

## Duncan Lewis

Duncan Lewis' response to the proposals for reform of the Judicial Review system produced by the Ministry of Justice Consultation Papers CP 25/2012

### Introduction

Judicial Review is a vital part of the fabric of the constitutional liberties of England and Wales and is a remedy of last resort where there is no other option open to holding the executive to account in cases where its actions or proposed actions are in breach of the law. We consider it most regrettable that proposed reforms of such magnitude should be brought forward in a consultation paper, especially one based on “anecdotal evidence” with such a short window for response and timed to cover the Christmas break. As pointed out below, the statistics relied upon do support the case for the reforms that are proposed in the document. The lack of any hard evidence that could justify a change of such constitutional magnitude is a remarkable feature of the proposals as a whole.

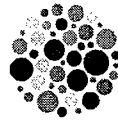
We have included with this response supporting documents from two separate cases to illustrate the points that we make. In each case many more examples could be supplied, but resources do not permit us as a legal aid firm to search our archives, so these examples come only from cases currently on the shelves by our desks. We have also sounded counsel with extensive experience of judicial review cases, and included a few of their comments throughout the document as direct quotes. The document however represents the views of Duncan Lewis, who we understand mount the greatest number of challenges by way of judicial review of any firm.

### Justifications:

We note that various justifications for the proposed reforms have been put forward at different times. Some of these are frankly little more than window-dressing and appear solely to be motivated as providing political cover: is that the proposals could “tackle red tape, promote growth and stimulate economic recovery”. Even if the proposed reforms to planning and procurement judicial reviews would have a positive effect, which is doubtful at best, they would only affect a tiny minority of judicial review cases, and it is now clear that the Ministry of Justice has been unable, or unwilling to provide any concrete examples or figures to support their case.<sup>1</sup>

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<sup>1</sup> ‘The Ministry of Justice told the BBC that it does not have any figures for the number of reviews related to building and planning’. Clive Coleman on radio 4: <http://www.bbc.co.uk/news/uk-politics-20399023>



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A further claim was made that Judicial Review is misused for political purposes as publicity seeking by pressure groups in circumstances in which there is no effective challenge that can be brought<sup>2</sup>. Once again no concrete examples or figures have been provided and we doubt that the number of such cases, if indeed there are any at all, can even run into double figures.

A further surprising suggestion is that the current rules lead to defensive practices by public bodies. Whoever else this could apply to it is obviously not The UK Border Agency, criticised in repeated reports for failing to take care over initial decisions.

*"I would love to know which public authorities are being referred to at paragraph 35 as being "overly cautious in the way they make decisions, making them too concerned about minimising, or eliminating, the risk of a legal challenge." It is certainly not a description of UKBA, or any other public body that I recognise."*

Galina Ward of Landmark Chambers

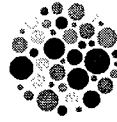
A more serious suggestion is that only a very small minority of claims have any realistic prospect of success. The paper also points to the related issues of delay and the increasing numbers of Judicial Review cases per se though given that the aims of the Ministry of Justice are stated as being "*not to deny, or restrict access to justice*", we do not consider that the mere growth of Judicial Review applications in itself requires the curtailing of the access to justice that the proposed reforms would bring about. Both of these issues are covered in more detail below.

### Statistics

The Ministry of Justice makes the suggestion that few cases of judicial review are well-founded has provided statistics intended to support this claim. However, the working assumption of the document is that only those claims granted permission had any prospect of success.

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<sup>2</sup> "I am concerned that judicial review is being used increasingly by organisations for PR purposes. Often the mere process of starting a Judicial Review will generate a headline." Chris Grayling: <http://www.bbc.co.uk/news/uk-politics-20709392>



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The proposals make no attempt to analyse the strength of cases never considered for permission. However, as the Ministry of Justice can only be too well aware, being the subject itself of many applications for Judicial Review, the stronger and more overwhelmingly obvious and correct the claimant's grounds are the more likely the defendant is to concede the issue prior to the Court considering permission in the matter. In other words, the strongest cases will rarely fall for consideration by the Court. By way of contrast, even a claimant who has made a weak claim has very little incentive to abandon a claim prior to the consideration of permission on the papers<sup>3</sup>. In the absence of analysis the assumption should clearly be that a claim not considered for permission is one in which the Defendant conceded the claim

Bearing this in mind and taking as an example the figures provided for 2011, the most reasonable reading of the figures is that of the 11,000 claims commenced, 3,400 cases were conceded by the defendant prior to the grant of permission, which when taken together with the 1,200 cases in which permission was granted comes to 4,600 (approximately 45% of claims) which had realistic prospects of success or successful conclusions, with the vast majority of that 45% coming to a conclusion favourable to the claimant. We do not consider that those figures demonstrate a system overburdened with frivolous, vexatious or hopeless claims.<sup>4</sup>

### **Delay and the increase in claims**

A further concern raised in the document is the length of time that Judicial Review proceedings take and we recognise that there is some force to this concern.

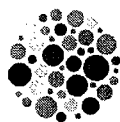
However, the most effective remedies to this problem lie in changes of practice by defendants, especially the UK Border Agency, who frequently fail to abide by the directions of the Court or the rules of Pt 54 of the CPR, or seek adjournments of hearings.

Most strikingly, it is exceptionally common for the Secretary of State to fail to file their Acknowledgment of Service within 21 days of the claim being brought allowing delay to creep into the system right at the outset, **for no reason other than that the Treasury solicitor is still awaiting**

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<sup>3</sup> Especially as any weakness will often only be exposed by the service of an Acknowledgement of Service, at which point the defendant will have already incurred the costs the claimant may have to pay if permission is refused.

<sup>4</sup> We recognise that the figures do not conclusively show this to be the case. The poor quality of the data prevents any conclusive analysis. We merely point out that the above is a much more realistic analysis of the figures provided.



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**instructions from the defendant.** It is not uncommon for there to be repeated requests of this nature made in the same case by the Treasury Solicitor. A similar dilatory approach is taken to preparing for hearings which often have to be vacated simply because the defendant has, or has not, taken a step that ought to have been taken far earlier in the life of the claim.

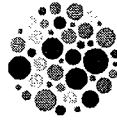
We of course acknowledge that there will be occasions upon which adjournment is a sensible course, but the significant distinction between applications by the Defendant and the Claimant is, in our experience, that claimant's solicitors would not even consider making applications to delay hearings on the basis that they were unable to obtain instructions from their client. It is extraordinary that this issue is not even considered in the document, and that no statistics as to the frequency of this practice have been produced where the length of proceedings is considered to be a significant negative feature of the system. We note that we have received no substantive response to our Freedom of Information request (FOI/79746 made to the Ministry of Justice on 13 December 2012, for which the statutory deadline for a response was 15 January 2013), seeking *inter alia* the average time it takes for the Secretary of State for the Home Department to file an Acknowledgement of Service in judicial review claims.<sup>5</sup>

More fundamentally, fewer cases would lead to less delay. The overburdening of the Court system by Judicial Reviews comes about because of the manner in which public bodies make and disseminate their opinions. This is particularly so in respect of the Secretary of State for the Home Department who is the defendant in more than 75% of the cases in the High Court. The analysis below is specifically in the immigration and asylum context, but the general principles apply to all public bodies.

Firstly, the Secretary of State has a consistent practice in removal cases that leads to large numbers of unnecessary claims for Judicial Review. The most obvious of these is a practice whereby removal directions are set before a response is given to outstanding representations. Frequently a claim will have to be lodged simply on the basis that no response has been received and yet the defendant refuses to defer the removal directions. Similarly, the practice of refusing representations at the very

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<sup>5</sup> See the Order in CO/7194/2012 provided as an example of repeated delay of this sort in the accompanying documents



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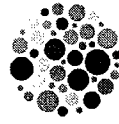
last moment and certifying them as insufficient to justify consideration in the Tribunal leads to large numbers of claims being lodged that could have been avoided – had the claimant been afforded an opportunity to respond the doubts of the defendant for example. It is our experience that the vast majority of such claims end up settled on the basis that the case will be heard in the Tribunal after all.

Secondly, there is the policy decision of the Secretary of State to continue to set removal directions in ‘destination cases’ where it is well-known that most or all applications for Judicial Review will result in a stay.

The most obvious of these at the moment is the manner in which the Secretary of State has continued to set thousands of removal directions to Italy whilst the challenges to removability to Italy had been and are still continuing. Other cases come to mind such as removals to Iraq, removals to Zimbabwe, removals to Afghanistan, which at different epochs have resulted in thousands of unnecessary cases. We describe these cases as ‘unnecessary’ because at the relevant time such decisions would inevitably result in a challenge before the Court in all cases where the recipient of removal directions was in receipt of competent representation, as it was already established that the Court would grant stays on removal. Given the multitude of other tasks in which the UK Border Agency is failing to meet its obligations, we suggest that resources could be better pursued in those directions. Indeed the Secretary of State commonly pleads lack of resources when defending claims brought, for example on the basis of excessive delay in decision making, another field of constant, and usually successful, challenge by way of Judicial Review.

To add to the burden on the court system, the Secretary of State routinely fails to deal with pre-action correspondence even where the full period is given for a reply, resulting in claims which were entirely avoidable – see *Bahta* [2011] EWCA Civ 895.

Lastly, the Ministry of Justice must surely be aware that the delays to and poor quality of decision making by UKBA has been condemned in every report that has considered the matter for the past 10 years and again this leads directly to a number of Judicial Review claims. This issue has been a flagrant scandal for well over a decade, and despite repeated promises to improve the latest report of



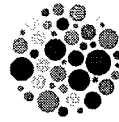
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the Home Affairs Committee leaves no room for doubt that the failings persist.<sup>6</sup> John Vine, the Independent Chief Inspector for Borders and Immigration agrees: "The agency needs to improve the quality of its initial decision-making to avoid the cost of unnecessary legal challenges..."<sup>7</sup>

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<sup>6</sup> <http://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/news/121109-ukba-rpt-published/>

<sup>7</sup> <http://icinspector.independent.gov.uk/decisions-in-marriage-applications-are-reasonable-but-chief-inspector-raises-concerns-about-backlogs-and-a-lack-of-consideration-of-the-best-interests-of-children/>



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### **Response to the direct questions raised in the consultation**

**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?**

**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?**

**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?**

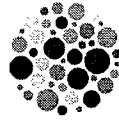
**Question 4: Are there any other types of case in which a shorter time limit might be appropriate? If so, please give details.**

In relation to Questions 1, 2, 3 and 4, we comment that we do not have a specialised planning and procurement practice and considered that those who operate on a daily basis in this skill will be better placed to respond.

We do however note that the three months time limit is sufficiently challenging to give rise to problems in itself, given the need for claimants to locate and instruct legal advisers and those advisers to request, receive, consider and advise upon all of the documents relevant to the case and to then enter into pre-action correspondence with the Defendant and also prepare and issue claim for Judicial Review within the three month period.

Whilst we recognise the need for balance in the system and the virtues of certainty for public bodies that their decisions will be immune from further challenge, a balance has to be struck. We considered that the three-month period already throws up difficulties such as the need in many cases to commence a claim without giving the Defendant a full period in which to consider letters before action and respond. Any reduction in time limit can only increase the number of claims that need not have been brought in the first place.

We note further that the current formulation of Part 54.5 of the CPR is formulated such that at 54.5 (2) that "the time limit to this rule may not be extended by agreement between the parties". On the theme of reducing the number of unnecessary Judicial Reviews, a more suitable reform that the Ministry of Justice might consider would be to allow the parties, where a pre-action letter has been



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lodged prior to the expiry of the three months limit, to agree between themselves that the time limit could be extended for a short further period of say four to six weeks to allow for negotiations. Given that the justification for the short time period in which to bring a claim is said to be to allow defendants the necessary certainty for them to conduct their business efficiently, it is difficult to see why if a defendant is of the view that it would be advantageous for the time limit to be extended to allow negotiations to take place that may avoid a Judicial Review, at least for a short period, that the CPR should not reflect this.

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

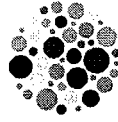
**Question 6: Are there any risks in taking forward the proposal? For example, might it encourage claims to be brought earlier where they might otherwise be resolved without reference to the court?**

The whole question of claims in relation to ongoing breaches, or grounds for review emerging over a series of correspondence, is a vexed one.

In the first case, there are some sort of continuing breaches which it would clearly be inappropriate to allow to continue regardless of the date of decision. The most obvious example of this is unlawful detention.

Secondly, there are many cases in which the precise point at which the grounds arose can be exceptionally difficult to identify. An obvious example here is the delay on the part of the defendant in making a decision. In many other cases, it will be difficult to identify in a course of correspondence the point at which the defendant has ceased to respond reasonably.

The Secretary of State can and does defend the applications for Judicial Review on the basis that they are out of time and we consider that the current system provides the right balance between for acknowledging that the grounds of claim can develop over a series of whilst refusing to entertain claims in circumstances where they really should have been brought at an earlier point. Whilst we recognise that this is a difficult issue, a course of action of this nature would inevitably result in a dramatic increase in a number of Judicial Reviews as claimants will be obliged to protect their



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position even perhaps before the Secretary of State was fully aware of the true circumstances of the case.

*“I do not understand why CPR 54.5 needs redrafting, given that it already refers to when ‘the grounds to make the claim first arose’”.*

Galina Ward of Landmark Chambers

**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 “prior judicial hearing” should take into account?**

**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?**

**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?**

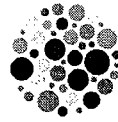
**Question 10: Do you agree that where an application for permission to bring Judicial Review has been assessed as totally without merit, there should be no right to ask for an oral renewal?**

**Question 11: It is proposed that in principle 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?**

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

**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?**

We are firmly of the view that the proposals are draconian and wrong in principle. If nonetheless they are to be entertained then we consider that there would be vital safeguards that should be added to the system:



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Firstly, we consider that in any claim in which it is proposed to restrict the right to oral renewal, it is vital that the claimant be explicitly granted a right to reply to the summary grounds of defence by a further paper submission before the Court reaches its decision.

*“I have had cases where permission was refused on the papers and described as ‘wholly without merit’ where permission was later granted. It then turns out that the judge who made the initial decision had not been handed our amended grounds, which followed a new decision that had accompanied the Acknowledgement of Service.”*

Victoria Laughton of Lamb Building chambers

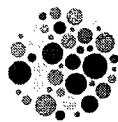
Secondly, we consider that the proposals are entirely disproportionate in cases where the claimant was forced to file and serve a claim for Judicial Review at extremely short notice. The classic example of this would be a case challenging removal where directions are routinely given a little over 72 hours before removal is proposed. Any restrictions on the right to oral renewal ought to be confined to cases in which the circumstances of the case allowed the claimant a full three months (in itself a short period) in which to consider and formulate the claim.

Thirdly, we consider that any such reform should at minimum leave any restriction or renewal to the discretion of the Judge.

Fourthly, while we recognise that the increased use of deputy judges in the High Court, most of whom come from other areas of law, has been a successful initiative, there are intricacies and specialities to immigration litigation with which they are not aware. This relatively frequently results in inappropriate refusals of permission and the labelling of the claim as ‘wholly without merit’. We suggest that such an option should be restricted to a full judge of the High Court.

‘Totally without merit’ cases

The suggestion that there be a restriction on the right to orally renew a claim for Judicial Review where it has been assessed to be totally without merit has some superficial attraction. However, as stated in more detail below, we have extensive experience of claims for Judicial Review initially



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described as being ‘totally without merit’ which proved ultimately successful and we are therefore concerned at the suggestion to restrict oral renewal in these cases.

*‘It is not a rarity for permission to be granted in cases that have at one point been labelled by a judge as “wholly without merit”, or even in some cases as ‘an abuse of process’”.*

Gordon Lee of Lamb Building chambers

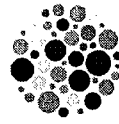
More fundamentally, the justification for the change is also difficult to follow from the proposals. The proposals rightly note that the High Court already has the power to make a “renewal to be no bar to removal” order. We could envisage that an extension of this practice through other forms of claim could be justified so that where a public authority proposed to take an action and a claim for Judicial Review was brought seeking to prevent the action by public authority that the Court could order that the renewal of the claim should not prevent the public authority going ahead with their proposed action. Indeed it is difficult to conceive of cases lying outside of removal cases, and possibly planning and procurement cases, where the oral renewal of a claim places a major burden on a public authority. Certainly, the proposals as put forward do not identify any other type of case that requires this restriction on the rights of audience before a Judge.

Alternative measures and safeguards

We do recognise that hopeless cases are often brought to the Administrative Court, often by litigants acting in person in desperation and unschooled in legal proceedings and not knowing any other manner in which to challenge decision of vital importance to them. Without criticising those litigants in person we recognise that this does impose a burden on the Court system.

If a remedy is acquired to tackle this issue, we propose that there should be no restriction on the right to an oral renewal in any case where grounds are settled by Counsel or an identified individual solicitor. That barrister or solicitor is an officer of the Superior Courts and is regulated by their disciplinary body.

We at Duncan Lewis are aware that there are some unscrupulous private immigration advisers who exploit the desperate by taking money from them in order to profit from formulating a challenge



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which never had a realistic prospect of success. We note that the Administrative Court in a series of recent judgments has started to crack down on this behaviour<sup>8</sup> and we consider that the combination of greater judicial activism on this point, which we entirely applaud, and the responsibilities of officers to the Court system and their regulatory bodies access a sufficient safeguard to the issuing of wholly abusive claims.

We suggest that a Solicitor or Counsel ought to be obliged to certify that they consider that the grounds are arguable and if necessary to defend that decision to the Court at a later date. In such circumstances, we consider that an adequate safeguard against the bringing of abusive claims.

We note further that the bringing of claims in immigration Judicial Reviews will often be carried out by publicly funded providers. In such circumstances, those providers are: (a) expert in the field and (b) regularly audited both as to their conduct of individual files and as to their overall practice in the Administrative Court by the Legal Services Commission. Every defendant in such a case has the right to make representations to the Legal Services Commission about the justification of funding the proceedings, and these are then considered in detail by the Commission. Further, in every case where a legally-aided firm brings a challenge in the High Court, they will only be allowed their costs of doing so on detailed assessment if the costs officer considers that the work was reasonably carried out.

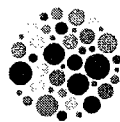
We suggest that these factors are sufficient to ensure that there will be few, if any, abusive claims brought by legally aided providers and that those providers ought to be exempt from any rule that would restrict the right to an oral renewal. We note on this subject that in none of the cases in which poor practice has been identified by the Administrative Court in the last few years as the provider being working on the basis of a Legal Aid contract.

Any competent Immigration Judicial Review adviser who has been practicing in the field for some time will have experience of having eventually succeeded in cases that were refused permission on the papers initially as on the basis that the Judge concluded the application did not display an arguable case. This is of course particularly the case where the legally aided firm takes over representation from a private provider.

To demonstrate these points is beyond the means of a legally aided firm as it would require the significant investment of time to access and consider the cases in our archives but we do provide an

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<sup>8</sup> *R ota Hamid* [2012] EWHC 3070 (Admin); *R ota Awuku and others* [2012] EWHC 3298 (Admin)



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example series of documents in which the judicial review was (1) initially described as ‘totally without merit’ and even an ‘abuse of process’ but (2) settled on the basis that the matter would be heard in the Tribunal and even (3) (following two hearings in the Upper Tribunal) resulted in the conceding of the issue and a grant of leave. This example was provided because it covers both the ‘totally without merit’ and the ‘prior judicial hearing’ point.

As a further suggestion, we consider that rather than preventing an oral renewal application where a case is described as ‘totally without merit’ the Court could be given the power to require the payment of a fee application if the is to be renewed in such cases.

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

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

These proposals appear reasonable.



**In the High Court of Justice  
Queen's Bench Division  
Administrative Court**

CO Ref: CO/7194/2012

In the matter of an application for Judicial Review

The Queen on the application of [REDACTED]

versus SSHD

**NOTIFICATION of the Judge's decision (CPR Part 54.11, 54.12)**

Following consideration of the documents lodged by the Claimant

Order by David Elvin QC sitting as a Deputy High Court Judge

**Permission is hereby granted.**

**Observations:**

I am concerned with regard to the statement regarding returnees to DOC as was Hamblen J. when granting the injunction and I note the absence of an AOS despite several requests for extension, the final one of which expired on 9 January.

Signed

15 January 2013

**For completion by the Administrative Court Office**

Sent / Handed to the claimant, defendant and any interested party / the claimant's, defendants, and any interested party's solicitors on (date): **17 JAN 2013**

Solicitors: Duncan Lewis

Ref No. *TOUFIK ULTAH / 2044287001 /*

**Notes for the Claimant**

- To continue the proceedings a further fee of £215.00, or a certified Application for Fee Remission if appropriate, must be lodged within 7 days of the service on you of this order. Failure to pay the fee or lodge a certificate within that period may result in the claim being struck out.
- You are reminded of your obligation to reconsider the merits of your claim on receipt of the defendant's evidence.



In the High Court of Justice  
Queen's Bench Division  
Administrative Court

CO Ref: CO/11465/2010

In the matter of an application for Judicial Review

The Queen on the application of

versus SECRETARY OF STATE FOR THE HOME DEPARTMENT

Application for permission to apply for Judicial Review  
NOTIFICATION of the Judge's decision (CPR Part 54.11, 54.12)

Following consideration of the documents lodged by the Claimant and the  
Acknowledgement of Service filed by the Defendant.

Order by the Honourable Mr Justice LLOYD JONES

- (1) Permission is hereby refused.
- (2) If the Claimant does not seek a reconsideration the costs of preparing the Acknowledgment of Service are to be paid by the Claimant to the Defendant, in the sum of £480 unless within 14 days the Claimant notifies the court and the Defendant, in writing, that she objects to paying costs, or as to the amount to be paid, in either case giving reasons. If she does so, the Defendant has a further 14 days to respond to both the court and the Claimant, and the Claimant the right to reply with a further 7 days, after which the claim for costs is to be put before a judge to be determined on the papers. Where the Claimant seeks a reconsideration, costs are to be dealt with on that occasion.
- (3) This order is no bar to removal without further order.
- (4) Case is considered to be totally without merit.

## Reasons:

The application does not disclose any arguable grounds for judicial review.

The application is an abuse of process because it simply seeks to reargue grounds dismissed by the Tribunal in its decision of 17th July 2010.

The interference with the Claimant's right to a family life would not be disproportionate for the reasons there stated.

The Defendant directed herself correctly as to the approach in law to the further submissions.

Signed

*David Lloyd Jones 1st December 2010.*

Sent / Handed to the claimant, defendant and any interested party / the claimant's, defendant's, and any interested party's solicitors on (date):  
Solicitors: SLA SOLICITORS  
Ref No.

## Notes for the Claimant

If you request the decision to be reconsidered at a hearing in open court, you must complete and serve the enclosed FORM within 7 days of the service of this order – CPR 54.12



# Tribunals Service

## Upper Tribunal

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### IMMIGRATION AND ASYLUM CHAMBER

Customer.Service@tribunals.gsi.gov.uk  
(For General Enquiries Only)  
www.tribunals.gov.uk

Field House  
15 Breems Buildings  
London  
EC4A 1DZ

Ph: 0845 600 0877  
Fax: 0207 073 0348  
Minicom: 0845 606 0766

Duncan Lewis & Co Solicitors (  
54 Goldhawk Road  
Shepherds Bush  
West London  
W12 8HA

Date : 8 March 2011

## THE IMMIGRATION ACTS

Appeal No: 1A/32201/2009  
Appellant: Ms [REDACTED]  
Respondent: Secretary of State

HO Ref: G1051034/2  
Port Ref: GAN/389093  
FCO Number:  
Reps Ref: G045470006/SYK

To the Appellant and Respondent

## NOTICE OF HEARING

This appeal will be heard on **Thursday, 14 April 2011**  
at **2:00 PM**  
at **Field House, 15 Breems Buildings, London, EC4A 1DZ.**

☐ Directions are set out in the attached Notice.

The Upper Tribunal will not consider evidence which was not before the First-tier Tribunal unless the Upper Tribunal has specifically decided to admit that evidence.

If a party or his Representative does not attend the hearing the Tribunal may determine the appeal in the absence of that party.

A. O'Brien

Clerk to the Upper Tribunal

Copy issued to Appellant: Ms Venesha Nekesha Gayle, SW9  
Copy issued to Home Office: Presenting Officers Unit, Angel Square, EC1V 1NY



ALL CORRESPONDENCE SHOULD BE SENT TO THE ADDRESS AT THE TOP OF THIS NOTICE QUOTING  
THE APPEAL NUMBER AND ANY HEARING DATE

Representative Copy

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United Kingdom Border Agency  
Gatwick RFU  
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Perimeter Road North  
Gatwick Airport  
West Sussex  
RH60JJ  
Tel  
Fax  
Email @ukba.gsi.gov.uk  
Web www.ukba.homeoffice.gov.uk

[REDACTED]

Date of Birth: [REDACTED]

Nationality: [REDACTED]

Dependants

Our Ref G1051034/4

Your Ref Your Ref

Case ID 013533517

Date 15 October 2011

Dear [REDACTED]

#### GRANT OF DISCRETIONARY LEAVE TO ENTER

I am writing to inform you that, although you do not qualify for leave to remain in the United Kingdom under the Immigration Rules, it has nonetheless been decided that discretion should be exercised in your favour. You have therefore been granted limited leave to enter the United Kingdom in accordance with the principles set out in the Home Office Policy Instruction on Discretionary Leave. You have been granted Discretionary Leave to enter until 14<sup>th</sup> April 2012.

The leave you have been granted may be subject to review before it expires if, for example, the circumstances under which it was granted cease to exist. You should understand that, if you take part in any criminal activities during your stay in the United Kingdom, you may not be allowed to remain in this country.

#### ENTITLEMENTS

You are free to take a job and do not need the permission of any Government Department before doing so. You are free to use the National Health Service and the social services, and other services provided by local authorities as you need them.

#### POLICE REGISTRATION

You no longer need to report changes of address or other details to the police.

#### TRAVEL ABROAD

You may travel out of the Common Travel Area any number of times during the validity of the leave you have been granted. The Common Travel Area comprises the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland. On your return and provided your leave has not expired, you will normally be re-admitted to the United Kingdom without having to obtain fresh leave to enter unless

- you are seeking admission for a different purpose from the one for which this leave has been granted.

Nevertheless, an investigation into your circumstances may be carried out upon your return to the United Kingdom, in order to determine whether or not the leave you have been granted should be varied or cancelled.