

information sheet

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Judicial Review: How it works

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Judicial review is the name for the process whereby a Court examines decisions made by the Government or public bodies to ensure that they have been made in a lawful way. Judicial review is focussed on the *manner* in which decisions are made, not whether the decision was the right one or not. This Information Sheet describes how this process works. The Government is currently proposing a number of changes which will impact upon the availability of judicial review and its operation in practice. These are outlined in our recent Information Sheets: [Judicial Review: Update 1](#) and [Judicial Review: Update 2](#).

When is a judicial review brought?

Judicial review can only be brought when there is no other way to challenge a decision; for this reason it is called a remedy of 'last resort'. For example, if there is an official complaints procedure in place, or if there is a right of appeal to another body, such as a Tribunal, then it is not possible to bring an application for judicial review: you must first exhaust all other possible remedies.

Who can bring a judicial review?

Judicial review claims may be brought by individuals, groups or organisations, as long as they can show that they have sufficient interest in the decision they wish to challenge. The person (or group) applying for judicial review is known as the Claimant and the public body that they are bringing the case against is known as the Defendant.

What is the procedure involved?

In most cases judicial review is a two-stage process¹. The Claimant must first apply for 'permission' from the Court to proceed, and will only get through this initial filter stage if s/he can show that the case is arguable – i.e. that there is some merit to the case.

¹ Occasionally, in urgent or very straightforward cases, the two stages are conflated in what is known as a 'rolled up' hearing.

The Claimant applies for permission by filling out an application form and setting out their arguments in writing. The Defendant is given an opportunity to respond in writing with an Acknowledgement of Service (within 14 days) before both sets of written arguments are considered by a High Court judge. The judge will either (a) grant permission – in which case the case will be given a date for a full hearing in Court; or (b) refuse permission. If permission is refused the Claimant must decide whether to give up entirely at this point, or to renew their application at an oral permission hearing. This is a short hearing in open court (i.e. in a courtroom open to the public) at which the Claimant must convince the judge that despite their argument not looking strong on paper, they do have an arguable case. Again, the Judge can either refuse or grant permission.

If permission is granted, a full hearing will follow. At this hearing both sides present legal argument and the judge will decide whether or not the decision under challenge was lawful. It is possible for both sides to come to an agreement on the dispute and stop the proceedings on the basis of an agreement between them; this is known as ‘settling’ the case. Judicial reviews are subject to tight timescales: you must make an application promptly, and in any event not later than three months from the date of the decision you wish to challenge.

Grounds for Judicial Review

In a judicial review case, the Court looks at the lawfulness of the decision-making process. If the Court finds that the decision was unlawful, it will be ‘quashed’ (struck down) and the decision-maker will have to take the decision again, this time in a lawful way. Some of the common errors of decision-making that lead to the Court striking down a decision are as follows:

- *error of law*: the decision-maker misunderstood or misapplied the law
- *relevance*: the decision-maker wrongly took irrelevant considerations into account or failed to have regard to relevant information
- *ultra vires*: the decision-maker acted with an improper purpose beyond their statutory powers
- *unreasonableness*: that the decision-maker behaved so unreasonably that no reasonable decision-maker would have reached the same decision
- *bad faith*: the decision was affected by dishonesty, corruption, bribery
- *breach of natural justice*: e.g. a failure to give someone a reasonable opportunity to be heard by the decision-maker
- *bias*: the decision was not free of bias or the appearance of bias

The above list is not exhaustive.

Remedies

If you are successful in bringing a judicial review then the decision-maker will usually be forced to re-make the decision properly or cease its unlawful conduct.