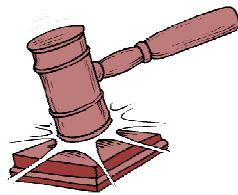


Judicial review

It 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,



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.



It challenges abuses of decision making powers

- Not available as a challenge to primary legislation
- or
- As a challenge to a decision by a private body



e.g. Jockey Club ex parte Aga Khan (1993) WLR 909

- On 10 June 1989 the filly Aliysa, owned by the Aga Khan, won the Oaks at Epsom. after the race, a prohibited substance was found in the urine of the horse. The Jockey Club disqualified the horse
- Question for High Court could this be challenged by judicial review?
- HELD: Jockey Club is not a public body, hence judicial review cannot be used in this case

PURPOSES OF JUDICIAL REVIEW

- Correct interpretation of statutes
- Procedures correctly followed
- Decision maker has acted fairly



3 outcomes

- **Mandamus**-to compel performance of a duty
- **Prohibition**-to prevent exercise of powers
- **Certiorari**- overturning a previous decision

Purposes:

- To ensure the law is correctly interpreted
- That the discretion conferred by statute has been lawfully exercised
- That the decision maker has acted fairly

The *Human Rights Act 1998* created an additional ground, making it unlawful for public bodies to act in a way incompatible with Convention rights.

Court must grant leave for an application

Also require locus standi =
The right of a litigant to act or be heard. Can include those with "sufficient interest"

3 Grounds for Judicial Review:

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

Illegality

Can be: Abuse of power

or

Decisions in excess of authority

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

2 cases which illustrate these two areas are as follows:

Attorney General v Fulham Corporation [1921] 1 Ch 440

- L. A had power to provide wash houses
- Instead they provided a launderette on a commercial basis, for a small charge
- Court held:
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, a local Councillor, 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 under this heading:
- 1. Failing to observe proper procedures
- Or
- 2. Not exercising powers fairly, or following the rules of natural justice

1. Not observing proper procedures:

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



2. Failure to observe the rules of natural justice: It requires powers to be exercised fairly

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.

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

Lord Hewart CJ said:

..it 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."

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

IRRATIONALITY :

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.

The irrelevant must not influence the decision:

Roberts v Hopwood [1925] A.C. 578

- The Council decided to pay a min wage of £4/week to both men & women. The reasonableness & legality were challenged
- HOL held 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.

**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.



Summary

- It does not challenge a decision but the way in which it was made
- Were the correct procedures followed?
- Cannot challenge existing laws
- Not available to challenge decisions by private bodies

Its purpose is :
 To ensure the law is correctly interpreted

 That the discretion conferred by statute
 has been lawfully exercised

 That the decision maker has acted fairly

 It is not incompatible with human rights

Grounds for JR

- Illegality
- Irrationality
- OR
- Procedural Impropriety: includes
- Failing to observe proper procedures
- And
- Not exercising powers fairly, or following the rules of natural justice

FIN!

Any questions?
