



Factsheet

Judicial Review

Judicial Review is a process that allows individuals or organisations to challenge the lawfulness of policies, decisions or actions made by a public body or those exercising a public function. This factsheet is designed to explain how you can challenge decisions, the grounds for challenge and the remedies available to individuals.

Examples of bodies that can be judicially reviewed:

- Maintained schools and governing bodies
- Regulatory or supervising bodies
- Local authorities
- NHS trusts
- Government departments

By way of example, the decision to withdraw or cut funding to a care package without reason may be open to challenge by Judicial Review.

On an application for Judicial Review the Administrative Court will conduct a review of the process by which the decision was made to determine whether it was valid.

Grounds for Judicial Review

Judicial Review is not an appeals process and decisions cannot be challenged just because you do not agree with them. A challenge against a public body can only be

made on any of the following grounds:

- Irrationality/unreasonableness
- Illegality
- Procedural unfairness
- Breach of human rights

Irrationality/unreasonableness

If a decision is so irrational or outrageous such that no reasonable body would have made it, it can be challenged by Judicial Review. In assessing the reasonableness of a decision, the courts will look at whether the public body took into account irrelevant matters or failed to consider something it should have.

Illegality

A decision can be challenged as unlawful or illegal if it can be shown that a public body has acted by exercising a power it does not have, or by exercising a power

incorrectly. For example, if a public body has made a decision that it has no power to make, a Judicial Review of that decision may be appropriate.

A public body may also act illegally if it incorrectly interprets the law or fails to apply the law properly, such as by failing to adhere to a specific requirement under a relevant statute.

Procedural unfairness

Public bodies have a duty to act fairly and in accordance with the rules of natural justice. For example, it is expected that a public body will always deal with cases that are similar in the same way, rather than taking multiple different approaches. If a decision is made that appears to be biased or unfair it is open to challenge by Judicial Review.

Breach of human rights

A public body will be acting unlawfully if it breaches any of the rights contained in the Human Rights Act 1998.

Remedies available

The appropriate remedy will depend on the particular circumstances of each case, but there are six forms of relief that can be requested:

- Quashing order
- Prohibiting order
- Mandatory order
- A declaration
- A stay or injunction
- Damages

A quashing order is usually requested to quash the decision in question together with a mandatory order directing the public body to re-take the decision again.

A declaration can be issued to set out the legal position or rights of the parties. It will usually state what the public body got wrong when initially making their decision. The public body will be expected to take necessary steps to act in accordance with the declaration.

In addition, a court has powers to grant interim relief, requiring something to happen or not to happen pending a final decision. For example, if the claim is around the suitability of a care package, the court could order that a specific provision be put in place pending the final outcome of the Judicial Review proceedings.

Procedures and time limits

Any application for a Judicial Review must be brought promptly and no later than three months from the date of the decision that is being challenged. Judicial Review

is a last resort. Before making your claim, the court will expect you to have exhausted the local appeals or complaint processes first.

There is a pre-action protocol for Judicial Review which should be followed prior to the issue of the claim form. The aim is to avoid unnecessary litigation by setting out steps that ought to be followed by both parties. For example, the person challenging the decision should send a letter of claim to the public body setting out the issues in dispute, giving the public body 14 days to reply. If the matter can be resolved at this stage, then there is no need to issue formal proceedings.

On receipt of a claim form for Judicial Review, a judge will need to grant 'permission' for the claimant to proceed. This means that a judge will determine whether there is any reasonable ground for a Judicial Review. A substantive hearing can only take place if permission is granted.

Urgent cases

The pre-action protocol can be dispensed with but only if there are good reasons for doing so. It is still good practice to notify the public body that you are making a Judicial Review application and explain your reasons for doing so. Usually this is done by sending them a copy of the claim form.

You will also need to tell the court why the matter is urgent. If emergency provisions are required, you can apply to the court for interim relief pending the outcome of the proceedings.

Timescale

Judicial Review cases will be dealt with in accordance with the court timetable. Unless an urgent application has been made it may take some time for a hearing date to be fixed depending on the availability at court.

Negotiations with the public body can take place while you are waiting for a hearing date. Most cases are capable of settling without the need for a formal hearing.

Funding your case

There are a number of possible funding options, but, importantly, if you have been directly affected by the decision you are challenging, or represent someone who was, it may be possible to get public funding (Legal Aid) to cover your legal fees.

How we can help

Asking the court for a Judicial Review is a complex process and legal representation is essential to ensure the best possible outcome. We have particular expertise in this area and can guide you through the process.

Contact us today
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