The City of London Law Society

4 College Hill
London EC4R 2RB

Tel +44 (0)20 7329 2173
Fax +44 (0)20 7329 2190
DX 98936 – Cheapside 2

mail@citysolicitors.org.uk

www.citysolicitors.org.uk

Litigation Committee response to the Ministry of Justice's consultation paper entitled *Judicial Review: Proposals for further reform*

The City of London Law Society ("CLLS") represents approximately 15,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees. This response to the Ministry of Justice's Consultation Paper entitled *Judicial Review: Proposals for further reform* has prepared by the CLLS Litigation Committee (the "Committee"). The response is concerned solely with judicial review in a commercial context, and not with, for example, immigration and asylum cases or planning issues.

The Committee is not convinced by the arguments in the Consultation Paper that the system of judicial review is in need of reform in the manner proposed in the Consultation Paper. The Committee concedes that it may be irritating to the Government that judicial review "hinder[s] actions the executive wishes to take". That temporary hindrance, assuming always that the judicial review proves unfounded, in the tiny number of cases involved is a necessary price to pay for what the Consultation Paper correctly acknowledges is "a crucial check to ensure lawful public administration".

The procedural hurdles in the way of judicial review are already considerable, both in terms of the time limits for seeking judicial review and the requirement for permission. Outside immigration and asylum cases, the number of judicial review applications has been fairly constant over recent years. Even including immigration and asylum cases, the statistics in the Consultation Paper show that only 11% of cases are granted permission to proceed, that only 4% of cases reach a substantive hearing and that only 1% of cases succeed (though some, even many, of the cases withdrawn may be because the executive has agreed to remedy the complaint and could therefore count as successful). This suggests strongly that the filters applied to judicial review are already effective in limiting the impact on executive action, and does not indicate a need for further reform. If the Government's real complaint is that

it takes too long even to refuse an application for permission to proceed, that is an issue that may need to be addressed in terms of judicial deployment but it does not in itself suggest a need to change the tests currently applied in judicial review.

Turning to certain of the questions raised in the Consultation Paper, the Committee does not consider that the current rules on standing to bring judicial review need amendment. The Consultation Paper specifically refers to judicial reviews commenced by campaign groups, pointing to some 50 such applications over a five-year period (though also acknowledging that these applications are relatively successful). The Committee does not see any objection in principle to campaign groups applying for judicial review, and this tiny number does not indicate any abuse or need for reform. In any event, if a campaign group wishes to apply for judicial review, it will in practice have little difficulty in finding an individual or other entity that meets whatever standing requirement is imposed and then funding that individual's application. It is better to be clear who is really making an application for judicial review than for that person to be forced to hide behind others.

Similarly, the Committee does not see any need to revise the test to be applied where there has been a procedural error. In the Committee's view, the hurdle that the executive must pass in order to show that a procedural defect would not have affected the outcome should be a high one, as is currently the case. The procedures required of the executive are important in order to ensure openness and fairness in decision-making. Nothing should be done that might encourage the executive to disregard procedural aspects because the executive concludes that they will not affect the final outcome.

Finally, the Committee does not consider that the current law on leap-frogging should be changed significantly. While there may be an argument that the consent of the parties to leap-frogging should not be required, the importance of full judicial consideration of the issues below the Supreme Court should not be underestimated. Cases that reach the Supreme Court raise difficult issues. The ultimate aim should be to ensure that the final appeal court within the UK reaches the correct decision. In seeking to achieve this, the Supreme Court will generally be assisted by the Court of Appeal's consideration of the issues, even if the Supreme Court ultimately disagrees with the Court of Appeal's conclusion. It should only be in rare cases that this intermediate step is missed out. A desire on the part of the executive for haste in judicial review is in itself an insufficient reason.

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THE CITY OF LONDON LAW SOCIETY
Litigation Committee

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