

PLP debunks the Lord Chancellor's misuse of judicial review statistics

On the Today Programme on 23 April 2013, the Lord Chancellor was interviewed by John Humphreys about the Government's plans to implement changes to judicial review procedure. The interview (see an unofficial transcript here: <http://www.publiclawproject.org.uk/documents/TranscriptChrisGraylingToday.pdf>) included the following exchange:

Humphreys: Why are you doing it [making the changes]?

The Lord Chancellor: Well let me give you a raw piece of statistic that will explain the nature of the problem. In 2011, the last year we had figures available, there were 11,359 applications for judicial review. In the end 144 were successful and all of the rest of them tied up government lawyers, local authority lawyers in time, in expense for a huge number of cases of which virtually none were successful. We're not saying there shouldn't be judicial review, we're not saying that members of the public and organisations should not be able to challenge public bodies, but what we're saying is that we have to raise the bar so that we have fewer cases that have no chance of succeeding.

A brief look at the official Ministry of Justice statistics (see table 6 of the document headed "Judicial Review Statistics 2007-2011 – tables" here: <https://www.gov.uk/government/publications/ad-hoc-statistical-releases>) shows that the Lord Chancellor's reference to only 144 "successful" cases was misconceived. This is of concern, because it suggests that the Government's recently announced changes to judicial review procedure, and its new proposals for restricting legal aid for judicial review, were based on a misreading of the evidence and/or a misunderstanding of the judicial review process. The Lord Chancellor should, more than anyone, be well aware of the constitutional significance of judicial review, as the means by which Government can be held to account by the courts. Restricting access to judicial review – and interfering with the checks and balances of our unwritten constitution – should not be done on the basis of misleading statistics or in an evidential vacuum.

The 144 figure relied upon by the Lord Chancellor is false because it only measures the number of judicial review cases that succeeded at a full hearing (as opposed to 212 that failed). But PLP's research suggests that thousands of cases will have settled with a positive outcome for the claimant in 2011:

- after the claim was issued but before the permission application was determined
- after permission was refused on the papers but before the oral renewal was heard
- after permission was granted but before the substantive hearing.

The precise number of such cases is not retrievable from the official statistics¹. What is clear is that thousands of issued cases remain unaccounted for. For example there is a significant

¹ Indeed, the official statistics that have been released are likely to cloud the true picture because:

- the figures appear to give a snapshot over time, and not to track cases issued in 2011 to their conclusion in subsequent years.
- some cases may appear both in the column marked "Permission to proceed" as refusals, and again in the column marked "Application for oral renewal", and so may be double-counted
- the number of cases in which the claimant was represented is not shown. This is significant since claims brought by litigants in person are likely to have resulted in far worse outcomes than claims brought with the benefit of representation (which is likely to have skewed the statistics in the immigration/asylum category in particular).

difference (4551 cases) between the total number of judicial review cases issued (11,539) and the total number of cases that received a paper permission decision (6,988) in 2011.

Research done by PLP and Essex University confirms practitioners' experience that settled judicial review cases are settled favourably to the claimant in a substantial proportion of cases. It is therefore clear that a substantial proportion of the missing cases and those recorded as withdrawn will have settled on terms favourable to the claimant. For a projection of the number of successful cases in 2011, see this response to the Lord Chancellor's statement by PLP's Research Director, and Professor Maurice Sunkin of the University of Essex: www.publiclawproject.org.uk/documents/UnpackingJRStatistics.pdf

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- the number of cases that had the benefit of legal aid is not recorded, nor the number of those in which there was no call on the legal aid fund (which is particularly relevant to the new legal aid proposals being consulted on).