

Changes to Judicial Review:

What was proposed, what was agreed and what the changes mean



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The government have now [published their response](#) to the consultation into proposed changes to Judicial Review, in line with the new [Criminal Justice and Courts Bill](#).

Judicial review is a type of court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body. In other words, judicial reviews are a challenge to the way in which a decision has been made, rather than the rights and wrongs of the conclusion reached.

Compact Voice [responded to the consultation](#) into proposed changes to Judicial Review in November 2013. In this response, we expressed concern about the lack of evidence justifying the need for the proposed changes, and the short period during which the consultation was held, which was in breach of [the Compact](#). We also addressed issues around the questions of standing, protective cost orders (PCO) and interveners.

Changes proposed as a result of the consultation

1. Proposed changes to who can bring a Judicial Review case to court

‘Standing’ is the legal term for who is permitted to bring a case to court. We were pleased to see that the government has decided against changing the current rules on standing. The government had argued that ‘judicial reviews are brought by groups who seek nothing more than cheap headlines’, so they proposed to restrict access to Judicial Review to only those who can show they are directly affected by the matter.

Many VCS organisations and others argued that changing the rules on standing would shield public bodies from being held to account; ultimately shifting the focus of judicial review from challenging public wrongs to protecting private rights.

2. Changing how costs for cases with a strong public interest are capped

Protective cost orders (PCOs) can be issued by a court in order to cap the cost limit for cases with a strong public interest. Compact Voice raised concerns about the changes proposed to reduce access to PCOs. Compact Voice, alongside many other organisations, felt that by reducing access to PCOs, some parties would be prevented from bringing forward legitimate Judicial Review claims because of the possible costs they could incur.

The government has decided that PCOs are to be limited. Courts will be allowed to issue a PCO to an unsuccessful claimant only if the judge is satisfied that the case has been

brought in the public interest by someone who would've needed to withdraw the case without costs protection.

3. Proposal to impose additional costs on 'interveners'

Compact Voice raised concerns about the government's proposals to impose additional cost burdens on interveners. An intervener is any person granted permission to file evidence or to make representations at the hearing of the judicial review.

Compact Voice maintained that interveners are granted permission to intervene because they have specialist knowledge that will benefit the court. Because of this, additional costs would discourage interveners' participation in issues where there is a strong public interest, and interveners generally always bear their own costs.

On the issue of interveners, the Government has decided to make third party interveners liable for costs incurred by other parties unless there are "exceptional circumstances". It seems that the additional costs to interveners will apply even if the arguments advanced by the third party are accepted by the court.

In conclusion

The new provisions around both PCOs and interveners are not as bad in practice as they may first look. The judge in a Judicial Review case will still have the power to issue a PCO, and if a judge invites a third party to intervene the group doesn't have to pay the additional costs.

Compact Voice were worried that many of the proposals made by government in November 2013 appeared to work against principle 1.1 of the Compact, which states that government must 'respect and uphold the independence of CSOs to deliver their mission, including their right to campaign, regardless of any relationship, financial or otherwise, which may exist'.

We were concerned that the proposed changes would put barriers in place that would discriminate against many legitimate cases.

Compact Voice considers Judicial Review to be a vital tool in holding the government and other public bodies to account. We feel that despite some provisions in the new Bill, the purpose of Judicial Review is still intact.

Further information on Judicial Review:

- This news item from Civil Society outlines the above in more detail:
http://www.civilsociety.co.uk/governance/news/content/16871/government_backs_down_on_some_judicial_review_reforms_after_charity_lobbying
- Ministry of Justice Judicial Review consultation pages:
<https://consult.justice.gov.uk/digital-communications/judicial-review>
- Compact Voice blog 'Why proposed changes to Judicial Review have us worried':
<http://www.compactvoice.org.uk/blogs/compact-voice/2013/10/31/why-proposed-changes-judicial-review-have-us-worried>