Prisoners **A**dvice **S**ervice - Information Sheet

JUDICIAL REVIEW

Administrative law
All public bodies (including prisons, Parole Board and government departments) should perform their duties and make decisions efficiently and fairly. Administrative law, which includes the application of the Human Rights Act 1998 and Judicial Review procedure, is the mechanism for challenging the making of these 'decisions' if they are unfair or unreasonable.

What constitutes a decision?
'Decisions' relate to particular matters affecting individuals or groups, such as assigning a prisoner to a particular security category. However the courts have held that Judicial Review extends to things like policies (of general application), reports and recommendations, as well as advice and guidance.

Administrative law has developed a series of tests for measuring the lawfulness of a public law power:

- **Legality** – acting within the scope of any powers and for a proper purpose
- **Procedural Fairness** – for example giving the individual an opportunity to be heard
- **Reasonableness or Rationality** – following a proper reasoning process and so coming to a reasonable conclusion
- **Compatibility** – with European Convention rights and EC law

Are any kinds of decisions immune from Judicial Review?
'Private law' which governs the relationships between private individuals or private bodies/companies acting in their private capacity is outside the scope of Judicial Review. There also remains a class of decision (usually 'political judgment') where the court accepts that the decision-maker is better qualified than the court to make a judgment. For example:

- Ordering financial priorities, in deciding how to spend public money;
- Assessing the needs of national security and public order;
- Setting policy on prisons, immigration etc

Can anyone challenge a decision?
To apply for judicial review of a decision in principle a person (the Claimant) must have a 'sufficient interest or standing' in the decision. This means they must have a direct or personal interest in the decision. So a person cannot challenge a decision which does not affect them personally simply because they disagree with it. However groups protecting or campaigning for a particular public interest may have 'standing' to challenge a decision on the basis that they represent the interest of the person directly affected.

The pre-action stage
The 'Pre-Action Protocol for Judicial Review' section of the Civil Procedure Rules (CPR) sets out the steps that should be taken before commencing a Judicial Review challenge. The person challenging the decision must set out in a pre-action letter the decision they are challenging, the reasons and how the decision can be remedied. Any response from the decision-maker should say what aspects of the claim are conceded (if any) and what is disputed. If there is some more immediate form of appeal or review then this should be tried first before any court action.

The timing of a Judicial Review application
The claim for Judicial Review must be issued (CPR Part 54.5):

- Promptly; and
- In any event not later than **three** months after the grounds to make the claim (the decision) first arose.

The court has the power to extend time if a good reason can be shown, so where for example there is a strong case and there is no detriment to another person by any delay.

Duty of candour
Judicial Reviews are not usually about facts but about legality, fairness and procedure. The courts will therefore expect all the parties involved to be open and honest and not withhold information suggesting weaknesses in their cases. The Freedom of Information Act 2000 also allows a person challenging a decision of a public body to make an application for all information he thinks may be relevant.

The permission stage
The Claimant is required to issue in the Administrative Court (located in London, Birmingham, Manchester, and Cardiff) and to

'serve' the Defendant (and any 'interested parties') with a Claim Form (form N461), accompanied by a statement of the grounds for bringing a claim and supporting evidence. 'Serve' means sending these documents by post or email to the Defendant directly or to their lawyers. In most cases this will be the Government Legal Department, 102 Petty France, Westminster, London SW1H 9GL, but some government departments and private prisons use in-house lawyers or private legal firms. Once the Claim Form is issued and served the Defendant must within 21 days send an Acknowledgement of Service (a defence). This response time may be shortened by the court in cases of emergency.

The initial fee for lodging an application for permission is £154. If you are a litigant in person and have a low income and no savings you should be exempt from paying this on submission of a fee remission form.

An initial decision will be made by a judge who can grant permission to proceed (indicating the claim has some prospect of success), refuse permission, or grant permission only on certain grounds or on conditions.

Permission refused

The judge will give reasons. Until 2013, in any case where permission was refused on the papers, the Claimant could renew the application at an oral hearing. Now, if the judge certifies the claim as completely without merit, you cannot proceed further. In other cases where permission is refused the Claimant can seek an oral hearing within seven days. There is also now a further fee of £385 to be paid at this point. If permission is again refused, you can apply to the Court of Appeal

Permission granted

The fee following the granting of permission is £770 (or £385 if you have already paid for an oral renewal hearing). The Defendant is required within 35 days to respond in full, providing evidence in the form of witness statements, the procedure followed in coming to its decision and the reasoning process etc. At this stage (or in cases of urgency such as deportation even before the permission hearing) the court may grant 'interim relief' such as an injunction which prevents the decision of the Defendant being implemented until the case has been decided by the court. Alternatively the Defendant may give an undertaking not to implement the decision.

Procedure at the hearing

- In advance of the hearing all parties must prepare an outline ('skeleton') of their arguments for use by the court.
- The evidence is usually on the papers and it is rare for witnesses to give oral evidence.
- The party who is unsuccessful has the right to apply for permission to appeal to the Court of Appeal. This is subject to a strict timetable.

Remedies following a successful challenge

The remedies the court may grant following a successful Judicial Review are:

- A quashing order, by which the court sets aside/cancels an unlawful decision;
- A prohibiting order, by which the court forbids the public authority to perform an unlawful act;
- A mandatory order by which the court instructs the public authority to perform a public duty;
- A declaration, by which the court declares what the law is;
- An injunction, usually an order not to do something but it can be a positive order to do something instead;
- Damages, by which (in limited circumstances) the court can award financial compensation.

The court can also make a 'declaration of incompatibility' as legislation and a convention right under Section 4 of the HRA 1998. This *does not* make the legislation invalid but the government *may* take action to change the legislation in some way to remove the incompatibility.

Legal Aid

Public funding is available to take actions for judicial review and is subject to both a merits (the prospects of success) and means (income and capital financial limits) test. Since March 2015 payment to legal representatives for work done between the issuing of proceedings and the granting of permission is conditional on either permission being granted or is at the discretion of the Legal Aid Agency (LAA). If permission is refused, no payment other than for court fees is made by the LAA.

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Mondays - Wednesdays - Fridays
10.00am-12.30 pm and 2.00-4.30pm