



Ministry
of Justice

Geoffrey Cox MP
House of Commons
London
SW1A 0AA

The Right Honourable
Chris Grayling MP
Lord Chancellor and
Secretary of State for Justice
102 Petty France
London
SW1H 9AJ

T 020 3334 3555
F 020 3334 3669
E general.queries@justice.gsi.gov.uk

www.gov.uk/moj

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JUDICIAL REVIEW – CRIMINAL JUSTICE AND COURTS BILL

I write following the House of Commons debate on Monday 1st December on the judicial review clauses in the Criminal Justice and Courts Bill and our subsequent conversation.

The debate ranged across a number of areas, including the exceptional circumstances subsection in the amended Interveners and Costs clause (clause 67 of the print of the Bill as introduced into the House of Lords) and the effect of the 'likelihood of a substantially different outcome for the applicant' clause (clause 64).

As we discussed, during what was a complicated debate, I inadvertently suggested to you that clause 64 contains a provision for the court to grant permission to proceed with a judicial review where conduct is highly likely to have not made a difference if it considered there were exceptional circumstances to do so. I would like to take this opportunity to clarify that that is not the case. No such exceptional circumstances provision exists in this clause. However, it is my view that the clause does have a level of judicial discretion within the 'highly likely' test.

I would like to make it clear that the clause as introduced strikes an appropriate balance, and where there is any real doubt that there could have been a substantial difference for the applicant, the court will be able to find that the threshold had not been met and can grant permission to proceed with judicial review.

I am placing a copy of this letter in the library of both Houses.

W.L. best wish

CHRIS GRAYLING