

W201 The Individual and the State

Study note on judicial review - alternative remedies

What happens when an applicant seeks judicial review but statute provides an alternative remedy - a formal appeal procedure or a reference to a tribunal an adjudicator or to a minister?

1. There is no automatic bar to judicial review (as for example there would be with the European Court of Human Rights where judicial or administrative domestic remedies must be exhausted).
2. In judicial review cases the court (normally the single judge when permission to proceed (formerly leave) is granted) exercises a **discretion**.

The court will consider:

- the nature of the appeal procedure

For example if there is a right of appeal on a point of law to the High Court as exists in compulsory purchase cases judicial review is not likely to be granted. If the only right is an administrative remedy eg an appeal to the minister - then judicial review is more likely to be allowed.

- the nature of the issue raised

A matter of fact might be resolved simply by the appeal procedure. A matter of law especially one falling clearly within the recognised judicial review categories is more likely to be accepted as suitable for judicial review.

- other matters such as the speed of any appeal process or the availability of alternative dispute resolution.

Examples

Permission to proceed (formerly leave) granted

Meade v Haringey LBC 1979 CA (The Education Act 1944 allowed a 'complaint to the minister'. Proceedings for judicial review were brought by a parent (without making a complaint first to the minister) seeking a declaration that Haringey were in breach of the Act when they closed the schools after the caretakers went on strike. Held - (Lord Denning) this did not exclude judicial review.)

R v Chief Constable of Merseyside Police ex parte Calverley 1986 CA (Police officers were the subject of complaints upheld by the Chief Constable. There was a statutory right

of appeal to the Home Secretary. They also sought judicial review. Held - judicial review would not normally be granted save in exceptional circumstances where there was an alternative remedy. In this case there had been serious delay in the disciplinary procedure which merited allowing judicial review.)

In **Calverley** some of the issues that might influence the court were listed:

- whether the alternative statutory remedy will resolve the question at issue fully and directly
- whether the statutory procedure would be quicker, or slower, than procedure by way of judicial review
- whether the matter depends on some particular or technical knowledge which is more readily available to the alternative appellate body

Permission to proceed (formerly leave) refused

R (Cowl) v Plymouth City Council 2002 C A (The Council decided to close Granby Way, a residential home, in order to save money. The residents appealed against a refusal by a judge of permission to proceed by way of judicial review. Held – the appeal should be dismissed as inter alia the Council was prepared to refer the matter to a statutory complaints panel. In this type of case parties should try and use alternative dispute resolution.)