

W201 The Individual and the State

Judicial Review - Problem solving guide

Always check the question. Are you being asked about the nature of judicial review (everything about it) or just a single aspect - the grounds, the limits or the remedies?

The grounds of judicial review

Are there grounds?

(A) **Illegality**

- (1) Misinterpreting legislation
- (2) Ultra vires (eg exceeding the powers granted)
- (3) Error in relation to jurisdictional fact
- (4) Considering irrelevant matters or ignoring relevant matters / improper purpose
(ask is it a duty or discretion at this point)
- (5) Fettering discretion
- (6) Unauthorised delegation
- (7) Disregard of quasi legal rules (substantive legitimate expectation)
- (8) Convention rights

(B) **Irrationality**

Is it a decision so unreasonable no reasonable body could have come to (Wednesbury)

(C) **Procedural Impropriety**

- (i) breach of procedure laid down by statute or rules
- (ii) does the requirement of fairness apply?
Are the 'rights of individuals' in issue? (Ridge v Baldwin)

If so check - bias - fair hearing – procedural legitimate expectation - reasons.

Fair hearing involves a sliding scale - judicial - quasi judicial - administrative.

no notice of hearing

no disclosure of adverse evidence

no right to respond

no oral hearing

no legal representative

no questioning of witnesses

Reasons - is there a statutory requirement - if not does fairness demand reasons (Doody).

The limits of judicial review

Are there any reasons why judicial review might not apply?

1. Is it a **public body**? (Apply the Datafin test)

The **Datafin** case in 1987 involved the Takeover Panel which was not set up by statute or by prerogative. The judge in the High Court said that normally the **source** of the power (eg statute or prerogative) was decisive but here the **nature** of the power was crucial. The takeover panel was therefore a public body.

2. Is it **public law** or **private law**?

(It must involve public law. It doesn't matter if it involves private law as well but private law **on its own** is not enough.)

3. Is it a non justiciable case? Eg national security.

4. Does the applicant have standing?

5. Is there delay? Proceedings must be prompt and within three months in the absence of good reason.

6. Is there an ouster clause?

7. Is there an alternative remedy or do the needs of good administration apply?

8. Is it an issue of fact not law? (more suited to an appeal). The jurisdiction is supervisory and deals with the decision making process only.

9. Does the exclusivity rule apply? (barring a public law issue from being brought under the private law procedure).

The remedies for judicial review

What is the remedy?

Public Law

A quashing order (to quash an existing decision) (formerly Certiorari)

A prohibiting order (to prevent a decision about to be made) (formerly Prohibition)

A mandatory order (to order a body to do something) (formerly Mandamus)

Declaration

Injunction

Damages

(all are discretionary)

Private Law

Declaration

(all except damages are discretionary)

Injunction

Damages