Judicial Reviews

A 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 asylum and immigration cases, that public body will usually be the Home Office.

A judicial review can challenge the way a decision has been made, if you believe it was illegal, irrational, or unfair. It is not really about whether the decision was "right", but whether the law has been correctly applied and the right procedures have been followed.

In a successful judicial review, the court will not substitute what it thinks is the 'correct' decision. If you are successful in your judicial review, the case will normally go back to the Home Office, or the court found to have made an error of law. They may be able to make the same decision again, but this time make the decision following the proper process or considering all relevant case law or evidence reasonably.

Since 2013, most judicial reviews in asylum and immigration cases in England and Wales are heard in the **Upper Tribunal.**

Previously, most judicial reviews were heard in the High Court. Some immigration and asylum judicial reviews in England and Wales are still heard in the High Court. These include judicial reviews challenging the lawfulness of detention and challenges to decisions of the Upper Tribunal.

If you have a judicial review hearing, the documents that the court sends you or your lawyer will tell you which court your judicial review is being heard in.

In Scotland, judicial reviews are heard in the Outer House of the Court of Session. In Northern Ireland, they are heard at the High Court in Belfast. See the Toolkit *Other Courts* section for more information.

Judicial reviews and legal aid

Recent cuts mean it is now much more difficult to get legal aid for a judicial review.

If you have had an appeal hearing or determination on the same, or substantially the same, issue within 12 months and you lost the appeal, legal aid for a judicial review will not be available.

The government has brought in measures in England and Wales that mean, in general, legal aid lawyers only get funding for working on a judicial review if permission to proceed

with that judicial review is granted. The Legal Aid Agency *can* allow legal aid for work done before permission is granted for a judicial review, but this is very hard to get. If you want to find out more, read this Legal Aid Handbook summary: http://legalaidhandbook.com/2015/03/26/moj-re-imposes-conditional-payments-for-judicial-review/

This means that legal aid lawyers taking on a judicial review are taking a risk, and are only likely to do this if they feel you have a strong case. The lawyer can receive the legal aid funding for the work done pre-permission stage if permission is subsequently granted, but if permission is refused that work will remain unpaid.

If your case would not qualify for legal aid under the current rules, you may be able to apply for exceptional legal aid funding, if you can show that your human rights or European Union rights would be breached if you do not have legal aid.

Is a judicial review your best option?

Judicial reviews are very complicated and you should always seek legal advice where possible on applying for a judicial review.

If you are unable to get legal aid for a judicial review, it is possible to represent yourself but this can be very difficult and there are risks in representing yourself in a judicial review. You will have to pay the fees yourself (see below) and if you lose, you are liable for the costs of the proceedings. A bad judgment may also be very unhelpful for your case, and for others.

It may seem like a judicial review is your only legal option, especially if you have no right of appeal or if your removal/deportation is imminent. **This does not necessarily mean it's the right thing to do.**

Think carefully about whether a judicial review is the best way to spend your time, energy and possibly money. A private lawyer may charge you a great deal of money for a judicial review, even if there is little hope it will help your situation.

Sometimes people see judicial reviews as a way of slowing down the process of removal/deportation. This is understandable when the asylum and immigration system can move so fast, denying you your rights. A poor application for a judicial review, however, may just speed up the process because a judge may order that any further applications are no bar to your removal/deportation.

ACTION SECTION

Look carefully at your case and the legal process and decide if a judicial review is the right option for you, or if there are better ways of using your (and your friends/supporters') resources.

- Have all aspects of your reasons to remain in the UK been considered?
- Have you exercised all your appeal rights?
- Can you find new evidence for further submissions to be considered as a fresh claim?
- Could you/your supporters work on presenting your case in the strongest way possible to convince a lawyer to take it on, either under legal aid or pro bono?

Reasons you may consider a judicial review

- If you have been told your asylum claim will be transferred to another European country under the Dublin regulations, and you wish to argue your human rights will be breached in that country.
- If your asylum claim has been certified (no right of appeal within the UK)
- If your further submissions have been rejected as not a fresh claim, with no right of appeal
- If you have been detained unlawfully
- If you have been refused permission to appeal at the Upper Tribunal
- To try and challenge an imminent removal (apply for interim relief – an injunction). See below.
- Your immigration application has been refused and you have no right of appeal on human rights grounds.

Time limits

An application for judicial review should be made as soon as is reasonably possible, and no later than **3 months** after the decision that you are trying to challenge was made. In asylum and immigration cases, this decision will usually be the one made by the Home Office.

Pre-action stage

If you intend to apply for a judicial review, you should write to the Home Office informing them of this, giving them chance to withdraw their decision or correct an error without having to go the point of a judicial review. This is called the “pre-action” stage. The letter you write to the Home Office is called a “pre-action letter” or “letter before claim”.

If you have a lawyer, they should write the pre-action letter for you. They will then usually “instruct” a barrister to represent you if the judicial review gets to a permission hearing, and then at the full hearing if permission is granted.

The pre-action stage does not affect the 3 month time limit for applying for a judicial review.

Read the “Pre-Action Protocol for Judicial Review” on the Ministry of Justice website for details of what should be included in this letter and what to do with it.
http://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_jrv

In the letter, you should:

- explain in detail how you think the Home Office has acted unfairly, irrationally, or unlawfully etc;
- say what you want the Home Office to do to put this right, and when you would like them to do it by;
- ask for a response within a time limit, which is usually 14 days

You are unlikely to receive any response to this letter (but it's still an important stage of the process, and may be used against you if you fail to do it). If you do not receive a response with the time limit, or the response is not satisfactory, and you want to continue to apply for a judicial review, you can move on to the permission stage.

Fees

If you are not applying for a judicial review through a legal aid lawyer, you have to pay the fees for the judicial review application.

The fee is **£140** to apply for permission for a judicial review.

If you are refused permission, and you apply for reconsideration at a hearing of the decision on permission (see “renew”, below), the fee is **£350**.

If you are granted permission, the fee for proceeding with the judicial review – which must be paid within 7 days of being informed you have permission – is **£700**.

For up-to-date information on fees and forms for applying for judicial review, go to the Ministry of Justice judicial review website: http://bit.ly/jr-info

If you do not have any or much income, you can apply for a reduction in the fees. See the application forms and guidance here: http://bit.ly/jrfees-help

Permission stage

To have a judicial review heard, you must apply for permission. The permission stage used to apply only in England and Wales, but now also applies to Scotland as well. The process described here on applying for permission is for judicial reviews in **England and Wales only.**

When applying for permission, you need the "judicial review claim" form.

You should always check you are using the correct form and paying the correct fee. Check the Upper Tribunal website for the latest information: https://www.gov.uk/courts-tribunals/upper-tribunal-immigration-and-asylum-chamber

At the time of writing, if you are applying for a judicial review that would generally be heard at the Upper Tribunal, you need to use form **T480**.

Some judicial reviews are still heard in the Administrative Court (the High Court). These include challenges to unlawful detention and challenges to decisions made by the Upper Tribunal. Read this Free Movement blog post for the type of judicial reviews still heard at the High Court: https://www.freemovement.org.uk/transfer-of-immigration-judicial-reviews-to-upper-tribunal/

If this applies to you, you need to use a different form and apply for permission to the High Court. You can find the application form and guidance here: http://bit.ly/jrform-high

and more information on applying for judicial review at the High Court here: http://bit.ly/jr-high

Remedy

When completing the application for permission for judicial review (the judicial review claim form), you need to say what **remedy** you are seeking in applying for a judicial review. This needs to be one of the following:

- **a mandatory order**: this makes a public body do something the law says it has to do
- **a prohibiting order:** this stops a public body from taking an unlawful decision or action it has not yet taken
- **a quashing order**: an order which overturns or undoes a decision already made. This is the most common remedy in successful asylum/immigration judicial reviews. A quashing order means the Home Office has to remake a decision on, for

example, your immigration application, or whether your asylum case can be transferred under the Dublin regulations, or on whether your further submissions meet the fresh claim test.

- **an injunction**: a temporary order requiring a public body to do something, or not do something, while waiting for a decision to be made in your case.

Questions in the form

- Who is the applicant? You are the **applicant**.
- If you are challenging a decision made by the Home Office, the r**espondent** is the Home Office. The form asks you to give the respondent's name and address. If it is the Home Office, the details you need are: Home Office, Status Park 2, 4 Nobel Drive, Harlington, Hayes, Middlesex, UB3 5EY.
- The applicant's “counsel” details. This means your barrister. If you have a barrister, you should not need to be filling out this form as your legal representative should be completing it for you!
- "Is this application being made under the terms of Part 5 of the Senior President of Tribunals’ Practice Directions entitled ‘Immigration Judicial Review in the Immigration and Asylum Chamber of the Upper Tribunal’?" This refers to judicial reviews *challenging forced removal*, either a removal the Home Office has said they intend to carry out or a removal they have already carried out.
- "Is the applicant in receipt of a Civil Legal Aid certificate?" This refers to whether you have legal aid funding for your judicial review. If the answer to this is “yes”, your legal representative who is being funded by legal aid should be filling in this form.
- "Are you claiming exceptional urgency, or do you need this application determined within a certain time scale?" This might be if you are applying for an injunction to stop a removal, in which case you will also need to fill out an Urgent Consideration form (see below).
- "Have you complied with the pre-action protocol?" See 'Pre-Action Stage', above.
- "Does this application challenge a Home Office Administrative Review decision?" Read more about Administrative Reviews in the 'After Refusal' section of the Toolkit.
- "Does the claim include any issues arising from the Human Rights Act 1998?" The most common human rights issues that are relevant to asylum/immigration applications are Article 3 and Article 8. Read more in the 'Human Rights' section of the Toolkit.
- Statement of grounds: this is where you set out the legal basis for requiring a judicial review. Remember, you are not just saying you disagree with the Home Office's decision. A judicial review will consider whether the decision was unlawful, unfair, irrational or disproportionate. Read more in the Public Law Project's leaflet.

- Remedy - see above
- Statement of facts: the guidance notes state "the facts on which you are basing your claim should be set out in this section of the form, or in a separate document attached to the form. It should contain a numbered list of the points that you intend to rely on at the hearing. Refer at each point to any documents [including a page number] you are filing in support of your claim".

Lodging your permission application

To lodge (submit) your permission application, you can send it by pre-paid post (ask at the post office) or by document exchange, or take the form in person to the Upper Tribunal (Upper Tribunal Immigration and Asylum Chamber, Field House, 15-25 Breams Building, London, EC4A 1DZ). You may be able to lodge your application in person at regional offices of the Tribunal. You can ask the Tribunal for information about this - see contact details here: https://www.gov.uk/courts-tribunals/upper-tribunal-immigration-and-asylum-chamber

When you lodge your application for permission, you must also file two copies of the documents you wish to rely on (including the decision you are challenging).

These should be put together in a file, called a bundle. You should number each page, and include an index (a list of the contents with the relevant page number next to each item).

The decision on whether you are granted permission to proceed with a judicial review will usually be made on the papers: a judge considers the documents and written arguments that have been lodged.

If you are refused permission

If your application for permission is refused on the papers – you do not go to court but a judge looks at your documents and makes a decision – you may be able to apply to “renew” the decision. This means you are asking the court to reconsider the decision – in an oral hearing rather than on the papers – to not grant you permission for a judicial review of your case.

If permission is refused on the papers and the case is deemed as “totally without merit”, you do not have the right to apply to renew the decision.

An application to renew by oral hearing must be must be filed no later than 7 days after service of the notification of the judge's decision (refusing permission for judicial review) upon you. A request for an oral hearing must be made on the Notice of Renewal, which you should receive with the written refusal of permission.

If you are granted permission

ACTION SECTION

If you applied for permission without a lawyer and have been granted permission, you now stand a better chance of a legal aid lawyer taking on your case. Go back to your previous lawyer, or try to find a new lawyer. If they take on your case, they will instruct a barrister to represent you in the hearing.

If you cannot find a legal aid lawyer to represent you, you may be able to find a lawyer to take on your case pro bono.

The rest of this section assumes you do not have a lawyer to represent you.

If you are granted permission, you need to pay the fee (see above) for proceeding with the judicial review within 7 days of being informed you have permission. You should receive information about this along with notification of permission being granted. This information should also tell you what else you need to submit in advance of the hearing.

Remember: if you change address, you must inform the Tribunal/court. Otherwise they may send vital information to the wrong address.

The Home Office must file and serve its detailed grounds within 35 days of permission being granted. This means they must set out the basis on which they are defending the claim (if they are defending the claim. In some cases, the Home Office will withdraw or change their decision without you having to go to a full hearing). Their grounds must include any written evidence they want to rely on.

If you want to rely on additional grounds during your judicial review hearing (other than those you set out in your application for permission), you need to give written notice to the Tribunal and the Home Office no later than 7 working days before the date of the hearing.

You also need to serve a **skeleton argument** on the Tribunal and the Home Office, no later than 21 days before the hearing. Your skeleton argument should include a list of the legal points you wish to raise (and any relevant authorities such as case law with page references to the passages relied on); a chronology of events in your legal case, such as Home Office decision, court decisions and any subsequent applications by you (with page references to the bundle of documents); and a list of essential documents to be read in advance by the Tribunal (if different from that served with the application).

You also need to serve a bundle of all the relevant documents upon the Tribunal and the Home Office. Serving the bundle means officially submitting/sending it. Keep proof of how and when this was done. The documents should include all those referred to in your skeleton argument. These might include witness statements, any “written submissions” you have prepared and any relevant letters or emails from the Tribunal or from the Home Office.

The hearing

If permission is granted, **a substantive hearing** will take place where a judge will consider the claim in detail.

The hearing may not be for several months from when you first applied for a judicial review, although this will depend on the urgency of the case.

You need to take your bundle of documents with you. The Tribunal will have asked you to send them a copy of the bundle in advance of your hearing date, which you must do, but you may want to bring several spare copies of all your documents with you, so that you can give them to the judge or the Home Office in case they haven't got them. If you have any witnesses speaking for you, they will also need a copy of your bundle in case they want to refer to any of the documents during their evidence.

To find out more about preparing for the hearing, read the Bar Council's Guide to Representing Yourself in Court:
http://www.barcouncil.org.uk/media/203109/srl_guide_final_for_online_use.pdf#21

At the end of the hearing the judge can give a decision on the day, but that is unusual. The judge usually "reserves" the judgment, which means you will be notified of the decision at a later date.

Outcomes

In a judicial review, the court will not substitute what it thinks is the ‘correct’ decision.

Positive

If you are successful in your judicial review, the case will normally go back to the Home Office (or if you are judicially reviewing a decision of a court, it will go back to that court) found to have made an error of law. They may be able to make the same decision again, but this time make the decision following the proper process or considering all relevant case law or evidence reasonably.

If you are applying for emergency relief to stop a removal (see below) and are successful, the court will issue an injunction to prevent that removal from taking place for a certain period of time.

If you argued that you needed time to proceed with certain aspects of the legal process, you will need to proceed with those.

If you argued you should not be removed while important other cases that have relevance to your case were waiting to be heard, you should not be removed until that case/those cases are decided. Be aware that the Home Office may move very swiftly to remove you if that case is decided in a way that is unhelpful for your case.

Negative

If you are not successful in a judicial review, it is possible to ask permission to appeal the decision at the Court of Appeal but this is very tricky without legal representation.

Urgent application, injunction

If you have been informed by the Home Office that you are liable to removal/deportation, you may be able to apply for an urgent judicial review to try and secure an injunction to prevent that removal/deportation.

An injunction is an emergency, interim measure.

In applying for an injunction, you are asking a judge to issue an injunction after looking at "the papers" of your urgent application (you will not present evidence at a hearing). You would be asking for an injunction - stopping a removal/deportation from taking place - to allow time for a full judicial review hearing or other decision-making process to take place. You cannot ask for an injunction in itself, to stop a flight – there must be some legal avenue to pursue as a result of a successful injunction.

For example, it may be argued that the refusal of a fresh claim by the Home Office was unreasonable and an error of law, and that removal should be postponed ("stayed") while a judicial review decides if the Home Office must reconsider the fresh claim. Or you may be seeking an injunction to stop a very imminent removal, and also be judicially reviewing the decision to issue removal directions.

You may know that an important case that has relevance to your case is due to be decided. You may apply for an injunction in order that your removal is stayed while that other case is decided. Be aware that the Home Office may move very swiftly to remove you if that case is decided in a way that is unhelpful for your case

Making an application

To apply for the emergency measure of an injunction, you need to complete the form for permission for a judicial review (a "judicial review claim form"), if you haven't already. See above for information on this form.

You **also** need to complete an "Application for urgent consideration form". You can find the form (T483) here: http://bit.ly/injunction-form

You need to explain why the application is urgent, and how quickly you require the application to be considered. This is likely to be before the end of your removal notice period (before the removal window begins).

You also need to state the date by which you wish the substantive hearing to take place (if you are granted permission).

You must include a **draft order** with your application. The draft order is what you are suggesting the judge should order. For example, your draft order may ask for your removal directions to be cancelled and no further directions to be issued while you wait for

completion of a vital medico-legal report to substantiate your testimony of torture in country of origin.

You must also explain the grounds (the reasons) on which the injunction should be granted. Remember that an injunction is part of a judicial review, so the grounds for the injunction should reflect this. Would your removal be the result of an illegal, unfair or irrational/disproportionate decision?

You should include the notice of being liable to removal/deportation, recent relevant Home Office refusals or appeal dismissals, and other relevant evidence to support the application.

Within the working hours of the Upper Tribunal, you should fax the completed forms and above documents to the Upper Tribunal Immigration and Asylum Chamber. The fax number is 0870 324 0185. For fax numbers of Welsh and regional offices, see the Tribunal website: https://www.gov.uk/upper-tribunal-immigration-asylum

You should make your application within the Upper Tribunal's opening hours whenever possible. If you are making your application "out of hours" (overnight, for example), you need to submit the application to the Administrative Court (the High Court). To do this, you will need to speak to the Royal Courts of Justice out of hours duty clerk (general telephone number is 020 7947 6000).

Judicial review: enough to stop a flight?

Submitting an application for a judicial review is **not enough** to prevent a removal/deportation. In some cases, judicial review proceedings against the removal/deportation (if permission for pursuing a judicial review has been granted) will mean that the Home Office will defer the removal/deportation.

There are, however, several exceptions to this.

The Home Office will not defer removal if:

- Within the previous six months, an application for judicial review of removal directions has been brought AND
- the Home Office decides that the new application for judicial review is on the same or virtually identical grounds, or on the same evidence, as the previous application; or decides that the grounds raised in the new application could reasonably have been raised in the previous application.
- OR if the judicial review proceedings are brought during the three month removal window (see Removal section of the Toolkit). During the removal window period, an injunction will be required to stop removal.
- OR if you are due to be removed on a charter flight and bring judicial review proceedings against the removal. An injunction will be needed to stop the removal.