

# Judicial review

Decisions made by public bodies such as the Parliamentary and Health Service Ombudsman and the Coroner can be challenged through the legal process known as judicial review.

This guide aims to provide you with a basic understanding of the judicial review process.

## Contents

What is judicial review? .....	<b>2</b>
Who or what is a public body? .....	<b>2</b>
Time limits in bringing judicial review proceedings. ....	<b>2</b>
Judicial Review Pre-Action protocol. ....	<b>2</b>
Costs. ....	<b>2</b>
AvMA's advice .....	<b>2</b>
Get in touch .....	<b>2</b>



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### What is judicial review?

Judicial review is a legal process by which the courts assess whether a public body has reached or failed to reach a decision fairly. The grounds for this can include:

- There has been an unfair or biased process, such as failure to review evidence presented by one side or to give a fair hearing on the basis of the written information
- The decision is irrational

The most important point about judicial review is that it must be sought very quickly after the decision has been made.

You should seek legal advice as quickly as possible if you are considering this route. An application for judicial review should be made as soon as possible and, in any event, no later than three months after the public body's decision has been made.

### Who or what is a public body?

A 'public body' is a formally established organisation that is (at least in part) publicly funded to deliver a public or government service, though not as a ministerial department.

A coroner is a public office holder and as such their decision may be subject to judicial review proceedings. There is no appeal process to enable a coroner's decision to be challenged, the only option is to proceed to judicial review proceedings. For example, if a coroner decides not to hold an inquest then this decision may be challenged by way of judicial review providing it can be shown that there is a case for arguing that the coroner's decision was unfair and/or biased and/or irrational.

The NHS is a public body, and their decisions may be subject to judicial review proceedings. However, in the case of the NHS complaints process, the first step is to refer the matter to the Parliamentary Health Service Ombudsman (PHSO). The Ombudsman is a government appointed official and their decision is subject to judicial review proceedings.

### Time limits in bringing judicial review proceedings

You should issue judicial review proceedings *as soon as possible* after the grounds for the claim first arose (after the date of the original decision which

you wish to have reviewed) but, in any event, proceedings must be issued within three months from the date the grounds first arose. This can be confusing to be clear, this does **not** mean you have three months to seek advice, but three months to issue proceedings. You will need to move quickly if you intend to bring judicial review proceedings.

### Judicial Review Pre-Action protocol

A Pre-action protocol is a process which sets out the conduct and the steps the court normally expect parties to take **before** commencing proceedings for certain types of civil claims.

There is a pre action protocol for judicial review proceedings which applicants are expected and encouraged to follow, except in urgent cases. A failure to follow the protocol may result in sanctions being imposed by the court. Details of the protocol can be found here:

[www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot\\_jrv](http://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_jrv)

The protocol encourages an applicant to serve a Letter before Action containing all the essential detailed information about the basis for the judicial review application.

### Costs

Judicial review can be complex and expensive, you may be eligible for legal aid but this can be difficult to obtain.

### AvMA's advice

You should seek representation from a solicitor specialising in this type of work.

**If you would like further legal advice relating to Judicial Review, then we strongly advise you to contact lawyers who specialise in Public Law. AvMA do not accredit solicitors in this specialist area of the law so we advise you to use The Law Society's 'find a solicitor' webpage to find such specialists. The link can be found at: <https://solicitors.lawsociety.org.uk>.**

### Get in touch

If you need further help, advice and or information please contact AvMA by completing a new client form at [www.avma.org.uk/new-client-form](http://www.avma.org.uk/new-client-form). We may be able to offer you some general support with the judicial review process.

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Our vision is a simple: **People who suffer avoidable medical harm get the support and the outcomes they need.**

This vision is underpinned by four objectives, we believe, will transform trust in the NHS and healthcare generally and significantly cut the cost – financial and human – which is incurred annually in settling legal claims as well as dealing with the human costs associated with traumatic medical injuries and death. Our four key objectives are:

- To expand the range of communities we serve and so enabling more people experiencing avoidable harm to access services from us that meet their needs
- To empower more people to secure the outcomes they need following an incident of medical harm, whilst providing caring and compassionate support
- To eliminate compounded harm following avoidable medical harm
- To have the necessary diversity of sustainable resources and capacities to deliver

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