



Law Commission consultation paper on administrative redress

Projects briefing July 2008

The Law Commission have recently published their consultation paper on proposed reforms to the law on administrative redress in public and private law. If taken forward, the suggested reforms (on which responses are invited) will have substantial impact on public bodies and their liabilities for bad administration.

The report seeks to balance the strengthening of citizens' right to compensation for loss caused by seriously substandard administrative action, with public agencies' need to get on and deliver statutory services without unacceptable impediments or financial risks. The author of the report, Kenneth Parker QC, has said: "we are seeking to achieve a fair balance between the legitimate claims of citizens and the need not to interfere unduly with the decision-making of public authorities, or to add unduly to calls on the public purse".

In essence, the proposed reforms would involve:

- expanding the Ombudsmen's role, with Courts being empowered to refer suitable cases back to the Ombudsmen and the Parliamentary Ombudsmen being permitted to accept cases put forward by citizens;
- reforming the judicial review process to allow the Courts to award financial damages to citizens – in line with European and Human Rights law;
- reforming the private law remedies available to citizens by abolishing the rights to seek redress for "misfeasance in public office" and "breach of statutory duty". In their place, will be a new system which will cover "truly public activities", i.e. the activities of statutory bodies not carried out by private organisations. Claimants would then have to demonstrate that legislation exists to promote the interests of individuals, and that the public body had been at "serious fault";
- allowing Courts to apportion blame between various respondents so that compensation is borne proportionately, and not borne in full by one public authority under the principle of "joint and several liability".

WHAT DOES ALL THIS MEAN?

The overall aim of the Law Commission is to introduce predictability into the legal system governing rights of redress and to give better protection to the public purse. For example, the Commission recommend the possibility of capping the level of damages that may be awarded by a Court, and/or giving statutory immunity in certain fields (as is already the case with regard to the Financial Services Authority).



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These reforms may well lead to an increase in cases on the public law front, because the courts would be able to award damages (at present remedies are generally limited to rescission of the decision taken by the public body).

The Commission expect that there will be a reduction in private law actions, given the requirement to show "serious fault". However, there is recognition that there would be a settling in period whilst courts struggle to apply the new test to the facts of individual cases.

To find the consultation paper, go to www.lawcom.gov.uk. The Law Commission website includes the full report, a short summary and the results of their prior research and consultations.

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