Judicial Review
A Practical Guide

Third Edition

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FOREWORD

Judicial Review, which involves the supervision by the courts of the legality of our public administration, is one of the bulwarks ensuring that the freedoms and rights of those living in England and Wales are upheld. Critical public law controls are exercised by the judiciary over the executive – namely, the departments of state that are run by ministers, as well as local authorities and quangos. When public powers, created or recognised by law, are exercised by executive government, these have legal limits and it is for the courts to ensure that what happens is lawful. As Lord Hoffmann observed in the *Alconbury* case 'when ministers or officials make decisions affecting the rights of individuals, they must do so in accordance with the law. The legality of what they do must be subject to review by independent and impartial tribunals' (paragraph 73).

The growth in the number of cases in recent years has been a real source of concern for the judiciary and the Ministry of Justice. One notable statistic is that between 2000 and 2013 the number of judicial review applications that were lodged increased over threefold, from around 4,200 in 2000 to over 15,600 in 2013. This growth was particularly driven by applications for judicial review in the field of immigration and asylum, and to ease the burden on the Administrative Court many of the cases in these two areas have been transferred to the Upper Tribunal.

Although there are numerous practitioners who specialise in judicial review, claims can arise unexpectedly in many different fields, with the result that lawyers with little familiarity with judicial review have found themselves involved in public law litigation. Simply by way of example, the Human Rights Act 1998 placed primary responsibility to respect rights under the European Convention on public authorities, with the result that judicial review has become a frequently used means of resolving disputes in this area.

This book has many strengths, including most particularly the evident underlying scholarship, but I consider its greatest strength is that it provides an invaluable practical guide on all the stages in the judicial review process. From the beginning of a claim right through to the end, it assists the practitioner on most, if not all, of the points that are likely to arise. It operates both as a manual and as a source of answers to the many questions that exercise those undertaking these cases. And I cannot overstress how important it is that these claims are advanced, and resisted, competently and professionally. In the recent

past, Green J expressed a concern that is felt by many judges who sit in the Court of Appeal, the Administrative Court and in the Upper Tribunal:

> 'The facts … reflect what has become an all too familiar and depressing pattern in which legal representatives demonstrate a lack of care and concern for the substantive and procedural rules governing claims for judicial review. They suggest, in our view, a deliberate disregard for the professional duties that all legal representatives owe to the Court, and in the present case to the Tribunal.' *Re Sandbrook Solicitors* [2015] EWHC 2473 (Admin)

This book, if read and followed, will assist considerably in reducing the instances when litigants or their representatives attempt to advance cases incompetently or negligently. I commend it to hardened regulars in the field as well as those with less familiarity with judicial review, whether they are judges or practitioners. It is an invaluable guide to the entirety of the process.

Sir Adrian Fulford
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