



# An Introduction to Public Law



The Public Law Project (PLP) is a national legal charity which aims to improve access to public law remedies for those whose access to justice is restricted by poverty or some other form of disadvantage.

Within this broad remit PLP has adopted three main objectives:

- increasing the accountability of public decision-makers;
- enhancing the quality of public decision-making;
- improving access to justice.

Uniquely for an organisation of its kind, PLP undertakes research, policy initiatives, casework and training across the range of public law remedies.

[www.publiclawproject.org.uk](http://www.publiclawproject.org.uk)

The Public Law Project would like to thank Matrix Causes fund for supporting our short guides project.

## Contents

1	What is public law?	1
2	What is a public body?	1
3	Where do public authorities get their legal authority from?	2
4	How can public law decisions affect you?	3
5	What are public law wrongs?	3
6	What is maladministration?	3
7	How can public law help you?	4
8	What is judicial review?	5
9	What are complaints procedures and ombudsman schemes?	6
10	What remedies can public law offer you?	8
11	Time limits – you need to act quickly	8
12	Cost	9
13	Example	10
14	MPs and Councillors	12
15	Data Protection Act and Freedom of Information Act requests	12

# An introduction to public law

## 1 What is public law?

Public law is about the exercise of power by public authorities, such as local authorities or government departments. It is different from private law, which governs relationships between individuals and private companies.

If a decision made by a public body acting in a public capacity is unlawful, or if the decision making process is unfair, it can be challenged by using a complaints procedure, or by judicial review if there is no other way to challenge it.

## 2 What is a public body?

Public law controls public bodies acting in a public capacity. Sometimes it is obvious what is a public body, for example a local authority or a government department.

The following are all public bodies:

Government ministers, departments and agencies, local authorities (including social services, housing departments and local education authorities), health authorities, the police, prisons, courts, statutory tribunals, coroners' courts, and regulatory and supervisory bodies.

Because many functions are now carried out by other agencies, you sometimes have to consider carefully if a body is “public” or not. In general, it will be controlled by public law principles if it is authorised by an Act of Parliament or carrying out a public function.

If a public body is acting in a private capacity, for instance as an employer, or in a contractual relationship with a supplier, or if it acts negligently, its actions are governed by private, not public law.

### **3 Where do public authorities get their legal authority from?**

Usually public bodies and officials get their authority to make decisions, and to take action, from Parliament in the form of legislation. These are often called statutory powers and duties, and you can find them in:

- Primary legislation; Acts of Parliament
- Secondary legislation, or delegated legislation; Regulations, Orders and Rules. Ministers can make this legislation under the authority of an Act of Parliament.
- European Community Law; Directions and Regulations made by the legislative bodies of the European Union.
- Common law or the royal prerogative; for instance the power of the government to sign treaties or issue passports.

### **4 How can public law decisions affect you?**

Most people are affected by public law decisions at some time in their lives. For example benefit claimants, health service users, the homeless, asylum seekers, people with disabilities, people with mental health problems, prisoners, those affected by planning decisions, school children and their parents.

If you have ever been to hospital, a Council Housing Office, Social Services, a Police Station or claimed benefits you are likely to have been affected by public law decisions.

### **5 What are public law wrongs?**

Public authorities have to act in accordance with public law principles. Briefly this means that they have to follow these rules:

- They must act lawfully, this means they must follow the law, they must not do things they do not have legal authority to do, or use their powers to do something improper
- They must act reasonably
- They must follow fair procedures

### **6 What is maladministration?**

Parliament has given a number of Ombudsmen the power to investigate complaints about maladministration, which is closely related to the public

law principles set out above.

Common examples of maladministration are; delay, doing things wrong, not providing information, not maintaining adequate records, not doing things, not taking relevant matters into account, failure to investigate, failure to deal with enquiries, failure to comply with legal requirements, making misleading or inaccurate statements.

## 7 How can public law help you?

If you are affected by a decision made by a public body you may be able to challenge it. You may also be able to challenge a failure to make a decision, or a delay in making a decision, by a public body.

Different decisions can be challenged in different ways.

- If there is a right of appeal against the decision, you will usually have to follow the appeal procedure.
- If there is no right of appeal, and no effective alternative remedy, you may be able to challenge the decision by judicial review

There may be other ways that you can challenge decisions. Many public bodies have complaints procedures you can follow. There may be an ombudsman scheme you can complain to – Please see further on in this guide.

Complaints decisions and ombudsman decisions can themselves be challenged by judicial review.

## 8 What is judicial review?

Judicial review is a public law challenge to a decision or a failure to act by a public body in the Administrative Court which is part of the High Court. You usually need help from a solicitor to apply for judicial review. See our Short Guide 03 An Introduction to Judicial Review in this series for further details. Some points you may want to consider are set out in the table below.

### Judicial review

- Important check on power of public bodies
- You must apply quickly and in any event within 3 months of any decision
- The court makes a binding decision which may help many other people in a similar situation
- The court procedures are not designed to be used by people who are not legally represented
- Like all court proceedings, judicial review is expensive unless legal aid is available
- The court's role is supervisory only
- Remedies are discretionary, and only include damages in very limited circumstances

## 9 What are complaints procedures and ombudsman schemes?

Most public bodies have complaints procedures you can follow. Some also offer access to ombudsman or similar schemes, usually if you are not happy with the outcome of the complaints process. See our Short Guide 02 Making and Effective Complaint to a Public Body (and forthcoming guide on Ombudsman schemes) for further details, some points you may want to consider are set out in the tables below.

### Using the complaints process:

Advantages	Disadvantages
<ul style="list-style-type: none"><li>• Usually free</li><li>• Designed to be used without the need for legal representation</li><li>• Your complaint may be investigated</li><li>• You may get an apology</li><li>• You may get compensation</li></ul>	<ul style="list-style-type: none"><li>• It is not independent</li><li>• It could take a long time</li><li>• It will not resolve disputes about policy or law</li></ul>

### Using the Ombudsman Scheme:

Advantages	Disadvantages
<ul style="list-style-type: none"><li>• Free</li><li>• Impartial</li><li>• Designed to be used without the need for legal representation</li><li>• The ombudsman staff can look at the local authority's files and investigate your complaint</li><li>• The Ombudsman can work with the public body to try and resolve a systemic problem</li><li>• You may get an apology and/or compensation</li></ul>	<ul style="list-style-type: none"><li>• You usually have to go through any complaints process first</li><li>• It can take a very long time, it is not generally suitable for urgent cases</li><li>• The Ombudsman's remit is limited to maladministration, s/he will not resolve disputes about policy or law</li></ul>

## 10 What remedies can public law offer you?

On an application for judicial review a court can do the following:

- Set aside the decision complained of
- Make an order stopping the public body from doing something unlawful
- Make a declaration about what the law says
- Make an order compelling a public body to do something
- Award damages in very limited circumstances

These remedies are discretionary and the court might not do anything if it does not think it's fair.

Complaints and ombudsman schemes have different remedies available, and you should check the individual scheme for details. They can usually investigate complaints and get an apology, or get the public body concerned to change its procedures. They can often obtain financial compensation.

## 11 Time limits – you need to act quickly

You must make sure you act in time. This is particularly important for judicial review where you must act quickly and challenges must be brought within three months of the decision you are challenging. There are exceptions, so if you are outside the time limit, seek advice. If you are challenging a failure to make a decision, or a delay, then the time limit should not apply in the same way.

## 12 Cost

If you challenge a public law decision, there may be a cost involved. If you challenge a decision by judicial review, you will usually need a solicitor to help you. If you are on income related benefits or on a low income you can get legal aid to fund representation. See our [Guide 03 Introduction to Judicial Review](#) for further details. Most complaints procedures and ombudsman schemes are free, and you do not need legal representation to follow these, although you may be able to get advice. We have an online list of current advice services that may be able to help you.

[Download list of current advice services\\*](#)

---

\*If reading the printed version of this document a list of weblinks can be found in full on the last page.

### 13 Example

Sasha gets a decision from HMRC refusing to write off an overpayment of tax credits. She thinks the decision is wrong because HMRC has not taken account of all of the information she sent them.

This decision is a public law decision made by a public authority. There is no right of appeal against it. Sasha has the following options.

- Sasha can follow HMRC's complaints procedures and make a complaint to HMRC about the decision. There is no time limit for this, but the longer Sasha leaves it, the less likely HMRC is to allow her complaint.
- If it can be argued that the complaints procedures cannot offer Sasha an effective remedy, Sasha may be able to challenge HMRC's decision by judicial review. Sasha needs help from a solicitor with this.

If Sasha follows the complaints procedure, and she is not happy with the outcome, she can complain to the Adjudicator or to the Parliamentary and Health Service Ombudsman. The Adjudicator is set up by HMRC, the Parliamentary and Health Service Ombudsman is independent of HMRC.

Both the Adjudicator and the Parliamentary Ombudsman will usually expect her to have exhausted HMRC's complaints procedure before she makes her complaint to them. However, a delay in HMRC's complaints procedure may in itself be something she can make a complaint about.

A complaint to the Adjudicator must be made within six months of the final correspondence with HMRC. A complaint to the Parliamentary and Health Service Ombudsman must be made within 12 months from the date you are notified of the matter complained of.

There is no fee for a complaint to either the Adjudicator or the Parliamentary Ombudsman scheme. Sasha could make a complaint to either scheme without help from a solicitor, although she may be able to get advice if she needs it.

Both the adjudicator and the ombudsman can investigate Sasha's complaint, and make a recommendation about whether the overpayment can be recovered or not. If they think HMRC made mistakes, Sasha might get some compensation and an apology. She could get compensation for things like worry and stress and any costs she has incurred, like extra phone calls.

If Sasha chooses to complain to the Adjudicator, and she is not happy with the Adjudicator's decision, she can complain to the Parliamentary and Health Service Ombudsman about that decision.

The Adjudicator's decision is a public law decision taken by a public body, and it may be challenged by judicial review.

The decision of the Parliamentary and Health Service Ombudsman is a public law decision taken by a public body, and it may be challenged by judicial review.



## 14 MPs and Councillors

If you have encountered problems with a public body, you may want to consider contacting your local councillor or your MP. They may be able to help with a complaint by making enquiries and requesting explanations for decisions. They may be able to advise you on how to access other forms of support and assistance.

You can find out who your local councillor is by contacting your local authority. Details can also be found on your local authority's website. You can also search on gov.uk.

[search now on gov.uk](#)

If you want to check who your local MP is you can search on the parliament.uk website.

[search now on parliament.uk](#)

## 15 Data Protection Act and Freedom of Information Act requests

If you want to find out what information a public body holds about you, you can make an application under the Data Protection Act 1998 for a copy of your file.

If you want to get information about a public body about other information it holds you can make an application under the Freedom of Information Act

You should make your request clearly and explain what you are asking for. Public bodies may charge fees for providing information. They have a duty to respond to requests within time limits. If they fail to provide information this can be subject to challenge or complaint.

There is more information about the Data Protection Act and the Freedom of Information Act on the Information Commissioner's website.

[Link to the Information Commissioners website](#)

You can also visit the website for The Campaign for Freedom of Information for more information.

[Link to the Campaign for Freedom of Information](#)

The Campaign has published a users' guide to the Freedom of Information Act, Environmental Information Regulations and rights to see personal data about you held by public authorities.

[Download the guide here](#)

## Web links in this document

Download list of advice services

[www.publiclawproject.org.uk/Downloads/advice\\_organisations\\_signposting.pdf](http://www.publiclawproject.org.uk/Downloads/advice_organisations_signposting.pdf)

Find your local councillor

[www.gov.uk/find-your-local-council](http://www.gov.uk/find-your-local-council)

Find your MP

[www.findyourmp.parliament.uk/](http://www.findyourmp.parliament.uk/)

The Information Commissioner

[www.ico.org.uk/](http://www.ico.org.uk/)

The Campaign for Freedom of Information

[www.cfoi.org.uk/](http://www.cfoi.org.uk/)

Freedom of Information Act, Users Guide

[www.cfoi.org.uk/pdf/foi\\_guide.pdf](http://www.cfoi.org.uk/pdf/foi_guide.pdf)

## Guides in this series:

01 An Introduction to Public Law

02 Making an Effective Complaint to a Public Body

03 An Introduction to Judicial Review

## Coming soon

A Guide to Urgent Judicial Review

Making Freedom of Information and Data Access Requests  
in Support of Public Law Challenges

Ombudsmen Uncovered

Tribunals and Public Law

PLP receives core and project support for its activities from:

AB Charitable Trust, Baring Foundation, Bromley Trust,  
Clifford Chance LLP, The Cooperative Membership Community Fund,  
Lankelly Chase Foundation, The London Legal Support Trust, Matrix  
Causes Fund, Nuffield Foundation, Trust for London, Paul Hamlyn  
Foundation, Strategic Legal Fund for Vulnerable Young Migrants

PLP has a contract to provide legal services with The Legal Aid Agency



Public Law Project