

# ThirtyNine

ESSEX STREET

## *Preparing a case for Judicial Review*

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## Preparing a case for Judicial Review

### Introduction

1. The topics I shall address are as follows:
  - (1) Community Legal Service funding
  - (2) Pre-action protocol
  - (3) Alternative dispute resolution
  - (4) Protective costs orders and other costs management options
  - (5) Identifying the decision to be reviewed
  - (6) Identifying the appropriate defendant(s)
  - (7) Interested parties
  - (8) Claim form
  - (9) Evidence, bundle & authorities
  - (10) Where to issue
  - (11) Urgent consideration and interim relief
  - (12) Judicial review jurisdiction of the Upper Tribunal.
  
2. There won't be enough time to cover all these in detail during this session. A checklist of points to consider when contemplating JR proceedings, with the focus on some of the more important issues.

### Scope of JR: a reminder

3. The judicial review procedure must be used in a claim for judicial review when the Claimant is seeking a prerogative order (mandatory order, prohibiting order, or quashing order) or an injunction under s30 Supreme Court Act 1981 (restraining a person from acting in any office in which he is not entitled to act): CPR 54.2.

4. The judicial review procedure may be used in a claim for judicial review where the Claimant is seeking a declaration or an injunction: CPR 54.3(1). A claim for judicial review may include a claim for damages, restitution, or the recovery of a sum due, but may not seek such a remedy alone: 54.3(2).

A 'front-loaded' procedure

5. A key difference between JR and mainstream civil litigation – in addition to the short time-limit for issue and the need for permission -- is the “front-loaded” nature of the process. Pre-issue preparation in JR incorporates much of the work that in ordinary proceedings is usually postponed till later. In order to get permission you need to present the court with a well-argued claim supported by a well-organised bundle – so far as time constraints allow.

(1) CLS funding

6. Public funding for judicial review claims is (at present ...) provided by the Legal Services Commission as part of the Community Legal Service (CLS).
7. There are a number of general criteria that have to be satisfied – the financial eligibility of the claimant; absence of alternative funding; etc. There are also criteria specific to judicial review – is judicial review available (i.e. does the decision appear to be one susceptible to JR?), existence of administrative appeals or other procedures; prospects of success and cost benefit (ie whether costs are proportionate to likely benefit of the proceedings) – and slightly different criteria pre and post permission. For full details see the LSC Funding Code.
8. Short time limits mean that Investigative Help (beyond initial certificate under issued by solicitor under delegated powers) will usually be inappropriate. Seek certificate for Full Representation, which will generally be limited to permission stage (often including oral hearing) followed by counsel/solicitor advocate's further opinion.

**(2) Pre-action protocol**

9. In the vast majority of judicial review cases, the parties must comply with the pre-action protocol: see

[http://www.justice.gov.uk/civil/procrules\\_fin/contents/protocols/prot\\_jrv.htm](http://www.justice.gov.uk/civil/procrules_fin/contents/protocols/prot_jrv.htm)

**Steps by prospective Claimant**

10. The pre-action protocol requires the Claimant, before making a claim, to write a letter before claim to the proposed Defendant. The protocol recommends a letter in a standard form (see Annex A of the Protocol), although provided that the letter addresses the core issues a failure to use the standard form is unlikely to be significant. The information which should be included in the pre action letter is as follows:

- Details of the claimant and defendant
- Any reference details or details of the identity of those within the public body who has been handling the dispute
- The matter which is being challenged should be clearly set out
- The issue in the claim should be spelt out – the date and details of the decision, act or omission, a brief summary of the facts and an explanation as to why it is contended to be wrong
- Details of the action which the defendant is expected to take, including details of the remedy sought
- Details of the legal advisors if any dealing with the claim
- Details of any interested parties – NB a copy of the letter should be sent to them (omitting to do this is a favourite source of “prejudice” arguments on behalf of IPs)
- Details of any information sought, including any request for a fuller explanation of the reasons for the decision
- Details of any documents of which disclosure is sought, setting out why these are relevant and why disclosure is necessary

- Address for reply and service of court documents
- Proposed reply date (usually 14 days, although a longer or shorter time may be appropriate in a particular case).

The claim should not normally be issued until the proposed reply date has passed.

Steps by prospective Defendant

11. Within (usually) 14 days the Defendant should send a letter of response. Again the protocol has a recommended standard form (see Annex B). This should provide where appropriate a fuller explanation of the decision, and indicate whether the claim is conceded in whole or in part, or will be contested. Where the Defendant does not propose to disclose any information or documents that have been requested, the reasons for this should be explained. The letter of response should be sent to the interested parties and should identify any parties who the Defendant considers have an interest and who have not already been named by the Claimant. If the claim is being conceded in full, the letter should clearly and unambiguously say so. If it is being conceded in part or not at all, again the Defendant's position should be unambiguously set out.

Importance of compliance

12. The protocol letters are important: not to be treated as a tick-box exercise. A well-composed Claimant's letter may persuade a sensibly advised Defendant to concede. Conversely Defendant's letter is an opportunity to confront the Claimant with an obvious weakness in its position.
13. Failure to comply with the pre-action protocol may well affect a party's prospects of recovering costs:
  - (1) In *R (William Kemp) v Denbighshire Local Health Board* [2006] EWHC 181 (Admin) the Claimant had effectively succeeded in obtaining funding of his nursing home costs; but because he had failed to comply with the

pre-action protocol, there was no evidence that the Defendant would not have offered a review had a protocol letter been written, so no order for costs was made.

- (2) In *R (Ewing) v Office of the Deputy Prime Minister* [2006] 1 WLR 1260 Lord Justice Brooke commented (para 54):

“Needless to say, if the claimant skips the pre-action protocol stage, he must expect to put his opponents to greater expense in preparing the summary of their grounds for contesting the claim, and this may be reflected in the greater order for costs that is made against him if permission is refused.”

- (3) *Ewing* also implied that a Defendant who fails to provide a protocol response will not recover its full costs of acknowledging service, since an adequate protocol response will enable D to keep its summary grounds suitably brief

- (4) In *Aegis Group Plc v Inland Revenue Commissioners* [2005] EWHC 1468 (Ch) the Claimant discontinued judicial review proceedings, but because the Defendant took almost two months to reply to the Claimant’s initial protocol letter, it was awarded only 85% of its costs.

14. Alternatively a failure to comply with the pre-action protocol may be taken into account by the court when making case management directions (e.g. a defendant who has not previously been notified of the claim through the pre-action protocol process may be afforded a longer period to file an acknowledgement of service).

Limits of the protocol

15. The protocol is not appropriate, and does not have to be used, where the Defendant is *functus* – ie. it does not have the legal power to change the decision

being challenged – for example, final decision of a statutory tribunal<sup>1</sup>, or certain kinds of licence or consent. However, if the case is considered to be strong, it may be worth sending a protocol letter because the Defendant may agree to submit to judgment.

16. In urgent cases a Claimant may be justified in not using the protocol, where interim relief has to be sought because a decision is about to be implemented (e.g. removal of a failed asylum seeker, withdrawal of community care services).
17. It is important to remember that the protocol does NOT affect the time limit in CPR 54.5(1) which requires the filing of a claim form promptly and in any event no later than 3 months after the grounds to make the claim first arose. Although the courts have from time to time regarded compliance with the pre-action protocol and/or pre-action negotiations and/or an exploration of alternative dispute resolution as a sufficient explanation for delay and a good reason to extend time, there is no guarantee that the court will do so, and the more prudent course is therefore to issue proceedings (and then if appropriate seek a stay for a defined period to allow the negotiations/ADR to continue).

### **(3) Alternative dispute resolution**

18. Prior to the issue of proceedings (and either prior to or as part of the pre-action protocol process) the parties should consider whether some form of alternative dispute resolution (ADR) would be more suitable than litigation in the Administrative Court and if so should endeavour to agree what form to adopt. The value of ADR in public law cases is that it can encompass substantive issues beyond the narrow questions of legality that JR can consider. The (previous)

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<sup>1</sup> In any event, there now exists a right of appeal against many tribunal decisions to the Upper Tribunal established under the Tribunals, Courts and Enforcement Act 2007 – see below. Some tribunals have a power to review or recall their decisions.

government pledged in 2001 that ADR “will be considered and used in all suitable cases where the other party accepts it”:

[http://www.dca.gov.uk/civil/adr/adrrep\\_0405.pdf](http://www.dca.gov.uk/civil/adr/adrrep_0405.pdf).<sup>2</sup>

19. The courts take the view (see *Cowl v Plymouth City Council* [2002] 1 WLR 803) that litigation should be a last resort. The courts cannot compel ADR but a failure to pursue ADR may affect the grant of permission and/or the grant of relief to an otherwise successful claimant and/or the award of costs. Methods of ADR may include RTMs (round table meetings), complaint to an Ombudsman, mediation or early neutral evaluation by an independent third party.

#### **(4) Protective costs orders and other costs management options**

##### PCOs : background

20. A Claimant may wish to apply for an order that it pays no costs even if it loses the case. In *R v Lord Chancellor ex p Child Poverty Action Group* [1999] 1 WLR 347 Dyson J accepted that he had the power to make such an order – now known as a Protective Costs Order (“PCO”). However Dyson J indicated that only in the most exceptional circumstances would the discretion to make a PCO be exercised in a public law case. The criteria were stated at p358:

- (1) The court is satisfied that the issues raised are truly ones of general public importance; and
- (2) That it has a sufficient appreciation of the merits of the claim (by short argument) that it can conclude that it is in the public interest to make the order.

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<sup>2</sup> This link should open a file from the Government archive page for the former Department of Constitutional Affairs.

- (3) The court must also have regard to the financial resources of the applicant and respondent, and the amount of costs likely to be in issue.
- (4) It will be more likely to make an order where the respondent clearly has a superior capacity to bear the costs of the proceedings than the applicant, and where it is satisfied that, unless the order is made, the applicant will probably discontinue the proceedings, and will be acting reasonably in so doing.

The *Corner House* principles and subsequent developments

21. In *R (Corner House Research) v Secretary of State for Trade and Industry* [2005] 1 WLR 2600 the Court of Appeal reviewed the jurisdiction and procedure of PCOs. The case involved an application for judicial review of procedures adopted by the Export Credit Guarantee Department of the DTI. Corner House was a non-profit making company with a particular interest and expertise in examining bribery and corruption in international trade.
22. The general principles were recast as follows:
  - “1. A protective costs order may be made at any stage of the proceedings, on such conditions as the court thinks fit, provided that the court is satisfied that:
    - i) The issues raised are of general public importance;
    - ii) The public interest requires that those issues should be resolved;
    - iii) The applicant has no private interest in the outcome of the case;
    - iv) Having regard to the financial resources of the applicant and the respondent(s) and to the amount of costs that are likely to be involved it is fair and just to make the order;
    - v) If the order is not made the applicant will probably discontinue the proceedings and will be acting reasonably in so doing.

2. If those acting for the applicant are doing so *pro bono* this will be likely to enhance the merits of the application for a PCO.
3. It is for the court, in its discretion, to decide whether it is fair and just to make the order in the light of the considerations set out above.” [74]
23. The second guideline in the CPAG case was modified,  
“no PCO should be granted unless the judge considers that the application for judicial review has **a real prospect of success...**” [73] (emphasis added)
24. The court commented that  
“Dyson J’s requirement that the court should have a sufficient appreciation of the merits of the claim after hearing short argument tends to preclude the making of a PCO in a case of any complexity.” [71]
25. A PCO which prescribed that there the Claimant be under no liability for the Defendant’s costs whatever the outcome would generally only be granted where the Claimant’s lawyers were acting *pro bono*.
26. Where the Claimant is expecting to have its reasonable costs reimbursed in full if it won, a costs capping order was more likely to be appropriate.
27. In *R (Compton) v Wiltshire Primary Care Trust* [2008] ECA Civ 749, a challenge to the closure of the minor injuries unit at a hospital, the Court of Appeal held that there was no additional criterion that a case be exceptional. The court also held that issues of general public importance could include issues of public importance affecting only a section of the population – there was no need that the issue be of interest to all of the public nationally.
28. The “no private interest” criterion has proved particularly problematic. This aspect of *Corner House* remains binding (for the moment) but the consensus appears to be that it should be “applied flexibly”: *Wilkinson v Kitzinger* [2006]

EWHC 835 (Fam); *R (Bullmore) v West Hertfordshire NHS Trust* [2007] EWHC 1350 (Admin).

29. In *R (Buglife) v Thurrock Thames Gateway Development Corporation* [2008] EWCA Civ 1209 the Defendant's decision to grant planning permission in respect of a development was challenged. The court held:

- (1) There was no difference in principle to PCOs in environmental and non-environmental cases.
- (2) Where a court was making a PCO in favour of a Claimant, it might also be appropriate to cap the liability of the Defendant should the Claimant win.
- (3) There should be no automatic assumption that the Claimant's and Defendant's costs should be capped at the same amount: the amount of any cap depended on the circumstances.
- (4) A similar procedure to that at first instance should apply in the Court of Appeal. Issues of permission to appeal and PCOs should be considered at the same time, and the success fee (if the Claimant's lawyers are on CFAs) should be disclosed at the same time.

Fixing the cap

30. As to the amount of the cap:

- (1) the court should prescribe by way of a capping order a total amount of the recoverable costs inclusive, so far as a CFA-funded party is concerned, of any additional liability;
- (2) The liability of the defendant for the applicant's costs if the defendant loses will thus be restricted to a reasonably modest amount. The applicant should expect the capping order to restrict it to solicitors' fees and a fee for a single advocate of junior counsel status that are no more than modest.

- (3) The overriding purpose is to enable the applicant to present its case to the court with a reasonably competent advocate without being exposed to such serious financial risks that would deter it from advancing a case of general public importance at all, where the court considers that it is in the public interest that an order should be made. The beneficiary of a PCO must not expect the capping order that will accompany the PCO to permit anything other than modest representation, and must arrange its legal representation (when its lawyers are not willing to act *pro bono*) accordingly. [76]

PCO procedure

31. A PCO should be sought on the face of the initiating Claim Form, supported by the requisite evidence, which should include a schedule of the Claimant's future costs of and incidental to the full judicial review application.
32. If the Defendant wishes to resist the PCO, it should set out its reasons in the Acknowledgment of Service.
33. The application will then be considered by the judge on the papers. If the judge refuses to grant a PCO and the Claimant requests that the decision is reconsidered at a hearing, the hearing should be limited to one hour.
34. A common current practice is to make an order on the papers including provision (a) expressly enabling either side to request a review of its terms at a hearing, and (b) imposing a costs cap on that hearing.

Recent PCO examples

35. Recent decisions on PCOs include:
- (1) *R (Birch) v Barnsley MBC* [2009] EWHC 3561 (Admin), where Collins J concluded that an applicant was not precluded from obtaining a PCO in respect of a challenge to development on environmental grounds simply because the interest in the development was not as wide as in some cases,

nor because he clearly had his own interest in pursuing the matter, although these factors meant that the order might be less favourable to the claimant than might otherwise have been the case. In that case the claimant sought judicial review of the local authority's decision to grant planning permission for a waste composting site. The court made a PCO in the amount of £2,500 and a cap of £25,000.

- (2) *R (Action against Medical Accidents) v General Medical Council* [2009] EWHC 2522 (Admin) The Court refused to make a PCT to assist a charity bringing JR proceedings against the GMC where, if the charity was unable to continue with the claim, an individual with sufficient interest would be able to adopt and pursue it and the case did not involve matters of general public importance but involved issues unique to an interested party's family and the doctors concerned.
- (3) *R (Garner) v Elmbridge Council* [2010] EWHC 567 (Admin) – a PCO was refused to an applicant bringing JR proceedings against a local authority which granted planning permission for the development of sites opposite Hampton Court Palace. The issues raised were not of general public importance and there was insufficient evidence of the claimant's financial resources for the court to determine whether the claimant would probably discontinue the JR proceedings and would be acting reasonably in so doing.

Collective and community claims: costs management alternatives

36. A local campaign or community group may form a company to protect individuals against costs liability. This is reasonably common in planning/environmental challenges. Rules on standing permit this so long as the members of the company would themselves have sufficient interest: *R. (Residents Against Waste Site Ltd) v. Lancashire CC* [2007] EWHC 2558 (Admin). Though still a risk of court taking a sceptical view of standing. Open to Defendant to apply for security for costs. In that event security should not be fixed at a level that would make access to court

effectively impossible. In theory the result should be essentially the same as if the Claimants had sought a PCO.

37. Alternatively, find an individual with standing who is financially eligible for CLS funding. Funding Code C para 5.5 applies: LSC will seek a reasonable contribution from others with the same interest. If the LSC approves such an arrangement, unlikely the court will treat the claim as an abuse of CLS funding: *R. (Edwards) v. Environment Agency* [2004] JPL 1691.

#### **(5) Identifying the decision to be reviewed**

38. The Claimant must identify the enactment, decision, action or failure to act about which complaint is made. In the majority of cases this is obvious, but difficulties can arise where there are continuing failures to act or a series of decisions.
39. Where the Defendant takes a fresh decision in response to representations made by the Claimant or the pre-action protocol, the appropriate target will usually be the most recent decision. Care needs to be taken, however, over time limits where the “fresh” decision is merely a re-statement of the first decision or a refusal to review an earlier decision. The court may conclude that for the purposes of the requirement to act promptly and in any event within three months, the earlier decision is the one that should have been challenged. In that event it is impermissible to “piggy back” the claim on the later decision: *R (Louden) v. Bury School Organisation Committee* [2002] EWHC 2749 (Admin).

#### **(6) Identifying the appropriate defendant(s)**

40. Identifying the appropriate defendant is rarely problematic. The Defendant will be the public body which has taken the decision complained of or has acted or failed to act in a way that is said to be unlawful.

41. Occasionally difficulties can arise where more than one public body has contributed to the decision/act/omission, or where a decision is taken by one public body on behalf of others.

**(7) Interested parties**

42. CPT 54.6(1)(a) requires the Claimant to set out in the claim form the name and address of any person he considers to be an interested party. An interested party means “any person (other than the claimant and defendant) who is directly affected by the claim”. Practice Direction 54A confirms that in a claim by a defendant in a criminal case in the Magistrates or Crown Court for judicial review of a decision in that case, the prosecution must always be named as an interested party. Other examples of persons whose interests could be directly affected by the claim are a developer in a JR of a grant of planning permission; a service user in a dispute between two local authorities as to funding responsibility for that person’s care; a body which has been awarded a licence which is now the subject of challenge. In *R (Fuller) v Chief Constable of Dorset Constabulary* [2001] EWHC 1057 (Admin) the local authority was found to be an interested party who should have been named by the claimant travellers who were challenging the powers of police to remove them from local authority land.
43. Consideration should also be given to whether government departments or public interest groups should be named as interested parties. However, resist the temptation to include a minister or department merely because a declaration of incompatibility is sought under HRA 1998 s. 4. Correct procedure is to allow court to consider whether to direct giving of notice to the Crown: see PD19A para. 6.1. May be costs consequences of involving government department unnecessarily.

**(8) The claim form**

44. The Claimant must use the Part 8 procedure as modified by Part 54. The relevant form is N461.
45. Points to consider when drafting the claim form:
- (1) It is important to explain why the pre-action protocol has not been complied with where that is the case.
  - (2) Where a claimant seeks to raise any issue under the Human Rights Act 1998 or seeks a remedy available under the HRA, the claim form must include the information required by paragraph 15 of the Practice Direction supplementing CPR Pt 16, namely:
    - (a) precise details of the Convention right which it is alleged has been infringed and details of the alleged infringement;
    - (b) the relief sought in respect of that infringement;
    - (c) if a declaration of incompatibility is sought, the precise details of the legislative provision in question and of the alleged incompatibility must be provided;
    - (d) where the claim is founded on a judicial act, the act complained of and the court or tribunal alleged to have made it must be identified.
  - (3) In all cases, specify the relief sought. Ensure all forms of relief that you can anticipate are pleaded at this stage. Useful catch-all “Such other relief as the Court thinks fit or as is necessary to give effect to the judgment of the Court.”
46. The claim form will usually be supported by a detailed “statement of facts and grounds”. The approach of individual practitioners varies, but it is usually helpful to include all the necessary factual description and legal argument in this single document. Be sparing with any accompanying witness statement (see below). Some tips:

- (1) State what the case is about in the first paragraph
  - (2) Begin with summary of the facts – as concise as possible, followed by...
  - (3) Legal framework, then
  - (4) Grounds of challenge.
  - (5) Ensure that the issues of law are clearly identified and beware “the overloading of a case with hopeless points [which] simply operates potentially to devalue points which otherwise might be made to appear arguable”: *R (Naing) v IAT* [2003] EWHC 771 (Admin).
  - (6) Anticipate any delay objection (which may already be trailed in protocol correspondence) – give reasons for lapse of time and include an application to extend time if necessary.
  - (7) Prudent to consider dealing with ADR or alternative remedy issues in the grounds if a potential route is open or has been plausibly suggested. Explain why JR proceedings are nevertheless brought at this stage.
47. The Claim Form and accompanying documents (see below) must be served on the Defendant and any person the Claimant considers to be an interested party within 7 days after the date of issue (54.7).
48. There are different forms for certain specialist types of claim.

**(9) Evidence, bundle and authorities**

49. The claim form must be accompanied by a bundle which includes:
- (1) Any written evidence on which the claimant relies.
  - (2) A copy of any order the claimant seeks to have quashed.
  - (3) A copy of the decision under challenge and any other documents on which the claimant seeks to rely.
  - (4) A copy of any relevant statutory material;
  - (5) A list of essential reading with page references.

See Practice Direction 54A at para. 5.6.

50. The “other documents” should include the letter before claim, the response and any other relevant correspondence. NB do not omit obviously relevant documents merely because they are unhelpful to the claim – the claimant has a duty of candour. That duty is probably less absolute under the CPR 54 on-notice permission procedure than under the former *ex parte* RSC leave procedure. The proportionality aspect of the overriding objective suggests a balanced approach, avoiding burdening the court with unnecessary detail at the outset. See *R. (McCarthy and others) v. Basildon DC* [2008] EWHC 987 (Admin), Collins J [8], [emphasis added]:

“There is a growing tendency to place far too much material before the court. A claimant must produce all clearly relevant material to the court and must in particular include any which may be considered to be possibly adverse to his claim. Only thus can he comply with the duty of candour. The same applies to a defendant. There is often material which may be relevant but need not be put to the judge until it becomes clear that it is. Equally, parties often want to refer to particular paragraphs or excerpts from reports or other documents which mean that, although the context may need to be made clear, the whole need not be included in a bundle. The court should only be provided initially with what is clearly relevant and material. The balance of possibly relevant material should be brought to court and must have been made available to the other party.”

51. The claimant must file 2 copies of the bundle in a paginated and indexed form. The Practice Direction does not require authorities to be filed, but if there are authorities on which the claimant relies to make out his claim or which obviously require to be read in order for the Judge to understand the case and consider whether permission should be granted, then it is sensible to include the authorities with the statutory material in the bundle.

**(10) Where to issue**

52. There are now a number of regional Administrative Court centres: Cardiff, Birmingham, Leeds and Manchester. Claims can be issued at any Administrative Court office, and if issued in the regional offices will usually be heard locally. Proceedings may be transferred to another office by a judge, and the general expectation is that proceedings will be administered and determined in the region with which the claimant has the closest connection, although there are a number of potential contrary considerations listed in para 5.4 of Practice Direction 54D. If a claimant has a particular preference for the case to be heard in a region other than that in which the claim was issued, it is sensible to address that point in the claim form/grounds.
53. “Excepted classes of claim” should be issued at the Administrative Court Office in the High Court in London (see Practice Direction 54D – Administrative Court (Venue) at para 3.1). These include cases involving control orders, terrorist cases, special advocate cases and proceedings under the Proceeds of Crime Act.

**(11) Urgent consideration and interim relief**

54. Where the Claimant wishes to apply for urgent interim relief, or requires the claim to be determined within a particularly short timeframe, an application must be made on form N463: Application for urgent consideration.
55. The form requires the Claimant’s advocate to:
- (1) Set out the reasons for urgency
  - (2) Set out a proposed timetable
  - (3) Set out what interim relief is sought and why
  - (4) Provide a separate draft order for interim relief
  - (5) Demonstrate that the form has been served on the defendant and interested parties.

56. Interim relief may be granted on the papers, and/or a hearing may be directed – in which case permission will usually be dealt with at the same time, with time for acknowledgement of service abridged.

**(12) The judicial review jurisdiction of the Upper Tribunal**

57. The Tribunals, Courts and Enforcement Act 2007 introduced a new two-tier tribunal system, with a statutory right of appeal from a decision of the First-tier Tribunal to the Upper Tribunal. The existence of the statutory right of appeal means that many decisions that would have previously been the subject of a judicial review claim (e.g. a decision of a Mental Health Review Tribunal not to discharge a detained patient) can now be appealed.

58. In addition to the Upper Tribunal’s appeal jurisdiction, however, the Upper Tribunal enjoys a judicial review jurisdiction (conferred by section 15 of the 2007 Act) over:

- (1) A decision of the First-tier Tribunal on an appeal made in the exercise of a right conferred by the Criminal Injuries Compensation Scheme in compliance with section 5(1) of the Criminal Injuries Compensation Act 1995; and
- (2) Any decision of the First-tier Tribunal made under Tribunal Procedure Rules or section 9 of the 2007 Act where there is no right of appeal to the Upper Tribunal and the decision is not an excluded decision within paragraph (b), (c) or (f) of section 11(5) of the 2007 Act.

See the Lord Chief Justice’s Direction “Classes of Cases specified under section 18(6) of the Tribunals, Courts and Enforcement Act 2007”. There is a further general power to transfer other judicial review cases from the Administrative Court to the Upper Tribunal if certain conditions are met.

59. Different forms must be used for judicial review claims in the Upper Tribunal: Form JR1 (Judicial Review claim form) and Form JR2 (Acknowledgement of Service). These forms are similar, though not identical, to N461 and N462.

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