Civil Justice Council submission to the Government's judicial review reform consultation

April 2021

Introduction

1. The Civil Justice Council (CJC) is a public advisory body established under the Civil Procedure Act 1997. Our statutory functions include: considering how to make the civil justice system more accessible, fair and efficient; making proposals for research; and advising the Lord Chancellor and the judiciary on the development of the civil justice system.[1]

2. Judicial review is a central feature of the UK's constitutional democracy based on the rule of law. As such we welcome the Lord Chancellor's recognition of the connection between the rule of law and judicial review.[2] In our view any reform of judicial review must flow from this fact and change addressing perceived problems should be targeted, proportionate, and balanced. We also welcome the Lord Chancellor's commitment 'to preserve the fairness that is inherent in our justice system, a fairness that protects the rights of citizens in challenging government or other public bodies and which affords them appropriate remedy.'[3] We agree any reform should satisfy these important ideals.

3. In general terms, the CJC welcomes reform to increase the efficiency of the court process where such measures are consistent with key components of the rule of law, including but not limited to legal certainty, access to justice, effective remedies and redress for unlawful conduct.

4. We welcome that the Government is consulting on these reforms 'at an early point in their development'[4] and that the Government is 'very aware that certain proposals will need further iteration, before we can consider bringing forward legislation.'[5] An open-minded and cautious approach is essential in such a constitutionally sensitive area.

5. The CJC is concerned to promote evidence-based policy making and the systemic collection and analysis of data across the civil justice system. Reform of judicial review, including of procedure, may have significant implications, including through its unintended consequences. Therefore, it is essential that methods of enquiry and

[1] Civil Procedure Act 1997 6(3)
[2] Para. [18] of the Government's consultation.
[3] Para. [5] of the Government's consultation.
[4] Para. [15] of the Government's consultation.
[5] Para. [15] of the Government's consultation.

evidence collection are robust and methodologically sound, and that any proposals for reform are evidence-led.

6. We are concerned that there is an absence of a clear evidential basis for some of the proposals. The risk of compromising access to justice may thereby be heightened. There is interplay between a number of ongoing exercises related to civil justice. These include the current consultation, the Home Secretary's *New Plan for Immigration*, and the Independent Human Rights Act Review (IHRAR) chaired by Sir Peter Gross. While the CJC agree that iterative action is appropriate, it is important that the eventual reforms are coherent and fit together as a general package of measures. Time and care should be taken to ensure that these separate exercises do not produce fragmented and inconsistent reforms. The CJC could offer assistance to avoid this problem wherever possible.

Responses to consultation questions

Question 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?

7. The CJC considers that a proposal to provide courts with an express statutory discretion to suspend quashing orders could be appropriate. The CJC would also not raise specific concern over the appropriateness of a statutory provision which identifies factors that courts should have regard to when deciding whether to suspend a quashing order. However, we would question a proposal making those factors conclusive in any case. We note the conclusion of IRAL was that a court should have the discretion to make the suspension of the quashing order subject to certain conditions. These conditions might include that the public body takes certain actions to resolve the illegality within a particular timeframe.

8. The advantage of IRAL's proposal that courts should themselves develop the principles surrounding the suspension of quashing orders is that courts resolve disputes as to appropriate relief on a day-to-day basis. Therefore, courts are well placed to identify relevant factors and to resolve any tension between these factors in a concrete case.

9. Equally, s.31 of the Senior Courts Act 1981 already provides limited guidance to courts on when certain remedies can be issued. In principle therefore the proposal for guidance is not problematic. It does not direct that particular judicial decisions about remedies must be favourable to a particular party. It merely lists a range of factors that a sensible court would have regard to. Section 31(2), for instance, states that when deciding whether to issue a declaration or injunction, the court will have regard to the alternative remedies available, the nature of the public body, and all other circumstances of the case.

10. The CJC further recognises that unlimited judicial discretion can promote unpredictable outcomes and uncertainty for parties in litigation about how to focus their arguments.

11. Therefore, on balance, the CJC recognises the potential utility of a statutory provision providing courts with non-conclusive guidance on when to exercise the discretion to suspend a quashing order.

12. However, we do not consider that s.102 of the Scotland Act 1998 itself resolves that unpredictability and uncertainty. S.102(3) of the 1998 Act only identifies one factor to be taken into account by the court – the extent to which persons not party to the proceedings would be adversely affected. We consider that, to be fair and to promote equality between the parties,[6] a statutory provision should include a range of factors representing the interests of all parties and important considerations. These factors might include: any injustice caused to the claimant from the suspension of the quashing order; the extent of the disadvantage caused to the public body from failing to suspend the order; whether the claimant agrees with the suspension of the order; whether the public body has put forward in advance a realistic plan to remedy the unlawful conduct; the extent to which suspension of the order would undermine the claimant's right to an effective remedy; and the extent to which suspension would undermine the rule of law.

13. A statutory provision requiring courts to have regard to these factors could produce a balanced and sensible enactment that satisfies IRAL's recommendation, satisfies the Government's objectives, respects judicial independence, facilitates a guided use of discretion, and promotes equality between the parties.

Question 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?

14. The CJC is concerned that the development of civil justice should be evidence based. We have highlighted in a number of recent reports the challenges created in recommending change without the systemic collection and analysis of data to inform those recommendations. We have followed with interest the ongoing public discussion concerning the statistical basis for IRAL's recommendation to abolish *Cart* judicial reviews. We are concerned that changes to judicial review should not be undertaken on the basis of inaccurate statistical assumptions and unreliable data.

15. We consider that the Government should, as a priority, produce so far as possible, and highlight where not possible, accurate figures as to the number, nature, and outcomes of *Cart* judicial reviews. This is important so that interested parties can make an informed assessment of whether the proposed changes would indeed have a desirable effect or be likely to achieve their stated aims.

16. As the data which IRAL considered in making this recommendation is in question, we query whether the fact of the recommendation by IRAL alone provides sufficient justification to proceed with the proposal.

[6] Noting the Civil Procedure Rules 1.1.2(a) regard equality between the parties as an overriding objective of civil justice.

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

17. The CJC agrees with IRAL that the creation of a fragmented judicial review system in the UK is highly undesirable.[7] This is especially so when there have been efforts made by the courts to increase the coherence of the UK's judicial review principles.[8] In principle, reforms should apply coherently across the UK. Significant fragmentation occurring between UK jurisdictions would increase the likelihood of forum shopping by claimants.

18. Any reforms to judicial review, even if limited to England and Wales, will impact on the current role of the courts in scrutinising the legality of the actions of Senedd Cymru, the Welsh Government and other devolved bodies.

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

19. The CJC considers that there is potential merit in providing courts with a discretionary statutory power to order prospective-only remedies. There might be some circumstances where a retrospective remedy would cause undue significant hardship to the public body and/or to third parties who have relied on the unlawful administrative decision in good faith.

20. However, we believe that this aspect of the consultation insufficiently distinguishes between the different types of remedies. Not least, the consultation does not recognise that most remedies are already prospective-only. It is difficult to envisage how an injunction, mandatory order, or prohibiting order could operate retrospectively. By definition, they can only affect, restrain, and require future conduct. This leaves only declaratory relief and quashing orders which can operate retrospectively.

21. The CJC considers that it is likely that only exceptional circumstances would justify prospective-only declaratory relief. A declaration has no coercive consequences on the public body. It is a statement from the court about what the law is and about whether a particular decision was lawful. Therefore, it is difficult to envisage why this form of relief might need to be prospective-only. In addition, leaving a claimant without even a declaration that the conduct they have suffered is unlawful would be difficult to justify as it is not clear that access would remain to an effective remedy.

22. Furthermore, even if a declaration can be prospective-only, the court's judgment will already address the question of law in the context of the claimant's case. The words of the judgment still identify the illegality conducted by the public body even if a prospective-only declaration is issued. As such, the judgment itself stands as an implicit

[7] See 5.48 of IRAL's report.

[8] *AXA General Insurance v Lord Advocate* [2011] UKSC 46, where the Supreme Court modified the rules on standing in Scottish judicial review.

retrospective declaration. Technical issues such as this are not fully addressed in the consultation and will require careful thought.

23. In consequence, the CJC believes that it is essentially only quashing orders for which this proposal might be workable. As with our response to question one on suspended quashing orders, we consider that a statutory provision should include a range of factors representing the interests of all parties and a range of important interests. These factors might include: any injustice caused to the claimant from the prospective-only effect of the remedy; the extent of the disadvantage caused to the public body from failing to order a prospective-only remedy; whether the public body has put forward a plan to remedy the unlawful conduct suffered by the claimant; the extent to which a prospective-only relief would undermine the claimant's right to an effective remedy; and the extent to which the rule of law would be undermined.

24. In this respect, careful thought might be given as to how a prospective-only quashing order might interrelate with a suspended quashing order, if at all. If these are regarded as two separate forms of relief, the risk of satellite litigation on form of relief would appear real.

Question 5: Do you agree that the proposed approaches in (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?

25. The CJC considers that there is currently inadequate evidence to consider that the mandatory nor the presumptive approach has been justified. Specifically, the consultation does not identify the issue which this change would seek to address, through either an individual case or a systemic pattern.

26. This proposal also appears to reduce judicial discretion over remedies to close to nil. This risks either undermining the role of the judiciary or increasing satellite litigation by requiring courts to determine whether the case in issue was able to overcome the mandated or presumed prospective-only requirement. Moreover, we believe that mandatory or presumed remedies favourable to public bodies would risk discouraging good faith claimants from pursuing legitimate applications, as the strength of the remedy available would be significantly undermined, thereby limiting access to justice.

27. These proposals in our view also increase the risk of a public body failing to act lawfully. A public body operating unlawfully could do so knowing that any actions it performs would not normally be subject to a judicial remedy voiding that past unlawful conduct. This, in our view, increases the risk of harming the general culture of compliance and respect for the law among public bodies.

28. In addition, the courts deal with judicial review cases every day and are experienced in making assessments as to appropriate remedies. We do consider that statutory guidance may be justified, however we consider that legislating for a mandatory or presumed approach goes further than this. In our view such an approach would risk

inappropriately weighting any remedies towards outcomes favourable to the executive. We do not believe that this course of action has been justified. The CJC can, with caution, support a list of guiding factors in a statutory provision that courts must have regard to but does not consider that the need for a mandatory or presumed approach to remedies has been demonstrated to be necessary.

29. The CJC would also query the assumption on which this proposal is based. The proposal is based on an assumption that parliamentary scrutiny alone is sufficient for statutory instruments, but parliamentary and judicial scrutiny accomplish different things in different ways.

Question 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 (a) or the mandatory approach in (b) would be more appropriate?

30. For the reasons given in relation to question five, we believe that neither the presumptive nor the mandatory approach has been sufficiently justified.

31. Available empirical evidence indicates that around three-quarters of judicial review cases concern individual claimants seeking a remedy related only to the application of a law or policy in the circumstances of their own case. Claimants do not normally represent any broader public interest or challenge a policy more generally.[9] The presumptive or mandatory approach of prospective-only remedies (further to which an individual claimant could not expect to benefit from any relief s/he might obtain) would in our view discourage such individual citizens from pursuing legitimate judicial review applications. The CJC does not therefore consider that the need for this proposal is made out.

Question 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?

32. The CJC would take the view that the concept of nullity in administrative law should be approached and reformed with caution and only if considered absolutely necessary. We do not consider it obvious that improved clarity would result, and we welcome the Government's recognition that the detail of any proposals would have to be carefully considered.

Question 8: Would the methods outlined above, or a different method, achieve the aim of giving effect to ouster clauses?

[9] Varda Bondy and Maurice Sunkin, The Dynamics of Judicial Review Litigation (Public Law Project, 2009). Available at https://publiclawproject.org.uk/wp-content/uploads/data/resources/9/TheDynamicsofJudicialReviewLitigation.pdf (accessed 20 April 2021).

33. The CJC notes and endorses IRAL's view that while Parliament has the power to limit and restrict judicial review, to do so there would need to be highly cogent justification given its constitutional importance.[10]

Question 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.

34. The CJC believes that this is a supportable proposition which replicates changes already made in Northern Ireland through the Rules of the Court of Judicature (Northern Ireland) (Amendment) 2017.[11]

35. While there is no published research on the consequences of this change, anecdotal evidence has suggested that this reform has not detrimentally impacted the promptness of judicial review applications. Not least, good lawyers pursue cases promptly anyway and claimants generally want their cases resolved as speedily as possible. Lawyers are also aware that if they do not pursue cases promptly, they may be criticised publicly by the defendant or by the court and suffer reputational damage. Furthermore, despite the removal of an express promptness requirement, the court can still take promptness into account at the permission and remedy stages where appropriate. Finally, this change may encourage claimants to engage with the Pre-Action Protocol (PAP) process, as claimants will have a specific timeframe to work to, rather than an indeterminate standard of promptness.[12] For all these reasons, the CJC believes that the CPRC should, in principle, consider this proposal.

36. The CJC would also welcome clarification in relation to one aspect of this proposal. The question states that the consequence of this proposal will be that "claims must be brought within three months". However, the CJC notes that the current time limit of three months is not absolute. Courts have a residual discretion to permit a judicial review application "out of time".[13] If an absolute three-month limit with no exceptions is proposed, the CJC would oppose this. It would prevent claimants from pursuing legitimate applications that courts would previously have admitted and may leave important legal questions unresolved until a future claimant brings a case.

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

37. The time limits for bringing judicial review, and any mechanism for extending those limits, inevitably involve a difficult balancing exercise between important, and competing, interests.

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[10] Para 2.89 of IRAL's report.

[11] https://www.legislation.gov.uk/nisr/2017/213/made (accessed 26 April 2021).

[12] The CJC thanks Conor McCormick, Grainne McKeever, Brice Dickson, and Gordon Anthony for their assistance on this matter.

[13] 5.4.4. 'Extensions of time' in the Administrative Court Judicial Review Guide: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/913526/HMCTS_Admin_Court_JRG_2020_Final_Web.pdf (accessed 21 April 2021).

38. On the one hand, people need sufficient time to investigate whether they could, and should, challenge a decision, which may have had a serious adverse impact on them. In many cases this is likely to involve securing advice (which may well be through the legal aid scheme where a potential litigant is without means). It is also important to provide a meaningful opportunity to explore whether dispute can be resolved without the need for formal litigation. On the other hand, there is a need for certainty in public decision making, particularly for government agencies, which facilitates sound planning and allocation of services and resources including to third parties relying on those decisions. (There is an interplay between this proposal and the proposals related to relief).

39. On consideration of these competing interests, the CJC believes that the CPRC should be invited to consider extending the time limit to encourage pre-action resolution. This is for a number of reasons. First, empirical evidence indicates there is commonly a strong desire among both defendants and claimants to resolve disputes without the need for litigation. Secondly, empirical evidence also indicates that most arguable judicial review cases are settled prior to the permission stage in any event. An extended time limit might encourage a greater number still by providing greater space for informal resolution. Third, empirical evidence further suggests that strict time limits may inhibit informal resolution by limiting opportunities for early settlement.[14] For these reasons, with caution, we believe that this option warrants careful consideration.

40. There is potential merit in a pilot to determine whether the assumption that an extension of time limits would have the intended impact of encouraging more pre-action settlement. The CJC considers that it would be important for legal aid to be available to support engagement with this. A related question, whether there are a significant number of potentially unlawful decisions that go unchallenged as a result of the current three-month time limit for JR, raises a further empirical question in respect of which the CJC would also support further investigation.

Question 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?

41. IRAL's report states that: '[w]hile we were also attracted to this suggestion [to allow parties to agree to extend time limits], we think that it may be very difficult to implement without creating undesirable side effects for third parties, including other government agencies.'[15] We agree both with IRAL's sympathy for mutually extended time limits and with IRAL's concern that unjustifiable disadvantage should not be caused to third parties. Ultimately, the CJC believes that this option should be considered but with an extension to time being possible only through an application to the court.

[14] Varda Bondy and Maurice Sunkin, 'The dynamics of judicial review litigation: the resolution of public law challenges before final hearing' (Public Law Project, 2009) at p.26. Available at https://publiclawproject.org.uk/wp-content/uploads/data/resources/9/TheDynamicsofJudicialReviewLitigation.pdf (accessed 20 April 2021).
[15] Para. 4.144.

42. An extension of time was recommended by Michael Fordham QC and others in 2014 in a report published by the *Bingham Centre for the Rule of Law*. Fordham and colleagues justified this proposal on a number of bases. First, parties already informally agree to extend time limits by not raising time arguments before the court. However, this gives rise to uncertainty for claimants because there is no guarantee that the court will uphold the agreement and permit the claim to proceed out of time. Second, the strictness of the current rules mean that claimants are forced to issue proceedings protectively and that this can result in unnecessary costs to both sides.[16] Therefore, there may be merit in formalising this arrangement for the certainty of both claimants and defendants.

43. However the CJC agrees with the IRAL and the Consultation Paper that the extension of time limits can have negative effects on third parties. This might include other government agencies and third parties waiting longer for the legal dispute to be resolved, which may affect government planning, and the interests and rights of third parties. It may mean that administrative actions that have created criminal offences continue to be applied to third parties. It is also possible that a time delay could undermine the value of the claim to third parties. This list of adverse consequences is by no means exhaustive.

44. For these reasons, we are minded to adopt IRAL's conclusion that it is generally not desirable to allow parties to unilaterally extend time limits. Accordingly, we believe any power to extend time limits should rest with the court and the rule should be structured in a way that allows the court to exercise its discretion taking into account the competing interests.

45. We would suggest there is a case for giving the court power to extend the time limit for bringing a claim, whether before or after the relevant time limit has expired, taking into account all the circumstances of the case including, but not limited to: (a) when the applicant became aware of the decision; (b) whether and when the applicant had access to advice about the lawfulness of the decision; (c) whether the applicant had sufficient time to prepare their claim and follow any relevant pre-action process; (d) whether the respondent consents to the extension; (e) whether the respondent, or a third party, would be prejudiced by the extension; (f) the impact a refusal to extend the time limit would have on the applicant; (g) the merits of the proposed judicial review; and (h) any pressure which has been placed on the claimant to extend time limits against their interests.

Question 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?

[16]Fordham, Chamberlain, Steele & Al-Rikabi, Streamlining Judicial Review in a Manner Consistent with the Rule of Law (February 2014). Available at https://binghamcentre.biicl.org/documents/53_streamlining_judicial_review_in_a_manner_consistant_with_the_rule_of_law.pdf

46. This was not a recommendation made by IRAL and the Consultation Paper does not identify the respondent(s) who made this proposal or the evidence informing its inclusion for consultation.

47. It is also worth noting that different procedural requirements – in terms of time limits especially – already do apply in different areas e.g. the six-week time limit in planning judicial reviews. The creation of a major new track system with any substantial distinctions in procedural rules between case types would require very careful consultation.

48. In general, the CJC's view is that significant further evidential justification would be required to identify the need for the additional procedural complexity of a track system for judicial review. Such evidence should include: (a) the workload of the Administrative Court; (b) the settlement rate; (c) the extent to which existing practices are felt by parties to work well, or require improvement.

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

49. The CJC would welcome clarification in relation to this question. The consultation links this question to interveners at paragraph 103. Therefore, we are unclear as to whether this question concerns third parties who might be invited to intervene in the proceedings or provide further information to the court, or whether this question is directed to requiring parties to identify third parties who are assisting them 'behind the scenes'.

50. If the first interpretation is accurate, the CJC agrees that imposing a (light touch) duty on parties to identify other groups or persons who might assist in the litigation is a suggestion worthy of consideration. Given the public nature of judicial review claims, courts regularly and increasingly receive assistance from third-party organisations with considerable expertise on matters of international or comparative law or the policy context of the decision under review.

51. One of the limitations of our adversarial system is that not all persons who might be able to assist the court are always before it. Introducing a duty on the parties to identify such persons will a go small way to remedying that defect. As the Government notes, giving the court notice of the potential for interveners could also be useful in estimating the cost and length of litigation, and give the court a better sense of what is at stake, all of which will assist the court resolve the dispute justly and proportionately. Finally, as a note of caution, any such positive duty would need to be drafted with care and applied with common sense as the number of persons/organisations who could assist the court is potentially very broad in many, if not most, judicial review cases. Parties should not, for example be required to actively seek interveners in a case.

52. If the second interpretation is correct, "assist" is a potentially broad and vague word. Assistance can take a variety of forms, the majority of which are not obviously problematic. We would welcome further clarification on what this question seeks to address.

Question 14: Do you agree that the CPRC should be invited to include a formal provision for an extra step for a Reply, as outlined above?

53. The CJC agrees with this proposal. This will assist all parties to clarify issues earlier and will improve upon the inconsistent current practice. We also agree that the CPRC is the correct body to consider the implementation of these reforms.

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

54. The CJC agrees that there is no reason to retain administrative burdens on public bodies that serve no function. However, the requirement to produce both summary and detailed grounds of resistance do serve an important purpose for all parties. These processes narrow down contentious issues early; give the defendant an insight into the strength of its defence; and give claimants an opportunity to examine the merits of their claim. Therefore, while the CPRC might usefully consider the issue with appropriate consultation, it should bear in mind the functions served by these requirements.

55. We also note the ambiguity in relation to this question. The question refers to detailed grounds of resistance, but the only proposal identified in the consultation relates to summary grounds of resistance. On summary grounds, the proposal is that summary grounds should only be required from the defendant where: (i) the pre-action stage was not followed or (ii) the claimant has raised new grounds from the pre-action stage.

56. We believe that there is merit in this proposal. On the one hand, the grounds of resistance may change from the pre-action stage, even when the core issues have stayed the same. Therefore, it could be essential to have another iteration of the grounds even where pre-action has occurred. On the other hand, if the claimant is already substantially aware of the grounds of resistance and the defendant's resistance has not substantially changed, there may be no harm in altering this requirement where issues have been framed and sufficient information provided in the pre-action stage.

57. However, we do wonder what problem this is intended to resolve. If the pre-action stage has been followed, there is nothing to prevent the defendant from relying on its PAP response in its summary grounds of resistance.

58. We note there is no legal or procedural obligation on public bodies to draft very detailed, lengthy, and extensive summary grounds of resistance.

Question 16: As set out in para 105(b) above, is it appropriate to invite the CPRC to consider increasing the time limit required by CPR54.14 to 56 days?

59. There is no clear evidence that defendants require more than the current time period of 35 days. No identifiable opinions were expressed to this effect in IRAL responses, including from public bodies. In addition, the court already has a discretion to extend this time limit under the Civil Procedure Rules bearing in mind the complexity of the case: CPR 54.10(1). In the absence of further evidence, whilst the CPRC would ultimately

be the right body to consider this change, we currently consider this proposal to be unnecessary.

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

60. Paragraph 109 invites feedback especially on issues faced during the pre-action stage and how these might be dealt with. This might be an additional issue sensibly consulted upon by the CJC.

61. The leading academic study would be Bondy and Sunkin's previously cited work. Findings of note in that study include: short time-limits encourage parties to lodge judicial review claims rather than resolve the issue informally; public bodies tend to involve lawyers at a late stage, meaning that bad defences are pursued far beyond that which is sensible or justifiable; legal aid at the pre-permission stage can encourage early resolution as specialist lawyers are involved earlier.[17]

62. The CJC further notes that it is currently conducting a review of pre-action protocols and has established a sub-committee to look specifically at the operation of the Pre-action Protocol for Judicial Review claims. The terms of reference for the review are listed on the CJC website.[18]

[17] Varda Bondy and Maurice Sunkin, *The Dynamics of Judicial Review Litigation* (Public Law Project, 2009). Available at https://publiclawproject.org.uk/wp-content/uploads/data/resources/9/TheDynamicsofJudicialReviewLitigation.pdf (accessed 20 April 2021).
[18] https://www.judiciary.uk/announcements/civil-justice-council-launches-review-of-pre-action-protocols/ (accessed 27 April 2021).