

ILPA information sheet

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Judicial Review: Update¹

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Judicial review is a legal remedy that enables individuals and organisations to challenge decisions by Government departments (such as the Home Office) or public bodies where there is no other right of appeal. A challenge can be brought on grounds that the decision is unlawful, for example because it was unreasonable or irrational. An explanation of what judicial review is, and how it operates in practice, may be found in our recent Information Sheet: [Judicial Review: how it works.](#)

Several changes, both realised and pending, will affect the operation of this remedy. Taken together, the changes are likely to reduce the ability of individuals to be able to rely on judicial review to redress unlawful public decision making.

This Information Sheet outlines some of the important changes and should be read with Information Sheet: [Judicial Review: Update 2](#) for the full context of the proposed changes.

Increased Court Fees

Court fees for judicial review (as well as many other types of case) were increased in April. The fee increases affect judicial review cases in both the High Court and the Upper Tribunal (Asylum and Immigration Chamber)¹. The box below sets out the relevant figures.

- The fee for making an application for judicial review has more than **doubled**, rising from £60 to £135
- The fee for proceeding with a judicial review to a full Court hearing has **tripled** from £215 to £680
- The total fee for bringing a judicial review case is now £815
- This is an overall increase of £540 per case

The fee increases have made recourse to judicial review, already an expensive course of action, even more costly.

¹ In a relatively recent development, many immigration judicial reviews are now heard in the Upper Tribunal.

Court fees are, however, only part of the cost of bringing a judicial review; in most cases they will be much less than the major cost involved: legal fees. A person who does not qualify for legal aid is entitled to represent him/herself, known as a 'litigant-in-person'. However judicial review is a complicated area of law, difficult for non-lawyers to navigate. By bringing the case, a person also risks being required to pay the cost of the lawyer(s) for the other side if they lose. If s/he is able to secure legal aid for their case the State will pay both the Court fees and the costs of their lawyer and they will not risk of having to pay the legal costs of the person against whom they have brought the case. However the Government is pressing forward with more cuts to the legal aid budget and in future fewer people will be able to secure legal aid for judicial review.

Cuts to Legal Aid

Recent years have seen successive cuts to the legal aid budget and more are planned. As of last month, legal aid has been restricted at the 'permission' stage of a judicial review: this is the initial stage where the person must show that they have an arguable case. If they cannot show that they have an arguable case they are refused 'permission' by the Court and the matter stops there. Previously, legal work done at this stage was paid for by the Legal Aid Agency, regardless of outcome. However from now on, a lawyer working on a legally-aided case will only get paid if they are successful in getting permission to proceed. This is likely to make it more difficult for those who cannot pay to find a lawyer to take on their case because lawyers will (understandably) be more reluctant to take on cases from legally-aided clients, as these are now cases which carry the risk of no payment whatsoever.

Legal Aid would also be affected by the introduction of a proposed 'Residence Test', which would made it more difficult for persons subject to immigration control to get legal aid across a whole range of civil (i.e. non-criminal) matters, including judicial review. For further information see the Information Sheet: [Legal Aid 18](#). This is proposed for August, although currently the subject of a legal challenge (itself a judicial review).

Combined effect

Overall, the increases in Court fees, combined with the cuts to legal aid provision, will result in judicial review being less accessible to members of the public who cannot afford to pay for lawyers to defend their rights. The changes to judicial review will operate as a means of insulating the Home Office from legal scrutiny, meaning that more unlawful decisions will be left unchallenged with the consequent injustice for the individuals affected.

Immigration cases make up the largest proportion of judicial review cases; this remedy is often the only one available for people subjected to poor decision-making by the Home Office. The fee increases will thus affect large numbers of people who are no longer able to secure legal aid (either because immigration has gone out of the scope of legal aid, or because the cuts mean that they are unable to find a lawyer willing to take on their case). The imminent loss of immigration appeal rights with the passing of the Immigration Act means that judicial review will be the only possible means of challenging an unjust Home Office decision for an even larger group of people, giving these changes a heightened significance.