



Remedies in judicial review

1. What is a remedy?

When you commence judicial review proceedings, you ask the court to grant a remedy – this is the order the court makes if you win the case. The most common scenario is that the Claimant wants a decision taken by the Defendant to be quashed. This has the effect of cancelling that decision so that all the parties are in the position they were in before the decision in dispute was taken.

2. What remedies are available?

The following remedies are available in proceedings for judicial review:

- Quashing order;
- Prohibiting order;
- Mandatory order;
- Declaration;
- Injunction;
- Damages

In any case more than one remedy can be applied for; however, the granting of all remedies is entirely at the court's discretion.

3. Quashing Order

A quashing order nullifies a decision which has been made by a public body. The effect is to make the decision completely invalid. Such an order is usually made where an authority has acted outside the scope of its powers ('ultra vires'). The most common order made in successful judicial review proceedings is a quashing order.

If the court makes a quashing order it can send the case back to the original decision maker directing it to remake the decision in light of the court's findings. Or, very rarely, if there is no purpose in sending the case back, it may take the decision itself.

4. Prohibiting Order

A prohibiting order is similar to a quashing order in that it prevents a tribunal or authority from acting beyond the scope of its powers. The key difference is that a prohibiting order acts prospectively by telling an authority not to do something in contemplation.

Examples of where prohibiting orders may be appropriate include stopping the implementation of a decision in breach of natural justice, or to prevent a local authority licensing indecent films, or to prevent the deportation of someone whose immigration status has been wrongly decided.

5. Mandatory Order

A mandatory order compels public authorities to fulfil their duties. Whereas quashing and prohibition orders deal with wrongful acts, a mandatory order addresses wrongful *failure* to act. A mandatory order is similar to a mandatory injunction (below) as they are orders from the court requiring an act to be performed. Failure to comply is punishable as a contempt of court.

Examples of where a mandatory order might be appropriate include: compelling an authority to assess a disabled person's needs, to approve building plans, or to improve conditions of imprisonment.

A mandatory order may be made in conjunction with a quashing order, for example, where a local authority's decision is quashed because the decision was made outside its powers, the court may simultaneously order the court to remake the decision within the scope of its powers.

6. Declaration

A declaration is a judgment by the Administrative Court which clarifies the respective rights and obligations of the parties to the proceedings, without actually making any order. Unlike the remedies of quashing, prohibiting and mandatory order the court is not telling the parties to do anything in a declaratory judgment.

For example, if the court declared that a proposed rule by a local authority was unlawful, a declaration would resolve the legal position of the parties in the proceedings. Subsequently, if the authority were to proceed ignoring the declaration, the applicant who obtained the declaration would not have to comply with the unlawful rule and the quashing, prohibiting and mandatory orders would be available.

7. Injunction

An injunction is an order made by the court to stop a public body from acting in an unlawful way. Less commonly, an injunction can be mandatory, that is, it compels a public body to do something.

Where there is an imminent risk of damage or loss, and other remedies would not be sufficient, the court may grant an interim injunction to protect the position of the parties before going to a full hearing. If an interim injunction is granted pending final hearing, it is possible that the side which benefits from the injunction will be asked to give an undertaking that if the other side is successful at the final hearing, the party which had the benefit of the interim protection can compensate the other party for its losses. This does not happen where the claimant is legally aided.

8. Damages

Damages are available as a remedy in judicial review in limited circumstances. Compensation is not available merely because a public authority has acted unlawfully. For damages to be available there must be either:

- (a) A recognised 'private' law cause of action such as negligence or breach of statutory duty or;
- (b) A claim under European law or the Human Rights Act 1998.

9. Discretion

The discretionary nature of the remedies outlined above means that even if a court finds a public body has acted wrongly, it does not have to grant any remedy.

Examples of where discretion will be exercised against an applicant may include where the applicant's own conduct has been unmeritorious or unreasonable, for example where the applicant has unreasonably delayed in applying for judicial review, where the applicant has not acted in good faith, where a remedy would impede the an authority's ability to deliver fair administration, or where the judge considers that an alternative remedy could have been pursued.

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