

PANNONE

JUDICIAL REVIEW

What is judicial review?

Judicial review is the procedure by which you can seek to challenge in court the decision, action or failure to act of a public body (for example a government department or local authority) or other body exercising a public law function. The basis of a challenge to a decision is typically that there has been an abuse of power or failure to act in accordance with the rules of that public body.

The judge will review the lawfulness of a decision or an action made by a public body but will not usually substitute what he thinks is the correct decision if he would have made a different decision. The court is predominantly concerned with the manner in which the decision was reached and ensuring that the correct processes were followed. If the process was wrong, the decision could be quashed but usually the body concerned would have to make the decision again. Only in very limited circumstances can the court substitute its own decision for the decision in question.

It is therefore important to appreciate that even if an application for judicial review is successful, it is possible that the public body will make the same decision again, as long as it does so in a lawful way.

Applying for judicial review

There are certain rules of court in place called pre-action protocols which outline the steps that parties to prospective legal proceedings should take before proceedings are started. The main purpose of pre-action protocols is to avoid unnecessary litigation. There is a pre-action protocol for judicial review and a claim should comply with the protocol unless the case is urgent. The pre-action protocol requires the claimant (the person making the claim) to write to the body concerned before commencing any court proceedings.

See further our guidance note Pre-Action Conduct.

To start proceedings and bring a judicial review claim, you must first apply for the permission of the court. The application for permission must be filed promptly and not later than three months after the making of the decision which you seek to challenge. A court fee of £50 is payable with your application for permission.

To bring a claim you must have sufficient interest in the subject matter to which the application relates. You must also have generally exhausted all alternative remedies. Judicial review is an application of last resort.

The defendant to an application for judicial review must be a public body or a body exercising a public law function. This includes government departments and local authorities and bodies such as the General Medical Council and Inland Revenue Commissioners.

Applications for permission to proceed with a judicial review claim are considered by a single judge on the basis of the written papers before him. This is to ensure that applications are dealt with speedily and without unnecessary expense. The judge's decision and the reasons for it are then given.

If permission is granted, the second stage is a substantive hearing of the claim. If you pursue the judicial review claim to the second stage, a further court fee of £180 is payable.

If permission is refused or is granted subject to conditions, you may request a reconsideration of that decision at an oral hearing.

Judicial review proceedings are dealt with by the Administrative Court (part of the High Court which specialises in matters of administrative law including judicial review).

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In addition to London, the Administrative Court has four regional courts based in Manchester, Leeds, Birmingham and Cardiff. Claims for judicial review can only be commenced and dealt with by the courts at these locations (including the full hearing, if that stage is reached). This may have an impact on costs depending on your location.

Grounds for a successful application for judicial review

As the name implies, the intervention by the court is one of review and is not the same as an appeal or a means by which an appeal can be made from a decision.

The court will intervene in the decision, action or failure to act and order one of the remedies available (see Remedies available below) as a matter of discretion. It will do so where it is necessary to right a wrong in the decision making process on the basis that it was unlawful, unreasonable or unfair.

- Unlawful – where a relevant mistake is made on a legal issue which was part of the reasoning or where the public body mistakenly steps outside the legal limits of its powers.
- Unreasonable – where a decision is so unreasonable or irrational that no sensible person could have reached it.
- Unfairness or procedural impropriety – where there is a failure in the process of reaching a decision, for example, a lack of consultation which should have taken place, bias or failure to give adequate reasons

Remedies available

The court has the power to grant the following relief where an application for judicial review is successful but the court will not substitute its own decision.

- A mandatory order – an order directing the public body to take certain actions, for example, directing that a hearing take place or that the body makes a decision.
- A prohibiting order – an order preventing the public body from doing something, often in the form of an injunction.
- A quashing order – an order quashing the public body's decision. Where the decision is quashed on the ground that there has been an error of law and without the error, there would have only been one decision, the court can substitute its own decision for the decision in question.
- A declaration – where the court sets out the legal position between the parties without ordering either to take any action.
- Damages – compensation where the successful claim for judicial review is beyond mere unlawfulness, for example, misfeasance (negligence or a breach of trust in the case of a company) or a claim under the Human Rights Act. It is rare for damages to be awarded as the aim of judicial review is to put right bad decisions rather than to award compensation.

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Costs

The rules in relation to costs are the same as for any other proceedings, the general rule being that a party which loses a substantive claim for judicial review will be ordered to pay the costs of the claim. However, the judge has a discretion to deal with the issue of costs as he considers appropriate in all of the circumstances.

Should you have any questions please contact your usual Pannone contact or: Louise Brace, Senior Associate, Dispute Resolution, tel 0161 909 1578 or email: louise.brace@pannone.co.uk.

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