



What is judicial review?

1. What kind of decision can I challenge?

Public law is the set of legal principles governing the exercise of power by public bodies. If a public body makes a decision in breach of any public law principle then that decision may be challenged. Briefly, a decision may be unlawful if:

- the decision-maker does not have power to make that decision, or is using the power they have for an improper purpose;
- the decision is irrational;
- the procedure followed by the decision-maker was unfair or biased;
- the decision was taken in breach of the Human Rights Act; or
- the decision breaches European Community (EC) law.

It is also unlawful for a public body not to do something it has a duty to do. For more information about public bodies and unlawful decisions, please see the first leaflet in this series, "How can public law help me?".

2. What ways are there of challenging a decision or a failure to act?

These are the main ways of challenging a decision or a failure to act you think is wrong:

1. You can make an official complaint using the public body's Complaints Procedure.
2. You can complain to an Ombudsman. You usually have to go through the Complaint's procedure first.
3. You can ask the public body to go to mediation or other form of 'alternative dispute resolution'.
4. In some contexts, there is a tribunal or statutory appeal available, e.g. in immigration law and social security law.
5. You can ask a judge to examine the decision using court proceedings called 'judicial review' if there is no suitable alternative remedy.

The best method to use will depend on the particular circumstances of each case. As a general rule it is best to try to resolve the problem with an 'informal' complaint first and then resort to other methods if that does not work. However, you should bear in mind that if you do have grounds to bring a judicial review case, it must be brought to court as soon as possible and almost always within three months of the decision or action being challenged to avoid time limit problems. Therefore if you think you may have a case you should seek specialist legal advice straight away.

3. Can I bring a court case?

Claims for compensation for loss or damage caused by the decisions of public bodies are not normally public law matters. You will only be able to bring a claim for compensation in limited circumstances, for example if you can prove negligence by a doctor or social worker. This leaflet does not deal with this sort of claim. If you think you may have a claim for negligence you should seek advice from a solicitor.

However, if your main concern is about the way a public body has reached a decision or acted, then you may be able to pursue a public law remedy through the courts called 'judicial review'.

A judicial review claim must be brought as soon as possible and within three months of the decision you want to challenge. In exceptional circumstances this time limit can be extended, but you cannot rely on this. Get advice quickly if you think you may have a claim.

4. How will the case be paid for?

Public funding is available for judicial review actions to those people who satisfy the criteria. The funding is now called 'Community Legal Service Funding'. It used to be known as 'legal aid'. There is a two-part test to determine if you qualify: a test of the merits of your case, and a test of your means. If you receive Income Support, income-based Job Seeker's Allowance, or Guarantee State Pension Credit you will automatically satisfy the means test.

Only solicitors who have a contract with the Legal Services Commission can do publicly funded work. They will be able to advise you further on whether you can get funding to bring a case. Details of these solicitors can be found on the Community Legal Service website at www.clsdirect.org.uk or by calling the Legal Services Commission directory line on 0845 608 1122.

If you are not eligible to receive public funding, you may not be able to afford to bring judicial review proceedings (the total cost could be at least £15000). You may also be ordered to pay the other side's costs (another £10000 or so) if you lose so it can be a big risk even if you can afford your own solicitor's costs. Ask voluntary organisations and support groups who deal with your kind of problem whether they know of any other source of free legal advice for people in your situation.

5. 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. In general terms judicial review may be appropriate where:

- the challenge is based on an allegation that the public body has taken an unlawful decision or action, and
- there is no adequate alternative remedy.

Alternative remedies have been mentioned above: for example, appeals to a tribunal in social security cases, complaints procedures and so on. They are explained in more detail in other leaflets available from our website. If none of these is appropriate in your case you may be able to bring a judicial review claim. You will need advice from a solicitor who specialises in this field on whether or not you have grounds to bring a claim.

Judicial review does not involve the court in deciding whether the public body has made the 'right' or 'correct' decision, but whether the correct legal basis has been used in reaching it.

The factors which can make a decision unlawful are discussed in other leaflets available from the website. A more detailed explanation is in the booklet "Is it lawful?" which is also available as a free download from our website.

6. How does judicial review work?

Here is an outline of the procedure only. There is more detail in the fourth leaflet in this series. You will need specialist advice before bringing a case.

1. The Claimant (who must be a person who has been affected by the decision being challenged) sends a letter (called a Letter Before Claim) to the Defendant (the public body that made the decision). The letter must set out details of the decision, the reason why the Claimant thinks it is unlawful, what the Claimant wants the Defendant to do about it and when the Defendant must reply. It must state that judicial review proceedings will be issued if a satisfactory response is not received within the time limit.
2. At this stage the Defendant may respond and the parties may be able to negotiate. If a settlement is offered it is important to obtain legal advice before accepting it in order to make sure that it is made on fair terms.
3. If there is no response to the letter, or the response is unsatisfactory, the Claimant can make an application to the Court for permission to bring the judicial review proceedings and must serve it on the Defendant. A special form must be used and there is a £50 court fee.
4. If the claimant needs an urgent solution and has asked for one in the application form (for example, to prevent deportation or homelessness) the judge may make a temporary order requiring the Defendant to do something (such as house the claimant) or preventing the Defendant from doing something (such as deporting the claimant) until the Judge can consider the case fully.
5. The Defendant then normally tells the Court briefly why it thinks that the decision was not unlawful in an 'Acknowledgment of Service'.
6. A Judge will consider the application for permission and will usually decide just by looking at the papers whether permission should be granted or not.
7. If permission is refused the Claimant can request that the decision be reconsidered at an oral hearing. Such a request must be made within 7 days after notification of the refusal has been received.

8. If permission is refused again, the Claimant can appeal to the Court of Appeal, which must be done within 7 days. However, the permission of the Court of Appeal is required before any such appeal can be heard, and so specialist legal advice must be sought immediately.
9. If permission is granted to proceed with the judicial review, the parties may attempt to negotiate again and may be able to agree a settlement.
10. The Claimant must lodge a further fee of £180.00 within 7 days of service of the judge's decision. If this is not done, the file may be closed.
11. If the parties cannot agree a settlement, the Defendant must file and serve, within 35 days of service of the order granting permission, its detailed grounds for contesting the claim and any written evidence such as witness statements it wants to rely on.
12. In due course a hearing will take place when a Judge will consider the matter fully. This can be several months from when the claim was first issued. It is usual for both parties to be represented by barristers. The hearing can last from a couple of hours to several days depending on the complexity of the case. There is usually no oral evidence.
13. Usually the court gives a fully reasoned decision some weeks after the hearing, but this will be done more quickly in urgent cases.
14. Either party can appeal against the Court's decision to the Court of Appeal. All cases require permission to appeal, and if the application for permission is not made at the conclusion of the case, the application for permission to appeal must be made to the Court of Appeal Civil Division within 14 days.

7. What can the court do?

If an application for judicial review is successful, the court has available to it six possible remedies:

- Quashing Orders – the original decision is struck down and the public body has to take the decision again (lawfully, this time)
- Prohibiting Orders – the public body is forbidden from doing something unlawful in the future
- Mandatory Orders – the public body is ordered to do something specific which it has a duty to do
- A declaration – for example, on the way to interpret the law in future, or a declaration that a legislative provision is incompatible with the Human Rights Act
- An injunction – this is usually a temporary remedy until the full application for judicial review is heard
- Damages – this is rare, but may be available in some cases, particularly where there has been a breach of an individual's rights under the Human Rights Act.

All of these remedies are discretionary – the Judge does not have to order any remedy at all. More than one can be applied for in any particular case. There is more detail on these in the fifth leaflet in this series.

8. 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 or you can call the Legal Services Commission directory line on 0845 608 1122.

The following websites may be of further assistance to you:

<http://www.adviceuk.org.uk/>

<http://www.asauk.org.uk/>

<http://www.adviceguide.org.uk/>

<http://www.citizensadvice.org.uk/>

<http://www.liberty-human-rights.org.uk/>

<http://www.yourrights.org.uk/>

9. 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.

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The information contained in this leaflet is for information only. You should always seek advice from an appropriate adviser or solicitor in relation to the specific circumstances of your own case.