

# Judicial Review

## Access to Justice in Scotland

These factsheets are to be used as a tool to outline your rights and to help improve access to justice here in Scotland.

They explain key ideas, definition, rights, and laws so that people and organisations know how to use the law to defend themselves and others.

They contain general information, not legal advice.



## What is Judicial Review?

Judicial Review is a court process that allows you to ask a judge to review a decision, policy, action, or failure to act by a public body.

It's important to note that the role of the court in a Judicial Review is not to re-make the decision being challenged. The court's role is to decide if the process used to reach the decision was unfair, or if the decision was unlawful. If the court decides that the decision or policy is unlawful it may be overturned. The public body would then have to remake the decision or produce a revised policy.

If a public decision, policy, or law breaches the Human Rights Act (HRA), Judicial Review is the procedure used to challenge it in court. For more information on that, you can review our [factsheet on the Human Rights Act](#). Judicial Review can also be used if the decision or policy breaches the Equality Act (EA). For more information on this, you can go to our [Equality Act factsheet](#).



## Which decisions can be judicially reviewed?

All public authorities and bodies exercising public functions can be subject to Judicial Review. The court can be asked to overturn the decision or policy on the basis that it is:

- Illegal – when a public authority breaches a legal requirement, misunderstands what the law requires, exercises a power wrongly, or acts beyond their powers. This includes where it breaches the HRA or EA.
- Irrational – when a decision is so irrational that no reasonable authority could have reached that decision.
- Procedurally improper – when the decision-maker failed to follow statutory procedures or minimum standards of procedural fairness.
- In breach of legitimate expectation – when a public body has failed to act in line with an expectation that it has created by its own acts and statements.

## Who can ask for a Judicial Review?

An individual or organisation with a strong interest in the matter can bring a Judicial Review.

In the majority of cases, Judicial Review will be brought by an individual who is directly affected by the act or decision that is being challenged. In other cases, it may be brought by an organisation where the decision affects its members or the work it does. An example is where a decision affects the environment, and an

environmental organisation brings a Judicial Review to challenge the decision in the public interest.

In Scotland, Judicial Review can only be brought in the Court of Session, which is in Edinburgh. If you have a solicitor, they will need to instruct an Advocate to appear in court for you and to prepare the court documents. An [Advocate](#) is a specially trained lawyer who can work in the Court of Session.

It is possible to represent yourself in Scotland's civil courts and there are particular rules depending on the court and the particular procedure, which can be found on the Scottish Courts and Tribunal's [website](#).

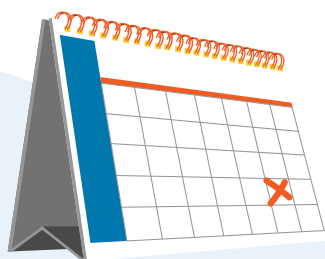
However, Judicial Review is a complex legal process. If you are thinking of challenging a decision or policy through Judicial Review, we recommend that you seek legal advice from a solicitor as soon as possible.

To find a solicitor, you may want to contact a Law Centre such as:

- [Dundee Law Centre](#)
- [Ethnic Minorities Law Centre](#)
- [Fife Law Centre](#)
- [Govan Law Centre](#)
- [Legal Services Agency](#)
- [Scottish Child Law Centre](#)
- [Castlemilk Law Centre](#)

## How long do you have?

The process of seeking Judicial Review begins with an application to the Court of Session for permission to proceed with the court action. This application must be made within 3 months of the decision or act that is being challenged – such as the date of a social care reassessment, or a decision letter from the local authority. Three months is a very short period of time, especially if you need to apply for Legal Aid, and so it is important that you contact a solicitor as soon as you are considering challenging the decision.



In very limited circumstances the court may allow an application for permission to raise a Judicial Review later than three months after the decision that is being challenged. However, this is rare and is at the discretion of the court. It may be worth looking at the steps you can take before legal action on our [Initial Action factsheet](#), but it is important to be aware of the strict deadline in place to raise a Judicial Review.

# What remedies are available if judicial review is successful?

Judicial Review can be a powerful tool to force a public authority to revisit a decision, act or policy, reconsider their actions towards you, and work within the law. If a Judicial Review is successful, the main orders the court can grant are:

- Declarator - a declaration that the public body acted unlawfully.
- Reduction – an order invalidating, or setting aside, the act or decision that was challenged. The court will not replace the decision or policy with one of its own, instead it will be for the public body to retake the decision or produce a revised policy.
- Specific implement – a mandatory order requiring the public body to take specific steps to carry out its legal duties.
- Interdict - a prohibitory order preventing the public body from acting beyond its powers.
- Damages – financial compensation.
- The most commonly granted remedies are a declarator that the public body acted unlawfully along with reduction of the decision or policy.

## How much does it cost?

It is important to know that Judicial Review can be a slow and expensive process. It may take many months, a year, or more, to obtain a final decision from the courts.

It is not unusual for Judicial Reviews to cost tens of thousands of pounds. Just how much your case may cost will depend on the facts, the law and the court time that is needed. Each case varies. Your solicitor will be able to advise you about the likely costs in your case. Costs to be aware of include solicitor fees, Advocate fees and court fees.

Some people can obtain Legal Aid, public funds which can cover some or all of the legal costs of bringing a Judicial Review. Check our [factsheet on legal aid](#) for more information on costs and help available.

In addition to paying for your own solicitor, Advocate and court fees, there is also the risk of having to pay the other side's legal costs if your claim is not successful.



Ordinarily, when someone is unsuccessful in civil court in Scotland, they are ordered to pay a significant amount towards the other side's legal expenses. The amount will vary depending on the case, but it could be very substantial. If you have Legal Aid you will be able to ask the court to reduce your liability to nil, however this is not guaranteed.

It is also possible for individuals and organisations to apply for a Protective Expenses Order (PEO), which limits the amount of legal costs you have to pay if you are not successful.

However, these orders are very rare in Scotland. Your solicitor can advise you about the possibility of this in your case.

It will be important to obtain detailed advice from your solicitor about costs and risk before making a decision about seeking a Judicial Review.

## What happens if the judicial review is unsuccessful?

If unsuccessful, you may be able to appeal the court's decision.

Your solicitor can advise you on whether that is feasible and worthwhile. If you are successful, the other side may appeal the court's decision.



JustRight Scotland identified a need in the community for better information and resources on access to justice.

Read our other factsheets on:

**Equality Act**  
**Claims**

**Human Rights**  
**Act Claims**

**Discrimination**

*(Direct and Indirect)*

**Legal Aid**

**For more help and information:**

SPICe – **Judicial Review**

Shelter Scotland – **What is Judicial Review**

## JustRight Scotland

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PEOPLE'S RIGHTS**

