

Factsheet: Basic principles of public law

The Home Office and entry clearance posts make many different types of decisions relating to the immigration status of migrants as well as those relating to the general administration of the immigration system. Only some of those decisions have a right of appeal to the First-tier Tribunal.

- An **appealable decision** is one that has been given an identifiable right of appeal contained in a statute. At first instance the appeal is likely to be a full review of the decision where the Tribunal considers the facts of the case and makes a fresh decision.

- A **non-appealable decision** is one where there is no right of appeal contained in a statute or an appeal is specifically excluded by statute e.g. certification. A non-appealable decision might be a decision relating to a person's status in the UK but could also be one of many other administrative decisions made by a public body e.g. detention.

- Where there is no right of appeal the High Court (or the Upper Tribunal exercising **Judicial Review** jurisdiction) may be able to review whether the decision is lawful but the court will not normally decide the facts or remake the decision i.e. not a decision on the merits of a case.

- A claimant will normally be expected to have exhausted all other possible remedies before applying for Judicial Review. Claim must be brought "promptly" or in any event not later than three months after the claim arises.

GROUNDS FOR JUDICIAL REVIEW

Illegality

A public body must act within the law and within the powers prescribed to it

Irrationality

A public body must act rationally and reasonably

Procedural impropriety

A public body must act in accordance with minimum standards of procedural fairness. Maladministration may occur due to bias, neglect, delay, incompetence or due to arbitrary actions or decisions

Legitimate expectation

A discrete ground for JR based on expectation that a particular decision or course of action should have been taken

Human Rights Act 1998

A public body must not act in a way that is incompatible with human rights

JUDICIAL REVIEW REMEDIES

Quashing Order

Invalidates the original decision

Prohibiting Order

Prevents a specific action

Mandatory Order

Compels a specific action

Declaration

Sets out the position or the obligations of the parties

Injunction

Order to stop a specific action
Often issued as an interim order

Damages

Only in limited circumstances