Judicial review for prison lawyers

- Adam Straw –

Useful resources	Reference
A basic outline of remedies is in s.31 Senior Courts Act 1981. Procedure is governed by CPR r.54 and the accompanying practice directions, PD.54A, C and D.	CPR Part 54
Forms, email addresses for serving skeleton arguments, and other useful information can be found here: https://www.gov.uk/government/publications/form-n461-judicial-review-claim-form-administrative-court and here: www.justice.gov.uk/courts/rcj-rolls-building/administrative-court. The Administrative Court has produced a detailed guide, here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/825753/HMCTS_Admin_Court_JRG_2019_WEB.PDF	
Useful textbooks: Procedure: *Judicial Review – a Practical Guide* by Southey, Weston, Bunting and Desai. The law: *Judicial Review Handbook*, by Fordham, or *Judicial Review of Administrative Action* by De Smith et al.	
Legal Aid	
Obtaining public funding is complicated. A guide for how to make an application is here: https://publiclawproject.org.uk/wp-content/uploads/data/resources/234/How-to-Apply-for-Legal-Aid-Funding-for-Judicial-Review_15_9_16.pdf If permission is refused, you will only get legal aid for costs incurred in making an application in specified circumstances: reg.5A Civil Legal Aid (Remuneration) Regulations 2013. There are various ways to mitigate that costs risk.	The rules include the Civil Legal Aid (Merits Criteria) Regulations 2013.
Grounds for judicial review	
Overlapping categories	
The grounds on which the Administrative Court will grant judicial review are often split into three categories: • illegality;	*Council of Civil Service Unions v. Minister for the Civil Service*

• unreasonableness; • procedural impropriety, or unfairness. There is overlap between those categories and they are not exhaustive. The claim for judicial review is not normally a rehearing, but a review of how the decision was made.	[1985] AC 374, 410D
## Illegality	
Illegality involves an error of law that is material to the decision. A decision will be unlawful if the authority acted outside its prescribed powers, or 'ultra vires'. Examples include:	
• The Independent Adjudicator's decision to refer a disciplinary charge to the police was illegal, as she had no express or implied power to do so.	*R (O'Brien) v. Independent Adjudicator* [2019] EWHC 2884 (Admin)
• Misunderstanding of legislation, for example, by wrongly concluding that disciplinary charges other than those provided for in the Prison Rules could be brought.	*R v Board of Visitors of Dartmoor Prison, ex p Smith* [1987] QB 106
• Misdirection as to the correct legal test, such as where the Parole Board asked itself whether there was a risk of offending; whereas it should have asked whether the risk was proportionate to continued detention.	*R (Wells) v. Parole Board* [2019] EWHC 2710 (Admin)
A decision may be unlawful if the decision maker did not ask the right question, or consider the information necessary to answer that question. For example, in *R (WB) v. SSJ* [2014] EWHC 1696 (Admin) the prison authorities failed to investigate and assess whether a mother and baby unit was in a child's best interests.	*Secretary of State for Education v. Tameside* [1977] AC 1014, 1065A
## Human Rights Act 1998	
Legislation must, so far as it is possible to do so, be read and given effect in a way that is compatible with rights guarantee by the European Convention on Human Rights.	S.3 HRA 1998
The Court may grant a declaration of incompatibility if a provision of primary legislation is incompatible with a Convention right.	S.4 HRA 1998
It is unlawful for a public authority to act in a manner that violates a Convention right.	S.6 HRA 1998

It is for the court to decide whether a claimant's Convention right has been infringed, giving due weight to the view of the original decision-maker.	*Belfast City Council v. Miss Behavin;* [2007] 1 WLR 1420 §
The Convention rights include the following: • The right to life (article 2). • The prohibition of torture and inhuman or degrading treatment (article 3). • The prohibition of slavery and forced labour (trafficking: article 4). • The right to liberty (article 5). • The right to a fair trial (article 6). • The right to respect for privacy (article 8). Some of the ways Convention rights may be relevant to prisoners are as follows.	Schedule 1 to Human Rights Act 1998
The authorities are under positive duties (under articles 2, 3, and 8) to protect someone in state detention from a real risk of serious harm or death, either from a third party, from self-harm, or from poor prison conditions. This means the authorities must: • Take all reasonable steps to protect a prisoner from a real and immediate risk of serious harm of which they knew or ought to have known: *Premininy v Russia* (2011) 31 BHRC 9, §84. • Provide detainees with timely and appropriate medical care and assessment: *Blokhin v Russia* (App. No. 47152/06), 23 March 2016 §137. • Put in place systems, including training and implementation, for the effective protection of prisoners from serious harm, inhuman or degrading treatment: *LW v. Sodexo*, below.	*Savage v South Essex Partnership NHS Foundation Trust* [2009] 1 AC 681
For example, failing to train, monitor, supervise and give adequate guidance to staff regarding strip-searching of prisoners breached articles 3 and 8.	*LW v. Sodexo* [2019] EWHC 367 (Admin)
Prison conditions may breach article 3, such as a small cell, limited out of cell activities, poor hygiene, and absence of private toilet.	*Muršić v. Croatia* (7334/13) 20 October 2016 (GC), §136
An allegation that a prisoner was seriously injured by a third party should be independently and effectively investigated, particularly where any discrimination is involved. The investigation required depends on the context. Where there were repeated allegations of abuse by staff of immigration detainees in Brook House, a full inquiry was necessary, in public, at which the detainees were represented.	*MA and BB v. SSHD* [2019] EWHC 1523 (Admin)
Other fundamental or constitutional rights	

As well as Convention rights, the domestic courts recognize other constitutional rights, such as the right of access to a court, and freedom of speech. The following issues may arise:	
It may be necessary to interpret legislation, where possible, consistently with constitutional rights. A statute must contain "crystal clear" words to permit an interference with a constitutional right. If not, a decision which interferes with constitutional rights may be unlawful ("ultra vires").	*R (Evans) v. Attorney General* [2015] AC 1787, §56
For example, a Prison Rule limiting the right of prisoners to correspond with their lawyers was ultra vires the Prison Act 1952.	*R v SSHD, ex p Leech* [1994] 1 AC 531
Similarly, a blanket ban on correspondence by a prisoner with a journalist was contrary to the freedom of speech, and unlawful.	*R v. SSHD, ex p Simms* [2000] 2 AC 115
Where a decision interferes with constitutional rights a stricter standard of review will often be applied by the courts.	*Kennedy v. Information Commissioner* [2015] AC 455
Discrimination	
Discrimination in respect of prisoners is prohibited by the Equality Act 2010 and article 14 ECHR.	
Some discrimination claims may only be brought by judicial review, in particular the breach of the public sector equality duty in s.149 EA 2010. That requires the prison to have due regard to matters such as the need to eliminate discrimination. For example, it may be breached by a failure to inquire into a prisoner's disability, needs or capacity, and to take that into account when making important decisions about the prisoner.	*R (ASK) v. SSHD* [2019] EWCA Civ 1239
There is a duty to make reasonable adjustments for disabled prisoners. This requires, for example: • Adapted offending behavior courses to be made available to a prisoner with a serious learning disability: *Gill*. • Immigration detainees with mental health problems to be given assistance in understanding the reasons for, and making representations in respect of, important decisions about them: *VC*.	*R (Gill) v SSJ* [2010] 13 CCLR 193 *R (VC) v. SSHD* [2018] 1 WLR 4781
Less favourable treatment on a protected ground (e.g. sex, race or religion) is prohibited. For example, the smaller number of probation hostels for women as compared to men was discriminatory, because it meant women were more likely to be subjected to the detriment of being further from home. A discriminatory policy or system may be challenged by judicial review.	EA 2010, s.13 *R (Coll) v. SSJ* [2017] 1 WLR 2093.
A measure which is applied to everyone, but which puts a protected group at a particular disadvantage, is indirect discrimination.	S.19 EA 2010

For example, statistics which show a substantially greater proportion of BME prisoners are subjected to a disadvantage (such as segregation) may demonstrate indirect discrimination.	*Essop v. Home Office* [2017] 3 WLR 1343
Policies	
A public authority may be required to produce a policy, to ensure consistent decision making.	
The defendant will normally be required to comply with its policy unless it puts forward a good and clear reason for not doing so. Thus, a failure to comply with policies about offending behavior work without a good reason was unlawful in *R (Gill) v SSJ* [2010] 13 CCLR 193 at §79 and 81.	*R (Lumba) v. SSHD* [2012] 1 AC 245 at §26, 202 and 313.
A policy should normally be published, for example so that the individual can make representations in relation to it. A failure to publish policy about medical treatment for prisoners was unlawful in *R (Roberts) v SSJ* [2009] EWHC 2321 (Admin).	*R (Lumba) v SSHD* [2012] 1 AC 245, at §35 and 302
If guidance gets the law wrong, or indicates to staff that they should do something which is not in accordance with the law, the guidance itself may be unlawful.	*R (Gudanaviciene) v. Director of Legal Aid Casework* [2015] 1 WLR 2247 §45
Fetter on powers	
It is unlawful for an authority to 'fetter its discretion' by failing to take into account circumstances which are relevant to the particular case.	*R v SSHD ex parte Venables and Thompson* [1998] AC 407, 496H to 501
For example, a policy restricting childcare resettlement leave to the last two years before release was unlawful, because relevant considerations (such as the best interests of the child) could mean leave should be given earlier.	*R (MP) v. SSJ* [2012] EWHC 214 (Admin)
Wednesbury unreasonableness (irrationality)	
Traditionally, a court would not intervene in a discretionary decision or a decision of fact unless no reasonable authority could have come to that conclusion. Recently, a more flexible standard of review has been used in some cases, which depends on the context. A stricter standard may be applied to certain decisions which have a serious adverse impact: *Kennedy v. Information Commissioner* [2015] AC 455.	*Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223, 233-4

While the specialist nature of the Parole Board calls for a higher hurdle, because of the serious adverse impact of its decisions, the irrationality test is no longer appropriate.	*R (Wells) v. Parole Board.*[2019] EWHC 2710 (Admin)
A clear error of uncontentious and objectively verifiable fact is a ground for review.	*E v SSHD* [2004] QB 1044, §66
An example is where the Parole Board thought a prisoner had been convicted of matters which in fact he had not been.	*H v. Parole Board* [2011] EWHC 2081 (Admin).
The court will decide for itself whether there was an error of 'precedent fact'. A precedent fact is something whose existence triggers the public body's functions. An example is whether someone was detained "pending removal".	*Tan Te Lam v. Superintendent of Tai A Chau Detention Centre* [1997] AC 97, 112C-114E
A statutory power must be exercised in a manner that is consistent with the purpose and objects of that statute.	*Padfield v Minister of Agriculture* [1968] AC 997.
Consistency: It may be unlawful to reverse a decision (such as to release a prisoner on home detention curfew) which was properly made, if there has been no material change in circumstances.	*R (Boparan) v. Governor of Stoke Heath Prison* [2019] EWHC 2352 (Admin).
Relevant/ irrelevant factors	
Failing to take account of a relevant factor or taking account of an irrelevant factor are grounds of challenge. An authority is obliged to take some factors into account. Examples are fundamental rights, or considerations that legislation, legitimate expectation or perhaps policy requires to be considered. In other cases, whether the authority takes into account the factor will often be a matter of its discretion.	*R v SSHD ex p Brind* [1991] 1 AC 696 at 751D
For example, where a minimum tariff was being set for a child's detention, public opinion in form of petition was held to be an irrelevant consideration.	*R v SSHD ex p Venables* [1998] AC 407
Procedural fairness	
A failure to comply with an express procedural requirement within legislation, for example within the Prison Rules 1999, can be challenged.	

Procedural fairness is also protected by the common law. Its requirements depend on the context, such as how serious an impact the decision will have, the nature of the decision, and the purposes of the relevant statute. The court decides for itself whether the process followed was fair. Some particular aspects of procedural fairness are as follows.	*R (Smith) v. Parole Board* [2005] 1 All ER 755, §28
Disclosure	
Fairness may require disclosure of information relevant to an anticipated decision.	*Kanda v Government of Malaya* [1962] AC 322, 337.
Full disclosure, or something approaching it, will be necessary in some cases, such as decisions affecting the length of detention, and category A reviews: *R (Lord) v SSHD* [2003] EWHC 2073 (Admin).	*R v SSHD, ex p Doody* [1994] 1 AC 531
Even if full disclosure is not required, a gist may be, such as for the categorisation of life-sentenced prisoners.	*R (McLeod) v SSHD* [2002] EWHC 390 (Admin).
Right to make representations	
Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations either before the decision is taken, or after it with a view to altering the outcome. The status of the individual at issue may be relevant to what fairness requires. For example, it may be unlawful to segregate a juvenile unless he has been given the opportunity to make representations first (*R v. SSHD, ex p SP* [2004] EWCA Civ 1750) whilst the same does not ordinarily apply to adult prisoners.	*R v SSHD, ex p Doody* [1994] 1 AC 531, 560D-G.
There is no general requirement for a determinate sentence prisoner to have an opportunity to make representations before being recategorised, providing he or she can do so afterwards.	*R (Palmer) v SSHD* [2004] EWHC 1817 (Admin)
Consultation	
A right to be consulted may arise, for example where a person has a legitimate expectation of this. If so, the consultation must be conducted at a time when the proposals are at a formative stage, must involve sufficient information and time for a proper response; and the responses must be conscientiously taken into account.	*R v North and East Devon Health Authority, ex p Coughlan* [2001] QB 213 at §108.
Right to a hearing/ to question witnesses	

A prisoner may have a right to an oral hearing before the Parole Board, or before a category A decision is made, if there is something she can contribute. There have been a number of recent cases quashing decisions not to hold an oral hearing.	*R (Osborn) v. Parole Board* [2014] AC 1115. *R (Hopkins) v. SSJ* [2019] EWHC 2151 (Admin)
Fairness may require a prisoner to have an opportunity to cross-examine a witness who gives evidence that is fundamental to a Parole Board decision, before the Board can take that evidence into account.	*R (Sim) v SSHD* [2004] QB 1288
Reasons	
Reasons may be required by a statute or statutory instrument.	E.g. r.25(6) Parole Board Rules 2019.
In many, although not all, cases a public authority will be required by common law to explain why it acted. Such cases include where the subject matter is of importance (such as liberty), and where the decision appears aberrant.	*North Range Shipping Ltd v. Seatrans Shipping Corp* [2002] 1 WLR 2397 at §15
An absence of reasons may mean an apparently aberrant decision is held to be irrational.	*R v SSHD, ex p Pegg* Times, August 11, 1994
The extent of reasons required depends on the context. They should generally be adequate and intelligible, but need not be extensive. In the Parole Board context, where the decision is particularly important, reasons should address the significant issues in dispute.	*R v Parole Board, ex p Oyston* [2000] Independent 17 April, CA
Bias	
If a decision maker has a direct interest in the outcome of the litigation, such as a financial interest, that person will be automatically disqualified.	*Locobail v Bayfield Properties Ltd and another* [2000] QB 451
Apparent bias arises where a reasonable and fair-minded observer would conclude that there was a real possibility that the decision maker was biased. The assessment must be based on all relevant circumstances, not just those known to the parties at the time the decision was made. An example is *R (on the application of Al-Hasan) v SSHD* [2005] 1 WLR 688. A governor was disqualified by apparent bias from an adjudication for disobeying an order, because he had been present when the order was made, and so gave it his tacit assent.	*Magill v Porter* [2002] 2 AC 357

The relationship of sponsorship between the Ministry of Justice and the Parole Board, together with other factors, created an appearance of bias.	*R (Brooke) v. Parole Board* [2007] EWHC 2036 (Admin)
## Legitimate expectation	
A court may quash a decision if it failed to fulfill a legitimate expectation. That is, where a public authority made a clear and unambiguous undertaking, it will not be permitted to depart from it unless it is fair to do so. The court is the arbiter of fairness. It is relevant, but not determinative, that the claimant has relied on the undertaking to her detriment.	*Re Finucane* [2019] UKSC 7
# Procedure	
## Time limit	
A claim must be filed promptly and in any event not later than 3 months after the grounds to make the claim first arose.	R.54.5(1) CPR
The court has a general power to extend time under r.3.1(2)(a) CPR if there is a good reason to do so, and a checklist of relevant circumstances appears at r.3.9. Good reasons to extend time may include: a. there is an adequate explanation for delay; b. the claimant excusably lacked essential information needed for knowing whether he or she could make a claim for judicial review; c. the claimant expeditiously sought an alternative means of resolving the dispute without litigation; and Difficulties in obtaining public funding, where the claimant took all reasonable steps to expedite a decision, is a factor which can be taken into account.	R.3.1(2)(a) and 3.9 CPR. As to funding: *A v. Essex County Council* [2011] 1 AC 280, at §115; *R v. Stratford on Avon DC, ex p Jackson* [1985] 1 WLR 1319; and *R (Kigen) v. SSHD* [2016] 1 WLR 723.
However, an extension may be refused if granting the remedy is likely to cause substantial hardship or prejudice to a person, or detriment to good administration	S.31(6) SCA 1981
## Pre-action protocol	
The protocol, which is guidance, is here: http://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_jrv. It includes:	

a. The claimant should send to the defendant a letter before claim. This should be copied to any interested parties. b. The defendant should respond, normally with 14 days. The protocol defines what information should go into each letter, and has annexed to it a suggested format for a letter before claim.	
The parties should comply with the pre-action protocol, unless there is a justification for not doing so, for example because the matter is too urgent. A failure to comply may be relevant to costs.	*R (Bahta and others) v. SSHD* [2011] All ER (D) 244
Location	
Proceedings will be administered and determined in the region with which the claimant has the closest connection, subject to a range of other considerations described at §5.2 PD54D.	§5.2 PD54D
Claim form N461	
The claim form and grounds must include, or be accompanied by, the information specified in form N461, such as: • A detailed statement of facts and grounds. This is often drafted by counsel and annexed to the N461. • If the claim is not issued within the time limit, an application to extend time. • Any application for interim relief or directions. • The documents referred to in section 9 of the Claim Form, if available. • Any written evidence in support of the claim or application(s). The solicitor may sign the statement of truth at the end of the Claim Form, and if so that will stand as evidence. • A copy of the decision or order under challenge. It is advisable to enclose a copy of important authorities relied on which are not readily available online.	PD54A §5.6 and 5.7 r.54.6 CPR
The claimant must file the original claim form together with a copy for the court's use, and one indexed and paginated bundle. If the case is of a criminal nature then a second bundle should be provided. The list of essential reading should be limited, and be somewhere obvious at the start of the bundle. The claimant must serve sealed copies of the claim form on the other parties.	PD54A §5.9 r.54.7 CPR
The parties are subject to a duty of candour, both as to the facts and law. A failure by a public authority to disclose relevant information may lead the court to draw inferences against it.	*R (Quark Fishing Ltd.) v Secretary of State for Foreign and*

	Commonwealth Affairs [2002] All ER (D) 450 at §50.
## Urgent consideration	
Form N463 is the application for urgent consideration. It should be accompanied by the information specified in the form. There must be a justification for urgency. The more delay in making the application, the harder it will be to persuade the court to expedite the case. When completing the form, the date by which the Acknowledgment of Service is lodged should normally be earlier than the date the application for permission is determined.	Practice statement: [2002] 1 WLR 810
In a real emergency, when it would be too late for the case to be issued when the court is next open, an out of hours application can be made. The application form is here: http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court_forms_id=3007. Guidance can be found in paragraph 16.3 of the judicial review guide, mentioned at the start of this sheet, and also here: www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12e. You should contact the out of hours clerk as soon as possible, who can be reached by telephone on 020 7947 6000.	
## Acknowledgment of Service	
Any party who has been served with the claim form and who wishes to take part in the proceedings should file an Acknowledgment of Service within 21 days of service. Form N462 should be used, and this specifies the information that should be included.	r.54.8 CPR
A failure to file this will prevent the party from appearing at the permission hearing, unless the court grants leave.	R.54.9(1) CPR
## Claimant's reply	
There is no specific rule about a reply, but a claimant may reply to the Defendant's summary grounds. A reply can be very important, but should not be produced if it will not add anything. It is important to respond urgently, because the court will not automatically delay deciding permission until a response has been received.	

Amending the claim form and grounds / applications	
The practice of the court is that leave is required to amend the claim, even before the permission decision has been made. If making the amendment would not breach any time limit, then it tends to be permitted.	
After the permission decision, if the claimant seeks to rely on additional grounds, she will have to apply for permission.	CPR r.54.15 and PD54A §11.1
An application should normally be made on the N244 (unless it is made at the same time as the claim is issued), which is here: https://www.gov.uk/government/publications/form-n244-application-notice	CPR part 23
Normally a claim that has become academic should be withdrawn. However, the court may hear an academic claim if that is in the public interest, for example where a number of similar cases are anticipated in future. Another exception is where the claim includes damages or a declaration.	*Deuss v. Attorney General for Bermuda* [2010] 1 All ER 1059, at §11
Permission decision	
Permission will be granted where the claimant can show there is an 'arguable' claim. This is a low test. It means there "is a point fit for further investigation on a full inter partes basis with all such evidence as is necessary on the facts and all such argument as is necessary on the law".	*R v SSHD, ex p Begum* [1990] COD 107.
Normally a judge will decide whether to grant permission without having an oral hearing. The judge's decision and reasons will be served upon the parties in form JRJ.	
Renewing the application for permission/interim relief	
If permission is refused on the papers, the claimant has a right to apply to renew the application. This must be done on form 86B within 7 days after service of the judge's decision. Renewal grounds need not be detailed. They should briefly address the reasons given by the judge for refusing permission. An oral hearing will then be arranged. It is usually listed for 30 minutes, so the court should be informed if longer is necessary. A skeleton argument is not required, but it is normally advisable to file one. This should arrive at the court at least 48 hours in advance of the hearing. It will normally be necessary to provide an agreed bundle of authorities.	CPR r.54.12(3) *Practice Note* [2012] 1 WLR 2422, §21
The claimant may appeal against a refusal of permission at the oral hearing in a civil matter to the Court of Appeal. There is no such appeal right in a criminal matter, although it appears that an appeal	CPR r.52.15

to the Supreme Court can be made if the normal preconditions for an appeal to that court exist.	
## After permission	
The court may make case management directions: r.54.10(1) The normal procedure is as follows: • A party who wishes to contest or support the claim on additional grounds must file and serve detailed grounds and written evidence within 35 days after service of the permission order: r.54.14 • The claimant must file and serve a skeleton argument not less than 21 *working* days before the date of the hearing of judicial review or warned date: PD54A §15.1. Skeleton arguments must contain the information listed in PD54A §15.3. • The claimant must file a paginated and indexed bundle of all relevant documents at the same time as serving her skeleton: PD54A §16.1. • Any other party wishing to make representations at the hearing must file and serve a skeleton argument not less than 14 working days before that date: PD54A §15.2	
## The hearing	
The court may decide the claim for judicial review without a hearing if all parties agree. The claimant must file and serve any agreed final order: PD54A §17.1. The process that should be followed where the parties are in agreement is described in more detail in *Practice Direction (Administrative Court: Uncontested Proceedings)* [2008] 1 WLR 1377.	CPR r.54.18
Oral evidence is not normally permitted at a judicial review hearing. However, there are exceptions, in particular if a dispute about a violation of a Convention right cannot be resolved on the basis of documentary evidence.	*R (Al-Sweady) v Secretary of State for Defence* [2010] HRLR 2, §18
The court may transfer the claim to the Queen's Bench Division. That may happen if the claim ought to have been started as a private law matter, or where the public law issues are resolved by the Administrative Court first, and only private law issues remain.	CPR r.54.20
## Appeals	

In respect of substantive decisions, permission to appeal should normally be sought from the Administrative Court judge who decided the matter. If that judge refuses permission to appeal, any application to the Court of Appeal must happen within 21 days of the High Court's decision. That decision is normally the date at which the judgment is handed down.	CPR r.52.12(2)(b) *McDonald v. Rose* [2019] 1 WLR 2828
Costs	
Part 44 of the CPR governs orders for costs. Although the starting point is that costs follow the event, the decision depends on all relevant circumstances, such as the conduct of the parties.	CPR part 44.
If the claimant is only partly successful the court will attempt to assess the proportion of costs unnecessarily incurred as a result of the unsuccessful grounds.	*Fleming v Chief Constable of Sussex* [2005] 1 Costs LR 1, §35 and 40
Where permission is refused after an oral hearing, the defendant will normally recover the costs of filing the Acknowledgment of Service, but not of attending that hearing.	PD54A §8.6 *R (Mount Cook Land) v Westminster City Council* [2004] C.P. Rep 12
The Administrative Court tends not to make more than one award of costs, unless there is some good reason why it was appropriate for more than one party to be represented.	*Bolton MDC v. Secretary of State for the Environment* [1996] 1 All ER 184
Settlement: Where a defendant concedes part of the claim after issue, that may lead to the court making an order of costs in the claimant's favour. Whether it does depends on whether the concession ought to have been made during the pre-action process, and whether the Claimant obtained all or substantively all of the relief which he claimed. Guidance on costs submissions in these cases is here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/716591/ac013-eng.pdf	*R (M) v Croydon LBC* [2012] 1 WLR 2607, §58-63
If the unsuccessful party is in receipt of public funding, the court shall not order her to pay any costs that would exceed what is reasonable having regard to all the circumstances, including the resources of the parties. In practice, this means that the court should normally order the unsuccessful claimant to pay the reasonable costs of the successful party subject to s.26 LASPO	S.26 Legal Aid, Sentencing and Punishment of Offenders Act 2012

2012. Often a court will order that costs may be enforced only with the leave of the court.	
## Costs Capping Orders	
The rules are contained in ss.88-90 Criminal Justice and Courts Act 2015. The procedure is defined in more detail in CPR r.46.16-19. An application must be made in accordance with Part 23 CPR, normally when the claim is issued. The court may make a costs capping order only if it is satisfied that: (a) the proceedings are public interest proceedings, (b) in the absence of the order, the applicant for judicial review would withdraw the application for judicial review or cease to participate in the proceedings, and (c) it would be reasonable for the applicant for judicial review to do so.	Sections 88-90 Criminal Justice and Courts Act 2015
# The Parties	
## Standing	
The claimant must have "sufficient interest in the matter to which the application relates". This is a fairly low hurdle, and courts have at times indicated a claim may continue unless the claimant is a 'busybody'. Often it is not appropriate to resolve this question until the substantive hearing.	S.31(3) SCA 1981 *R v. Monopolies and Mergers Commission, ex p Argyll Group plc* [1986] 2 All ER 257
A person who claims that a public authority has acted unlawfully under the Human Rights Act 1998 may bring proceedings only if he or she is or would be a "victim" of that unlawful act.	S.7 HRA 1998
## Defendant	
The appropriate defendant is the person or body which was responsible for the decision under challenge. In prison judicial review claims involving treatment or conditions, the SSJ is often the appropriate defendant; unless the decision was made solely on the authority of the governor or Director. If you are unsure, you	

can write to both at the pre-action stage, and ask them to confirm who is the appropriate defendant.	
Private companies running prisons or contracted by prisons perform public functions. Their decisions in doing so are amendable to judicial review and they must comply with the Human Rights Act 1998.	
## Interested Parties	
An interested party is someone who is likely to be directly affected by the claim without the intervention of a third party.	R.54.1(f) CPR
Where the claim relates to proceedings in a court or tribunal, any other parties to those proceedings must be named as interested parties.	PD 54A §5
Where a declaration of incompatibility under s.4 HRA 1998 is sought, the relevant Minister must be named and given notice.	S.5 HRA 1998
# Remedies	
The High Court has a discretion as to whether it will grant a remedy. Those open to it include a quashing order, mandatory order, prohibiting order, declaration, and injunction.	CPR r.54.2, Senior Courts Act 1981 s.31(1 and 2)
A claim for judicial review may also include a claim for damages, restitution, or the recovery of a sum due. But the claimant should not make a purely private law claim in the Administrative Court.	CPR r.54.3(2)
The High Court must refuse to grant relief if it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred.	s.31(2A) SCA 1981
## Interim Remedies	
The court has broad powers to grant interim remedies, including an injunction, declaration and stay of other proceedings.	
An interim remedy may be granted if: a. there is an arguable claim for judicial review; and b. there is a lower risk of injustice if the interim remedy is granted than if it refused ('the balance of convenience'). In assessing the balance of convenience, the court should take into account all relevant circumstances, including the strength of the	*The Belize Alliance of Conservation Non-Governmental Organisations v. Department of the Environment* [2003] UKPC

challenge, the prejudice caused by each option, the wider public interest, the status quo, and whether a person can be compensated in money at the end of proceedings for any injustice.	63; [2003] 1 WLR 2839.
## Alternative remedy	
The Court will normally refuse permission to apply for judicial review where an alternative remedy exists. The alternative remedy must be equally satisfactory and effective. An application to the Ombudsman does not amount to an alternative remedy for many prison complaints, in part because the Ombudsman has no power to direct that action be taken[1].	*Kay v Lambeth London Borough Council* [2006] 2 AC 465, at §30
A complaint may be used to challenge many decisions made in the prison context. That process is often alternative remedy which must be exhausted first. However, you can often complete the complaints process by asking the prison to treat your letter before claim for judicial review as an appeal against the initial complaint. The route for an appeal or review of an adjudication is described in PSI 05/2018, Annex A, §3.2-3.8 and 3.12[2], which must also be completed before a claim for judicial review.	Prisoner Complaints Policy Framework[3]
The Parole Board may now reconsider decisions on the ground that the decision is irrational or procedurally unfair. If your judicial review claim contains only those grounds, an application to reconsider should be made first.	Parole Board Rules 2019, r.28
Where the defendant takes a fresh decision during proceedings it will often be appropriate for that to be substituted as the decision under challenge.	
## Failure to comply with court's order	
An application should be made to the court for a finding of contempt and, if necessary, a further mandatory order.	*R (JM) v Corydon LBC* [2009] EWHC 2474 (Admin)

[1] The PPO's Terms of Reference are here: https://s3-eu-west-2.amazonaws.com/ppo-prod-storage-1g9rkhjhkjmgw/uploads/2017/04/PPO-Terms-of-reference-2017.pdf

[2] www.justice.gov.uk/downloads/offenders/psipso/psi-2018/psi-05-2018-prisoner-discipline-procedures-adjudications.pdf

[3] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/814769/prisoner-complaints-policy-framework.pdf