

MAKING A SUCCESSFUL CLAIM FOR JUDICIAL REVIEW

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“...a somewhat labile and subjective concept”

Common Sense?

"Common Sense is neither common nor sensical. Much of what passes for common sense is not based on any underlying principle it's just anecdotes that have worked for the current situation."

- Benjamin Franklin

The important ingredients

- Who (twice)?
- What (twice)?
- Why?
- When?
- How?
- Where?

Understanding the nature of Judicial Review

- Judicial Review is the main means by which the courts supervise the exercise by public bodies of their public law functions.
- It is the exercise of those functions with which the courts are concerned, not the merits of the decisions made.

Understanding the nature of Judicial Reviewcont'd

- The use of the court's powers (sanctions) is discretionary.
- Is there an alternative remedy?
- There is a filter system.

Understanding the nature of Judicial Reviewcont'd

“Public law is not at base about rights, even though abuses of power may and often do invade private rights; it is about wrongs – that is to say misuses of public power.”

Sedley J

(R v Somerset County Council ex parte Dixon [COD] 1997 323 QBD)

WHO? (1)

- The applicant (Claimant) has to have sufficient interest.
- The importance of the subject matter of the challenge will be the predominant factor.
- Interference with personal rights.
- A direct financial interest or legal interest is not required.
- 3rd party - important indirect consequence.

WHO? (2)

- Who made the decision?
- Was it a public body?

WHO? (2) – cont'd

The Civil Procedure Rules (r 54.1(2)(a)) define reviewability by referring to:

“ a decision, action or failure to act in relation to the exercise of a public function.”

That definition focuses on the nature of the function being performed rather than the nature of the decision maker.

WHO? (2) – cont'd

It is not just public bodies that perform public functions.

The courts have developed several tests:

- The “but for” test.
- Statutory underpinning.
- Extensive or monopolistic powers.
- Carrying out the functions of a public body.

WHAT? (1)

- What is it that your client is aggrieved about?
- Identification of the precise nature of the grievance.
- The matter must have substance.
- Challenges to decision of superior courts not allowed.

WHAT? (2)

What is the nature of the challenge? What are the grounds?

- Illegality
- Irrationality
- Procedural impropriety
- Legitimate expectation
- Breach of Human Rights
- Restrictions on or fettering of an exercise of discretion

WHEN?

When was the decision made?

There are time limits

- “promptly”
- And in any event within 3 months.

WHY?

- Is there a different way of dealing with it?
- Is it worth it?

HOW?

- How is the challenge to be funded?
- Pre-action Protocol
- Use of forms N461
- Interested Parties

WHERE?

- Where is the case to be heard?
- *Local Courts v London*
- Upper Tribunal

Making a successful claim

- Identify the decision challenged as a decision made in the exercise of a public function by a public body.
- Identify clear ground(s) for the challenge.
- Be able to set out both in no more than 4 pages of A4 (in a decent size font).

Making a successful claim....cont'd

- Identify the remedies sought.
- Ensure that the procedural requirements have been met, and
- Ensure that proper funding is in place.

Making a successful claim....cont'd

- Quick and accurate identification of issues.
- Accurate gathering of information.
- Very early access to an administrative law specialist.

Recommend materials & reading

Judicial Review: A Practical Guide [Paperback]

Hugh Southey QC, Amanda Weston and Jude Bunting
Published by **Jordans**; **ISBN-10: 1846612950**

Judicial Review Handbook [Hardcover]

Michael Fordham QC 6th Revised edition (25 Oct 2012)
Published by **Hart Publishing**; **ISBN-10: 1849461597**

Judicial Review : A Quarterly Journal

Published by **Hart Publishing**: Editors **Michael Fordham QC**
and James Maurici

Sedley J's Law of Documents

FIRST LAW:

Documents may be assembled in any order, provided it is not chronological, numerical or alphabetical.

SECOND LAW:

Documents shall in no circumstances be paginated continuously.

THIRD LAW:

No two copies of any bundle shall have the same pagination.

FOURTH LAW:

Every document shall carry at least three numbers in different places.

FIFTH LAW:

Any important documents shall be omitted.

SIXTH LAW:

At least 10% of the documents shall appear more than once in the bundle.

SEVENTH LAW:

As many photocopies as practicable shall be illegible, truncated or cropped.

EIGHTH LAW:

- (a) At least 80% of the documents shall be irrelevant.

- (a) Counsel shall refer in court to no more than 10% of the documents, but these may include as many irrelevant ones as counsel or solicitor deems appropriate.

NINTH LAW:

Only one side of any double-sided document shall be reproduced.

TENTH LAW:

Transcriptions of manuscript documents shall bear as little relation as reasonably practicable to the original.

ELEVENTH LAW:

Documents shall be held together, in the absolute discretion of the solicitor assembling them by:

- (a) A steel pin sharp enough to injure the reader;
- (b) A staple too short to penetrate the full thickness of the bundle;

- (c) Tape binding so stitched that the bundle cannot be fully opened; or
- (d) A ring or arch-binder so damaged that the two arcs do not meet.

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