INDEPENDENT REVIEW OF ADMINISTRATIVE LAW
RESPONSE TO A CALL FOR EVIDENCE
FROM THE RT HON THE BARONESS HALE OF RICHMOND
FORMER PRESIDENT OF THE SUPREME COURT OF THE UNITED KINGDOM

1. I am grateful for the opportunity to respond to the Call for Evidence. I have had the benefit of reading the Response of the President of the Supreme Court of the United Kingdom. I agree with everything he says. There are only a few points I wish to emphasise.

2. In the vast majority of cases, judicial review is the servant of Parliament. It is there to ensure that public authorities at all levels act in accordance with the law which Parliament has laid down. In only a very few cases does it operate to ensure that public authorities act in accordance with the common law. If Parliament does not like what a court has decided, it can change the law.

3. It is beyond debate that public authorities must act in accordance with the law. There is no balance to be struck between that fundamental principle, established since the 17th century, and carrying on the business of government. The business of government must be carried on lawfully.

4. I accept, however, that the process of seeking a judicial review must not be allowed to impede the proper conduct of government. The focus of IRAL should be on the efficiency of the machinery for considering applications for permission to bring judicial review proceedings; weeding out the hopeless applications as quickly as possible; identifying applications which must be resolved speedily and expediting them; stream-lining procedures so that substantive cases can be decided without delay. The duty of candour should operate so as to enhance rather than impede efficiency. The impact of the last round of procedural reforms to judicial review should be carefully studied before further reforms are proposed.

5. My experience as a Law Commissioner for nine and a half years has taught me how very difficult it is to encapsulate the subtleties of the common law in statutory language. Unless the language is so broad as to leave too much discretion to the individual decision-maker, there is a risk that it will not cater for everything for which it should cater.

6. The judiciary are very well aware of the difference between the policy reasons for which a decision has been taken and the legality of the decision itself. Whether or not the decision is 'political' is irrelevant to the question that the court has to decide.

7. We have a proud tradition in this country that the judiciary is independent of politics. Political considerations do not influence judicial appointments. When in office, I did not know the party political affiliations (if any) of almost all my fellow judges. I myself was appointed to my first four judicial offices by a Conservative Lord Chancellor and to my next four under a Labour Lord Chancellor.

8. I agree with the President's answers to your questionnaire. But in summary, for the reasons given by him and emphasised above:

3. No.
4. Yes.
5. Yes.
6. That is where the focus of the inquiry should be.
7. I am not qualified to answer this.
8. See above. The rules on standing do not appear to cause problems.
9. The remedies do not appear to be inflexible. They are also discretionary.
10. The better the decision, and the explanation given for it, the less likely it is to be challenged or reviewed.
11. No personal experience, but I know that solutions are found before trial, in this as in every area of the law.
12. I am President of National Family Mediation and a great believer in ADR, but the risks are a lack of equality of arms, a lack of transparency, and delay.
13. I agree with the President on this. The Scottish experience is relevant here.

Hale of Richmond

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