

The Independent Review of Administrative Law

How did we get here?



Richard Drabble QC

IRAL “invites the submission of evidence on how well or effectively judicial review balances the legitimate interest in citizens being able to challenge the lawfulness of executive action with the role of the executive in carrying on the business of government...The panel is particularly interested in any notable trends in judicial review over the last thirty to forty years. Specifically, the panel is interested in understanding whether the balance struck is the same now as it was before, and whether it should be struck differently going forward”.

Call for evidence introduction

General themes behind both IRAL itself and the government response

- General suggestion of judicial overreach
- The void/voidable distinction and implications for remedies and ouster clauses
- Justiciability
- Validity of the concept of the principle of legality

Stepping stones on the way

Classic formulation by Lord Diplock in *Hoffman-La Roche & Co AG* 1975 AC 295

It would, however, be inconsistent with the doctrine of ultra vires as it has been developed in English law as a means of controlling abuse of power by the executive arm of government if the judgment of a court in proceedings properly constituted that a statutory instrument was ultra vires were to have any lesser consequence in law than to render the instrument incapable of ever having had any legal effect upon the rights or duties of the parties to the proceedings (cf. *Ridge v. Baldwin* [1964] A.C. 40).

Cases featuring in government thinking

- *Miller 2* seen by many as a classic example of judicial overreach and prompted the search for a clearer definition of the limits to justiciability.
- *Unison* also cited by Lord Faulkes himself as another example. Also seen as problematic both in terms of remedy and application of the principle of legality.

Where we are now

- Proposals of the Review itself relatively modest.
- Government proposals go beyond those of Review and if implemented would be a major change in relation to remedies in particular

Thank you for listening

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London

180 Fleet Street
London, EC4A 2HG
+44 (0)20 7430 1221

Birmingham

4th Floor, 2 Cornwall Street
Birmingham, B3 2DL
+44 (0)121 752 0800

Contact us

✉ clerks@landmarkchambers.co.uk
🌐 www.landmarkchambers.co.uk

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