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# Judicial Review in the Administrative Court during the COVID-19 Pandemic

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# Contents

Introduction _____	4
The routine work of the Administrative Court _____	6
The Administrative Court under COVID-19 measures _	8
Empirical evidence on the Administrative Court under COVID-19 measures _____	11
Conclusion _____	16



# Introduction

While much of UK life ground to a halt in response to the COVID-19 pandemic, the government sought to keep the wheels of justice turning.<sup>1</sup> To achieve this while also ensuring compliance with public health guidance on social distancing and associated legal restrictions, HM Courts and Tribunals Service (HMCTS) has relied extensively on remote hearings, generating a significant experiment in digital justice as a consequence. HMCTS was already in the process of an extensive, expensive, and controversial digital transformation project, but the arrival of the coronavirus in the UK caused a dramatic shift from conventional justice processes to remote hearings in a matter of days.<sup>2</sup> In this report, we report the first set of preliminary empirical findings concerning remote justice during the COVID-19 pandemic.

Our focus is on how the judicial review process in the Administrative Court has operated under COVID-19 measures.<sup>3</sup> Judicial review is important both as a part of the constitutional system but also as a means for individuals to advance claims against public bodies.<sup>4</sup> Judicial review is not an ideal process—no administrative justice process is. However, it is critically important that judicial review is as accessible and effective as possible. At a time when government is rapidly reforming its powers and responsibilities to respond to a public health emergency, access to judicial review takes on additional importance.<sup>5</sup>

This report considers how the amended judicial review procedure has been working in practice.<sup>6</sup> Our principal interest in this question is to understand whether judicial review has been accessible and effective in these unusual conditions. But there is also a chance that any emerging practices and precedents regarding remote justice may outlast the COVID-19 pandemic. Therefore, given there is a limited evidence base on remote justice proceedings, particularly in the UK, we are also interested in this question in the wider context of the effectiveness of remote hearings.<sup>7</sup> However, great care must be taken in any attempt to extract general conclusions beyond the

specific context we report on: this is not just digital justice, it is digital justice as a rapid-response contingency during a pandemic.

This report is divided into three parts. Part one provides an outline of the routine workload of the Administrative Court, to provide a baseline account of how the current system works. Part two sets out the measures put in place relevant to the Administrative Court, some of which are specific to its procedures and some of which are found in generally-applicable HMCTS guidance. The final part of the report reports on the findings from our initial empirical research into experiences with some of the first judicial review hearings under COVID-19 measures.

For the first part of the report, we drew our evidence from administrative data, which is routinely made available by HMCTS, and recent empirical studies on judicial review.<sup>8</sup> To develop an understanding of the experience with some of the first remote judicial review hearings to take place, we undertook semi-structured interviews with 13 lawyers during the week beginning 6th April 2020. This group included a mix of barristers and solicitors. It also included a mix of lawyers practising in London and various regional Administrative Court centres. By necessity, these interviews took place via online video calls.<sup>9</sup> The interviews related to participants' experiences of remote hearings held via telephone (primarily by BT MeetMe) or via video conference (by Skype for Business).

We are acutely aware that our data set does not, at present, include the views of lay clients and we are developing this research to engage with them as far as possible—their views are important and may differ substantially from their legal representatives' views.<sup>10</sup> We are also keen to engage with court staff and judges about their experiences of remote proceedings. However, there are distinct research challenges with accessing each of those groups, particularly at this time.

We had hoped to remotely observe some judicial review hearings under COVID-19 measures. However, the Administrative Court is sitting on a limited number of days and did not respond to our email requests for access to arranged hearings. We acknowledge that court staff are under a great deal of pressure at present, but based on our experience, there are two barriers to access to remote hearings: the Court requires observers to specify the case(s) they wish to observe, but releases case lists online with only minimal notice; and the Court requires observers to request access via the generic listings email address, which presumably experiences significant traffic and cannot respond to urgent requests for observation login details. For researchers and other observers, this is a significant problem. We intend to pursue this research further to broaden and widen our dataset. However, we see a strong benefit in publishing our preliminary findings at this stage.

# The routine work of the Administrative Court

The Administrative Court is based at the Royal Courts of Justice in London and also has centres in Birmingham, Cardiff, Leeds, and Manchester.<sup>11</sup>

The judicial review procedure, which has been subject to multiple reforms in recent decades, has several stages.<sup>12</sup> First, a claimant applies for permission to bring their judicial review. Second, a judge decides whether to grant permission, based on whether the claimant has an arguable case. Third, if permission is granted, the case proceeds to a final hearing, where both sides make arguments in person before a judge about the lawfulness of the act or decision under challenge. Finally, the judge makes a decision and issues a judgment, along with a remedy if appropriate.

An application for judicial review is ordinarily filed with an Administrative Court Office either in person or by post.<sup>13</sup> Permission is usually determined on the papers. The case then proceeds to a final hearing, which is ordinarily held in a physical courtroom and is open to anyone to attend and observe.<sup>14</sup> In view of the fact that the subject matter of such cases is very often of public interest or of interest to the public, such hearings are often attended by members of the press, parties with an interest in following the proceedings or by members of the general public. The Court has broad case management powers to hold a hearing by telephone or 'any other method of direct oral communication.'<sup>15</sup> The Court records all hearings unless the judge directs otherwise.<sup>16</sup> In general, however, it is unlawful for any person, even the court, to publish photos or video or audio recording of proceedings.<sup>17</sup>

The Administrative Court typically receives c.4,000 applications for judicial review each year.<sup>18</sup> Figure 1 shows the number of applications for judicial review from 2014 to 2018.<sup>19</sup> The process is front-heavy in practice, with many claims being withdrawn or conceded at an early stage, including often before a claim is even issued.<sup>20</sup> As a result, most judicial review claims never reach a full hearing and even fewer reach a full judgment (see Figure 2). When a final hearing does occur, the claimant's prospects of success are good (see Figure 3).

Figure 1: Applications for judicial review in the Administrative Court (2014-2018)

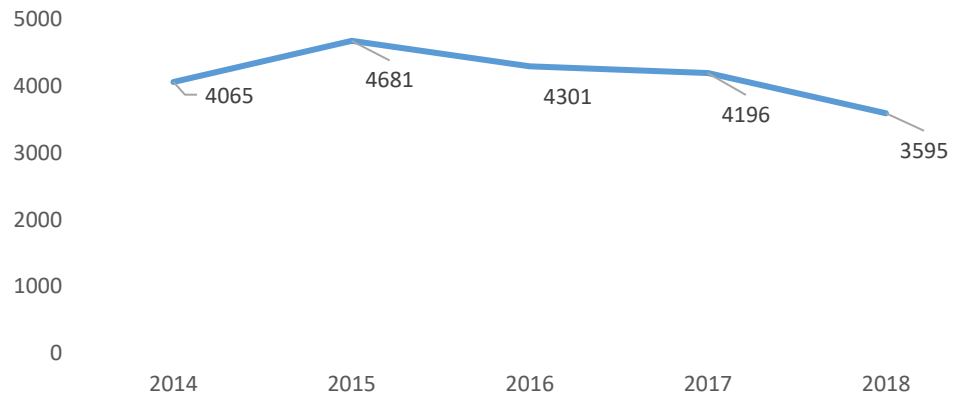


Figure 2: Applications, permission, hearings, and judgments in the Administrative Court (2014-2018)

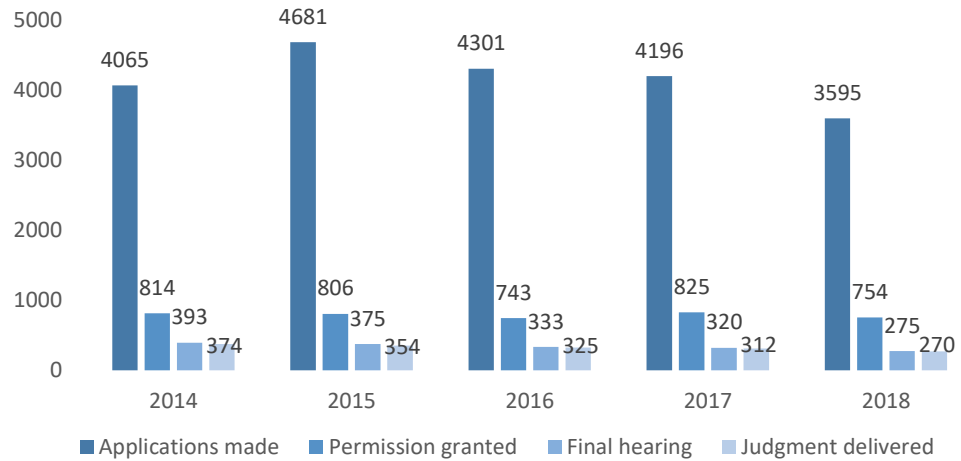
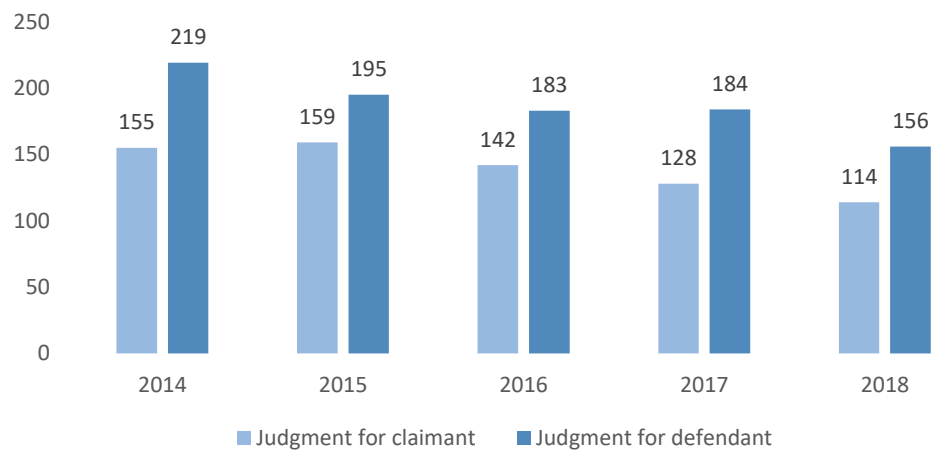


Figure 3: Judgments in the Administrative Court (2014-2018)



# The Administrative Court under COVID-19 measures

In response to the COVID-19 pandemic, there have been significant changes to the Administrative Court's ordinary judicial review procedure.<sup>21</sup>

New legislation, guidance, protocols, and rules provide for the Administrative Court to continue its work in a time of social distancing. Table 1 summarises the key COVID-19-related law and guidance relevant to the Administrative Court.

*Table 1: Overview of COVID-19 law and guidance relevant to the Administrative Court*

18 March 2020	HMCTS, <i>Guidance: HMCTS telephone and video hearings during coronavirus outbreak</i> (HMCTS First Guidance) <sup>22</sup>
20 March 2020	Judiciary of England and Wales, <i>Civil Justice in England and Wales: Protocol regarding Remote Hearings</i> <sup>23</sup>
23 March 2020	The Lord Burnett of Maldon, <i>Review of court arrangements due to COVID-19, message from the Lord Chief Justice</i> (LCJ Guidance) <sup>24</sup>
24 March 2020	Administrative Court Office, <i>Administrative Court Office Guidance – COVID-19 Measures</i> <sup>25</sup>
25 March 2020	Coronavirus Act 2020
25 March 2020	CPR Practice Direction 51Y – Video or Audio Hearings During Coronavirus Pandemic <sup>26</sup>
26 March 2020	Judiciary of England and Wales, <i>Civil Justice in England and Wales: Protocol regarding Remote Hearings</i> (Revised Remote Hearing Protocol) <sup>27</sup>



26 March 2020	Judiciary of England and Wales, <i>High Court Business: Contingency Plan for maintaining Urgent Court Hearings</i> (High Court Contingency Plan) <sup>28</sup>
27 March 2020	Administrative Court Office, <i>Administrative Court Office Guidance – COVID-19 Measures</i> (Revised Administrative Court Office Guidance) <sup>29</sup>
2 April 2020	CPR Practice Direction 51ZA – Extension of Time Limits and Clarification of Practice Direction 51Y <sup>30</sup>
8 April 2020	HMCTS, <i>Guidance: How to join telephone and video hearings during coronavirus (COVID-19) outbreak</i> (HMCTS Second Guidance) <sup>31</sup>

In relation to the filing of applications, all applications for judicial review must now be filed electronically by email to the Administrative Court Office.<sup>32</sup> Applications must be accompanied by an electronic bundle of the relevant documents which complies with certain formatting requirements (*e.g.* a hyperlinked index, selectable text, *etc.*). Urgent applications are to be limited to 'only those documents which it will be necessary for the court to read for the purposes of determining the application.' Urgent applications are those 'where it is contended that irreversible action will take place if the Court does not act to prevent it, or where an expedited judicial review is required.' The Administrative Court Office has noted that there may be a delay before non-urgent applications are issued, but the date that the application is sent will be the date that it is recorded as filed. Claimants who are not legally represented and do not have access to email are asked to contact the Administrative Court Office by telephone so that alternative arrangements can be made.

Permission continues to be considered and determined on the papers, although the Administrative Court Office has indicated that the response time for such decisions is likely to increase.<sup>33</sup> In relation to hearings, the Lord Chief Justice has directed that all civil hearings, including judicial review, will take place remotely, unless 'a remote hearing is not possible' and 'suitable arrangements can be made to ensure safety.'<sup>34</sup> The Revised Administrative Court Office Guidance is to the same effect. It states that cases will continue to be listed for hearing 'although hearings of non-urgent business may take longer to come on,' and '[m]ost if not all hearings' will be conducted remotely and, where possible, conducted as public hearings.<sup>35</sup> The Royal Courts of Justice and all of the regional centres remain open for essential in-person hearings.<sup>36</sup>

The COVID-19 measures provide for remote hearings to occur in a particular format. Most if not all hearings will be conducted by Skype for Business or telephone.<sup>37</sup> The Court should, wherever possible, consult with the parties before proceeding with a remote hearing.<sup>38</sup> In a remote hearing, the Court official and the parties should log in or call in to the relevant platform 'in good time for the stated start time of the remote hearing,' and the Court official will then invite in the judge.<sup>39</sup> HMCTS has published general guidance on how to join telephone and video hearings.<sup>40</sup> As required by CPR Part 39.9(1), the hearing will be recorded unless the judge directs otherwise. The parties and their legal representatives are not permitted to record the hearing.<sup>41</sup> HMCTS has advised that its systems cannot provide for confidential communications between lawyers and clients and, as such, 'other arrangements will have to be made to facilitate these conversations, such as phone calls to clients.'<sup>42</sup>

Remote hearings 'should, so far as possible, still be public hearings.'<sup>43</sup> The Revised Remote Hearing Protocol suggests a number of methods: a judge or Court official relaying the audio and/or video to an open court room; allowing a media representative to log in to the remote hearing; and/or live streaming the hearing over the internet, where broadcasting hearings is authorised in legislation.<sup>44</sup> The Coronavirus Act 2020 relevantly authorises courts to record and broadcast proceedings which are conducted wholly as video or audio proceedings, thus relaxing the conventional prohibitions on publishing or broadcasting court proceedings discussed above.<sup>45</sup> Requests from the media and others to observe a hearing remotely should be made to the Court in advance to allow for inclusion during the hearing set-up.<sup>46</sup>

In some cases, public access to a remote hearing may be impossible. Practice Direction 51Y states 'where the court directs that proceedings are to be conducted wholly as video or audio proceedings and it is not practicable for the hearing to be broadcast in a court building, the court may direct that the hearing must take place in private where it is necessary to do so to secure the proper administration of justice.' Where a 'media representative' is able to access proceedings remotely while they are taking place, they will be deemed public proceedings and the Court may not direct that the hearing be private. Any hearing held in private must be recorded, where that is practicable, in a manner directed by the Court, and any person can request access to such a recording in a court building with the Court's consent.<sup>47</sup>

# Empirical evidence on the Administrative Court under COVID-19 measures

The significant changes to judicial review implemented through the above measures represent a swift shift from conventional justice procedures to remote, mostly digital justice procedures. Our research into the operation of those hearings allows us to make the following initial observations.<sup>48</sup>

There was a general consensus among interviewees that they were grateful that judicial reviews were still able to go ahead in the Administrative Court. Many expressed their appreciation for the efforts of Court staff to facilitate this. The responses reflect patience and problem-solving attitudes from all parties towards technical or practical issues. This 'just get it done' approach and sense of goodwill in difficult circumstances was appreciated by many. Interviewees also valued the flexibility of being able to conduct hearings listed all over the country from their own homes.

Ensuring that everyone had the same bundle and that the necessary paperwork was all in place prior to the start of the hearing was seen as vital to the effective running of judicial reviews using the new remote method. Many interviewees felt that the Court was generally handling this well. In particular, one interviewee noted the responsiveness of the Administrative Court, which enabled an urgent application to go ahead without delay. In some cases, it fell to the lawyer to proactively contact parties to ensure that everyone was speaking to the same documents. However, Court staff were often able to take on this vital role, including helping parties to upload bundles. The notice that parties were given prior to the hearing also seems to be increasing, which was highlighted by a number of interviewees as an improvement. This gave parties sufficient time to set up the technology and make any necessary arrangements in terms of communication with clients or instructing solicitors during the course of the hearing.

Many interviewees noted that the greater significance of effective and responsive Court staff in enabling remote hearings. Not only was this seen as vital in maintaining effective case management prior to the hearing, but the



'marshalling role' of the clerk before and during the hearing itself was also seen as particularly constructive. Court staff generally circulated details to the parties about joining hearings and often dialled parties in for audio-only hearings. During the hearing itself, clerks sometimes provided impromptu technical support, dialling parties back in if a connection temporarily failed or turning off a judge's camera at the end of a session.

A number of interviewees highlighted the value of test calls scheduled in advance of the hearing. These ranged from several days in advance, to the day before a morning hearing, or the morning before an afternoon hearing. As one interviewee put it: '[i]t was a very good move to make sure everyone had Skype for Business up and running.' This 'tech rehearsal' process, as one interviewee called it, ensured that when it came to the hearing, all parties were familiar with each other (which was particularly important for an audio-only hearing) and the technology. In cases without a pre-hearing test call, delays at the start of hearings were common, ranging from half an hour to an hour. Interviewees appreciated the understanding shown by the Court and other parties in giving them time at the beginning to set up. In one instance, the Court gave a barrister an hour to set up their instructing solicitors on the video conference and they appreciated this time being afforded to them. However, hearings that had scheduled pre-hearing test calls largely avoided these preliminary technical issues and the consequent time delays. Comprehensive introductory remarks by the judge were appreciated by interviewees who experienced this. This generally included introducing the participants, outlining how the hearing would proceed, and noting any changes to Court etiquette that were required, such as muting microphones when not speaking. Alongside a pre-hearing test call, a thorough introduction by the judge was felt by many to suitably frame the hearing and set the tone for the ensuing proceedings.

Interviewees were generally pleased with the Administrative Court's apparent practice thus far, with one interviewee noting that 'it seems to be a step ahead' of other comparable jurisdictions within the courts and tribunals system. Still, a number of interviewees felt that Administrative Court cases, by their nature, were often more suitable for remote hearings: submissions are often very focused on specific points of law, litigants are rarely in court, and there is generally no live evidence to test. As one interviewee put it:

My view is it worked very well... I think it was really because of the nature of the case... it was really only two issues in dispute. We had already been circulated the papers amongst us. So it was really just a case of focused submissions on those two central issues with everybody having read the relevant documents, so entirely amenable to a telephone hearing.

Many interviewees felt a remote hearing was appropriate for the particular case they presented in the Administrative Court, but expressed concerns about the use of remote hearings in other settings or in other circumstances. Two interviewees had conducted judicial reviews in the Administrative Court where a litigant was unrepresented. This presented a number of issues. For example, one litigant in person did not have access to the bundle or to video conferencing technology, which meant that the hearing had to take place via telephone and at a slower pace to compensate for their lack of bundle access. One litigant in person began to cry during the hearing, while another was cut out mid-way through their submissions by technical problems. In each case, it was difficult for the judge to respond effectively to these problems within the timeframe of the hearing. Whilst the interviewees considered that, in these instances, the issues were ultimately handled well and did not obstruct progress, they expressed concern about the experiences of litigants in person in remote hearings more generally. In particular, one interviewee was concerned about a litigant in person's ability to comprehend the consequences of a remote hearing. A number of interviewees also felt that in more complex cases, such as those with 'significant debate' or where a substantial amount of case management had not already been completed prior to the hearing, they would be less comfortable conducting a hearing remotely. There was also concern that hearings that were more 'document heavy' would be more difficult to conduct efficiently in a remote configuration.

Whilst the interviewees saw the present necessity of conducting hearings remotely, they also saw in-person hearings as ultimately preferable in most instances. This is partly due to a number of challenges arising from the use of telephone or video conferencing technology. Common issues included problems logging into the remote hearing, and calls suddenly freezing or dropping out when an internet connection failed. These were largely navigated with patience, but could be frustrating for participants who were cut off in the middle of a sentence and lost their flow. Even when the technology worked well, access to the necessary hardware was a frequent problem, *e.g.* a need for two screens when engaging with extensive paperwork or lay clients without access to a computer. One interviewee noted that telephone hearings could generate a particularly disruptive issue: if a hearing overran, the participants of the next hearing would dial in at the allotted time, only to interrupt the late-running hearing that was still on the line. As each participant dialled in, their entry would automatically be announced and the judge had to wait until everyone who was expected to join had done so before explaining that they should leave and return to the call at an agreed later time. The use of the audio or video link also made it more difficult for participants to take instruction from clients or solicitors and for judges to deliberate during a hearing. Interviewees developed workarounds for this challenge, such as communicating with others via

WhatsApp or text message. Some representatives had multiple ongoing conversations at the same time and were concerned about the level of distraction this involved. One interviewee noted the potential for breaches of confidentiality with the use of audio or video links. In one instance, witnessed in a break before judgment was handed down, one participant disconnected their video connection but forgot to mute their microphone. This led to them inadvertently broadcasting their informal discussions with colleagues and some frantic emailing to alert them to what they had done.

Many interviewees highlighted the challenge of not being able to see how submissions were being received, particularly by the judge, during both telephone and video hearings. Consequently, it was hard to establish whether the judge had grasped a certain point, or to spend longer elaborating on it. It was also harder to get a sense throughout the hearing of the judge's likely decision on the case. One interviewee noted that judges were less interventionist than they might be in an in-person hearing:

[I]t's more difficult to be interventionist with video streaming because of the delays and problems of over-speaking, and so people, naturally, I think, sort of sit back and listen more than they would otherwise. That is obviously a disadvantage for debate and effective public hearings.

This was frustrating for some interviewees, as they felt they were not always able to adequately address points during the hearing and would only hear what the judge really thought in the final judgement. Overall, interviewees felt that they were 'fighting an uphill battle' on this front, which primarily stemmed from their limited ability to engage the judge. One interviewee noted that remote hearings called for 'a slightly different style of advocacy,' but that without feedback from other participants, it was difficult to gauge what this style was.

A number of the interviewees' hearings had a press or public presence. While some saw the process of gaining access to remotely observe hearings as 'quite easy to arrange,' others noted instances where there was a struggle immediately before a hearing for press to be given the login details to observe the hearing remotely. One interviewee also remarked that it was not clear whether the court was exercising its power under CPR Practice Direction 51Y to make the hearing private and that this should be made clear to all parties.

Multiple interviewees conducted their hearings via telephone as this was the platform chosen by the Court, but the majority said that they would have preferred to conduct the hearing via video link. In one instance, the Court opted for a telephone hearing as there were technical difficulties with the Skype hearing initially scheduled. In another instance the Court chose a



telephone hearing because the judge was struggling to get to grips with Skype. On other occasions, it was not clear why the Court chose an audio-only link. Interviewees found telephone links exacerbated the problem of speaking over one another and made it even harder to engage the judge. Audio-only links also created greater feelings of disconnection from the other participants, not least because whilst conducting a telephone hearing, as one interviewee noted, participants are left 'just staring into the abyss.'

# Conclusion

Our initial findings suggest that there is support for the judicial review process continuing during the COVID-19 lockdown and that remote hearings have certain strengths. However, there are also various technical difficulties and remote hearings are not seen as universally appropriate, even in a heavily 'law-focused' jurisdiction such as judicial review.

As stated at the outset of this report, we intend to collect further data on how the Administrative Court is operating during the pandemic. Further engagement with lay clients, legal representatives, Court staff, and judges is crucial. Data collection by the Administrative Court and HMCTS—including, critically, on case outcomes linked to remote hearings—would also assist in the collective endeavour of ensuring the Administrative Court is both working and seen to be working in these extraordinary times.<sup>49</sup> The developing experience of the judicial review process in these unusual circumstances may, if properly studied, provide important insights about the future of the system, and digital justice more generally, after the pandemic.

# References

<sup>1</sup> The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020, SI 2020/350; The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020, 353 (W. 80). These legal restrictions are supported by Government public health advice, which was in place before the legal restrictions were enacted.

<sup>2</sup> For a critical and recent overview of the reforms, see: House of Commons Justice Committee, *Court and Tribunal reforms: Second Report of Session 2019* (HC 190, 2019). See also: J. Rozenberg, *The Online Court: Will IT Work?* (Legal Education Foundation, 2017); J. Tomlinson, *Justice in the Digital State* (Bristol University Press, 2019), Ch. 3.

<sup>3</sup> Most immigration judicial review cases, which constitute the majority of all judicial reviews, are now handled in the Upper Tribunal (Immigration and Asylum Chamber). That was not part of our focus here. For a recent analysis of that system, see: R. Thomas and J. Tomlinson, *Immigration Judicial Reviews: An Empirical Study* (Nuffield Foundation, 2019).

<sup>4</sup> For a fuller account of the functions of judicial review, see: C. Harlow and R. Rawlings, *Law and Administration* (3<sup>rd</sup> edn Cambridge University Press, Cambridge 2009), pp.669-670. See also: S. Nason, *Reconstructing Judicial Review* (Bloomsbury Hart, Oxford 2016).

<sup>5</sup> There have already been multiple successful challenges brought during the COVID-19 pandemic, see e.g. 'Government guidance changed to permit people with specific health needs to exercise outside more than once a day and to travel to do so where necessary' (Bindmans LLP, 8 April 2020) <<https://www.bindmans.com/news/government-guidance-changed-to-permit-people-with-specific-health-needs-to-exercise-outside-more-than-once-a-day-and-to-travel-to-do-so-where-necessary/>>.

<sup>6</sup> To be clear, our ambitions in this report are limited to description only. We do not provide an analysis of the legality or general desirability of the arrangements that have been put in place.

<sup>7</sup> See generally: A. Wallace, S. Roach Anleu, and K. Mack, 'Judicial Engagement and AV links: Judicial Perceptions from Australian Courts' (2018) 26(1) *International Journal of the Legal Profession* 51; A. Wallace, S. Roach Anleu, and K. Mack, 'Judicial Work and AV use: Perceptions from Australian Courts' (2017) 7(4) *Onati Socio Legal Series* 691; P. Gibbs, *Defendants on video – conveyor belt justice or a revolution in access?* (Transform Justice, 2017); I. Eagly, 'Remote Adjudication in Immigration' (2015) 109(4) *Northwestern University Law Review* 933; D. Tait, B. McKimmie, R. Sarre, D. Jones, L.W. McDonald, and K. Gelb, *Towards a Distributed Courtroom* (2017); M. Mason and A.H. Sherr, *Evaluation of the Small Claims Online Dispute Resolution Pilot* (2008); M. Terry, S. Johnson, and P. Thompson, *Virtual Court Pilot Outcome Evaluation* (HMCTS, 2010); M. Rossner and M. McCurdy, *Implementing Video hearings (Party-to-State): A Process Evaluation* (HMCTS, 2018).

<sup>8</sup> In particular, see: V. Bondy, L. Platt and M. Sunkin, *The Value and Effects of Judicial Review: The Nature of Claims, their Outcomes and Consequences* (Public Law Project, 2015).

<sup>9</sup> All of the authors were, of course, subject to the lockdown. All interviews were recorded and transcribed.

<sup>10</sup> For a powerful recent account, see: C. Kitzinger, 'Remote justice: a family perspective' (The Transparency Project, 29 March 2020) <<http://www.transparencyproject.org.uk/remote-justice-a-family-perspective/>>.



<sup>11</sup> See generally: S. Nason and M. Sunkin, 'The Regionalisation of Judicial Review: Constitutional Authority, Access to Justice and Specialisation of Legal Services in Public Law' (2013) 76(2) *The Modern Law Review* 223.

<sup>12</sup> For an overview, see: R. Rawlings 'Modelling Judicial Review' (2008) 61(1) *Current Legal Problems* 95.

<sup>13</sup> The Administrative Court permits certain documents to be filed by email. See Judiciary for England and Wales, *The Administrative Court Judicial Review Guide 2019* (July 2019) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/825753/HMCTS\\_Admin\\_Court\\_JRG\\_2019\\_WEB.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/825753/HMCTS_Admin_Court_JRG_2019_WEB.PDF)>, [6.7].

<sup>14</sup> CPR Part 39.2(1).

<sup>15</sup> CPR Part 3.1(d).

<sup>16</sup> CPR Part 39.9(1).

<sup>17</sup> Criminal Justice Act 1925 s.41; Contempt of Court Act 1981 s.9; *R (Spurrier) v Secretary of State for Transport* [2019] EWHC 528. See further: T. de la Mare QC, *Coronavirus and Public Civil Hearings* (Blackstone Chambers, 30 March 2020) <<https://coronavirus.blackstonechambers.com/coronavirus-and-public-civil-hearings/>>.

<sup>18</sup> All data is taken from Ministry of Justice, *Civil Justice Statistics Quarterly: October to December 2019* (5 March 2020), Tables 2.1 and 2.2.

<sup>19</sup> In 2013, most immigration judicial reviews were transferred from the Administrative Court to the Upper Tribunal (Immigration and Asylum Chamber).

<sup>20</sup> See generally: M. Sunkin and V. Bondy, 'Settlement in Judicial Review proceedings' [2009] *Public Law* 237.

<sup>21</sup> All information is accurate as at 15 April 2020.

<sup>22</sup> HMCTS, *Guidance: HMCTS telephone and video hearings during coronavirus outbreak* (27 March 2020) <<https://www.gov.uk/guidance/hmcts-telephone-and-video-hearings-during-coronavirus-outbreak>>. This Guidance has been updated several times since it was first published. For the sake of clarity, this report refers to the most recent version as at the date of publication, which was updated on 14 April 2020.

<sup>23</sup> Judiciary of England and Wales, *Civil Justice in England and Wales: Protocol regarding Remote Hearings* (20 March 2020) <[https://www.judiciary.uk/wp-content/uploads/2020/03/Remote-hearings.Protocol.Civil\\_.GenerallyApplicableVersion.f-amend-24\\_03\\_20-1.pdf](https://www.judiciary.uk/wp-content/uploads/2020/03/Remote-hearings.Protocol.Civil_.GenerallyApplicableVersion.f-amend-24_03_20-1.pdf)>.

<sup>24</sup> The Lord Burnett of Maldon, *Review of court arrangements due to COVID-19, message from the Lord Chief Justice* (23 March 2020) <<https://www.judiciary.uk/announcements/review-of-court-arrangements-due-to-covid-19-message-from-the-lord-chief-justice/>>.

<sup>25</sup> Thomson Reuters Practical Law, *COVID-19: Administrative Court Office publishes guidance on measures for judicial review applications for immediate or urgent action* (2 April 2020) <[https://uk.practicallaw.thomsonreuters.com/w-024-7598?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/w-024-7598?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1)>.

<sup>26</sup> CPR Practice Direction 51Y – Video or Audio Hearings During Coronavirus Pandemic <<http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part51/practice-direction-51y-video-or-audio-hearings-during-coronavirus-pandemic>>.

<sup>27</sup> Judiciary of England and Wales, *Civil Justice in England and Wales: Protocol regarding Remote Hearings* (26 March 2020) <[https://www.judiciary.uk/wp-content/uploads/2020/03/Remote-hearings.Protocol.Civil\\_.GenerallyApplicableVersion.f-amend-26\\_03\\_20-1-1.pdf](https://www.judiciary.uk/wp-content/uploads/2020/03/Remote-hearings.Protocol.Civil_.GenerallyApplicableVersion.f-amend-26_03_20-1-1.pdf)>. The Revised Remote Hearing Protocol applies to 'hearings of all kinds', and a hearing conducted in accordance with it is to be treated 'as a hearing in accordance with the CPR'. See Revised Remote Hearing Protocol, [1], [3].

<sup>28</sup> Judiciary of England and Wales, *High Court Business: Contingency Plan for maintaining Urgent Court Hearings* (26 March 2020) <[https://www.judiciary.uk/wp-content/uploads/2020/03/High-Court.Contingency.final\\_.26thMarch2020-002.pdf](https://www.judiciary.uk/wp-content/uploads/2020/03/High-Court.Contingency.final_.26thMarch2020-002.pdf)>.

<sup>29</sup> Administrative Court Office, *Administrative Court Office Guidance – COVID-19 Measures* (27 March 2020). This Guidance was originally circulated to practitioners by email, but is now available online here: <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/878790/Ops\\_update\\_-\\_Admin\\_Court\\_Office\\_Guide.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/878790/Ops_update_-_Admin_Court_Office_Guide.pdf)>.

<sup>30</sup> CPR Practice Direction 51ZA - Extension of Time Limits and Clarification of Practice Direction 51Y <<http://www.justice.gov.uk/courts/procedure-rules/civil/rules/practice-direction-51za-extension-of-time-limits-and-clarification-of-practice-direction-51y-coronavirus>>.

<sup>31</sup> HMCTS, *Guidance: How to join telephone and video hearings during coronavirus (COVID-19) outbreak* (8 April 2020) <<https://www.gov.uk/guidance/how-to-join-telephone-and-video-hearings-during-coronavirus-covid-19-outbreak>>.

<sup>32</sup> Revised Administrative Court Office Guidance. See also High Court Contingency Plan.

<sup>33</sup> Revised Administrative Court Office Guidance.

<sup>34</sup> LCJ Guidance.

<sup>35</sup> Revised Administrative Court Office Guidance. The Guidance also advises that, '[w]hen providing a time estimate for a hearing, any estimate should be adjusted for the fact that a hearing by Skype or telephone can take longer than a hearing conducted in person'.

<sup>36</sup> HMCTS, *Courts and tribunals tracker: 9 April 2020* <<https://www.gov.uk/guidance/courts-and-tribunals-tracker-list-during-coronavirus-outbreak>>.

<sup>37</sup> Revised Administrative Court Office Guidance. We note that the more general instruments provide different guidance on the platforms available for remote hearings. The Revised Remote Hearing Protocol refers to BT conference call, Skype for Business, court video link, BT MeetMe, Zoom and telephone call, but states that any communication method available to the participants can be considered if appropriate. The HMCTS First Guidance states that only BT MeetMe (for teleconferencing) and Kinly and Skype for Business (for videoconferencing) are available.

<sup>38</sup> Revised Remote Hearing Protocol, [16]-[18].

<sup>39</sup> Revised Remote Hearing Protocol, [20].

<sup>40</sup> HMCTS Second Guidance.

<sup>41</sup> Revised Remote Hearing Protocol, [5], [9].

<sup>42</sup> HMCTS First Guidance.

<sup>43</sup> Revised Remote Hearing Protocol, [8].

<sup>44</sup> Revised Remote Hearing Protocol, [8].

<sup>45</sup> Coronavirus Act 2020 s.55 and sch.25, which insert new provisions in the Courts Act 2003 to this effect.

<sup>46</sup> HMCTS First Guidance.

<sup>47</sup> Practice Direction 51ZA clarifies that a person is not required to make a formal application for access to a recording of a private hearing.

<sup>48</sup> We do so on the basis of the methodological caveats set out at the start of the report.

<sup>49</sup> See generally: N. Byrom, *Digital Justice: HMCTS data strategy and delivering access to justice* (Legal Education Foundation, 2019).









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