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# **Judicial Review (Part 2): The Process of Judicial Review**

If you have a good idea of what Judicial Review is (have you read our briefing “Judicial Review: An Introduction?”), and you would like more information on the process of it all, this briefing is for you!

This briefing explains the procedural steps involved in bringing a judicial review claim.

### **Before you get started...**

Remember judicial review is a complex and highly specialised legal process. Unfortunately, it is not designed to make it easy for a non-lawyer to act on their own. In addition, as with many other court proceedings, there is a real risk that if you lose you will have to pay the legal costs of the other parties (more on this below). For those reasons, your first step should normally be to contact a lawyer and take legal advice (see list of contacts at the end of this document).

It is also important to remember to **act promptly**. The limit for starting proceedings (i.e. actually filing detailed papers with the Court – step 3 below) is generally **3 months** from the date of the relevant decision. If you are challenging a planning decision, the time limit for starting proceedings is reduced to **6 weeks** from the date of the decision.

## **What happens and when?**

### **1. Pre-Action Protocol Letter**

The first step in a judicial review claim is to let the public authority know formally that you think it has acted, or is about to act, unlawfully and give it a chance to remedy the situation. This is done through a Pre-Action Protocol Letter (or “PAP letter”) which should normally be written by your solicitor. Sometimes a solicitor will want to involve a barrister at this stage.

### **2. Authority’s response**

Once you receive the authority’s response to your letter, then you can **decide whether or not to proceed with a judicial review**.

If you decide to do so, then your lawyers (usually your solicitor and barrister jointly) will prepare your **Claim Form and any necessary evidence**. The evidence will normally be in the form of a witness statement, together with a bundle of documents. Getting the documents ready involves a lot of work for your lawyers and for you. This is the time when you can often be particularly helpful by providing all of the documents that are relevant and helping to explain all the relevant facts. You will probably be much more of an expert on the facts and local issues than your lawyers.

### **3. Filing and serving the Claim Form**

The Claim Form will then be filed with the High Court. From then on you are the Claimant and the public authority is the Defendant. There may also be an Interested Party such as a developer in a planning case.

The Claim Form and supporting bundle of documents will be served (delivered) to the Defendant (and Interested Party), who will confirm receipt and present their views on the claim to the Court and the Claimant through a formal Acknowledgment of Service Form.

A Court Fee will be payable when filing the Claim Form. Someone who is receiving benefits or has a low income may be able to pay a reduced Court Fee.

#### **4. Permission stage**

Once you have filed the Claim Form, a judge will decide whether or not you should be given **permission** to bring judicial review proceedings. You will only get permission if you have an arguable case, if you have acted promptly and if you have “standing” (see “Judicial Review: An Introduction”). That decision is usually made in writing without a hearing of any sort, within about 6-8 weeks of filing your papers with the Court.

- If you are not given permission, then you can ask for a hearing in front of a judge to reconsider that decision. If you are still not given permission, then you can appeal.
- If you are given permission, then your case (or the bits of it that have been given permission) will proceed to a full hearing. That hearing might be several months (or more) after permission has been granted.

A further Court Fee will be payable if you are given permission to proceed to a full hearing.

#### **5. The hearing**

The hearing itself will usually be in the High Court (usually in London or Cardiff, but it may also be possible to have it in some other major cities). Unlike a normal civil case, the hearing consists almost entirely of legal arguments (submissions) between your barrister and the Defendant’s (and Interested Party’s) barrister(s). It is very unusual for there to be any live evidence from witnesses. Most environmental judicial reviews will take one or two days.

#### **6. The judgment**

Sometimes judgment will be given immediately at the end of the hearing but, more often the judge will “reserve judgment”. This means that the judge will go away and consider their decision before writing their judgment. They will then notify the parties 1 or 2 days before they “hand down” their judgment in Court.

After judgment any of the parties may ask for permission to appeal.

### **What happens if I win?**

That depends. It is **entirely a matter for the judge's discretion whether or not to grant any "relief"** – eg whether to order the public authority to do anything differently. This will depend on many factors including whether the Claimant acted promptly, respected the "requirements of good administration", and whether the decision would be any different if the authority was asked to take it again in a lawful manner.

Sometimes you might "win" the argument but be told by the judge that they are not going to order the public authority to do anything different. In other cases, the judge might order the public authority to do something (for instance to go away and take the decision again) or not to do something (for instance not to grant a licence). Sometimes the judge will make a formal 'declaration' as to what the law means.

Because judicial review is often concerned with process rather than substance, there is a risk that a public authority will be told to go away and take a decision again following the correct process. In such cases the authority may do that, but reach exactly the same decision as the one that you objected to in the first place. That can particularly be the case in decisions that are "political" such as planning decisions by local authorities.

### **What happens if I lose?**

The most important feature of losing a judicial review is the "loser pays" principle, which means you must pay the costs of the Defendant.

However, protective cost limits can be granted for environmental claims. If you state in your Claim Form that your claim is an Aarhus Convention claim (eg an environmental claim where the special costs rules should apply), and you file and serve a schedule of financial resources, your exposure as a claimant to pay the other party's costs can be limited.

Under the old version of these rules, costs liability was automatically capped so that:

- as an individual, you could be liable to contribute to the other side's costs up to a limit of £5,000
- where a claim was brought by a company or on behalf of an organisation, the costs limit was £10,000
- the Defendant's liability to pay your costs (if you won) was also limited to £35,000.

However, new rules were introduced in 2017 which affect the application of this "costs protection".

These new rules got rid of the fixed cost caps of the old system and introduced a default cost cap system. They allowed the court to vary the costs protection you could benefit from by reference to the available financial resources you disclosed, and then, if you could afford a higher amount, also by reference to what was objectively reasonable.

Friends of the Earth believed that these reforms created unwelcome uncertainty for claimants who needed costs protection, not least because environmental claims often have wider public importance. We also thought that it was unfair and unreasonable that the new rules also exposed individual claimants' personal financial affairs to the public, just to start a case and get costs protection. So, in 2017, we, along with RSPB and ClientEarth, brought a claim for judicial review over these new rules<sup>1</sup>. We argued that they would put the UK in breach of its obligations under the Aarhus Convention and EU law. And we won, and in doing so, have fought to prevent people from being priced out of justice.

Following our case, the previous fixed limits (£5,000 for an individual and £10,000 for an organisation) remain a default starting point. But, the Court ruled that any challenge to this should be made at the start of the proceedings, not later on, save in exceptional circumstances. This means that costs protection should be fixed early and before significant legal costs have been accrued – limiting uncertainty for claimants. In addition, the Court ruled that a claimant's financial disclosure should remain private. Furthermore, the government also conceded that a claimant's costs for their own legal representation can be factored into how expensive the overall proceedings are for them, and so inform where their costs liability limit to the defendant should be set. This issue – recorded in the Judgment – can be important for those of lesser means in securing adequate costs protection.

These are significant improvements, but it is clear that cost uncertainty remains an ongoing issue for environmental claimants, as found in the recent [Pillar of Justice report](#) co-authored by Friends of the Earth and RSPB. Your solicitor should advise you about all of these costs issues when you first talk to them.

Remember, if you lose you can still **appeal** (with permission). Many important environmental cases are lost first time around and then won on appeal! Our victory in our challenge against Heathrow expansion is a good example of this; we lost in the High Court, but went on to win in the Court of Appeal<sup>2</sup> (see our briefing “Judicial Review: an introduction” for details of this case). However, there is likely to be a costs risk involved in embarking on another round of litigation.

### **Contacts (for environmental law matters)**

The Friends of the Earth Rights and Justice Centre provides this and other legal and planning briefings in order to help people who want to use the law to protect their communities and the environment. Friends of the Earth also seeks to take “test cases” that will help communities in the future. For example, we challenged Heathrow expansion on climate change and

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<sup>1</sup> RSPB, Friends of the Earth Ltd and ClientEarth v SofS for Justice and Lord Chancellor [2017] EWHC 2309

<sup>2</sup> R (oao Friends of the Earth Ltd) v Secretary of State for Transport [2020] EWCA Civ 214

sustainable development grounds in support of our West London local group network and to protect our shared environment.

If you hear of an individual or community group who needs legal advice, they can try calling the Environmental Law Foundation advice and referral service (“ELF”). ELF ([www.elflaw.org](http://www.elflaw.org)) provides a very good referral service for community groups and members of the public, to put you in touch with specialist environmental lawyers around the country who will provide you with some initial free advice and may then be able to act for you. You can contact ELF by telephone on 0330 123 0169, by email at [info17@elflaw.org](mailto:info17@elflaw.org) [or through the online enquiries form on their website \(see below\)](#).

### **Further information and guidance**

#### **Friends of the Earth**

Tel: 020 7490 1555

Website: [www.foe.co.uk](http://www.foe.co.uk)

#### **Planning**

Email: [planning@foe.co.uk](mailto:planning@foe.co.uk)

### **Useful websites**

#### **Government**

- The Ministry of Housing, Communities and Local Government  
<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>
- The Planning Inspectorate  
<https://www.gov.uk/government/organisations/planning-inspectorate>
- Environment Agency  
<https://www.gov.uk/government/organisations/environment-agency>
- Information Commissioner’s Office  
[www.ico.org.uk](http://www.ico.org.uk)
- Planning Portal  
[www.planningportal.gov.uk](http://www.planningportal.gov.uk)

#### **Non-governmental organisations (NGOs)**

- Campaign to Protect Rural England planning site  
[www.planninghelp.cpre.org.uk/](http://www.planninghelp.cpre.org.uk/)
- Environmental Law Foundation

[www.elflaw.org](http://www.elflaw.org)

- Liberty  
[www.liberty-human-rights.org.uk/](http://www.liberty-human-rights.org.uk/)
- Planning Aid  
<http://www.rtpi.org.uk/planning-aid/>
- Wildlife and Countryside Link  
[www.wcl.org.uk](http://www.wcl.org.uk)

### **Specific reading**

For more information on your environmental rights, have a look at other briefings in our Community Rights Resource Pack: <https://friendsoftheearth.uk/legal-and-planning/guide-community-rights-environment-and-planning-law>