



Public Law Project

20th April 2021

Mr. Ed Humpherson
Office for Statistics Regulation
1 Drummond Gate
London
SW1V 2QQ



Dear Mr Humpherson,

Re: Use of statistics in judicial review reform

Public Law Project is a registered charity with a mission to improve public decision making and facilitate access to justice. We employ specialist lawyers who assist individuals experiencing personal disadvantage, or charities or organisations representing the interests of marginalised or disadvantaged groups. We also employ expert academics and researchers. Through our work, we have extensive expertise in and experience of the judicial review system.

In 2020, the Government established the Independent Review of Administrative Law, which sought to review the operation of judicial review. In March 2021, a Report was published, and the government opened a new consultation on further reforms. The Independent Review recommended that an important type of judicial review—known as *Cart* judicial reviews—ought to be cut back. *Cart* judicial reviews concern the Upper Tribunal's power to refuse to grant someone permission to appeal against a decision of a First-tier Tribunal. Such a refusal is not capable of being appealed—hence why the UK Supreme Court ruled in 2011 that judicial review should be available. The IRAL panel recommended that they should be abolished. The Government accepted this recommendation and is now consulting on *how* *Cart* judicial reviews ought to be restricted or abolished.

We will not restate in detail the justification advanced for the discontinuation of *Cart* judicial reviews, but the central logic of both the Independent Review of Administrative Law's Report and the Government is clear: that there are too few

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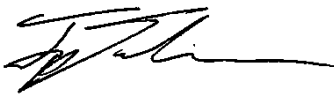
successful *Cart* cases relative to how many are lodged, resulting in a disproportionate use of judicial resource. This assessment was made on the basis that there have only been 12 successful *Cart* judicial reviews since 2012, which represents 0.22% of all such cases brought. This figure was relied on by government and has been widely cited in the mainstream press.

The figure 0.22% is entirely incorrect and misleading. The core of the problem with the figure is that it is built out of *reported* cases, of which there were only 45 found by the Panel. On the basis of the outcomes the panel had access to via legal databases, the success rate figure would be 12 out of 45 cases, not 5,502. This would represent a much higher success rate of 26.7%. The figure being relied on artificially deflates the actual success rate in reported cases by taking 5,457 cases and assuming they were all failures. There is no basis for that assumption. Furthermore, *Cart* cases are not generally reported because they go through a specific procedure, the dynamics of which means reported successful cases are unlikely. That success in the judicial review system does not usually come in the form of a judgment but some other resolution is recognised elsewhere in the Independent Review of Administrative Law Report (para. C.22), but not in relation to *Cart* cases. I enclose with this letter an article by myself and Alison Pickup, which sets out in detail the clear errors made in the approach to statistics. We also enclose an article by Dr Joanna Bell (University of Oxford), which accepts our analysis and seeks to provide ways to collect better data.

Our concern is that the government is now undertaking important reform to the constitutionally important system of judicial review based on an obviously flawed statistic. Furthermore, our attention has been drawn to further instances of misleading data being used in this process and much of what government submitted to the Independent Review process has not been published. We invite the Office for Statistics Regulation to urgently review the use of statistics in this ongoing process.

Thank you in advance for your time on this matter and please do not hesitate to contact us if we can be of further assistance. This letter is also being copied to Professor Jane Hutton, Chair of the Royal Statistical Society's Statistics and Law Section.

Yours sincerely,



Dr Joe Tomlinson

Research Director

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CC. Professor Jane Hutton, Chair of the Royal Statistical Society's Statistics and Law Section

Enc. Article on *Cart* judicial reviews by Dr Joe Tomlinson and Alison Pickup
Article on *Cart* judicial reviews by Dr Joanna Bell