

# Judicial review

Judicial review is a type of court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body.

In other words, judicial reviews are a challenge to the way in which a decision has been made, rather than the rights and wrongs of the conclusion reached.

It is not really concerned with the conclusions of that process and whether those were 'right', as long as the right procedures have been followed. The court will not substitute what it thinks is the 'correct' decision.

This may mean that the public body will be able to make the same decision again, so long as it does so in a lawful way.

If you want to argue that a decision was incorrect, judicial review may not be best for you. There are alternative remedies, such as appealing against the decision to a higher court.

Examples of the types of decision which may fall within the range of judicial review include:

- Decisions of local authorities in the exercise of their duties to provide various welfare benefits and special education for children in need of such education;
- Certain decisions of the immigration authorities and Immigration Appellate Authority;
- Decisions of regulatory bodies;
- Decisions relating to prisoner's rights.

It is not available as a challenge to primary legislation

Or as a challenge to a decision by a PRIVATE body

## **Datafin [1987] [1987] 2 WLR 699.**

This case marks a major development in the scope of judicial review. Traditionally, JR was only available against bodies whose powers derived from statute..

Then *Datafin* extended it to bodies whose powers were 'governmental' in nature, even without any direct governmental support. The body under review was the Panel on Takeovers and Mergers, a voluntary, self-regulatory body set up by its members. Previously this body would not have been deemed reviewable. The decision to allow review of the Panel was based on the extent and nature of its power, and the lack of an effective appeal procedure.

The panel was an unincorporated association without legal personality and, so far as can be seen, had only about twelve members. But those members were appointed by and represented the Accepting Houses Committee, the Association of Investment Trust Companies, the Association of British Insurers, the Committee of London and Scottish Bankers, the Confederation of British Industry, the Council of the Stock Exchange, the Institute of Chartered Accountants in England and Wales, the Issuing Houses Association, the National

Association of Pension Funds, the Financial Intermediaries Managers and Brokers Regulatory Association, and the Unit Trust Association; the chairman and deputy chairman being appointed by the Bank of England. Furthermore, the panel is supported by the Foreign Bankers in London, the Foreign Brokers in London and the Consultative Committee of Accountancy Bodies.

### **Jockey Club ex parte Aga Khan (1993) WLR 909**

On 10 June 1989 the filly Aliysa, owned by the applicant, His Highness the Aga Khan, won the Oaks at Epsom. In a routine examination after the race, a metabolite of camphor was said to be found in a sample of the filly's urine. Under the Jockey Club's Rules of Racing, camphor was a prohibited substance and the Disciplinary Committee of the Jockey Club held an inquiry. On 20 November 1990 the committee ruled that the urine contained a metabolite of camphor, that the source of the metabolite was camphor, that the filly should be disqualified for the race in question and that the filly's trainer should be fined £200.

... The issue squarely raised before this court is whether the Jockey Club's decision here in issue can be challenged by judicial review

HELD: Jockey Club is not in its origin, its history, its constitution or (least of all) its membership a public body, hence judicial review cannot be used in this case.

### **PURPOSES OF JR**

- To determine if statutes have been interpreted correctly
- To determine if the discretion conferred by statute has been lawfully exercised
- To determine if the decision maker has acted unfairly
- The Human Rights Act 1998 created an additional ground, making it unlawful for public bodies to act in a way incompatible with Convention rights.
- 

**It is not granted as a right**

**The court must grant leave for an application**

**Requires "locus standi."**

This includes those with sufficient interest and those who challenge a decision in the public interest. If the person challenging the decision can say that he is affected by it and there is no more appropriate challenger, and there is substance in his challenge, the court will not usually let technical rules on whether he has sufficient interest stand in its way.

**There are three outcomes so-called prerogative remedies**

- **MANDAMUS**
- **PROHIBITION**
- **CERTIORARI**

**MANDAMUS**

**To compel performance of a duty**

## **PROHIBITION**

**To prevent the exercise of powers, which has the same effect as injunction**

## **CERTIORARI**

**Overturning a previous decision**

## **SUBSTANTIVE GROUNDS FOR JUDICIAL REVIEW**

**In the GCHQ Case**

**aka**

**Council of Civil Service Unions v Minister of State for Civil Service [1984] 3 All ER 935**

Lord Diplock classified the grounds on which administrative action is subject to judicial control under three heads, namely:

- **Illegality**
- **Irrationality**
- **Procedural Impropriety**

He also said that further grounds may be added as the law developed on a case-by-case basis

- **ILLEGALITY**

**Decisions in excess of authority or decisions which constitute an abuse of power will be invalid**

**Attorney General v Fulham Corporation [1921] 1 Ch 440**

L. A had power to provide wash houses

Provided a launderette on a commercial basis, for a small charge

Used its power for wrong purpose. They were acting ultra vires = in excess of, or outside, their powers

**Porter v Magill [2002] 2 AC 357**

Dame Shirley Porter was selling former council flats to private tenants in the hope of gaining political advantage at the elections,

HOL held that this was not a proper purpose.

- **PROCEDURAL IMPROPRIETY**

**There are 2 considerations:**

1. **Failure to observe the proper procedure**

## **AGRICULTURAL, HORTICULTURAL AND FORESTRY INDUSTRY TRAINING BOARD v AYLESBURY MUSHROOMS LTD [1972] 1 WLR 590**

A youth training scheme was run by the Govt. before making an order establishing a training board for the agricultural, horticultural and forestry industry, the Minister was under a duty to consult the Mushroom Growers Association, he did not consult

### **2 Failure to observe the rules of natural justice**

It requires powers to be exercised fairly

Specific common law rules include the rule against bias

### **The Rule against bias**

#### ***Rex v. Sussex Justices, Ex parte McCarthy* ([1924] 1 KB 256, [1923] All ER 233)**

Unknown to the Defendant and his Solicitors, the *Clerk to the Justices* was a member of the firm of Solicitors acting in a civil claim against the Defendant arising out of the accident that had given rise to the prosecution. The Clerk retired with the Justices, who returned to convict the Defendant.

On learning of the Clerk's provenance, the Defendant applied to have the conviction quashed. The Justices swore affidavits stating that they had reached their decision to convict the Defendant without consulting their Clerk.

The Appeal was essentially one of Judicial Review In a landmark and far-reaching judgement, Lord Hewart CJ said:

"It is said, and, no doubt, truly, that when that gentleman retired in the usual way with the justices, taking with him the notes of the evidence in case the justices might desire to consult him, the justices came to a conclusion without consulting him, and that he scrupulously abstained from referring to the case in any way. But while that is so, a long line of cases shows that it is not merely of some importance but is of fundamental importance that ***justice should not only be done, but should manifestly and undoubtedly be seen to be done.***

the rule must be made absolute and the conviction quashed."

### **The Right to a fair hearing**

#### **Dr. Bonham's Case (1610) 8 Co. Rep. 107a, 114a C.P. 1610**

Royal College of Physicians had convicted and imprisoned Thomas Bonham for practicing medicine without a licence. When Bonham challenged his imprisonment, Coke ruled that the

Royal College lacked the authority under its charter and a parliamentary statute to imprison for practicing without a licence.

Coke also noted that the College cannot be a judge in a case to which it is a party.

Drawing on prior judicial decisions, Coke then made the following general statement:

“And it appears in our books, that in many cases, the common law will control acts of parliament, and sometimes adjudge them to be utterly void: for when an act of parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will control it, and adjudge such act to be void”

- **IRRATIONALITY**

Based on the “Wednesbury” principle of unreasonableness of action

Was the decision so unreasonable that no reasonable authority could ever have come to it?

**Associated Provincial Picture Houses v. Wednesbury Corporation [1948] 1 KB 223**

Local; authority had the power to grant cinema licences

For a Sunday licence it imposed the condition that no-one under the age of 15 could be admitted

applicants argued this was unreasonable.

**This poses the problem of what is reasonable?**

Wednesbury laid down the principle that the local authority must not take into account matters that it should not take into account, and must not neglect matters which it should take into account. If it has done the above, then the court can only interfere if the resulting decision was so unreasonable that no reasonable authority would ever take it.

Clearly therefore council officers need to present all the facts that are relevant, including the results of any public consultations, to members before they make a decision.

**Coleen Properties v Minister of Housing & Local Govt. [1971] 1 W.L.R. 433**

The Local authority had the power to compulsorily acquire slum properties for redevelopment and as part of such a scheme to acquire other properties (i.e. not slums) for the development of the area where this was “reasonably necessary.” At the public inquiry, which was convened, the L.A. offered no evidence relating to the need to acquire the property. A compulsory purchase order was confirmed by the Minister following the report from the inquiry.

C.A. held: the Minister could not have reached any valid conclusion that it was “reasonably necessary” as there was no evidence on which to base the decision.

Similarly the irrelevant must not influence the decision:

**Roberts v Hopwood [1925] A.C. 578**

A local authority had authority to pay its employees such wages as it thought fit. The Council decided to pay a min wage of £4/week to both men & women. The reasonableness & legality were challenged  
HOL held that the Council "...had been influenced by such irrelevances as eccentric principles of socialist philanthropy and feminist ambition to secure equality of the sexes in such a matter of wages." (Per Lord Atkinson) and that it failed to take in to account the falling cost of living & the level of wages nationally.

**The exercise of powers must be for their proper purpose**

**Congreve v Home Office [1976] 1 QB 629; [1976] 1 All ER 697; [1977] 2 WLR 291**

The appellant had bought his television licence when the charge was £12 although the minister had already announced that it would later be increased to £18. The Home Office wrote to those who had purchased their licence before the new charge came into effect demanding the payment of the extra £6 failing which their licence would be revoked. Held: It was an abuse of the Minister's undoubted discretionary power to revoke TV licences for him to seek to revoke a validly issued licence as a means of levying money which Parliament had given the executive no power to demand. The courts will rule invalid the exercise of a discretion which contains no express limitations in such a way as to run counter to the policy of the legislation by which it was conferred.

Geoffrey Lane LJ: "the proposed revocation ... is illegal for two reasons. First, it is coupled with an illegal demand which taints the revocation and makes that illegal too. Secondly, or possibly putting the same matter in a different way, it is an improper exercise of a discretionary power to use a threat to exercise that power as a means of extracting money which Parliament has given the executive no mandate to demand:

**Unreasonable in its strictest sense:**

**Backhouse v Lambeth (1972) 116. SJ. 802**

In order to get round the provisions of the Housing Finance Act 1972, which required them to raise council house rents. Lambeth decided that they would get round this by putting all of the increase on one empty property and raised the rent from £7 a week to £18,000/wk. This was ruled to be ultra vires and a decision that no reasonable council could have made.