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Factsheet 13

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**This Factsheet looks at the Judicial Review process in relation to Asylum Support**

**What is a Judicial Review?**

Judicial review is the process by which the courts supervise the actions of government bodies which make decision affecting the public, such as the Home Office and the First Tier Tribunal (Asylum Support). Judicial review generally 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 seeking a judicial review. In the context of asylum support, many (but not all) Home Office decisions attract a right of appeal to the Tribunal. The decisions which are not appealable (such as a dispersal decision or the asylum support rates) can only be challenged by way of judicial review.

There is no asylum support Upper Tribunal, to lodge an appeal against an unlawful decision of the First Tier Tribunal. Therefore the only remedy is a judicial review of the Tribunal's decision, and both parties (the Home Office and the asylum seeker) can take this action.

**Three Month Time Limit**

Judicial review is governed by the Supreme Court Act 1981 (s31) and Rule 54 Civil Procedure Rules (CPR) and takes place in the High Court. Applications must start as soon as possible and within 3 months from the date the grounds for an application for judicial review arose. So, if the Tribunal potentially unlawfully dismisses an appeal, leaving the asylum seeker destitute, the decision must be challenged at the latest within 3 months of the date the Tribunal hearing.

**Applying for a Judicial Review**

A potential claimant will need specialist legal advisors, and the benefit of legal aid. Judicial reviews, in the field of asylum, immigration and asylum support, carried out by 'litigants in person', are very unlikely to be successful. Once proceedings are issued, the first stage is to seek 'permission' to proceed, which is when the court checks that there is sufficient merit in the claimant's case.

The traditional grounds for judicial review are irrationality, illegality and procedural impropriety. The European Convention of Human Rights, embedded in UK law by the Human Rights Act 1998, has widened the potential grounds for judicial review and is very relevant in asylum support law.

