

Judicial Review – Challenging decisions by public bodies

When public bodies, whether at local or national level, make decisions which affect the services they provide, they have to do so in accordance with the law. This covers an enormous amount of decisions, such as decisions about access to community care services and treatment, provision of equipment, amount and type of care provided, closure of public services, development of public land, criminal investigations and prosecutions, immigration detention and so on.

When making these decisions public bodies have **legal obligations**, which if not followed could render their decision **unlawful**.

Judicial review is a process by which the courts review the lawfulness of a decision made (or sometimes lack of a decision made) or action taken (or sometimes failure to act) by a public body. A judge considers whether a public body has acted in accordance with its legal obligations and if not, can **quash the decision**. The Court's role is supervisory and cases rarely involve financial compensation (except in cases concerning a breach of human rights).

Many different public bodies can have their **decisions and policies** challenged by judicial review, including:

- Government ministers and government departments
- Local authorities, Clinical Commissioning Groups, and NHS Trusts
- Chief constables and prison governors
- Maintained schools and school governing bodies
- Magistrates, coroners and some county courts/tribunals
- Regulatory and supervisory bodies such as the CQC

Grounds of Challenge

Decisions by public bodies can be challenged on a number of grounds. If you consider a decision has been taken by a public body that is outrageous, unfair, bias, disproportionate or unreasonable, you should seek legal advice from a **Public Law Solicitor**, who will advise whether you have sufficient **grounds** to challenge the decision.

Your Solicitor will consider:

- Whether there has been **illegality** (Has the public body complied with the law and any relevant guidance when reaching its decision? Has the public body understood the law? Has there been an unreasonable delay? Has the public body considered relevant or irrelevant factors?)
- Whether there has been **unfairness** (Has there been consultation? Has there been bias? Has the public body abused its power? Did the public body fail to keep a promise?)
- Whether the decision is **irrational** (Is the decision **so unreasonable that no other reasonable public body could have made it?** (a very high threshold)).
- Whether the decision breaches **human rights** (Does the decision engage your rights under the Human Rights Act 1998? Does the decision interfere with your human rights in a way that is disproportionate to the aims of the state?)

If you are advised you have grounds to bring a judicial review, your Solicitor will assist you to send a **letter before action** giving the public body an opportunity to reviews its decision. If this does not

succeed, your Solicitor will **apply to the Court for permission** to bring a judicial review.

ACT PROMPTLY – 6 WEEKS OR 3 MONTHS

The law requires a judicial review to be **promptly** and for some decisions within **6 weeks** and for others within **3 months of the date of the decision**. You must therefore act quickly to seek advice as not knowing the law is not considered by the Court to be an acceptable excuse for lateness.

A judicial review can take place very quickly and the Court can order temporary and/or urgent relief. If the matter is not urgent, a judicial review can take over a year as the **Administrative Court**, especially in London, is very busy.

Outcomes

If successful, a judicial review can lead to the Court quashing a decision of a public body, or the public body being required or forbidden from doing something permanently or temporarily. The Court rarely makes or remakes the actual decision for the public body, instead the new decision will have to be taken in a different and lawful way. This means that a successful judicial review can help not just you but many other people who are affected by similar decisions.

Outcomes are difficult to predict and it is very rare for a judicial review to stand more than a 65-70% chance of winning.

Funding

Judicial reviews can be expensive but means tested **legal aid** is available if your case meets the relevant criteria. In some public interest cases, a **protective costs order** can be applied for to limit the costs. Your Solicitor will discuss funding with you in full before pursuing a judicial review.

For more information, please visit:

www.leighday.co.uk/Asserting-your-rights/Human-rights

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