

# Introduction to Judicial Review

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Factsheet 13

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The information contained in this Factsheet is intended for guidance only. While every effort is made to ensure it is correct a time of publication, it should

## This Factsheet looks at judicial review 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 (HO) and the First-tier Tribunal (Asylum Support) (AST). 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.

### Non-appealable asylum support decisions

In the context of asylum support, many (but not all) HO decisions attract a right of appeal to the AST. The following decisions are not appealable and judicial review would be the only legal remedy<sup>1</sup>:-

- dispersal decision
- asylum support rates
- delays in making a decision on an asylum support application
- refusal to provide s98 accommodation (see Factsheet 17)
- delays in providing support following a positive decision by the HO or the AST review
- an application for support under Immigration Act 2016 Sch 10 para 9

### Asylum support decisions which are appealable to the AST

In the event of the AST making an unlawful decision, there is no Upper Tribunal to appeal to (unlike the majority of other first tier tribunals). Therefore the only remedy is a judicial review of the AST's decision, and both parties (the HO and the asylum-seeker) can take this action. These judicial reviews are very rare.

### Three Month Time Limit

Judicial review is governed by the Senior Courts 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 AST potentially unlawfully dismisses an appeal, the decision must be challenged within 3 months of the date the hearing, or, at the

<sup>1</sup> In some situations it might be appropriate to use a complaints procedure before using judicial review

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very latest, within 3 months of the date the Statement of Reasons are sent out. Statements of Reasons contain the date of the hearing in the 1<sup>st</sup> paragraph. They have to be sent to appellants within 3 working days of the date of the appeal.<sup>2</sup>

### Applying for a Judicial Review

A potential claimant will need a specialist asylum support/public law/community care legal aid solicitor. 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 (ECHR), 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.

### Significant asylum support judicial reviews

The overwhelming majority of judicial reviews settle and therefore do not result in a judgment. However, if there is judgment, it will be binding on the AST. The following are the most important:-

*R (Limbuela and others) (Shelter intervening) v SSHD* [2005] UKHL66

It is a breach of ECHR Article 3 for asylum-seekers with outstanding claims to be left destitute

*R (SSHD) v Asylum Support Adjudicator and Osman* [2006] 1248

A consideration of eligibility for s4 support under reg 3(2)(b), 'unable to leave the UK by reason of a physical impediment to travel or for some other reason'

*R (NS) v First-tier Tribunal* [2009] EWHC 3819

There are a variety of factual circumstances in which refused asylum-seekers could be eligible for s4 support under reg 3(2)(e). See Factsheet 2

*Birmingham CC v Clue* [2010] EWCA Civ 460

Not a case concerning an asylum-seeker but an overstayer (with children) who had an outstanding Article 8 (family life) application for leave to remain. She had applied for support under Children Act 1989 s17. Established that provided the outstanding application is not 'hopeless or abusive' then support should be provided. This applies to destitute asylum-seekers who have lodged further submissions (see Factsheets 2 and 12).

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<sup>2</sup> The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008, last updated 21/8/15 rule 34(1)(a).

