



Lord Pannick QC
House of Lords
London
SW1A 0PW

MoJ ref: SUB94210

7 March 2022

Dear Lord Pannick,

ONLINE PROCEDURE RULE COMMITTEE CLAUSES IN THE JUDICIAL REVIEW AND COURTS BILL

I write in response to the helpful points that you raised during the Committee Stage of the Judicial Review and Courts Bill, regarding the criteria for deciding which cases must be subject to the online procedure.

As laid out in the clauses now before Parliament, the Online Procedure Rules Committee's (OPRC) rule-making powers will potentially extend to all Civil, Family and Tribunal (CFT) proceedings; but this is subject to the exercise of the Lord Chancellor's power by regulations to specify proceedings in relation to which the OPRC may make rules. That power requires both an affirmative resolution procedure and the concurrence of the Lord Chief Justice and Senior President of Tribunals. There will therefore be further opportunities for Parliament to consider the specific jurisdictions where the OPRC will have powers to make rules. I anticipate we will initially give the OPRC powers to make rules for money claims as previously indicated, but it is of course not the Government's intention permanently to restrict future rule making powers to this narrow area. I anticipate that online rules may be required across a range of CFT proceedings as online procedures develop, but it will always be the case that Parliament will have future opportunities to debate these proposals in detail and that there will always be options for the use of non-electronic or paper channels.

You also raised a question around how the OPRC will decide which cases will be heard online and which will not, and whether offline and paper routes will remain available to those who request them. This applies to both hearings and other procedural matters. I am confident that we had the opportunity thoroughly to discuss this in the Chamber, however I reiterate my response here for completeness. Proceedings other than hearings are treated slightly differently from hearings. For proceedings other than hearings, clause 19(6) provides that if Online Procedure Rules require a person to start, or take any step in, proceedings by electronic means, the rules **must** also provide that if the person is not legally represented, that person may choose to take the step by non-electronic means. So, the option of the paper channel must always be open for the unrepresented litigant. For hearings, clause 19(7) provides that if Online Procedure Rules require any person to take part in a hearing by electronic means, the rules **must** also provide that the court or tribunal may order or direct that person or any other person to participate by non-electronic means – so the judge ultimately decides what form of hearing there will be.

I would also draw your attention to clause 21 which gives the Lord Chancellor powers to provide in regulations (again subject to an affirmative resolution procedure and only with the concurrence of the Lord Chief Justice and Senior President of Tribunals) for certain proceedings or parts of proceedings to be governed by the applicable standard rules (for example the Civil Procedure Rules in the case of money claims) rather than Online Procedure Rules, or for parties to be able to choose whether the Online Procedure Rules or the applicable standard rules are to apply to all or part of the proceedings.

I will place a copy of this letter in the House Library.

Yours sincerely,

A handwritten signature in blue ink that reads "David Wolfson". The signature is written in a cursive style with a small flourish at the end.

**LORD (DAVID) WOLFSON
OF TREDEGAR, QC**