



## A brief guide to judicial review procedure

### 1. What is judicial review?

Judicial review is a form of court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body. It is a challenge to the *way in which a decision has been made*. It is not really concerned with the conclusions of that process and whether those were 'right', as long as the law has been correctly applied and the right procedures have been followed. The court will not substitute what it thinks is the 'correct' decision. This may mean that the public body will be able to make the same decision again, so long as it does so in a lawful way. If you want to argue that the decision was incorrect, judicial review may not be best for you. You should look at the alternative remedies (see 4 below).

Judicial review may be appropriate where:

- an unlawful decision or action (2) has been taken by a public body (3); and,
- no alternative remedy (4) is available.

### 2. What makes a decision unlawful?

Judicial review looks at the lawfulness of actions and decisions. These can be challenged on a number of grounds, which are usually described as follows:

- *illegality*;
- *irrationality*; and
- *unfairness*.

*Illegality*. Public bodies must correctly understand and apply the law that regulates their decision making powers. An action or decision may be unlawful if the decision maker had no power to make it or exceeded the powers given to him/her. Four kinds of illegal activity may be identified :

- *refusing to act* in a certain way in a mistaken belief that the law does not allow the body to act in that way;
- *misuse of discretion*- e.g. using a discretionary power for the wrong purpose or in the wrong circumstances, or putting unlawful limits on the exercise of discretion (often called *fettering of discretion* and typically applying a local policy rigidly);
- *taking irrelevant factors into account* or failing to take account of all relevant factors; and,
- *failing to take account of the Human Rights Act 1998*. This short guide cannot deal with the details of the 1998 Act. You can find further information in 'Is it lawful?' which can be downloaded from our website.

*Irrationality.* The court can reverse a decision if it is so unreasonable as to be “perverse” or “irrational”. Arguing that a decision is irrational is extremely difficult and such claims are usually linked to challenges based on *illegality* and/or *unfairness*, if this is possible.

*Unfairness.* This deals with the process for reaching a decision and includes *the right to a fair hearing* (which includes the rule against bias). Also the courts have recently extended the idea of fairness to prevent abuses of power where public bodies have sought to go back, without sufficient justification, on promises made (called '*legitimate expectations*').

For more on the grounds for judicial review, see the third leaflet in this series.

### 3. Whose decisions can be challenged by judicial review?

The sort of *public bodies* whose decisions may be challenged include:

- government ministers and departments;
- local authorities & health authorities;
- chief constables & prison governors;
- some tribunals (but not if you can appeal to a higher tribunal or court);
- magistrates, coroners and county courts; and,
- boards of school governors (but not independent schools).

### 4. What is an 'alternative remedy'? Must I use one?

Judicial review is appropriate only if there is no suitable alternative remedy which could solve the problem. The following may be adequate alternatives:

- a *statutory right of appeal* against a disputed decision (such as to a social security appeal tribunal). This will usually be the best way to deal with a dispute. Judicial review is **not** an appeal and does not usually involve a re-examination of the facts. Appeal hearings do look at the whole matter again, and may provide a better remedy in many cases.
- *internal appeal or complaints procedures* will usually be adequate where the complaint concerns disputed facts; and,
- *ombudsmen* where there are issues of maladministration.

If alternative procedures are available, offer more or less the same solution and have not been used, the judge can refuse to hear a judicial review or refuse to grant a remedy.

### 5. What can judicial review do for me?

If an application for judicial review is successful, the court can grant a *remedy* by making of one of six orders:

- *quashing order*;
- *prohibiting order*;
- *mandatory order*;
- *declaration*;
- *injunction*; and/or,
- *damages*.

*Quashing order.* This is the most commonly requested remedy. It *overturns* an invalid decision that has already been made. The public body must then take the decision again applying the proper legal test or following a fair procedure.

*Prohibiting order.* This *prevents* a public body from taking an unlawful decision or action - for instance, to prevent the Home Office from deporting someone whom it has wrongly decided is an illegal immigrant.

*Mandatory order.* This order *requires* the performance of a duty, either an action the body has a duty to perform or the duty to reach a discretionary decision. For instance the court may order the public body to consider an application for a benefit when it has failed to do so (though the court *cannot* require that a specific decision is made, such as ordering that benefit be paid).

*Declarations.* The court may simply declare what the law is, or declare the respective rights of the parties, without making any other order.

*Injunctions.* These prevent an illegal act or enforce the performance of a duty. Since a *prohibiting* and *mandatory orders* serve similar purposes, injunctions are relatively rare. However, they are sometimes granted at the permission stage of the proceedings as a temporary order made before the court considers the case fully at the final hearing. For example, an injunction can be sought at an early stage to require a local authority to continue to provide community care services in a case disputing the lawfulness of withdrawal of those services.

*Damages.* Before the Human Rights Act came into force, damages were rarely awarded in judicial review and were not available to compensate people who had unlawful decisions made against them. Damages may now be awarded where a public body has unlawfully interfered with your human rights.

## 6. Will I always get a remedy?

Even if the court accepts that a public body has acted unlawfully, there is no *right* to any of the remedies. Any order is at the absolute discretion of the court, taking into account such factors as whether the applicant has:

- acted promptly and in good faith; and,
- suffered any substantial hardship.

There have been cases where a judge has agreed that there has been an unlawful decision, but has decided not to make any order. However, in the majority of successful judicial review cases a remedy is given.

## 7. When should I apply?

Claims for judicial review must be brought *promptly* and in any event within *three months* of the event complained of. These time limits mean applications should be made as soon as possible once it is clear that the case is suitable for judicial review.

The following are not usually accepted as excuses for late applications:

- ignorance of the law, even if you have been badly advised;
- unjustified delay in seeking proper advice; or,
- delay by the public body if the claimant adds to this by his or her own delay.

## 9. Should I get legal aid?

Public funding is available for judicial review actions to those people who satisfy the criteria. There is more information on who may qualify in the first leaflet in this series.

There are two reasons why it is crucial to obtain *specialist legal advice* before embarking on a judicial review:

- judicial review can affect large numbers of people, so it is important to avoid a bad decision; and,
- the risk of costs (i.e. if you lose your case the court may order that you pay the public body's costs).

A solicitor will not only be able to give specialist legal advice, but will also be able to apply for Community Legal Service Funding (or legal aid as it used to be known). If funding is available, it is a very important asset for the claimant because it covers his or her own costs and will usually protect him or her from paying the defendant's costs should the case be lost.

## 10. What should I do first?

Where a public body has taken a decision or action which you think is unlawful, and if there is time, it is essential to write to the public body, following the format set out in the 'Pre action protocol' This can be found here:

[http://www.dca.gov.uk/civil/procrules\\_fin/contents/protocols/prot\\_jrv.htm](http://www.dca.gov.uk/civil/procrules_fin/contents/protocols/prot_jrv.htm).

This should be done by a lawyer who specialises in judicial review if possible and should:

- explain in detail where it is alleged the public body has gone wrong;
- ask for detailed reasons for the decision within a time limit- e.g. 14 days; and,
- threaten judicial review if these are not forthcoming, or are unsatisfactory.

This "letter before action" may often encourage the public body to put matters right and 'settle', saving time and money. If time is short, it is still a good idea to make telephone contact with the public body.

### **11. How do I apply to court?**

All claims for judicial review are heard at the Administrative Court in central London. This can make it extremely inconvenient for claimants outside London.

Claims for judicial review are made in two stages:

1) *The permission stage*. This allows the court to filter cases by deciding which should be allowed to go to a full hearing. The permission stage is decided on the basis of a written claim and will involve a fairly brief look at the case to decide whether:

- there is an arguable case; and,
- the case has been brought promptly or if any delay can be justified.

The claimant must prepare all the papers at this stage. A court fee of £50 is payable. The judge will read the documents and will decide whether to grant permission. The decision will be notified by post and very short reasons may be noted if permission has been refused.

2) *Full hearing*. The claimant must pay a further fee of £180 within 7 days of the decision to grant permission. The judge may also make an order concerning the way in which the case should proceed, called case management directions.

When all parties are ready, and when the court has time available, the case is listed for a full hearing at which argument by both sides is heard by the court.

*How long does it take?* Claimants currently wait between 6 months and 1 year for a case to go to a full hearing, though urgent cases can be heard within 24 hours if necessary.

However, the first 'permission' stage of the proceedings may only take a few weeks and many cases are "settled" following the decision of the court to grant permission. Very often making a claim will encourage a previously unresponsive defendant to review the matter, as they can see that you mean business. A public body's concentration on the issues involved will be increased even more if permission is granted.

### **12. Where can I get more advice?**

This leaflet does not give you sufficient information to bring a judicial review yourself. You will need the help of a lawyer experienced in judicial review matters, and possibly in the specific area which concerns you, e.g. housing, immigration or community care.

The Legal Services Commission have produced a directory (the Community Legal Service Directory) listing solicitors and other agencies which can offer help in public law matters. This is

on their website at [www.clsdirect.org.uk](http://www.clsdirect.org.uk) or by calling the Legal Services Commission directory line on 0845 608 1122.

### **13. Can the Public Law Project help me?**

Not directly if your case is about an individual. Although we do take on some test cases, we only do so when they are referred to us by a solicitor or advice agency. We do not offer telephone advice direct to the public, or respond to email or written requests for advice. If you seek advice from an advice agency or solicitor, they will be able to contact us to see whether we can help them or you with your case.

If you are seeking advice on behalf of an organisation, such as a charity or not-for-profit agency, we should be able to help you directly as part of our 'Empowering the Voluntary Sector' project – please see that section of our website or email us at [evs@publiclawproject.org.uk](mailto:evs@publiclawproject.org.uk).

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