



## Public and Administrative Law

Our global public and administrative law team advises a broad range of public and private sector clients in a variety of jurisdictions on a variety of matters arising from the development, passage, content, interpretation and application of laws and regulations.

Across the world, we use our jurisdiction specific legal knowledge of government and the public sector to advise on the full range of dispute resolution and investigative processes, including judicial review, public inquiries, statutory appeals and tribunal processes, at the national and international levels. Additionally, the team advises on non-contentious public law matters including in respect of legislative drafting, governance, freedom of information, and defensible public sector decision-making. The breadth and capacity of the firm's public and administrative law team is therefore unparalleled, and it is for this reason that we are the advisor of first choice for a large number of high profile central and local government matters as well as for corporates (particularly those operating in regulated sectors, such as those operating in the transport and healthcare sectors) interacting with government and governmental decision-making processes.

Public and administrative law touches all business activities which are in any way subject to statutory control or regulation. It not only affects businesses which deal directly with government by engaging in major projects, but also any business or business sector whose scope may be limited or rendered less competitive as a result of new legislation or direct or indirect governmental intervention. This can cover such areas as freedom of information, planning and environment law, taxation, competition, procurement, health and safety, telecommunications, advertising, human rights, professional discipline issues and any other area where businesses come into direct contact with government.

Our Public and Administrative Law team is experienced in providing the highest quality public law advice informed by a detailed knowledge and understanding of government and government processes. We therefore assist those who interact with government, and we advise government itself, in order to improve effective and lawful collaboration between the two.

### CAPABILITES

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At a national and international level, we advise on the full range of dispute resolution and investigative processes in a wide number of jurisdictions, including:

- judicial review
- public inquiries
- statutory appeals
- tribunal processes.

Additionally, the team advises on non-contentious public law matters including:

- legislative drafting
- governance

- freedom of information
- defensible public sector decision-making.

## EXPERIENCE

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### United Kingdom

### New Zealand

#### United Kingdom – England and Wales

##### **Department for Transport**

We acted for the Department for Transport rail franchising team in the 2019 Rail Franchising Litigation on all matters relating to conduct of the litigation including in respect of discrete areas of public law such as the application of parliamentary privilege in the context of the DfT's disclosure obligations.

##### **Magnox Inquiry**

We act as solicitors to the Magnox Inquiry established to review the conduct by the NDA of the failed procurement of Magnox decommissioning services and the ensuing cancellation of contract. We work alongside GLD to advise on public law and public procurement matters.

##### **Department for Transport**

We worked with the Department for Transport commercial team on all legal challenge/risk and public law issues relating to the DfT's internal review of the Report by the Airports Commission into Airport Capacity in the South East. This included advising on the reintegration of the DfT's staff from the Commission into the DfT, the roles and responsibilities of different staff in terms of the review process, liaison with the former members of the Commission, engagement with the scheme promoters, correspondence with potential scheme opponents and subsequent scrutiny. Assisting with potentially contentious and sensitive issues in relation to the DfT's review and decision-making processes, in connection with the taking forward of the Airport Commission's recommendations and conclusions.

##### **Independent Parliamentary Standards Authority**

We advise IPSA on a wide range of discrete public law matters including, for example, in respect of statutory interpretation and public law consultation requirements.

##### **Transport for Greater Manchester and the Greater Manchester Combined Authority**

We work with Transport for Greater Manchester and the Greater Manchester Combined Authority on all procedural and legal challenge-related issues concerning the development of a proposed bus franchising scheme for the Greater Manchester area. This includes advising on all governance and legal risk issues relating to the development of the scheme, consultation on the scheme and progressing the scheme to implementation by the GMCA.

##### **DEFRA**

We worked with the Open Water programme (DEFRA, OFWAT and the appointed Market Operator) in connection with the drafting of the statutory and regulatory framework for the opening up to competition of the retail water market in England and Wales. We supported on all legal aspects of the programme in its preparation to open in 2017 as the world's largest retail water market valued at over GBP2.5 billion. We have drafted over 1,000 pages of statutory and regulatory documents working closely with OFWAT and DEFRA and have advised on related matters, such as those concerning competition law.

##### **Institute for Apprenticeships and Technical Education**

We have advised the Institute on the scope of their statutory functions and powers in the context of agreeing a memorandum of understanding with Ofqual regarding the approval and regulation of the new Technical Qualifications. We have also advised on the scope and conduct of an appeal (brought under the Institute's own appeal process) against the Institute's advice to the Department for

Education in relation to the funding bands for particular apprenticeship standards.

### **Natural Environment Research Council**

Advising the Natural Environment Research Council on public, charities and commercial law considerations in relation to the potential arm's length establishment of independent research centres. This involved consideration of the original Royal Charter and of the Science and Technology Act 1965.

## **New Zealand**

### **Wellington City Council**

DLA Piper New Zealand act for the Council in relation to all judicial review proceedings including those challenging decisions made under the Resource Management Act and the Local Government Act.

### **Wellington Regional Council**

DLA Piper New Zealand acted for Greater Wellington Regional Council in a two-stage public tender process for the sale of forestry cutting rights for 60 years. This was one of the largest open market New Zealand forestry transactions in recent years and the rights gave access to Wellington Regional Council's 5430-hectare forestry estate near Wellington and in the Wairarapa. As a public entity, good public sector procurement practice was of paramount importance to our client.

### **New Zealand Fire Service**

DLA Piper New Zealand acted in a successful application for leave to the Supreme Court over the proper interpretation of the levy provisions of the Fire Service Act 1975. After leave was granted we prepared the matter for the substantive hearing and provided junior counsel. The proceedings are a test case, which have significant implications for the amount of levy that is payable by insurance companies.

### **Trustees Executors Ltd**

This matter concerned the ability of the Official Assignee to claim an interest in the KiwiSaver accounts of bankrupt members and, if so, the ability of the Official Assignee to claim that interest through an early withdrawal payment. These issues arise as a result of inconsistencies between the KiwiSaver Act 2006 and the Insolvency Act 2006. The proceedings are a test case. They have implications for the way in which KiwiSaver providers can hold accounts on behalf of bankrupt members.

### **Public Trust**

DLA Piper New Zealand advised Public Trust on the impact of the Non-Bank Deposit Takers Act and Financial Markets Conduct Act on the common fund a statutory fund established under the Public Trust Act. This was novel and unique to Public Trust and involved negotiating exemptions from these Acts with Treasury and the Reserve Bank. It was a significant issue for Public Trust and an excellent outcome.

## **INSIGHTS**

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### **Publications**

#### **The 2019 rail franchising litigation - procurement: Legal privilege and a duty to give sufficient reasons**

4 August 2020

Mr Justice Stuart-Smith handed down judgment in the 2019 Rail Franchising Litigation, one of the largest and most complex procurement and commercial judicial review claims litigated to date in the UK. In this, our second article, we examine the Court's findings as they relate to legal privilege and the duty to give sufficient reasons.

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