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.

This section looks at: reasons you may consider a judicial review; if a judicial review is your best option; judicial reviews and legal aid; the "pre-action" stage of the process; time limits; fees; the permission stage; if you are refused permission; if you are granted permission; the hearing; outcomes; if a judicial review is enough to stop removal/deportation; and urgent judicial reviews (injunctions)

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.

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.

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 or human rights claim has been certified by the Home Office (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 and you still believe you can demonstrate an error of law has occurred in deciding your application
- To try and challenge an imminent removal (apply for interim relief – an injunction). See below.
- Your immigration application has been refused, you have no right of appeal and an administrative review has not resolved the matter satisfactorily.

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.

Although it is unusual for people who are unsuccessful in a judicial review to have to pay their costs, you will still be considered as having a “litigation debt” which means the Home Office can refuse future immigration applications that you make.

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 access to justice. 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?
- Have you talked to your MP about assisting in your case? Read more here: https://righttoremain.org.uk/toolkit/politicians/

Judicial reviews and legal aid

Recent funding 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.

Recent research has suggested that most immigration judicial reviews are self-financed (people pay a private lawyer).

If you are using a private lawyer, an initial judicial review claim could cost at least £1000-£2000, and will be much more if the case proceeds to a full hearing. You may wish to consider a fixed fee arrangement with the lawyer so the costs won't spiral out of control. Some lawyers also use Conditional Fee Agreements, otherwise known as "No Win No Fee" agreements.

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.

If you are judicially reviewing an Upper Tribunal decision to refuse permission to appeal a First-tier Tribunal decision (known as a “cart judicial review”), the time limit for applying in England is just 16 days.

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 a chance to withdraw their decision or correct an error without having to go to 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.

You can use the guidance on the “Pre-Action Protocol for Judicial Review” on the Ministry of Justice website for details of what should be included in the letter: http://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_jrv

See also a template pre-action letter with suggested format (effectively a pre-action “form” to fill in) here: https://www.gov.uk/government/publications/pre-action-protocol-for-judicial-review The template letter includes the email address and postal address to send the letter to.

In the letter, you should:

- explain in detail how you think the Home Office has acted unfairly, irrationally or unlawfully
- 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 within the time limit, or if you do it is unlikely to be satisfactory. However, 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 **£154** 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 is **£700**.

For up-to-date information on fees and forms for applying for judicial review, go to the judicial review website: 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: bit.ly/jrfees-help

Permission stage

To have a judicial review heard, you must apply for permission. The process described here on applying for permission is for judicial reviews in **England and Wales only.**

When applying for permission, you need to use 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: 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: bit.ly/jrform-high

and more information on applying for judicial review at the High Court here: 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.
- 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.

In immigration judicial reviews, it is most likely you are seeking a **quashing order** or an **injunction**.

A remedy of a quashing order might be to undo a negative Home Office decision. A quashing order might mean the Home Office has to remake a decision on, for example, your immigration application. Alternatively, a quashing order might mean the Home Office has to remake a decision about whether you have the right to appeal. For example, they may uphold their decision that your further submissions fail to show you need refugee status, but remake the decision about whether you have a right of appeal of that decision.

An injunction is the remedy you will be seeking to stop the Home Office removing you from the UK – see below.

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 address is: Litigation Allocation Unit, 6 New Square, Bedfont Lakes, Feltham, TW14 8HA.
- 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 as well (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 in England, 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).

Once you have submitted ("lodged") your application form with the Upper Tribunal, you must notify the Home Office and send them a copy of the application, including the case reference number and any accompanying documents. This is called "serving" the Home Office with your judicial review.

You must provide the Upper Tribunal with a written statement of when and how this was done WITHIN 9 DAYS of making the application. To do this, you fill in form T485 which you can find here:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/794354/t485-eng.pdf

If you don't do this, the application will be automatically "struck out" (cancelled).

If you are refused permission

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. Most decisions are made within around three to four months (unless you are applying for an urgent injunction).

Around 90% of applications are refused permission to proceed on the papers (you do not go to court but a judge looks at your documents and makes a decision).

If your application for permission is refused on the papers 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. Around 20% of cases that have an oral renewal hearing are granted permission to proceed.

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. It is possible to apply to the Court of Appeal to challenge your case being categorised as totally without merit – but this is very difficult to do without a lawyer, and you will need to think very carefully if this is the best use of money if you are going to pay for a lawyer.

You should receive information about the procedure for asking for renewal 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.

In many cases, if you are granted permission to proceed with the judicial review, the Home Office will concede and agree to settle the case out of court. A “consent order” will set out what the agreement is. In these circumstances, you will not proceed to a full hearing and the Home Office will typically offer to withdraw their decision and make a new decision within three months (though they do not always make a new decision within this timeframe).

If you are granted permission and are proceeding to the full hearing, will receive information about what else you need to submit in advance of the hearing, and payment of the fee for proceeding with the judicial review.

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

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 clear working days before the date of the hearing. Clear days means to calculate this deadline, you don’t include the day you notify the Tribunal and the Home Office, or the day of the hearing.

You also need to serve a **skeleton argument** on the Tribunal and the Home Office, no later than 21 working 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 those 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.

The evidence in your bundle should be about how the decision made in your case was illegal, irrational or unlawful. In general, the judge will not consider new evidence about your substantive case. This is because the judge will be looking at whether the Home Office made the right decision *based on the evidence they had in front of them at the time*.

If you have a lawyer representing you, you will not speak during the hearing (unless you have permission to do so from the judge). This is different than during an appeal hearing, in which you are expected to speak.

If you are representing yourself, without a lawyer, you are known as a **“litigant in person”.**

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 in writing 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 the 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.

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:

- there has been less than 6 months since a previous judicial review or appeal has been concluded on the same or similar issues, or on the same evidence (even if the legal basis of the challenge is different)
- OR there has been less than 6 months since a previous judicial review or appeal has been concluded and the issues being raised could reasonably have been raised at that previous judicial review/appeal
- OR if the judicial review proceedings are brought during the three-month removal window (see Removal section). During the removal window period, an injunction will be required to stop removal. *Note – at the time of writing, the removal window policy was suspended due to a legal challenge.*
- 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.

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.

Making the 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"), unless a judicial review has already been lodged. See above for information on this form.

You also need to complete an "Application for urgent consideration form". You can find the form here: https://www.gov.uk/government/publications/form-n463-judicial-review-application-for-urgent-consideration

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, that you are not removed on a certain date (if you have been told the date) or within a certain period of time.

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 (or removal directions, if these have been issued), recent relevant Home Office refusals or appeal dismissals, and other relevant evidence to support the application.

You can fax or email the form to the Administrative Court. The email addresses and fax details can be found on the application form.