Ministry of JUSTICE

Reform of Judicial Review: the Government response

April 2013

Reform of Judicial Review: the Government response

Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

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Foreword

Last year, I published an engagement exercise which sought views on a series of proposals for reform of Judicial Review. The need for reform was driven by concern about the growth in the use of Judicial Review and the delays these proceedings create, in some cases frustrating plans for growth.

There was a body of support for my proposals, mainly among businesses and public authorities. But most of the responses we received were opposed to reform. There was criticism of the consultation procedure and the lack of evidence, and some saw the proposals as a serious attack on the rule of law.

I do not accept these criticisms. My reforms target the weak, frivolous and unmeritorious cases, which congest the courts and cause delays. I want to discourage those who seek to use Judicial Review for PR purposes, or as a tactical device to cause delay. But nothing in these reforms will prevent those who have arguable claims from having their cases heard.

I have considered the responses carefully, and I remain convinced that reform is necessary. I therefore intend to take forward most of the reforms in the engagement exercise:

- time limits in planning and procurement cases will be shortened so that these cases can be dealt with more quickly, providing greater certainty;
- we will charge fees which better reflect how much Judicial Reviews cost and give claimants a greater financial interest in the outcome of their case; and
- certain rights to renew a refused application for permission will be removed in clearly hopeless cases.

These are straightforward procedural reforms, which will be introduced as soon as possible. We are continuing to review the case for further reform, in particular to streamline the process for planning and infrastructure projects, which we are aiming to develop by the summer.

Chris Grayling, Lord Chancellor
and Secretary of State for Justice

Summary

1. In December 2012, the Government published proposals for the reform of Judicial Review. In developing these proposals, we set out one clear objective: to reduce the burdens placed on public authorities while maintaining access to justice and the rule of law.

2. The intention was to target weak, frivolous and unmeritorious cases, so that they were filtered out quickly and at an early stage, while ensuring that arguable claims could proceed to a conclusion without delay.

The case for reform

3. The case for reform was built on the significant growth in the use of Judicial Review, which had more than doubled in a decade from around 4,500 in 2001 to over 11,000 in 2011. A large proportion of these claims were, however, weak and were refused permission. Only around one in six of all applications lodged in 2011 and considered by the court were granted permission to proceed.[1]

4. While this indicates that the requirement to secure permission to bring Judicial Review operates effectively in filtering weak cases, the Government is concerned at the length of time it takes: on average 80 days to reach a decision on the papers for cases lodged in 2011.

5. We are also concerned that, despite the refusal of permission, there is scope for the matter to be further delayed. When permission is refused on the papers, the claimant is entitled to have the application reconsidered at a hearing (known as an “oral renewal”). For cases lodged in 2011, there were around 2,300 oral renewals of an application for permission. Of these, some 800 were withdrawn and only around 300 resulted in a grant of permission. This additional stage took around a further 110 days on average.

The impact of delay

6. Delays caused by the time it takes to conclude a Judicial Review do not just slow down the decision making process, adding to costs: they can also create uncertainty in the decisions of public bodies, which can be a particular concern for planning and infrastructure cases, and for other cases which seek to stimulate growth. For example, the engagement exercise has confirmed that infrastructure developments are routinely put on hold during the period of potential legal challenge. Certainty in decision making is also a critical factor in whether to invest in projects. Any uncertainty may discourage investment, placing the financial viability of projects at risk.

7. The target of our proposals for reform was therefore primarily the large numbers of weak, frivolous or unmeritorious claims which have burdened the courts in recent years. Our proposals had three aims: to discourage claimants from bringing these cases in the first place; to ensure that if they were brought, they did so quickly; and to filter out weak or hopeless cases at an early stage in proceedings. In this way, the

[1] See *Judicial Review Statistics 2007 – 2011*, Ministry of Justice Ad Hoc Bulletin, April 2013.

resources of the court could be focussed on genuinely arguable claims, which could proceed quickly and efficiently to a conclusion.

The way forward

8. There were over 250 responses to the engagement exercise, the majority of which were opposed to the Government's proposals. There was, however, a body of support for reforms, principally among businesses and public authorities.

9. There was a general concern that the data did not support the case for reform. Some argued that the engagement exercise had not taken into account the research undertaken on behalf of the Public Law Project,[2] which indicated that most of the cases which are withdrawn are settled on terms favourable to the claimant.

10. The Government believes that this research does not undermine the case for reform. It remains clear that too many claims which fall to the courts for determination (as opposed to those that settle and are withdrawn before the permission stage) are not arguable and accordingly fail at the permission stage.

11. We have carefully considered all the responses to the exercise, and we have concluded that reform is necessary to tackle the problems identified. We have however been persuaded not to pursue two of the original proposals: clarifying the rules on time limits in cases where there are continuing grounds, and removing the right to an oral renewal where there has been a prior judicial hearing on substantially the same matter.

12. A summary of the reforms we intend to take forward, and those we have decided not to pursue, is set out below. An analysis of the responses we received, the arguments raised and the Government's detailed response to them are set out in the Annex to this document.

[2] *The Dynamics of Judicial Review Litigation: The resolution of public law challenges before final hearing,* Bondy and Sunkin, Public Law Project, 2009.

Summary of reforms

Time limits

13. We will shorten the time limit for bringing a Judicial Review from three months of the grounds giving rise to the claim to six weeks in planning cases and thirty days in procurement cases.

14. We accept that this will not provide sufficient time to fulfil the requirements of the Pre-Action Protocol. We will also invite the Master of the Rolls to revise the Pre-Action Protocol to disapply it in these cases.

15. We have decided not to seek to clarify when the time limit starts to run in Judicial Review cases where the grounds giving rise to the claim are the result of an ongoing breach, relate to a delay in making a decision or taking action, or relate to a case where there have been multiple points at which decisions have been made.

Applying for permission

16. The Government intends to remove the right to a reconsideration at a hearing of the application for permission to bring Judicial Review (an oral renewal) in any case where the application is certified as totally without merit by the Judge considering the application on the papers.

17. The Government has, however, decided not to take forward the proposal to remove the right to an oral renewal in cases where permission is refused and substantially the same matter has been considered at a prior judicial hearing.

Fees

18. We have decided to introduce a fee for an oral renewal hearing. The fee will be set at the same level as the fee to fix a substantive hearing for a Judicial Review, which is currently £215. The fee for a full hearing will be waived if permission is granted at the oral renewal hearing, so that an applicant with a properly arguable case will not pay two fees.

19. The Government consulted separately on raising fees for Judicial Review cases.[3] The level of the fee for the oral renewal is therefore subject to the outcome of that consultation exercise. The Government intends to publish the response to that consultation shortly.

Impact of reforms

20. We have published a revised Impact Assessment, setting out the estimated impact of the reforms we will be introducing, alongside this Government response. Immigration and asylum claims make up the large majority of Judicial Reviews (over 75% of applications lodged in 2011) and the measures are expected to have the greatest impact on these types of claim. These reforms complement measures currently before Parliament in the Crime and Courts Bill which allow for the transfer of

[3] *Fees in the High Court and Court of Appeal Civil Division*, CP15/2011, Ministry of Justice, November 2011.

immigration and asylum Judicial Reviews to the Upper Tribunal, and the intention is to replicate these reforms within the relevant Tribunal Procedure Rules as necessary.

21. The combined impact of the reforms in this Government response should be to reduce the pressure on the Administrative Court, discourage people from bringing weak claims, and ensure that if they do, they are filtered out at an early stage in proceedings. The measures are also expected to have a beneficial impact on other types of Judicial Review. In particular, they should help to ensure that any challenges to planning and infrastructure cases are brought more swiftly, and that wider delays to these types of development during the period when legal challenges can be brought are minimised.

Next Steps

22. The Government intends to invite the Civil Procedure Rules Committee to consider the necessary changes to the Civil Procedure Rules to give effect to the reforms to time limits and the procedure for applying for permission.

23. We will bring forward secondary legislation for the fee for an oral renewal in due course.

Scope for further reform

24. The Government continues to believe that there may be scope to further streamline the process of Judicial Review, particularly for crucial infrastructure and housing projects. We are working to develop any further measures for reform by summer 2013.

Annex: Analysis of responses to the engagement exercise

Introduction

1. This section sets out the detailed analysis of the responses to the proposals for reform set out in the Government's engagement exercise: Judicial Review: proposals for reform.

2. The engagement exercise closed on 24 January 2013, and we received 252 responses. Responses were received from professional lawyers, representative bodies, businesses, public authorities and interested individuals. A full list of respondents and a summary of responses to each question is set out in sections 5 and 6 below.

Consultation period

3. In addition to the questions we asked in the engagement exercise, many respondents raised some general issues and criticisms. A number of respondents were concerned about the speed with which the engagement exercise was produced, and the shortened six week period allowed for responses. They argued that because the consultation period ran over the Christmas holiday, it only allowed only four to five weeks for a response to be prepared and submitted. They said that Judicial Review was of great constitutional importance, and insufficient time had been allowed for proper consideration and meaningful response.

4. Some respondents from the voluntary sector also argued that the short consultation period was in breach of the Compact.[4]

5. The Government accepts that many respondents would have preferred a longer period in which to consider and respond to the proposals for reform. However, in July last year we signalled that we intended to take a more targeted approach to consultation, proportionate to the anticipated impacts.[5]

6. The exercise on Judicial Review was a short engagement exercise, which set out a small number of simple, straightforward procedural reforms to make the Judicial Review process operate more effectively. For this reason, we believe that the six week engagement period provided sufficient time to consider the proposals and provide a meaningful response.

Evidence and data

7. Many respondents to the engagement exercise also pointed to the limited data available on the progress of Judicial Review cases through the Administrative Court, and criticised the reliance on general, unparticularised, concerns to support the case for reform. In the absence of detailed evidence, they argued that the Government had not substantiated the case for reform, nor justified the specific reforms put forward.

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[4] See: http://www.compactvoice.org.uk/sites/default/files/the_compact.pdf

[5] See: https://www.gov.uk/government/publications/consultation-principles-guidance

8. Some respondents pointed to research undertaken by Professor Maurice Sunkin and Varda Bondy for the Public Law Project[6] which provided further evidence on the progress of cases. This research suggested that, for the types of case considered, the large majority of cases which are withdrawn after proceedings are issued are settled on terms favourable to the claimant. These respondents suggested that, when this evidence is taken into account, there is a closer balance between claimants or defendants being successful in Judicial Reviews than the engagement exercise might have suggested.

9. We believe that this research does not undermine the broad case for these specific reforms. In particular, Administrative Court data[7] support the view that too many claims are not arguable and therefore fail at the permission stage. While this indicates that the permission test is an effective filter of weak cases, this filtering process takes a considerable amount of time. For all Judicial Review cases lodged in 2011, it took around 80 days on average for a permission decision on an initial paper application to be made. It took around a further 110 days on average if the initial permission decision is subject to an oral renewal, potentially leading to delays and the incurring of unnecessary costs.

10. Taking all available evidence and data into account, we believe that there is a sufficiently strong rationale to support the implementation of the reforms set out in this Government response.

[6] See footnote 2 above.

[7] See foot note 1 above.

1. Time limits for bringing a claim

Introduction

11. The engagement exercise made two proposals relating to time limits. The first proposed shortening the time limit for bringing Judicial Review proceedings in two categories of proceeding: in planning cases and in procurement cases. The second proposal sought views on how to clarify the rules applying to the time limit where the grounds for bringing Judicial Reviews continued over a period of time.

Time limits in planning and procurement cases

12. The current rules in Judicial Review require proceedings to be issued promptly and in any event within three months of the grounds giving rise to the claim. The Government proposed shortening the time limits:

    - to six weeks in planning cases; and
    - to 30 days in procurement cases.

13. In both cases, the policy intention was to bring the time limits for bringing Judicial Review proceedings into line with the time limits applying to challenges in these cases.

The time limit

14. **Question 1: Do you agree that it is appropriate to shorten the time limit for procurement and planning cases to bring them into line with the time limits for an appeal against the same decision?**

15. There were 198 responses to the proposal in planning cases. 44 respondents (22%) agreed with the proposal, 133 disagreed (67%) and 21 (11%) responded neither agreeing nor disagreeing. There were 176 responses on the proposal to shorten the time limit in procurement cases. 31 agreed (18%), 128 disagreed (73%), and 17 (10%) neither agreed nor disagreed.

16. Support was stronger among respondents from businesses and public authorities for the planning proposals. 62% of business respondents and 40% of public authority respondents were in favour of the proposals on planning Judicial Reviews.

17. These groups argued that:

    - the difference between the time limits in Judicial Review proceedings and challenges to decisions of the Secretary of State created a period of greater uncertainty which was unwelcome. They pointed out that in planning cases, developments were effectively put on hold during the period of potential legal challenge.
    - the decision in the *Uniplex* case[8] had called into question the relevance of the requirement to bring proceedings "promptly", at least in cases with a European dimension which meant that cases would be likely to be issued towards the end of the three month period;

[8] *Uniplex (UK) Ltd v NHS Business Service Authority* [2010] 2 CMLR 47.

- at the very least, the *Uniplex* case had created a two-tier system with different time limits for cases with, and without, a European dimension, which was unhelpful; and
- most, if not all, third parties taking part in Judicial Review of planning decisions were involved in the application process. They would not therefore be prejudiced by a shorter time limit for bringing Judicial Review.

18. Members of the legal profession, those responding from representative bodies, and members of the public were strongly opposed to the proposals. The main points raised by those who were opposed to the proposal were that:
    - the rules required claims to be brought promptly: claimants could not rely on the three-month time limit if the claim could and should have been brought earlier;
    - time limits in Judicial Review proceedings were already tighter than in other types of litigation. Generally proceedings needed to be issued within six years of the grounds giving rise to proceedings (three years in the case of personal injury claims);
    - in practice, the shorter time limits would only apply to a relatively small number of Judicial Reviews each year. The timeframe for these types of developments was measured in years, and the overall impact on delay would be limited;
    - the comparison with challenges to the Secretary of State's decisions was misconceived. Challenges could only be brought by aggrieved persons. Those bringing Judicial Review proceedings may not have been formal parties to earlier proceedings, and three months was therefore justified to allow them to take legal advice;
    - the three-month period had been carefully calculated to strike the right balance between the need for certainty in public affairs and providing potential claimants with sufficient time to prepare their case; and
    - there was a concern that reducing time limits may reduce access to justice for people and groups in disadvantaged or vulnerable situations, for example, disabled people, including those with mental health disabilities. There was also a concern that changes to time limits in planning cases may have a particular impact on Gypsy and Traveller communities.

19. They also made the following points:
    - it was not clear precisely what was meant by "planning" and "procurement" cases, and the Government would need to be clear to which proceedings the time limits would apply;
    - the Government was consulting separately on proposals to remove the requirement for Planning Authorities to give detailed reasons for the grant of planning consent; and
    - it was also not clear whether it was intended for the requirement to issue claims promptly would remain.

The Pre-Action Protocol

20. **Question 2: Does this provide sufficient time for the parties to fulfil the requirements of the Pre-Action Protocol? If not, how should these arrangements be adapted to cater for these types of case?**

21. There were 166 responses to this question. The majority (115 respondents) argued that the shortened time limit did not allow sufficient time, particularly for procurement cases.

22. The main points raised in response to this question were that it was likely to lead to parties issuing litigation on a protective or precautionary basis. It was therefore likely to be counter-productive, leading to the issue of more claims for Judicial Review where the avenues for alternatives, such as mediation or a settlement, had not been fully explored.

23. However, those in favour of shorter time limits argued that the scope for mediation or negotiation in these types of case was limited. In many of these cases, the Protocol was used to hone the points in issue between the parties and in some was used as a tactical means of delay.

Extensions of time

24. Question 3: Do you agree that the Courts' powers to allow an extension of time to bring a claim would be sufficient to ensure that access to justice was protected?

25. There were 175 responses to this question. 44 (25%) respondents agreed that the Court's powers were sufficient to ensure access to justice. However, 106 (61%) argued that they were not sufficient, and 25 (14%) responded neither agreeing nor disagreeing.

26. Respondents on both sides argued that it was a pre-requisite that the courts should have powers to extend the time limit in appropriate cases. Those who disagreed with the proposal to reduce time limits argued that the courts were only prepared to exercise these powers in rare circumstances. There was a risk that the shorter time limits might lead to satellite litigation to determine the circumstances in which late claims might be allowed.

27. Those in favour of shorter time limits argued that the need for certainty in public affairs meant that such powers should only be used sparingly.

Other types of Judicial Review

28. Question 4: Are there any other types of case in which a shorter time limit might be appropriate? If so please give details.

29. There were 159 responses to this question. Most did not identify other categories of case in which a shorter time limit would be appropriate. Some respondents responded that, if a shorter time limit was being considered for wider categories of case, it would not be appropriate to apply it to specified types of proceedings. The main category to which a shorter limit should not be applied was immigration and asylum cases.

Time limits: the Government response

30. The Government has carefully considered all the responses to the engagement exercise.

31. Some of the responses confirmed the actual and perceived impact that Judicial Review has on these types of case. We understand that the contractual arrangements for large scale developments now routinely contain clauses that defer completion of the contract until the window within which a Judicial Review can be brought has expired. This demonstrates that the potential impact that the threat of Judicial Review has on all developments, not just those which are the subject of a legal challenge.

32. We acknowledge the concerns that the proposal, and in particular the proposal to shorten the time limit in planning cases, has the potential to affect those with disabilities, those with mental health issues and learning difficulties, as well as Gypsy and Traveller communities. However, we believe that this is justified because the decisions in planning cases follow planning processes in which interested third parties can participate. Similarly, contract awards will have followed a formal tendering process. In exceptional cases, and where the courts determine it is in the interests of justice, an extension to the time limit may be granted. For these reasons, we do not believe that third parties will be prejudiced by the shorter time limits for bringing proceedings.

33. On balance, the Government has concluded that shorter time limits in these cases are justified by the need to reduce delays and to provide greater certainty in public decision-making on planning and procurement matters.

Definition

34. We intend the six week time limit for bringing a Judicial Review to apply to all Judicial Review proceedings relating to decision whether or not to grant planning permission made under the various planning acts.[9] This is consistent with the rationale for aligning the time limit for bringing a Judicial Review with the limits applying to statutory challenges to the grant of planning permission. It is not intended to capture planning policy decisions, such as the development of national and local policy including development plans, under the six week time limit.

35. It will therefore apply to Judicial Reviews challenging any decision relating to the grant or refusal of planning permission and will include any procedural decision taken by the Secretary of State or a local planning authority in reaching a decision under the Planning Acts. It would, for example, apply to:

    - decisions of the Secretary of State on whether or not to “call in” an application for planning permission; and
    - challenges to decisions taken by either the Secretary of State or a Local Planning Authority relating to the requirements of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (SI 2011/1824).

[9] As defined in section 336 of the Town and Country Planning Act 1990. These are the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990 and the Planning (Consequential Provisions) Act 1990 as amended.

36. Challenges to development consent orders for National Infrastructure Projects (defined in the Planning Act 2008 and as amended by the Localism Act 2011) are already subject to a six week time limit.

37. The new time limits are not intended to apply to challenges to policy statements made in relation to planning matters: for example, National Policy Statements made by the Secretary of State or the development of Local Plans. Judicial Reviews of these decisions will continue to be subject to the requirement that they should be brought promptly, and in any event within three months.

38. In procurement cases, the new 30 day time limit will apply to Judicial Reviews of all contracts subject to the Public Contracts Regulations 2006, consistent with the rationale for reform.

Conclusion

39. We have decided to reduce the current time limits so that:

- Judicial Reviews relating to a decision made by the Secretary of State or local planning authority under the planning acts[10] should be brought within six weeks of the grounds giving rise to proceedings; and
- Judicial Reviews of procurement cases, as defined in the Public Contracts Regulations 2006, should be brought with 30 days of the grounds giving rise to the claim.

40. We accept that, given the shorter time limits, the requirement for parties to bring proceedings promptly is unnecessary. We will invite the Civil Procedure Rules Committee to amend the Civil Procedure Rules to make these changes in respect of planning and procurement cases.

41. The Government also agrees that the shorter time limits mean that there is unlikely to be sufficient time to fulfil the Pre-Action Protocol. We will also invite the Master of the Rolls to revise the Pre-Action Protocol to disapply it in respect of these cases.

Time limits where there are continuing grounds

42. The Government proposed a clarification to the rules relating to the time limit in cases where the grounds giving rise to a Judicial Review claim were ongoing. The policy intention was to make sure that the current rules were applied sufficiently robustly and consistently, ensuring that challenges to decisions could not be brought long after the decision was taken, and providing certainty about the validity of those decisions.

43. Question 5: We would welcome views on the current wording of Part 54.5 of the Civil Procedure Rules and suggestions to make it clear that any challenge to a continuing breach or multiple decisions should be brought within three months of the first instance of the grounds and not from the end or the latest incidence of the grounds.

44. There were 176 responses to Question 5.

[10] See footnote 9 above.

45. Some respondents misunderstood the Government's proposal, believing that we intended to introduce a change to the law. That was not the intention: the Government's proposal sought only to clarify the existing law, so that it was applied strictly and consistently.

46. Many respondents argued that a clarification to the rules was unnecessary. There was little evidence that the courts had any difficulty in applying the rule, which was sufficiently robust to allow the courts to prevent any abuse of the process, while allowing legitimate claims to proceed.

47. Senior members of the Judiciary argued that this was a complex area involving substantive law as well as procedural considerations. It was, they suggested, an area ill-suited to development through changes to procedural rules.

48. Respondents also argued that any attempt to clarify the rules may be problematic in two types of case.

49. The first was cases in which there was a delay in the public body acting, or taking a decision. Many respondents argued that this could lead to the perverse outcome that public authorities could benefit from their continued failure if a decision could not be challenged once the three month limit had passed. They pointed out that in some cases it was not clear at which point a failure to act, or to take a decision, became unlawful and therefore at what point the time limit started to run.

50. The second was in cases where the grounds alleged discrimination, or a breach of human rights. Respondents argued that discrimination law requires cases to be brought within three months of the latest incidence of alleged discrimination; and under Human Rights law cases can be brought at any time while the alleged breach is ongoing. They argued that the inconsistency could lead to confusion about the point at which the time limit started to run, and could lead to cases being issued prematurely.

51. For these reasons, respondents argued that any proposal to clarify the wording risked causing greater confusion.

52. Question 6: Are there any risks in taking forward the proposal? For example, might it encourage claims to be brought earlier where they might otherwise be resolved without reference to the Court?

53. 178 respondents replied to this question. Most identified the risk of an increase in claims being issued prematurely so that claimants would be able to protect their position.

54. There was also a concern that it could lead to an increase in satellite litigation about whether a claim was late and whether it should be allowed to proceed. This could lead to greater uncertainty about the decisions and actions of public authorities, contrary to the purpose of the reforms.

Time limits in cases where the grounds are ongoing: the Government response

55. The Government received very strong representations that the current rules operated well in a complex area of law. It was argued that this was an area ill-suited to reform through rule changes, and that any attempt to clarify the wording of the rule carried a

significant risk that claimants might be encouraged to issue claims prematurely, on a protective or precautionary basis (which may otherwise have been resolved without needing to involve the court). This would defeat the purpose of the reform.

56. We also accept that there is a significant risk that it could lead to further satellite litigation, particularly in claims alleging delay, or those alleging discrimination or breaches of the Human Right Act, about whether the time limit had expired, and whether an extension should be granted.

57. The Government has concluded that the potential risks outweigh any benefit that may be gained in seeking clarification, and we have decided not to take forward this proposal.

2. Applying for permission

Introduction

58. The Government sought views on two proposals to remove the right to an "oral renewal": that is a hearing to reconsider an application to bring Judicial Review for which permission has been refused on the papers. The first proposal was for the removal of the right to an oral renewal where there has already been a prior judicial hearing on substantially the same matter. The second proposal was for the removal of the right to an oral renewal where the decision on the papers was that the application was totally without merit. The engagement exercise also sought views on whether the two proposals could be combined.

Proposal 1: Prior judicial hearing on substantially the same matter

59. The policy intention behind this proposal was to prevent claimants using the Judicial Review process to try to reargue matters that had already been litigated before an independent court or tribunal.

60. The engagement exercise did not seek respondents' views on the proposal: questions focussed on the practical points for implementation. Nevertheless, the large majority of respondents made clear their disagreement with the principle of the proposal. The main points raised included:

- in effect, the proposal sought to extend the approach suggested by the Supreme Court in the decision in *Cart*[11] to a wider category of cases. However, the decision in *Cart* was made in reference to a particular set of facts and circumstances which did not readily lend themselves to wider application;
- oral argument was central to our system of adversarial justice which could make a difference to the result;
- the success rate for oral hearings was higher than on the initial paper applications. Based on the statistics from the Administrative Court, around 22% of cases lodged in 2011 where a decision on permission was taken (i.e. excluding withdrawn cases) were successful at an oral renewal compared to around 14% at the initial permission stage;
- some also pointed to research by the Public Law Project which demonstrated wide variation in the refusal rates between different judges;
- it was felt that removing the right to an oral renewal would have an adverse impact on unrepresented claimants who were often better able to express their arguments at a hearing than on written submissions; and
- the principle was also questioned. The fact that there had been a hearing before a court, tribunal or 'body exercising the judicial power of the State' would not be an automatic guarantee that the matter had been properly considered (for example, a self-represented litigant before a lay magistrate).

[11] *R (Cart) v The Upper Tribunal* [2011] UKSC 28.

61. There were also a number of practical objections to the proposal:

    - it was not clear what was meant by a "prior judicial hearing", or "substantially the same matter" and it would be difficult to define these concepts in a fair and objective way. Many respondents argued that these difficulties were likely to lead to substantial satellite litigation, creating further delays and creating greater uncertainty; and
    - many feared that it would lead to an increase in the workload of the Court of Appeal.

62. The engagement exercise asked three questions seeking views on the practicability of the proposal.

63. Question 7: Do you agree with the proposal to use the existing definition of a court as the basis for determining whether there has been a prior judicial hearing"? Are there any other factors that the definition of a "prior judicial hearing" should take into account?

64. There were 179 responses to this question. 39 respondents (22%) agreed with the proposed definition, 102 disagreed (57%) and 38 (21%) neither agreed nor disagreed.

65. Some respondents, whether they agreed or disagreed with the proposal, acknowledged that the purpose of the reform was valid: claimants should not be allowed to continue to argue bad points. Those who disagreed with the proposal tended to argue that the courts already had sufficient powers to deal with abuses of process. Some argued that the proposed definition was too wide, and offered examples of the types of proceeding that should not be included in the definition, for example, proceedings before the First-tier tribunal, proceedings in the magistrates' courts and those before the Arbitration Court.

66. Question 8: Do you agree that the question of whether the issue raised in the Judicial Review is substantially the same matter as in a prior judicial hearing should be determined by the Judge considering the application for permission, taking into account all the circumstances of the case?

67. There were 152 responses to this question. 62 agreed (41%), 74 disagreed (49%) and 16 (11%) neither agreed nor disagreed.

68. Most respondents who agreed argued that, if this proposal were implemented, the decision could only properly be taken by the Judge.

69. Those who disagreed tended to do so because they disagreed with the proposal in principle:

    - they raised concerns about the difficulty in defining a prior judicial hearing. They also pointed to the risk of satellite litigation;
    - they stressed the importance of oral arguments which could make a difference to the result of the application in the adversarial process; and
    - they pointed to the research undertaken by Bondy and Sunkin,[12] which suggested that the Government was over-estimating the failure rate for applications for

[12] See footnote 2 above.

permission. This also suggested that the success rate at an oral hearing was almost twice the rate for decisions made on the papers.

70. Question 9: Do you agree it should be for the defendant to make the case that there is no right to an oral renewal in the Acknowledgement of Service? Can you see any difficulties with this approach?

71. There were 155 responses to this question. 53 agreed (34%), 86 disagreed (55%) and 16 (10%) neither agreed nor disagreed.

72. Most respondents recognised that only the defendant would be in a position to argue that the claim had been subject to a prior judicial hearing. Many of those who disagreed did so because they disagreed with the proposal in principle. However, some argued that the matter should not be decided purely on the basis of the arguments set out in the claim and defence, but that the claimant should have a right to reply. Some respondents argued that this would add to the length and cost of proceedings, which would defeat the purpose of the permission stage.

Proposal 1: the Government response

73. The Government continues to believe that the principle underpinning this proposal is sound. In particular, we do not believe that claimants should have the opportunity to re-argue points which have already been fully litigated. Nevertheless, we accept that there are real practical difficulties in implementing this proposal in a workable way. We acknowledge the difficulties in defining clearly what is meant by a “prior judicial hearing” and “substantially the same matter”, and we accept that there are real risks that these difficulties could lead to confusion and further litigation which would undermine the purpose of these reforms. We also believe that the question of whether a case has been litigated already will be relevant to the consideration on the grant or refusal of permission, and in particular whether the case is totally without merit. This is considered from paragraph 75 below.

74. For these reasons, the Government has decided not to pursue this proposal.

Proposal 2: Applications which are totally without merit

75. The engagement exercise sought views on a second proposal which would remove the right to an oral renewal where the claim was determined on the papers to be totally without merit. The policy intention behind this proposal was to ensure that weak, frivolous and unmeritorious cases could be filtered out at as early a stage as possible, reducing delays and costs.

76. Question 10: Do you agree that were an application for permission to bring Judicial Review has been assessed as “totally without merit” there should be no right to ask for an oral renewal?

77. There were 212 responses to this question. 44 (21%) agreed with the proposal, 157 (74%) disagreed and 11 (5%) neither agreed nor disagreed. Support for the proposals was much lower among respondents who were members of the legal profession.

78. Those who did not agree raised many of the same points that were argued under the first proposal on permission and in particular the importance of oral advocacy:

    - a number of respondents pointed to cases in their experience which had been assessed as totally without merit on the papers but which had gone on to secure permission, and were ultimately successful in the claim;
    - they also pointed the research by Bondy and Sunkin for the Public Law Project[13] which highlighted the wide variation in the rates of refusal of permission among judges;
    - this research also indicated that half of all cases described as hopeless were from self-represented litigants. Some argued that this group would be adversely affected by the proposals;
    - some respondents were concerned that "totally without merit" was not defined, but left to judicial discretion, and therefore open to wide interpretation. There was also a concern that decisions on permission could be made by inexperienced deputies rather than full time judges; and
    - some suggested that the courts already had powers to deal with hopeless, or spurious cases, and that an assessment that a case was totally without merit should not affect the right to an oral renewal, but might instead be a relevant factor in deciding costs.

79. Some respondents argued that the proposal would raise equality issues. They pointed out that immigration and asylum cases represented the majority of Judicial Review claims, and that the proposal would therefore necessarily have a greater impact on those from Black, Asian and Minority Ethnic groups. Some of these cases affected children seeking a review of a decision on an age assessment. Others suggested that other vulnerable groups, and specifically children, might potentially be affected. They pointed out that many children bringing claims against local authorities for failing to provide adequate education provision were disabled.

80. The majority of respondents from business and public authorities supported this proposal. They argued that an oral renewal could lead to a significant delay which, in cases which involved planning and infrastructure cases, could have a significant impact on the financial viability of the project. Other points argued in favour were that:

    - the totally without merit test was one which was already applied and was well understood by Judges; and
    - it could lead to the avoidance of unnecessary expenditure of public funds.

81. Some respondents also expressed the view that the assessment should also be relevant in deciding who should bear the costs of proceedings.

82. Question 11: It is proposed in principle that this reform could be applied to all Judicial Review proceedings. Are there specific types of Judicial Review case for which this approach would not be appropriate?

83. There were 135 responses to this question. Many of the respondents were simply opposed to introducing the reform, and therefore argued that it should not be applied

[13] See footnote 2 above.

in any cases. Some who disagreed with the reform argued that if it were introduced, it should not be applied to certain categories of case, including human rights cases, cases involving asylum, immigration or nationality, environmental or planning cases, and those brought by litigants-in-person.

84. Question 12: Are there any circumstances in which it might be appropriate to allow a claimant an oral renewal hearing, even though the case has been assessed as totally without merit?

85. There were 150 responses. Those in favour of the proposal argued that there were no circumstances in which a case assessed as totally without merit should be allowed an oral renewal.

86. Most respondents who were opposed to the proposal argued that an oral renewal should be available in all cases. However, those who offered specific circumstances where the right to an oral renewal should be retained included:

- cases where significant evidence came to light after the decision on permission had been made, or where there had been a failure in meeting the duty of candour;
- cases involving vulnerable claimants, disabled people, those with mental illnesses, children and litigants-in-person who may not be able to represent the case sufficiently strongly first time round and may be disadvantaged by the removal of the oral renewal; and
- cases where the claimant has not had an opportunity to reply to issues raised in the Acknowledgement of Service.

87. Some respondents argued that, if the proposal were introduced, the court should retain a general discretion to allow an oral renewal.

Proposal 2: the Government response

88. This reform seeks to target weak, frivolous and unmeritorious Judicial Reviews. The Government accepts that removing the right to an oral renewal may have a greater impact on foreign nationals given the nature and volume of immigration claims and we also accept that it has the potential to affect other groups. However, we believe this is justified because the reform only applies to cases that have been independently assessed by the court as totally without merit and would therefore have an impact only on the weakest cases. While we accept that there may be a risk of variability in decision-making between Judges, aggrieved parties would be entitled to appeal to the Court of Appeal against the refusal of permission, although only on the papers.

89. Furthermore, unlike the proposal under option 1, the totally without merit test is one which is already applied[14] and is well understood by Judges. We therefore believe that the likelihood and impact of the main risks identified are likely to be lower.

90. We do not believe that introducing this reform would breach Article 6 of the European Convention of Human Rights (Right to a fair trial). For the reasons set out in the engagement exercise, in the circumstances in which this reform would apply, the

[14] See Rule 52.3(4A) of the Civil Procedure Rules.

claimant would have failed to make out a claim to be determined and so would not engage Article 6 substantively.

91. For the reasons set out above, we believe that this proposal represents a workable solution that offers an appropriate balance between:

- reducing burdens on public services by targeting delays caused by the persistent pursuance of weak or hopeless cases; and
- maintaining access to justice for those with an arguable case or a case that displays any merit.

92. We therefore intend to invite the Civil Procedure Rules Committee to make the rules necessary to implement this reform.

Combining the two proposals

93. Question 13: Do you agree that the two proposals could be implemented together? If not, which option do you believe would be more effective in filtering out weak or frivolous cases early?

94. There were 151 responses to this question. 27 (18%) agreed that they could be implemented together, 104 (69%) disagreed and 20 (13%) neither agreed nor disagreed.

95. Those who agreed generally made the point that the proposals targeted two distinct categories of case, and both measures could potentially be implemented.

96. Most of those who disagreed were opposed in principle to the proposals, and argued that neither should be introduced. However, a small number of respondents indicated a preference for one or other of the options, with slightly more favouring the second proposal over the first. In their response, the senior Judiciary felt that the certification of “totally without merit” would be applied where appropriate to cases where there had been a relevant prior judicial hearing, but that this would avoid some of the difficulties that might arise under the prior judicial hearing proposal.

97. We set out in paragraphs 73 and 74 above that the Government has decided not to introduce the proposal under option 1 and the question of combining them does not therefore arise.

3. Fees

Introduction

98. The Government proposed the introduction of a fee for an oral renewal of an application for permission. The policy intention was to ensure that the fees charged in Judicial Review proceedings more closely reflected their full costs, and to ensure that claimants took into account the relative costs and benefits in deciding whether to pursue an oral renewal of an application for permission. Fee remissions would be available to claimants, so that those who met the criteria would be eligible to have their fees waived.

99. This proposal complements separate proposals for increasing fees in the High Court and Court of Appeal (including fees for Judicial Review) on which we consulted earlier.[15]

100. Question 14: Do you agree with the proposal to introduce a fee for an oral renewal hearing?

101. There were 202 responses to this question. 59 respondents agreed with the proposal (29%), 112 disagreed (55%) and 31 (15%) neither agreed nor disagreed.

102. Those in favour of charging a fee for an oral renewal argued that the provision of court time represented a cost to the taxpayer, and charging a fee was therefore justified, provided there were adequate safeguards in place for those on low incomes. They argued that it was right that the applicant should pause and reflect on the reasons for the refusal of permission before deciding whether to seek an oral renewal.

103. Those who disagreed were primarily concerned that the fee represented a barrier to justice to those on low incomes. There was a general concern that the fee might deter litigants from bringing meritorious claims. In particular, there was a concern about the impact it would have on self-represented litigants and other vulnerable claimants, for example, disabled people and children. They argued that it could further increase the disparity in resources between claimants and the public authorities whose actions and decisions they were seeking to challenge.

104. Some respondents pointed out that proceedings brought under the Aarhus Convention had found that environmental litigation in this country was too expensive. The United Kingdom was currently subject to infraction proceedings from the European Union, and while this was ongoing there should be no changes to fees which could add to the costs of litigation.

105. Other arguments raised in opposition included that:

- some Judicial Reviews were brought with legal aid. The fee would have little impact on these cases and the burden would fall on another part of the public sector;
- it was premature to introduce a fee while the response to the consultation on fees in the High Court and Court of Appeal was outstanding; and

[15] See footnote 3 above.

- some argued that allowing costs to be awarded against the claimant might be more effective in deterring oral renewals in weak or frivolous cases.

106. Question 15: Do you agree that the fee should be set at the same level as the fee payable for a full hearing, consistent with the approach proposed for the Court of Appeal where a party seeks leave to appeal?

107. There were 169 responses to this question. 47 (28%) agreed, 109 (64%) disagreed and 13 (8%) neither agreed nor disagreed.

108. Those who supported the proposed level of fee generally agreed that it made sense to apply the same procedure as proposed for the Court of Appeal (under the separate consultation exercise).

109. Some respondents disagreed with the principle of charging on the basis of cost recovery. Others argued that an oral renewal hearing was much shorter than a full hearing, and it was not therefore reasonable to charge the same fee.

The Government response

110. The Government does not agree that the introduction of the fee would restrict access to justice. The fee would only have an impact on those who were refused permission at the oral renewal. Under the Government's proposal, those granted permission would not be required to pay the fee for a full hearing. The availability of fee remissions should ensure that those who are unable to afford the fee will be entitled to a fee waiver and will not be denied the right to an oral renewal hearing.

111. Furthermore, the proposed fee is set at a level below the estimated cost of the hearing. We believe that it is therefore proportionate, and is unlikely to influence the European Union infraction proceedings in relation to cost of Judicial Review in environmental matters.

112. Neither does the Government accept that the introduction of the fee would be premature in advance of final decisions on the consultation on fees in the High Court and Court of Appeal. Final decisions on the proposals in that consultation would affect only the level of the fee rather than the principle. The Government intends to respond to the consultation on High Court and Court of Appeal fees shortly and will consider the appropriate timing and sequencing of the implementation of reform.

113. For the reasons set out above, the Government has decided to introduce a fee for an oral renewal hearing, as proposed in the engagement exercise. We will bring forward secondary legislation to do so in due course.

4. Impact Assessment and Equality Impacts

Introduction

114. We have published, alongside this Government response, a revised Impact Assessment to take account of the changes to the reform the Government has decided to take forward.

Equality Impacts

115. The engagement exercise set out the Government's obligations under the Equality Act 2010, and specifically the requirement to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between those with and those without protected characteristics. In the engagement exercise, we acknowledged that there is little information collected centrally about court users generally, and specifically about those who bring Judicial Review proceedings.

116. Question 16: From your experience, are there any particular groups of individuals with protected characteristics who may be particularly affected, either positively or negatively, by the proposals in this paper?

117. There were 171 responses to this question. The concerns raised in respect of specific proposals are dealt with in the main chapters of this Government response.

118. Some respondents also raised a more general concern that there was insufficient evidence about the impact of the proposed reforms generally, and specifically in relation to protected characteristics. They argued that, in these circumstances, they could not see how the Government could have fulfilled its equality duties.

119. We acknowledged in the engagement exercise that we had only limited information available on those who bring Judicial Review proceedings, including about their protected characteristics. We sought, through the engagement exercise, to gather further views and evidence on the potential equality impacts, and we have taken these into account in deciding whether to proceed with the reforms.

120. On balance, as set out in our responses to individual proposals above, we have concluded the benefits of reform are sufficient to justify the potential impacts and for this reason, we believe that the duty under the Equality Act 2010 has been fulfilled.

5. List of respondents

1 Child Maintenance Group
2 Northumberland Learning Disability Partnership Board
3 Northumbria Healthcare NHS Foundation Trust, Adult Services, Community Business Unit
4 National Deaf Children's Society
5 Compulsory Purchase Association
6 Manchester Airports Group
7 Chester-le-Street and District CVS and Volunteer Bureau
8 Thirty Nine, Essex Street Chambers
9 Hodge Jones and Allen Solicitors LLP
10 Carers for Justice
11 Jack Williams
12 Nucleus Legal Advice
13 Guy Adams
14 Ian Wolvers
15 Rob Goldspink
16 Mital Raithatha
17 Dickinson Dees LLP
18 National Association for Voluntary and Community Action (NAVCA)
19 Saba Ashraf
20 Christian Khan Solicitors
21 London Forum of Amenity and Civic Societies
22 Sir Henry Brooke
23 Irwin Mitchell LLP
24 EduLaw Chambers
25 Liverpool Law Society
26 Lady Hart of Chilton
27 Latitude Law Solicitors
28 David Foster
29 David Pollock
30 Adrian
31 Anonymous
32 Lester Morrill inc. Davies Gore Lomax
33 South West London Law Centres
34 Sam Hussaini
35 Delta Planning
36 Richard Spencer
37 Fulbahar Ruf
38 Lorraine Barter
39 James Carrington
40 Ali Bevan

41 Nicholas Jewitt
42 Keystone Law
43 Council of British Druid Orders.
44 South & City College
45 Terry Dobney
46 developing partners cic
47 Fisher Meredith LLP
48 University of Cambridge. Open University
49 Charles George QC
50 Robin Purchas
51 David Graham
52 Ravi Khosla
53 Kerry Cahalane
54 Sue Hetherington
55 Ian Tyes
56 Paul Thackray
57 Dr Cook
58 Rosemary Cantwell
59 John Hemming MP
60 Joseph Markus
61 Ben Appleby
62 John Palmer
63 Jim Tindal
64 Bell Yard Chambers
65 Jack Davies
66 Peter Turtill
67 7 Solicitors LLP
68 Joh Morison
69 Sarah Pengelly
70 Manley Turnbull Limited Solicitors
71 Suffolk Legal
72 Leonie Hirst
73 Mark Higgs
74 John Eayrs
75 Office of the Independent Adjudicator for Higher Education
76 Vanessa
77 McGanns Law LTD
78 Mark Cowling
79 Lynne Matthews
80 Martin Walsh
81 Carers Northumberland
82 Jide Odusina
83 Nick Hubbard

84 Akib
85 Fiona Bulmer
86 Independent Parental Special Education Advice
87 Rene Cassin
88 James Taylor
89 Caroline Robertson
90 Action against Medical Accidents
91 Matrix Chambers
92 Peter Wadsley
93 Sarah Nason
94 Philip Petchey
95 Swain & Co Solicitors
96 Victoria Pogge von Strandmann
97 Legal Services Office of Birmingham City Council
98 Stephen Broach
99 Kate Whittaker
100 Diane Astin
101 Bailey Nicholson Grayson
102 Richard Mctaggart
103 Andy Mercer
104 Terence Ewing
105 Jeff Matthews
106 Alec Samuels
107 SOS SEN
108 The National Organisation of Residents Associations
109 Eifion Edwards
110 David Mead
111 Civil Court Users Association
112 Colin Reid
113 Shlomo Dowen
114 The Welsh Language Commissioner
115 Thompson's Solicitors
116 Medical Justice
117 Ken Mafham Associates, Town Planning Consultants
118 Administrative Justice and Tribunals Council
119 False Allegations Support Organisation
120 Council of HM District Judges (Mags Courts)
121 David & Susan Radlett
122 The Corner House
123 National Council for Voluntary Organisations
124 Justin Leslie
125 The RCJ Advice Bureau
126 Young Legal Aid Lawyers

127 Community Law Partnership
128 The Association of Prison Lawyers
129 Advice Network
130 Charity Commission
131 Friends, Families and Travellers
132 Stephensons Solicitors
133 The Advice Services Alliance
134 Public Law Solicitors
135 John Lewis Partnership
136 John Ford Solicitors
137 Mitchell Woolf
138 Joan P Lardy
139 The Bingham Centre
140 Greater Manchester Police
141 Public Law Project
142 Levenes Solicitors
143 Northumbria University's Public Law Research Group
144 SHELTER
145 Haldane Society of Socialist Lawyers
146 Asda
147 Transport for London
148 Avon and Bristol Law Centre
149 Deighton Pierce Glynn Solicitors
150 Capsticks
151 Bindmans LLP
152 Garden Court Chambers' Immigration Team
153 Garden Court Chambers' Civil Team
154 Garden Court Chambers' Housing Team
155 Garden Court North Chambers
156 Coalition for Access to Justice for the Environment
157 The Odysseus Trust
158 Sense
159 The City of London Law Society
160 The Howard League for Penal Reform
161 Police Federation Of England and Wales
162 Irish Traveller Movement in Britain
163 UK Environmental Law Association
164 Doughty Street Chambers Public Law Team
165 Bar Council
166 Constitutional and Administrative Law Bar Association
167 Devon & Somerset Fire & Rescue Authority
168 Herbert Smith Freehills LLP
169 Equality and Human Rights Commission

170 National Farmers' Union
171 Rights of Women
172 National AIDS Trust
173 Royal National Institute of Blind People
174 Gatwick Airport Ltd
175 Planning, Environment & Local Government Bar Association
176 Law Society of England and Wales
177 British Property Federation
178 Fisher Meredith LLP
179 Coram Children Legal Centre
180 Turley Associates
181 Leigh Day & Co Solicitors
182 Dan Rosenberg
183 Women's Resource Centre
184 Just For Kids Law
185 Kingsley Napley LLP
186 Taylor Wimpey UK Ltd
187 Duncan Lewis solicitors
188 Home Builders Federation Ltd
189 Kids Company
190 Big Brother Watch
191 Eaves
192 North West Housing Law Practitioners Association
193 Child Poverty Action Group
194 British Institute of Human Rights
195 Bail for Immigration Detainees
196 British Irish Rights Watch
197 Mencap
198 Environmental Services Association
199 Reprieve
200 Children's Commissioner
201 Bevan Brittan
202 Liberty
203 Sheffield Law Centre
204 Mind
205 Her Majesty's Revenue and Customs
206 Legal Aid Practitioners Group
207 London Borough of Hammersmith and Fulham
208 Education Law Practitioners' Group
209 Allen & Overy LLP
210 Law Centres Network
211 London Solicitors Litigation Association
212 Prisoners Advice Service

213 Baker & McKenzie
214 Tooks Barristers Chambers
215 Education Law Association
216 Arden Chambers
217 T V Edwards LLP Solicitors
218 Richard Buxton Environmental and Public Law
219 Scope
220 Scott-Moncrieff & Associates
221 Lincoln Crawford OBE
222 Wragge & Co
223 JUSTICE
224 INQUEST
225 British Council of Shopping Centres
226 Immigration Law Practitioners' Association
227 Equality and Diversity Forum
228 Ben Hoare Bell Solicitors
229 Crown Prosecution Service
230 University of Cambridge Centre for Public Law
231 Justices' Clerks Society
232 Parliamentary and Health Service Ombudsman
233 The Legal Ombudsman
234 Tesco
235 Civil Justice Council
236 Martin Foster
237 Housing Law Practitioners Association
238 Kingsley Miller
239 Graham Martin Phillips
240 Moss Beachley Mullem & Coleman Solicitors
241 The Traveller Law Reform Project
242 Greg O Ceallaigh
243 Gilda Kiai
244 Sam Parham
245 Resolution
246 Joanne Cecil
247 James McGregor
248 N.C.G. Nicolson - Burrey
249 Miss June Compton
250 1 Pump Court Chambers (Barristers' Chambers)
251 Maxwell Gillott
252 The Lord Chief Justice, the Master of the Rolls, the President of the Queen's Bench Division, Lord Justice Maurice Kay (Vice President of the Court of Appeal (Civil Division)) and Lord Justice Richards (Deputy Head of Civil Justice)

6. Summary of responses

1. Time Limits

	Number	Percentage
Question 1: Do you agree that it is appropriate to shorten the time limit for procurement and planning cases to bring them into line with the time limits for an appeal against the same decision?		
Planning		
Agree	44	22%
Disagree	133	67%
Neither agree nor disagree	21	11%
Total responses	198	
Procurement		
Agree	31	18%
Disagree	128	73%
Neither agree nor disagree	17	10%
Total responses	176	
Question 2: Does this provide sufficient time for the parties to fulfil the requirements of the Pre-Action Protocol? If not, how should these arrangements be adapted to cater for these types of case?		
Agree	25	15%
Disagree	115	69%
Neither agree nor disagree	26	16%
Total responses	166	
Question 3: Do you agree that the Courts' powers to allow an extension of time to bring a claim would be sufficient to ensure that access to justice was protected?		
Agree	44	25%
Disagree	106	61%
Neither agree nor disagree	25	14%
Total responses	175	
Question 4: Are there any other types of case in which a shorter time limit might be appropriate? If so please give details.		
Total responses	159	
Question 5: We would welcome views on the current wording of Part 54.5 of the Civil Procedure Rules and suggestions to make it clear that any challenge to a continuing breach or multiple decisions should be brought within three months of the first instance of the grounds and not from the end or the latest incidence of the grounds.		
Total responses	176	
Question 6: Are there any risks in taking forward the proposal? For example, might it encourage claims to be brought earlier where they might otherwise be resolved without reference to the Court?		
Total responses	178	

2. Applying for Permission

	Number	Percentage
Question 7: Do you agree with the proposal to use the existing definition of a court as the basis for determining whether there has been a prior judicial hearing"? Are there any other factors that the definition of a "prior judicial hearing" should take into account?		
Agree	39	22%
Disagree	102	57%
Neither agree nor disagree	38	21%
Total responses	179	
Question 8: Do you agree that the question of whether the issue raised in the Judicial Review is substantially the same matter as in a prior judicial hearing should be determined by the Judge considering the application for permission, taking into account all the circumstances of the case?		
Agree	62	41%
Disagree	74	49%
Neither agree nor disagree	16	11%
Total responses	152	
Question 9: Do you agree it should be for the defendant to make the case that there is no right to an oral renewal in the Acknowledgement of Service? Can you see any difficulties with this approach?		
Agree	53	34%
Disagree	86	55%
Neither agree nor disagree	16	10%
Total responses	155	
Question 10: Do you agree that were an application for permission to bring Judicial Review has been assessed as "totally without merit" there should be no right to ask for an oral renewal?		
Agree	44	21%
Disagree	157	74%
Neither agree nor disagree	11	5%
Total responses	212	
Question 11: It is proposed in principle that this reform could be applied to all Judicial Review proceedings. Are there specific types of Judicial Review case for which this approach would not be appropriate?		
Total responses	135	
Question 12: Are there any circumstances in which it might be appropriate to allow a claimant an oral renewal hearing, even though the case has been assessed as totally without merit?		
Total responses	150	
Question 13: Do you agree that the two proposals could be implemented together? If not, which option do you believe would be more effective in filtering out weak or frivolous cases early?		
Agree	27	18%
Disagree	104	69%
Neither agree nor disagree	20	13%
Total responses	151	

3. Fees

	Number	Percentage
Question 14: Do you agree with the proposal to introduce a fee for an oral renewal hearing?		
Agree	59	29%
Disagree	112	55%
Neither agree nor disagree	31	15%
Total responses	202	
Question 15: Do you agree that the fee should be set at the same level as the fee payable for a full hearing, consistent with the approach proposed for the Court of Appeal where a party seeks leave to appeal?		
Agree	47	28%
Disagree	109	64%
Neither agree nor disagree	13	8%
Total responses	169	

4. Equality Issues

Question 16: From your experience, are there any particular groups of individuals with protected characteristics who may be particularly affected, either positively or negatively, by the proposals in this paper?	
Total responses	171

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