

# INTRODUCTION TO JUDICIAL REVIEW

Judicial Review is the process by which the courts supervise the actions of Government bodies who make decision which affect the public. BIA, and the Asylum Support Tribunal (AST) are all Government bodies. As they make decisions which affect the public they are subject to Judicial Review.

Judicial Review is different to an appeal because it looks at the process that was followed to come to a decision rather than the merits of the decision itself. A person must exhaust any available appeal process before requesting a Judicial Review. For example, if the Home Office decide to withdraw an asylum seeker's support, the asylum seeker would first have to make an appeal to the AST and have that appeal dismissed before considering Judicial Review.

## Applying for Judicial Review

Judicial Review is governed by the Supreme Court Act 1981 (s.31) and Rule 54 Civil Procedure Rules (CPR). The Civil Procedure Rules state that if a person wishes to apply for Judicial Review they should do so as soon as possible and within 3 months from the date the grounds for an application for Judicial Review arose. So, if the AST make a decision that a person wishes to Judicial Review the application should be made within 3 months of the date the AST makes the decision.

If a person wishes to Judicially Review a decision made by the Home Office or the AST they must first apply the courts for permission. The courts have to check that whoever made the decision is subject to Judicial Review (as explained above the AST and BIA make decisions that affect the public so can be Judicially Reviewed) and that it is a public law issue and not a private law issue (for example if an asylum seeker is refused support and this is upheld at the AST this is a public law issue and can be subject to Judicial Review). The courts will also check that the person requesting Judicial Review of a decision has "sufficient interest" (sometimes called *locus standi*) in the decision. This means the decision to be reviewed must be of direct concern to the individual. For example, a withdrawal support is of direct concern to the asylum seeker who loses his support so he will be able seek Judicial Review once his appeal rights are exhausted. The person seeking Judicial Review will also have to show at this point that there are grounds for Judicial Review.

**FACTSHEET NO: 8**

**24/4/07**

### **In This Factsheet**

**What is Judicial Review?**

**Applying for Judicial Review**

**Grounds for Judicial Review**

The information contained in this factsheet is intended for guidance only and whilst every effort is made to ensure it is correct at time of publication it should not be used as a substitute for legal advice. For client specific advice please contact ASAP.

## Grounds for Judicial Review

The grounds for Judicial Review are known as Irrationality, Illegality and Procedural Impropriety.

Irrationality means unreasonable. Unreasonableness was defined in a case called *Associated Provincial Picture House v Wednesbury Group* which held a decision will be considered unreasonable if “no sensible person could have ever dreamt that it lay within the powers of the Authority”. The courts can reverse decisions that are so unreasonable they would be regarded as “perverse”.

Illegality means that a decision making body has gone beyond their powers. This is called acting *ultra vires*. For example, if s.4 were to make a decision about an asylum seeker’s asylum application they would be acting outside their powers as it is BIA’s role to make decisions about asylum applications. Other examples of illegality include; where a decision making body has taken irrelevant facts into account whilst making a decision, where the decision maker has an unfair blanket policy rather than making decisions on a case by case basis or where the law has been applied incorrectly.

Procedural Impropriety means the decision making body has failed to follow certain procedural rules or have acted unfairly. A procedural rule could include giving an individual a decision in writing or advising an individual to a right of appeal and if the decision maker fails to do so this could be a ground for Judicial Review.

Decision makers must act fairly. This is also known as observing the rules of natural justice. The rules of natural justice mean that a person affected by a decision has the right to a fair hearing. This includes giving a person full reasons for a decision and allowing him to put forward his case. If a decision maker does not honour a promise or follow their own established policies and procedures this could be regarded as acting unfairly as the affected person is entitled to expect the due process to be followed. This is called a “legitimate expectation”.

Procedural impropriety also includes the rule against bias. This means that a decision maker must not be biased. For example if a decision is made and the affected person appeals, the person who made the original decision must not also take part in the appeal.

After a successful Judicial Review a Judge can quash the original decision, force a decision maker to take an action (for example make the decision again following the correct process) or prohibit the decision maker from acting unlawfully in the future.

If advisors require further advice on a particular case and whether Judicial Review is an option they should contact a solicitor or ASAP.

For more information and factsheets, visit [www.asaproject.org.uk](http://www.asaproject.org.uk)  
 © Asylum Support Appeals Project  
 Company limited by guarantee 04763838, Registered charity 1105625

**ASAP Fact-sheets:**

**No 1: Asylum Support**

**No 2: Section 4 Support for Failed Asylum Seekers**

**No 3: What to Bring to the AST**

**No 4: Proving Destitution**

**No 5: After a Negative Decision at the AST**

**No 6: Section 9 Withdrawal of Support for Failed Asylum Seeker Families**

**No 7: Introduction to Community Care**

**No 8: Introduction to Judicial Review**

**No 9: The European Convention on Human Rights and The Human Rights Act 1998**

**No 10: Medical Briefing**

**No 11: Section 4 Breach of Conditions**

**No 12: Section 4: New Ways to Apply**