in sum, if enacted, the Government would institute one of the most radical circumventions of judicial oversight in English legal history. As such we profoundly object to its proposals.

<u>Would the Government's proposals be effective? Should they be implemented?</u>
Finally, ignoring the above, we are unconvinced the Government's proposals would be effective at any rate. This is because the Supreme Court recently mooted in *Privacy International* that ouster clauses may be fundamentally unconstitutional.[23] Thus, if the Government were minded to introduce the radical reform it envisages, we strongly believe that the courts would intervene and overrule them.

If the Government remains minded to push ahead with these reforms regardless, we strongly suggest they provide a further period of consultation to assess the wide ranging implications of such a reform. Equally, we recommend that the Government enhances the range of factors the courts could consider when applying the 'safety value'. For example, when the courts are invited to consider a broad ranging ouster clause (e.g. an *Anisiminc*-like situation) we believe it would be appropriate for them to consider a broader range of factors when determining if it was an 'exceptional circumstance' under the safety value. For example, this could include: (1) the degree of injustice to the claimant, (2) the degree of damage to the rule of law, (3) the degree of damage to access to justice, and (4) the availability of alternative appeal procedures. In addition, we believe there would be merit in enhancing political accountability. For example, just as the Delegated

[21] Mark Elliot, '*Judicial review reform II: Ouster clauses and the rule of law*' (2021). Available at: https://publiclawforeveryone.com/2021/04/11/judicial-review-reform-ii-ouster-clauses-and-the-rule-of-law/
[22] *Ibid*
[23] *R (on the application of Privacy International) (Appellant) v Investigatory Powers Tribunal and others [2019] UKSC 22 [144]*

Legislation Committees currently review proposed Statutory Instruments, we would support a more overt role for a Parliamentary committee to examine ouster clauses before they are enacted and later review their use.

9. Do you agree that the CPRC should be invited to remove the promptitude requirement from Judicial Review claims? The result will be that claims must be brought within three months.

Yes. There are three reasons underlying our position. First, we think the notion of 'promptness' is vague and hard to understand. Although there is currently a general presumption that lodging claims within a three-month period satisfy the promptness requirement,[24] there are multiple cases where this has not been the case, since the notion is variable.[25] Second, to the extent the three-month rule is already being used in a manner synonymous with 'promptitude' the requirement is evidently unnecessary. Third, we are conscious that delays in legal proceedings can often occur through no fault of the claimant. For example, we understand it is not unusual for claimants to have to wait between six and eight weeks before legal aid is granted.[26] Yet, the Court of Appeal has been clear that such delays cannot always be relied upon as an excuse for protracted proceedings. For example, as per Lord Justice Moore-Bick 'solicitors in general may have been under the impression that any delay awaiting a decision by the Legal Aid Agency would simply be ignored if an extension of time were required as a result. That is not the case and it is to be hoped that any such misunderstanding will have been dispelled… Those acting for parties in the position of these appellants will in future need to take active steps either to lodge the necessary form promptly on behalf of their clients or advise them of the need to do so on their own behalf.'[27] In our view, it is inherently unjust to penalise claimants for errors beyond their control, and therefore appropriate for this requirement to be abolished.

Although we do not believe it was the intention of this question to imply otherwise by stating 'the result will be that claims must be brought within three months', for the avoidance of doubt we do not think removing the promptitude requirement should also remove the courts' discretion to extend the three-month time limit. The power to extend time limits is designed to promote out-of-court settlements, and provide flexibility in circumstances where it would be unjust to rigidly apply an arbitrary rule. We believe that both of these objectives remain desirable and should not be sacrificed.

10. Do you think that the CPRC should be invited to consider extending the time limit to encourage pre-action resolution?

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[24] *R (A1 Veg Ltd) v Hounslow LBC [2003] EWHC 3112*
[25] See for example *Finn-Kelcey v Milton Keynes Council [2008] EWCA Civ 1067* in which the Court of Appeal ruled the definition of promptness varies depending on the circumstances of the case, and rejected a claim despite having been lodged within three months. See also *R v Independent Television Commission, ex p TV Northern Ireland Limited [1996] JR 60 [1991] TLR 606.*
[26] Catherine Baksi, 'CCMS: despair at a system unfit for purpose', Legal Action Group (2017). Available at: https://www.lag.org.uk/article/201748/ccms--despair-at-a-system-unfit-for-purpose
[27] *R (Kigen and Cheruiyot) v Secretary of State for the Home Department [2015] EWCA Civ 1286*

Yes. There are two reasons underlying our position. First, unlike other forms of litigation, judicial review is a 'front-loaded' process. Prior to obtaining permission, claimants are expected to complete steps that other forms of litigation usually require later in the process e.g. assembling well organised bundles and reasoned legal arguments. In the case of legally or factually complex cases, this process is especially difficult as claimants will need time in order to obtain detailed legal advice. Moreover, in the event the claimant learns about the complainable issue after it arises, they will face an even steeper time frame since the requirement normally dates from when the grounds of complaint first arose, and not when the claimant first learnt about said grounds.[28] Second, as noted above, it is not unusual for claimants relying upon legal aid to experience significant delays, which can be used to penalise their conduct. In our view, providing claimants with a more generous time frame would enhance judicial review by enabling claimants to submit stronger legal arguments, better evidenced cases, and act without fear of having to rely upon the goodwill pro-bono representation of lawyers.

Outside of this, we also believe there is a compelling case to specifically extend the time limits for submitting a judicial review when a serious human rights abuse is claimed. The case in favour of providing a more lenient timeframe for human rights judicial review is underpinned by the fact that human rights violations can continue for much longer periods than a few months. Unlike common law rights (those based on rationality, illegality, and procedural fairness) it is important to recognise that human rights are universal. This is significant because it means that human rights apply to everyone equally throughout their lives, and as such must mean at the very least that they continue to apply when an individual's circumstances change. This has an important consequence in regard to time limits, as it is easy to conceive of a situation where a public authority's decision/action might not impact upon the human rights of an individual at the time of the decision, but will at a later stage. For example, if the Director of Public Prosecutions (DPP) changed his guidance on assisted dying this would be unlikely to impact upon someone who is able to end their life without assistance. However, it is easy to imagine a circumstance in which someone becomes severely disabled more than three months after the DPP issues new guidance. In this situation, if challenges had to be lodged within three months of the DPP's decision, then challenges would be impossible as they would not have been a 'victim' at the time of the decision. In practice of course claimants often write to the would-be defendant asking for a change of policy or law, and thereby effectively construct an artificial decision that can then be challengeable. But this is an inherently unreliable route forward because judges could of course look at this and decide that no fresh decision has been made that could be challengeable. It would be better therefore to put this on a proper footing.

Indeed, it is for this precise reason that the European Court of Human Rights does not impose a three-month time-limit to lodge a human rights case, and why many people who fall outside the domestic three-month window find themselves forced to pursue a case at the European level. Equally, it is likely that this problem was at the forefront of Parliament's mind when it drafted the Human Rights Act 1998, and so explains why a more generous one-year time-frame exists when

[28] *R v Department of Transport, ex parte Presvac Engineering Ltd* [1992] 4 Admin LR 121

individuals seek a 'civil' claim based on past abuses or breaches of their rights. Therefore we urge the Government to lift time limits for lodging human rights claims.

11. Do you think that the CPRC should be invited to consider allowing parties to agree to extend the time limits to bring a Judicial Review claim, bearing in mind the potential impacts on third parties?

Yes. In particular, we believe this measure could prove beneficial to claimants when no legal factors force them to issue a claim before they would otherwise wish. An instructive example of this is a recent agreement we reached with Southampton Council. In November, Southampton Council refused a humanist representative admission as a full member of the statutory local body responsible for overseeing religious education (the Standing Advisory Council on Religious Education or SACRE). That representative then sent a letter before challenge. However, given the pressing demands on its time due to Covid-19, Southampton Council asked her to withdraw her claim. Since she is required to issue proceedings within three months of the complainable decision arising, she was only able to do this by reaching a potentially unenforceable agreement with Southampton Council that it will retake its decision in November, when it is in a better position to consider her claim. Her hope is that if the Council subsequently declines to do this, then that in itself would constitute a fresh decision that would be judicially reviewable. But this is obviously somewhat tenuous and may not be looked upon favourably by a judge. Thus, had it been possible to mutually agree to an extension, due to the pressing and unusual demands on Southampton's time, she would not have been forced to resort to this arbitrary compromise, which puts the would-be SACRE member in a vulnerable position by relying upon the good faith of Southampton to retake its decision, or the good will of a judge in concluding that not doing so is itself a decision that can be challenged on the original grounds.

Although we recognise this option could be beneficial in some circumstances, it is worth noting that we would expect it to be rarely used. Indeed, we do not think it would be appropriate for mutual extension to become seen as 'the norm', nor for the decision of one party to refuse an extension to be viewed as acting in bad faith or seeking to frustrate the pre-action protocol. This is significant because if such a decision did come to be viewed as a failure to comply with the protocol, the party who failed to extend the time limit could face severe penalties in relation to costs.[29] Hence we would be anxious about the potential incentive for delay such a mechanism could create for local decision-makers, which prospective claimants would be forced to agree due to the risk in relation to their costs. Hence, provided this option was not introduced with the expectation parties should always use it, we would welcome the ability to extend time limits for judicial review via mutual agreement.

12. Do you think it would be useful to invite the CPRC to consider whether a 'track' system is viable for Judicial Review claims? What would allocation depend on?

[29] *See R (William Kemp) v Denbighshire Local Health Board [2006] EWHC 181*

No response.

13. Do you consider it would be useful to introduce a requirement to identify organisations or wider groups that might assist in litigation?

No. We are unclear how a requirement to identify organisations or wider groups would manifest in practice. However, we have interpreted it to mean a requirement akin to Rule 54.6(1)(a) of the Civil Procedural Rules which requires claimants to set out in their claim form the name and addresses of anyone they consider to have an interest in their litigation. Equally, we would expect respondents to be expected during the pre-action protocol process to identify any organisations not named by the claimant.

Assuming this is correct, there are four principled problems with this proposal. First, this proposal shifts all the emphasis from third party interveners to the parties to the claim. Yet it is important to be clear that third party interveners exist to assist the court, and not the particular parties involved in litigation.

Second, this proposal misunderstands the current practice of intervention. In some cases, such as Humanists UK's involvement in the assisted dying cases of Noel Conway[30] and Tony Nicklinson,[31] an organisation will be aware of upcoming litigation because the prospective claimants will belong to that particular organisation. Thus, it would theoretically be possible for the claimant to identify said organisations. However, in others, such as Humanists UK's intervention in Sarah Ewart's Northern Ireland abortion case,[32] organisations only become aware of the litigation after a claim has been filed or as a result of its publicity. Thus, unless the Government envisages parties (including Government departments) wasting significant periods of their time available to lodge a claim researching organisations with sympathetic policies, we do not see how this proposal could work in practice. Moreover, if the aim of the above proposal would be to avoid unwanted third party interveners, it is worth noting that in our experience all prospective interveners usually ask the claimants for permission to intervene before doing so. Thus, there would be no need for this reform, since the courts can already normally see if the claimant has rejected the potential intervention when determining permission.

Third, introducing a requirement to identify interveners at an early stage would create unnecessary confusion and waste resources. In our experience, interveners only ask for permission to become

[30] Humanists UK, '*Humanists UK to intervene in Conway assisted dying case at Court of Appeal*' (2018). Available at: https://humanism.org.uk/2018/04/26/humanists-uk-to-intervene-in-conway-assisted-dying-case-at-court-of-appeal/
[31] Humanists UK, '*Final day of assisted dying cases in Supreme Court: BHA presents evidence supporting Jane Nicklinson and Paul Lamb*' (2013). Available at: https://humanism.org.uk/2013/12/19/final-day-assisted-dying-cases-supreme-court-bha-presents-evidence-supporting-jane-nicklinson-paul-lamb/
[32] Humanists UK, '*Humanists UK to intervene in Northern Ireland abortion case at High Court*' (2019). Avaliable at: https://humanism.org.uk/2019/01/28/humanists-uk-to-intervene-in-northern-ireland-abortion-case-at-high-court/

involved in a case after it has been granted permission.[33] This is because permission may only be granted for some aspects of the claimant's case, or because the pertinent questions may only become clear after the defendants produce their detailed grounds for resistance. For example, during an early stage of Noel Conway's judicial review a claim was advanced that the UK's law on assisted dying infringed Article 14 of the European Court of Human Rights (prohibition on discrimination). Had Humanists UK been required to intervene at this point, our submissions could have been drawn to supporting this point, despite it later not being advanced in Noel's case. Consequently, we fear a requirement to identify interveners early in the process would waste the court's time, as at permission they'd be forced to deal with potentially irrelevant submissions, when in reality all they should be doing is determining if there is an arguable case; and also waste interveners' time.

Finally, we fear the introduction of this requirement could lead to unnecessarily defensive practices. Indeed were it the case that a failure to identify an organisation early on became a ground for rejecting their intervention, we anticipate a majority of organisations could speculatively indicate their willingness to be involved. This would result in a significantly higher burden for Government departments when responding to prospective litigation, and upon the courts' time when determining permission.

Alternatively, if it were not the case that a failure to be identified early on prejudiced an intervener's application, then it would be hard to see the point in requiring some interveners to be identified early on and for others not to be. Overall, if this were the case, the Government's proposal would fail to provide greater clarity on potential interveners, and only undermine the effectiveness of other interveners' submissions.

We note with some concern that this requirement could also be used as a precursor to further cuts to legal aid, as a requirement to identify organisations which might assist could be interpreted as a requirement to identify organisations willing to finance the case. In our experience, cuts to legal aid have already had a devastating impact upon the ability of ordinary citizens to challenge unlawful conduct, and forced many claimants to rely upon organisations and wider groups to fund their litigation. We think this is the antithesis of justice in our country, as the ability to secure justice and vindicate your rights should not depend upon your financial means or ability to secure backing from a wider civil society group.

Thus for the reasons set out above, we advise the Government against introducing this proposal.

14. Do you agree that the CPRC should be invited to include a formal provision for an extra step for a reply, as outlined in para 104?

[33] By way of example, in 2017 we were contacted by our member known as Omid T and informed of his intention to judicially review the UK's laws on assisted dying. However, instead of immediately seeking to support his case via an intervention, we made clear to the court that we would be minded to intervene if it was granted permission.

Yes. We believe two main benefits would flow from formally providing a right of reply within the pre-action protocol. First, the opportunity of replying to a respondent's detailed grounds of resistance enables claimants to clarify and refine their arguments. This could be necessary either because during the course of written submissions certain points become no longer as relevant as they had been beforehand; or, because the duty of candour reveals a significant point or piece of evidence enabling the claimants to develop their arguments. The upshot is that substantive proceedings will be focused upon more relevant issues, and claimants will be able to present the strongest possible form of their case and defendants will be relieved of the need to deal with points no longer being pursued by the claimants. Indeed, when six humanist couples challenged the law prohibiting the legal recognition of humanist marriage,[34] they voluntarily submitted a reply to the defendant's detailed grounds of defence for this very reason, resulting in streamlined and more relevant substantive proceedings. Second, we believe there would be a cost-saving efficiency associated with a formal provision for reply, as the procedure would streamline substantive hearings and reduce the time necessary to deal with arguments through oral submissions.

This said, in cases where interim relief is sought because a decision is about to be implemented immediately, we would advise against this becoming a requirement as we fear it could lead to unnecessary delays. However, as is currently the case, we believe sufficient flexibility to accommodate these circumstances could be recognised within the civil procedure rules.

15. As set out in para 105(a), do you agree it is worth inviting the CPRC to consider whether to change the obligations surrounding Detailed Grounds of Resistance?

No response.

16. Is it appropriate to invite the CPRC to consider increasing the time limit required by CPR54.14 to 56 days?

No response.

17. Do you have any information that you believe it would be useful for the Government to consider in developing a full impact assessment on the proposals in this consultation document?

We have two observations which we think are relevant for the Government to recognise.

First, we are concerned that some of the proposals within this consultation have the potential to act as red-herrings, and provide capacity for the Government to be seen as compromising and moderating its proposals. In the event this is unfortunately accurate, it is worth reiterating that the majority of the proposals in this consultation even if implemented in a modified form would still

[34] *R (Harrison and others) v Secretary of State for Justice [2020] EWHC 2096 (Admin)*

constitute the severest limitation of rights to judicial review in its history, with alarming implications for the rule of law.

Second, whilst any of these proposals in isolation represent a dramatic change to the law, taken together they amount to a programme of radical and in many places misguided reform. Put simply, the Government's preferred policy on ouster clauses risks curtailing accountability by abolishing the right to judicial review for many areas of law. At the same time its weakening of available remedies would often make it futile for ordinary citizens to challenge unlawful conduct.

In our view the Government's programme is therefore deplorable and shows a striking degree of short-sightedness. It assumes that judicial review is in essence an inconvenience for public bodies and should be weakened, rather than the vital constitutional safeguard it actually is. We encourage the Government to study the Institute for Government's recent report which comprehensively rebuts this assumption, and we endorse its finding that

> 'Policy makers should recognise that lawful decisions are likely to be better ones. They should also recognise that the best way to protect a decision from judicial review is to get a proper democratic mandate for it in Parliament or, failing that, to follow a fair and robust policy process. Like managing efficiency and cost, parliamentary and media attention, and evidence about the impact of policy, dealing with legal risk is part of being in government. Like other forms of scrutiny and challenge, it can be time-consuming and onerous, but it can also help ministers to govern more effectively.'[35]

For more details, information, and evidence, contact Humanists UK:

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020 7324 3072
richy@humanists.uk
Humanists.uk

[35] Catherine Haddock et al, '*Judicial review and policy making The role of legal advice in government*' Institute for Government (2021). Available at: https://www.instituteforgovernment.org.uk/sites/default/files/publications/judicial-review.pdf

ANNEX: JOINT STATEMENT IN SUPPORT OF THE HUMAN RIGHTS ACT AND JUDICIAL REVIEW

The following 190+ organisations, including charities, trades unions, human rights bodies, and religion or belief groups, have joined a coalition we established in defence of the Human Rights Act and judicial review.[36]

They have all signed up to the following statement:

> 'While every system could be improved, and protecting rights and freedoms for all is a balancing act, our Human Rights Act is a proportionate and well-drafted protection for the fundamental liberties and responsibilities of everyone in this country.
>
> 'The Act guarantees the rights to free speech and expression, to life, to liberty, to security, to privacy, to assembly, and to freedom of religion or belief. It prohibits torture and guarantees fair trials and the rule of law.
>
> 'Judicial review is an indispensable mechanism for individuals to assert those rights and freedoms against the power of the state.'
>
> 'Any government that cares about freedom and justice should celebrate and protect these vital institutions and never demean or threaten them.'

Humanists UK

Index on Censorship
the voice of free expression

accord
believing in children, learning together

ACTION:FGM
United Against Harmful Practices

advice UK

advocacy focus

[36] See 'Protect Human Rights and Judicial Review': https://humanrightsact.org.uk/


AFRICAN
RAINBOW
FAMILY
LGBTIQ EQUALITY


Pobl yn Gyntaf Cymru Gyfan
All Wales People First


ALLIANCE FOR CHOICE


ARC
Antenatal Results & Choices


the
aplastic
anaemia
trust


ARTICLE 12


ARTICLE 19


Article 39


- Offering practical support and friendship to refugees and asylum seekers -
Asylum Link Merseyside


AVA
Against Violence & Abuse


BAN
CONVERSION
THERAPY


Barrow
Cadbury
Trust


The Baring
Foundation


BEST for
BRITAIN


Beyond Skin

THE BIG ISSUE GROUP

birthrights
Protecting human rights in childbirth

bond

BPAS
British Pregnancy Advisory Service

BAJ
British Association of Journalists

HUMAN RIGHTS

BMSDemocracy
British Muslims for Secular Democracy

BPW UK

CAMPAIGN AGAINST ARMS TRADE

Campaign for Freedom of Information

CWJ
Centre for Women's Justice

CFEY
The Centre for Education & Youth

Changing Our Lives

Children England
Charities working for children and families

Children in Scotland

CRER
Coalition for Racial Equality and Rights

CAJ
Committee on the Administration of Justice
Promoting Justice / Protecting Rights

COMMONWEALTH

community
For a better working world

COMPASSION in world farming

Compassion in Politics

coram clc
Children's Legal Centre

CHRONIC ILLNESS INCLUSION PROJECT

CAMPAIGN FOR DIGNITY IN DYING.

Disability Equality Scotland
Working towards Equality, Inclusion and Participation for Disabled People in Scotland

Disability Rights UK

Discrimination Law Association

Drs for Choice UK

Down's Syndrome Association
A Registered Charity No. 1061474

EACH OTHER

ecpat UK

emmaus
working together to end homelessness

END VIOLENCE AGAINST WOMEN

ENGENDER

ENGLISH PEN

Environmental SMART

ANOTHER EUROPE IS POSSIBLE

Equality Network

EQUALLY OURS

EQUAL RIGHTS TRUST

THE EQUALITY TRUST

ERCS
JUSTICE FOR PEOPLE AND THE ENVIRONMENT

Fair Play SOUTH WEST

Fairness, Respect, Equality Shropshire

FAMILY RIGHTS GROUP
Keeping children safe in their families

Fawcett
Equality. It's about time.

FiLiA

foxglove

Frock Free United

FREEDOM FROM TORTURE
EMPOWERING SURVIVORS, REBUILDING LIVES

FRIDAYS FOR FUTURE Scotland

Friends at the End
Promoting end of life choices

Friends of the Earth

fft
Friends Families and Travellers

gi gendered intelligence

gires

Global Justice Now

Good Thinking

GREENPEACE

ALLIANCE
HEALTH AND SOCIAL CARE ALLIANCE SCOTLAND
people at the centre

Helen Bamber Foundation
working with survivors of human cruelty

FCSS
Hft's Family Carer Support Service

Howard League for Penal Reform

HUMANADE
supporting human rights and the environment

Humanist Society Scotland

HUMAN RIGHTS CONSORTIUM

Human Rights Consortium Scotland

IKWRO
WOMEN'S RIGHTS ORGANISATION

INSTITUTE OF RACE RELATIONS

Inclusion London
Supporting London's Deaf and Disabled People's Organisations

Inclusion Scotland
Disabled People's Organisation

INQUEST
TRUTH, JUSTICE AND ACCOUNTABILITY

JCWI

The JUDITH Trust

JUSTRIGHT SCOTLAND

JUST FOR KIDS LAW

LAWRS
LATIN AMERICAN WOMEN'S RIGHTS SERVICE
Servicio por los Derechos de la Mujer Latinoamericana
Serviço pelos Direitos da Mulher Latino-americana

Law Centres Network

LDE
Learning Disability England

Leonard Cheshire


Lesbian Immigration Support Group

CONSORTIUM
for stronger lgbt+ communities

LGBT foundation

LOCUM DOCTORS ASSOCIATION
L D A
UNITED WE STAND

Manchester MiSol Migrant Solidarity

Mary Ward Legal Centre

maternity action
Ten years of fighting for better maternity rights


local
mencap
Liverpool & Sefton


Mermaids


METRO
Embrace Difference


migrants
organise


minority
rights
group
international


mrn
migrants'
rights network


MOSAIC
LGBT YOUTH CENTRE


Musicians'
Union
mu


TRANSFORMING
THE UK'S
RESPONSE
TO HIV
NAT


NATIONAL
AIDS
TRUST
Securing rights
Stopping HIV


NATIONAL
CHILDREN'S
BUREAU


National
Deaf Children's
Society


NDTi
National Development Team for Inclusion


nsun
National Survivor
User Network

People First (Scotland)

Possability People

PositiveMoney

PRISON REFORM TRUST

the PROUD Trust
home of LGBT+ youth

Psychotherapy and Counselling Union
PCU
Standing up for Therapists and Therapy

SEICOLEGWYR DROS NEWID CYMDEITHASOL
PSYCHOLOGISTS FOR SOCIAL CHANGE SOUTH WALES

QUAKERS

Race Equality First
"Working with you to make equality a reality"

Race Equality Foundation

rota
Race on the Agenda

the rainbow project

ramfel
Refugee and Migrant Forum of Essex & London

ramblers
at the heart of walking

Refuge
For women and children.
Against domestic violence.

REFUGEE ACTION

Release
Drugs, The Law & Your Rights

RSF
REPORTERS WITHOUT BORDERS

rené cassin
the jewish voice for human rights

RJ4ALL
RESTORATIVE
JUSTICE FOR ALL
INTERNATIONAL INSTITUTE

RIGHTS & SECURITY INTERNATIONAL

RNIB
See differently

SAMARITANS

Save the Children

Scotland's International Development Alliance

ScottishPEN
defending the freedom of writers and readers

scottish refugee council

Scottish Women's Rights Centre

securitywomen
Calling for women's inclusion in security sector reform

SHEILA McKECHNIE FOUNDATION | UNLEASHING SOCIAL POWER

Shelter

Soroptimist International
Great Britain & Ireland

statewatch

SOS
STUDENTS ORGANISING FOR SUSTAINABILITY UNITED KINGDOM

Southall Black Sisters

sia
spinal injuries association

Stonewall
Acceptance without exception

tai pawb
promoting equality in housing
hybu cydraddoldeb ym maes tai

TALKFRACKING

Terrence Higgins Trust

together
Scottish Alliance for Children's Rights

townswomen's guilds

the Traveller Movement

VODG
Voluntary Organisations Disability Group

WATER WITNESS

WELSH REFUGEE COUNCIL
CYNGOR FFOADURIAID CYMRU

we are cycling UK

WILPF UK
UK Women's International League for Peace and Freedom

WISH
A voice for women's mental health


WOMANKIND
WORLDWIDE EQUAL RESPECTED PROUD


WOMEN&GIRLS
NETWORK


WOMEN FOR REFUGEE WOMEN


women's aid
until women & children are safe


wbg
WOMEN'S
BUDGET
GROUP


women's
resource
centre


UK Lesbian & Gay
Immigration Group


UNLOCK
DEMOCRACY


Z
ZERO
TOLERANCE