

Judicial review proceedings – a brief review

Procedure

The claimant must make the application for judicial review in accordance with CPR Part 54. The application must be made promptly and, in any event, within three months after the grounds to make the claim first arose. The time limit cannot be extended by agreement between the two parties. The permission of the court is required to bring such a claim.

When issuing, the claimant should lodge a bundle which includes the claim form and supporting written evidence. This must be served on the defendant and all known interested parties within 7 days of issue.

The proceedings are initially considered by a judge, without a hearing. Whether you have standing will be considered at this point. Accordingly, the Judge will determine whether you be given permission to bring a claim or not, or, alternatively he may adjourn the matter into open court or the issue of standing may be deferred to the main hearing.

If permission to proceed has been given, the court may give directions in the case.

Sufficient interest

In order to bring judicial review proceedings, the individual must be found to have a “sufficient interest” in the matter. The test is relatively broad in its scope and an applicant does not have to be directly and personally affected to bring an action, particularly if the matter is found to be in the public interest.

The action may be brought by a person or group to challenge a decision which is regarded as controversial by, for instance, local residents. The court will, however, consider whether there is a person better placed to bring the challenge who has not done so. The decision as to standing will be based on both law and fact.

An association may be able to bring an action on behalf of its members provided that that association represents interests which are relevant to its claim for Judicial review.

It is essential that an association can show that adequate provision has been made for the protection of the defendant in costs (*R v Ministry of Agriculture Fisheries and Food, ex p British Pig Industry Support Group [2000]*). In other words,

the claimant must be in a position to cover the costs of the defendant in the event that they were unsuccessful.

Judicial review of planning decisions

Judicial review involves a review of the lawfulness of the decision which has been made. Judicial review can not be used as a form of appeal. The court will not substitute its own decision in the case, unless they are entitled to (s.31 Supreme Court Act 1981).

Orders available

If successful, judicial review proceedings may result in a quashing order; a prohibitive order; or a mandatory order.

If the court makes a quashing order, the court may remit the matter to the decision maker, directing it to reconsider the matter and reach a decision in accordance with the court’s judgement.

Basis of the application

Action may be brought to review the decision of the Secretary of State on the basis of (from *CCSU v Minister for Civil Service [1985]*):

- » Illegality
- » Irrationality
- » Procedural Impropriety

1 Illegality

To challenge the decision on its legality, the claimant needs to show that the Secretary of State has acted in excess of his or her powers. It must be shown that there has been an error of law or fact in the course of arriving at its decision (*E v SS for Home Dept [2004]*).

Alternatively, if there has been a failure by the decision maker to retain the discretion vested in them, or an abuse of that discretion, the decision could be quashed on the basis of illegality.

2 Irrationality

It is most likely that a challenge would be brought on this basis, that is, that the decision made is unreasonable. When reaching a decision, a decision maker, for example the Secretary of State:

1. must consider all relevant, and up to date, information and if the Minister does not have it available, he must ensure he gains access to it before making the decision;
2. must make a decision which is reasonable and has been made according to logical principles;
3. must not have considered irrelevant information in making his decision.

In considering whether a decision is irrational, the court will ask whether the decision is so unreasonable that no reasonable authority, properly directing itself, could ever have come to that same decision. This is known as the test of *Wednesbury* reasonableness. This can be a high hurdle to overcome and courts will not interfere with decisions of Secretaries of State where they are made in accordance with statute even if many people are unhappy with that decision.

The court will adjust the threshold according to the specific case. That is, reasonableness will be interpreted in the context of each case (*R v Department for Education and Employment, ex p Begbie [2000]*).

The threshold of unreasonableness is lower if there is a breach of human rights.

3 Procedural Impropriety

Challenges for Procedural Impropriety are brought where the decision is considered to have offended the rules of natural justice.

Henmans LLP. Regulated by the Solicitors' Regulation Authority

5000 Oxford Business Park South
Oxford OX4 2BH
01865 781000

For more advice on the topics raised in this newsletter, please contact:

Andrew Crocombe
Partner
andrew.crocombe@henmansllp.co.uk