



GUIDE SERIES

An introduction to public law



The Public Law Project (PLP) is an independent national legal charity. Our mission is to improve public decision-making and facilitate access to justice. We work through a combination of research and policy work; training, conferences, and second-tier support; and legal casework including public interest litigation. Our strategic objectives are to:

- promote and safeguard the Rule of Law;
- ensure fair systems for public decision making; and
- improve access to justice.

www.publiclawproject.org.uk

In this guide we explain what public law is and the ways in which you may be able to use public law to change or influence decisions that affect you.

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



An introduction to public law

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1. Public law

What is public law?

Public law is a set of rules that govern the relationships between private individuals (like you) or private organisations (like a business or charity), and public bodies (like Government departments and local authorities) or private organisations exercising a **public function**.

What is a public body?

The following are all examples of 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 like the General Medical Council.

Usually public bodies and officials get their authority to make decisions, and to take action, from Parliament in the form of legislation. These are called statutory powers and duties, and you can find them in Acts of Parliament; secondary or delegated legislation (Regulations, Orders and Rules); and European Community Law. Some things done by Government ministers, such as issuing passports and signing treaties, are technically done on the monarch's behalf under "royal prerogative" powers.

What is a public function?

Examples of a public body carrying out a public function include a local authority deciding whether or not to provide accommodation to someone who needs housing; the DWP deciding whether or not to award someone welfare benefits; a Government minister deciding to lay regulations that determine who can access Legal Aid; and a local authority deciding whether to grant planning permission.

If an issue arises when a public body is acting, for example as an employer, or in a contractual relationship with a supplier, it will probably not be carrying out a public function, but acting in a private capacity and its actions will not be governed by public law.

Some of the things that public bodies do, such as providing housing and community care, are now carried out by private organisations. A private organization may be controlled by public law if it is doing something that a public body would otherwise usually do, i.e. if it is carrying out a public function. References in this guide to public bodies include private organisations carrying out public functions.

What does public law mean for public bodies?

Public bodies and organisations carrying out a public function have to act in accordance with public law principles and follow these rules:

- **They must act lawfully:** this means that they must follow the law, and must not do things they do not have legal authority to do; that they must not use their powers to do something improper; and that they should follow guidance and policy on the use of their powers unless there is a good reason not to.
- **They must act rationally:** this means that they cannot do something that is not within the range of reasonable decisions or actions available to them.
- **If European law or Human Rights issues are involved, then their decisions may be unlawful if they are disproportionate.** This involves asking if what the public body is doing is justified when weighed against the impact it has on an individual's rights and interests.

- **They must act fairly:** this means that they must not abuse power; that if the law says that there are procedures they have to follow to reach a decision they must follow them; that they cannot be biased; that they must treat people equally; that, in some cases, they must consult people before making a decision that affects them; and that they should keep promises unless there is a good reason not to.

As well as these general principles, certain failings are called 'maladministration', which can be investigated by ombudsmen. Some examples of maladministration are:

- delay or not doing things;
- doing things wrong;
- not providing information;
- not keeping adequate records;
- not taking relevant things into account;
- failure to investigate;
- failure to deal with enquiries;
- failure to comply with legal requirements; and
- making misleading or inaccurate statements.



2. Public law and you

Do public law decisions affect me?

Most people are affected by public law decisions at some time in their lives. If, for example, you have claimed benefits; if you have applied for planning permission; if the state school you or your children attend has been closed; or if you have tendered to get a government contract, you are likely to have been affected by a public law decision.

How can public law help me?

Public law can allow you to contribute to a public body's decision-making process, and you may be able to use public law to challenge a decision when it has been made. It can also allow you to challenge a public body's failure to make a decision. The main ways in which public law can help you are explained below.

- Sometimes a public body will ask for the views of people who will be affected by a proposal before they make a decision about what to do. This is called a **consultation**. If a public body consults on a proposal, it has to take the views of the people who responded into account when taking its final decision. You can read more about consultations below.
- Many public bodies have **complaints procedures** you can follow, or there could be an ombudsman scheme you can complain to. You will be expected to use complaints procedures or ombudsman schemes if they could effectively resolve the problem. Legal aid may be available to get advice on making a complaint. You can read more about complaints procedures and ombudsman schemes below, and in the [guides section of our website](#).
- There is a **right of appeal** against some decisions made by public bodies. Appeals will often take place in a Tribunal. Appeals can generally look at whether the decision was in accordance with the law, and make findings of fact. If there is a right of appeal, you will usually have to follow the appeal procedure rather than bring a judicial review. Legal aid may be available to get advice and representation for an appeal. You can read more about appeals below and PLP have produced guides to appeals and social security appeals specifically which you can find in the [our guides](#)

section of our website.

- If you think that a public body's decision is not correct, you may be able to ask the public body to review it. This is the case for some immigration decisions, where the process is called **administrative review**; and also for some decisions about welfare benefits, where the process is called **mandatory reconsideration**. There is no right of appeal against an administrative review of an immigration decision. However, if a welfare benefits decision is still incorrect after mandatory reconsideration, you may have a right of appeal to the First Tier Tribunal (Social Entitlement Chamber).
- If there is no right of appeal, complaints procedure, ombudsman scheme or review process; or if those things do not properly address the problem, you may be able to challenge a public body's decision by using **judicial review**. Judicial review generally looks at whether or not a public body has done things in the right way. It is difficult to bring a judicial review without advice from a specialist lawyer. Legal aid may be available to get advice and representation for a judicial review case. You can read more about judicial review below, and in our guide to judicial review in the [our guides](#) section of our website.



Consultations

What are consultations?

A consultation is a way for people to have an input into decisions taken by public bodies. When a public body plans to take a decision, it can consult those who would be affected by the decision for their opinion on the proposals.

When will a public body consult?

Sometimes a public body making a decision will have a duty to consult with the people who the decision will affect. Whether there is a duty to consult will depend on the circumstances, but there could be one if:

- legislation clearly says that the public body must consult on the decision that they are taking;
- legislation can be interpreted as requiring a public body to consult on that decision;
- the public body has previously consulted on the kind of decision they are taking;
- the public body has promised to consult before making the decision; or
- the decision will have a significant impact on the people affected by it.

How should a public body consult?

There are rules about how a consultation should be run. The public body cannot consult when it has already made up its mind what it will do; people must be given enough information about what the public body proposes to do so that they can properly understand it; people must be given enough time to consider the proposals and respond; the responses to the consultation must be taken into account when the public body makes its final decision. If a public body fails to consult when it should do, or does not consult properly, it may be possible to use judicial review to challenge the decision made.

What can I get from a consultation?

By participating in a consultation, you can make sure that a public body has to take your views into account when they make a decision. Sometimes, a public body will change its mind about a decision because of the responses it receives to a consultation, so consultations are an important way for you to be involved in decisions that affect you.

Example of a consultation

Funshire Local Authority is thinking of closing most of the children's play grounds in the area because they are expensive to maintain. This would leave hardly any playgrounds left for children to play in. The Local Authority writes to the residents of the town explaining what it is proposing to do, and why, and asks people to respond with their opinions on the planned closures within the next two months. Lots of people respond to the consultation to say that they disagree with the proposal because it will mean that lots of children will no longer be able to access a playground. Funshire considers all of the responses and, in light of the objections, decides to leave all of the playgrounds open. If Funshire had not taken the objections into account, and closed the playgrounds anyway, the residents may have been able to use judicial review to challenge the decision.



Complaints and ombudsman schemes

What are complaints procedures?

Most public bodies have complaints procedures you can follow. A complaints procedure is usually free and is designed to be used without the need for help from a lawyer, but it could help to get legal advice and legal aid may be available.

If you use a complaints procedure, it is likely that the public body will investigate what has happened. After investigating your complaint, the public body may decide to uphold the complaint and could then try to put things right; it could apologise to you; and, in some cases, could decide to give you financial compensation. Alternatively the public body may decide that they have not done anything wrong, and dismiss your complaint. Complaints procedures are not independent, and it can take a long time to go through the process, so they may not be suitable if your problem is urgent. A complaints procedure is also not suitable if you need to challenge the law or a public body's policies.

What are ombudsmen schemes?

Unlike a complaints procedure, an ombudsman scheme is independent of the public body you ask to be investigated. Ombudsmen can only investigate maladministration; they are generally not able to look at a public body's decision just because you disagree with it. Access to ombudsmen schemes is free and they are designed to be accessible without help from a lawyer, although it could help to get legal advice and legal aid may be available.

If an ombudsman agrees to investigate your complaint, they can look at the public body's files, and can work with the public body to try to fix any problems they find. If the ombudsman decides that things have not been done correctly, it could say that the public body should change the way it does things, apologise to you, and possibly say that the public body should give you financial compensation. Generally you have to go through a public body's complaints procedures before approaching an ombudsman, and it can take a long time for the ombudsman to complete its investigation, so it is not a suitable for urgent cases.

Example of ombudsmen schemes and complaints procedures

Rosa's neighbour was granted planning permission to build an extension. The extension that the neighbour built was taller than was allowed under the planning permission, and it blocked the light falling on Rosa's garden. When Rosa told the Local Authority about this, they took longer to acknowledge and act on her report than their policy said they would. They then did not enforce their decision that Rosa's neighbour should reduce the height of her extension. This made Rosa very upset.

Rosa complained to the Local Authority, but did not think that her complaint was properly looked into, and so she approached the Local Government Ombudsman. The Ombudsman looked at Rosa's correspondence with the Local Authority and spoke to both parties, and also looked at the Local Authority's policies. After investigating, the Ombudsman found that the Local Authority had failed to respond quickly enough to Rosa's initial report, and that they had delayed in starting enforcement proceedings for her neighbour's breach of planning permission. The Local Authority agreed to apologise to Rosa and commence enforcement proceedings against her neighbour if the extension had not been made compliant with the planning permission within six weeks.



Statutory appeals and tribunals

What is a statutory appeal?

A statutory appeal is an appeal, usually in a Tribunal, where the right of appeal comes from legislation. Often these appeals are against decisions made by public bodies.

When can I use a statutory appeal?

You can use a statutory appeal if the law says that you have a right of appeal. Statutory appeals are available against decisions in several different types of case. For example,

- someone who has claimed asylum will usually have a right to appeal to the First-Tier Tribunal (Immigration and Asylum Chamber) if their claim is refused;
- someone who has been refused Employment and Support Allowance will usually have a right to appeal to the First-Tier Tribunal (Social Entitlement Chamber);
- someone whose local authority has refused to make a statement of their special educational needs may have a right of appeal to the First-Tier Tribunal (Health, Education and Social Care Chamber).

It may be possible to appeal a decision of the First-tier Tribunal to the Upper Tribunal, but only if the First-tier or Upper Tribunal gives permission to appeal.

What can I get from a statutory appeal?

The Tribunal usually will look again at the decision made, and make its own findings of fact on the basis of the evidence that is presented at the hearing. For example, if you have been refused asylum support because the Home Office does not accept that you are destitute, and you present evidence at your appeal hearing to show that you are, the First-Tier Tribunal (Social Entitlement Chamber) can make a finding that you are destitute, and can decide that you are entitled to asylum support.

Example of a statutory appeal

Bertie came to the UK and claimed asylum, but the Home Office refused his claim because they believed that he would be safe if he went back to the country he had come from. Bertie knew that he would not be safe, and lodged an appeal against the decision at the First-Tier Tribunal (IAC). Bertie was able to find a solicitor to help him, and was able to get legal aid for his case. Before Bertie's appeal was heard, he and his solicitor collected lots of evidence to show that he would not be safe if he went back to the country he had come from. When the Tribunal heard Bertie's appeal, the judge looked at this evidence and found that it showed that Bertie would be at risk if he went back, and that he met the requirements to be recognized as a refugee.



Judicial review

What is judicial review?

Judicial review is a legal process through which a court examines a public body's decision, action or failure to act. A judicial review is usually issued as a claim in the Administrative Court, which is part of the High Court. However, immigration judicial reviews are issued in the Upper Tribunal (Immigration and Asylum Chamber). The arguments used in a judicial review claim are based on public law principles.

When can I use judicial review?

You may be able to use judicial review if you want to challenge a public body's decision, action or failure to act, and there are no other available ways to do it. So, if you have a right of appeal against the decision, then you are unlikely to also be able to bring a judicial review. Similarly, if your challenge could be addressed by a complaint to the public body or by asking an ombudsman to look at what has happened, then you are unlikely to also be able to bring a judicial review.

If you want to bring a judicial review, you have to issue the claim promptly and generally within three months of the decision that you are challenging. Some types of judicial review have to be issued much more quickly, for example a challenge to a grant of planning permission must be issued within six weeks. These time-limits are very strict, so it is important that you act quickly.

If you challenge a decision by judicial review, you will usually need a solicitor to help you. If you issue a judicial review you could be liable to pay the defendant's costs if you lose, so it is a serious step to take. If you are on income related benefits or on a low income you may be able to get legal aid. Legal aid can pay for a solicitor to help you and help protect you against having to pay the defendant's costs if you lose.

What can I get from a judicial review?

Judicial review is an important way of making sure that public bodies act lawfully. The Court will look at whether the public body has reached its decision in accordance with the law, but not (in most cases) whether the public body's decision was correct or not. A Court's decision in a judicial review case is binding, and so could help other people in a similar situation. If you apply for judicial review a court could:

- Make an order stopping the public body from doing something unlawful;
- Make an order telling a public body to do something;
- Make an order overturning a public body's decision;
- Make an order declaring what the law is;
- Award money as compensation, but only in very limited circumstances.

These are called 'remedies.' You can apply for more than one of these remedies. It is up to the Court whether to grant you any of them, and it is possible for someone to succeed in their judicial review but not get the remedies that they have asked for.

Example of judicial review

Aphra works as a nurse. She is unable to work more than 10 hours a week because of a mental health condition that she has. For a long time Aphra has been receiving welfare benefits to help her manage financially. The Government decides to make regulations that change the test for the welfare benefits that Aphra receives. They do not consult people who will be affected before making the new regulations, and do not think about how the new regulations will affect the different types of people who receive the benefits.

The new regulations say that in order to receive the benefits people have to work for 15 hours or more each week unless they have a physical health condition that means that they cannot do so. It is not possible for Aphra to work for 15 hours a week, but this is because of a mental, not physical, health condition. There are no other welfare benefits that Aphra can claim to make up for the money she will lose by no longer qualifying and she does not know how she will manage financially.

Aphra speaks to a solicitor, who advises her that it may be possible to bring a judicial review challenge to the regulations. The solicitor thinks that they could argue that the regulations should be overturned because the Government should have consulted before making them; because the Government should have considered how the regulations would affect the different types of people who receive the benefits; and because the regulations discriminate against people, like Aphra, who cannot work for 15 hours or more because of a mental health condition.

Aphra's solicitor writes to the Government explaining these arguments for why the regulations should be withdrawn. The Government replies to the letter, refusing to withdraw the regulations, and so Aphra's solicitor and a barrister prepare and issue a judicial review challenge in the Administrative Court. The Court grants permission for Aphra's case to proceed, and when it is heard by a judge Aphra's lawyers argue that the regulations should be overturned, and the Government's lawyers argue that they should not be. The judge does not make a decision immediately, but a few weeks later a judgment is given. The judgment says that the regulations are unlawful and should be overturned.



3. Help available

Legal aid

Check if you can get legal aid for your type of case on the [Legal Aid Agency's website](#). You can also check whether you would be financially eligible for legal aid [here](#).

You can search the [Law Society's database](#) to find a legal aid solicitor in your area who can help with your kind of case. Alternatively you can search the [gov.uk website](#).

Advisors

PLP keeps a list of advisors and law firms that can help with public law cases [here](#).

You may be able to get assistance with issues not covered by legal aid from some advice organisations such as your local [Citizens Advice Bureau](#), or your local [Law Centre](#).

The Free Representation Unit may be able to provide assistance with Employment Tribunal and Employment Appeals Tribunal cases; with benefit appeals in the First Tier Tribunal and Upper Tribunal; and with Criminal Injury Compensation cases in the First Tier Tribunal and Upper Tribunal.

If you have a case in a court or tribunal, and are not able to get legal aid for your case, the [Bar Pro Bono Unit](#) may be able to provide a barrister to help you.

Members of Parliament 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; looking on your local authority's website; or searching on www.gov.uk. If you want to check who your local MP is you can search on the www.parliament.uk website.

Data Protection Act 1998 and Freedom of Information Act 2000

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 information. If you want to obtain other information which is held by a public body, you can make an application under the Freedom of Information Act 2000. Public bodies may charge fees for providing information. If they fail to provide information you may be able to make a complaint to the public body, and/or to the Information Commissioner. There is more information about the Data Protection Act 1998 and the Freedom of Information Act 2000 on the [Information Commissioner's website](#).



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