ADMINISTRATIVE JUSTICE IN EUROPE

- Report for the United Kingdom -

INTRODUCTION (History, purpose of the review and classification of administrative acts, definition of an administrative authority)

1. Main dates in the evolution of the review of administrative acts

In the United Kingdom both the courts and specialist tribunals provide the means for individuals to challenge administrative decisions by Government.

Prior to 1642, review of the decisions of administrative authorities was undertaken by the Privy Council of the King or Queen through the Star Chamber. Following the Revolution of 1688, the Court of King's Bench assumed the jurisdiction to review decisions and acts of an administrative nature. The system of judicial review remained much the same until the twentieth century

The Administration of Justice (Miscellaneous Provisions) Act 1933 introduced a procedure for obtaining judicial review remedies. It required a claimant to apply to the High Court, without notice to the respondent, for permission to apply for the remedy he sought. The Court would refuse permission if the claim was unarguable or if the applicant had been guilty of unjustified delay. If permission was given, the case would proceed to a substantive hearing.

Important decisions of the House of Lords in 1963 and 1969 demonstrated the importance and general applicability of the rules of natural justice and the unacceptability of attempts by the executive and legislature to restrict judicial review of decisions of public authorities.

In 1977, Order 53 of the Rules of the Supreme Court (the procedural rules which, at the time, governed judicial review applications) was amended to allow an applicant to seek, by way of making an application for judicial review, any one or more of five remedies (mandamus, requiring a public authority to comply with its legal duty, certiorari, to annul an administrative or inferior judicial decision, prohibition, to forbid an inferior judicial body from performing an unlawful act, a declaration as to the law and an injunction which would forbid an administrative body from doing an unlawful act or require it to fulfil its legal duty). In 1981 the judicial review regime was given further statutory footing by section 31 of the Supreme Court Act 1981.

In 2000 the old Order 53 of the Rules of the Supreme Court was replaced by Part 54 of the Civil Procedure Rules ("the CPR"). The present procedure for judicial review, which differs significantly from that previously applicable, is referred to below under Question 26.

Statutory tribunals were first established in the early nineteenth century to deal with disputes in relation to regulatory legislation introduced following the Industrial Revolution. Subsequently, a large number of individual tribunals were established to deal with disputes arising from an increasing number of administrative decisions. The Franks Review (1958) was the first major review of the system and was followed by the Inquiries Act 1958. The

system underwent further review by Sir Andrew Leggatt in 2001. The legislative changes required to implement his recommendations were contained in the Tribunals, Courts and Enforcement Act 2007 which established a unified tribunal system with the creation of the First-tier and Upper Tribunal which have a United Kingdom wide jurisdiction. A number of different tribunal jurisdictions are now exercised by the First-tier and Upper Tribunal, although some tribunals remain outside this system including "devolved" tribunals in Scotland and Northern Ireland.

The Tribunals Courts and Enforcement Act 2007 also made provision for the transfer of classes of judicial review to the Upper Tribunal. Further detail on this is referred to below under Question 8.

Generally, the last 20 years have seen a substantial increase in the scope of judicial review and in the number of applications for judicial review.

2. Purpose of the review of administrative acts

Judicial review of administrative acts aims to ascertain whether administrative authorities make their decisions in compliance with the law and with respect for individual rights. It reviews whether the individual has been given fair treatment by the authority which made the decision relating to him, and grants appropriate relief if these requirements have not been fulfilled. The rule of law occupies a predominant place in our jurisprudence.

The Court reviews the legality of the decision in order to decide whether the decision-making authority:
1. exceeded the legal restrictions on its powers;
2. failed to observe the rules of natural justice;
3. wrongly took into account a legally irrelevant matter;
4. failed to take into account a matter that it was required to take into account;
5. reached a decision which no reasonable authority correctly applying the law could have reached;
6. wrongfully interfered with the rights of the claimant under the European Convention on Human Rights: this may involve consideration of the proportionality of any interference with the Convention rights of the individual;
7. failed to give adequate reasons for its decision; or
8. otherwise abused its powers or acted unlawfully.

Statutory tribunals, or administrative tribunals as they are sometimes known, are required to establish the facts of a case before applying, impartially, the relevant legal rules. They are thus part of the judicial branch of Government. They are often designed to be part of some scheme of administration, providing a means to challenge administrative decisions in compliance with obligations under Article 6 of the European Convention on Human Rights.

3. Definition of an administrative authority

The short answer to the question in the second sentence is: Yes. All governmental legal entities are amenable to judicial review under Part 54 of the CPR. In addition, other bodies that carry out functions of a governmental nature are amenable to judicial review in respect of

their exercise of those functions.. For example, the Institute of Chartered Accountants of England and Wales and the General Medical Council, which are bodies established by their respective professions (chartered accountants and doctors) have statutory functions relating to the regulation of their professions, and their exercise of those functions is amenable to judicial review.

Generally, judicial review under Part 54 of the Civil Procedure Rules is available in respect of any decision that would engage the responsibility of the UK Government under the European Convention on Human Rights.

However, it must be borne in mind that similar rules and judicial procedures may be available under private law to individuals aggrieved by legal entities exercising private law non-governmental authority.

4. Classification of administrative acts

Although there is no formal classification *per se*, practical distinctions are made between administrative, judicial and legislative acts. Certain public bodies have the power (where authorised by primary legislation) to undertake general normative acts by way of delegated legislation. In addition, where authorised by primary or secondary legislation or acting under the Royal Prerogative, public bodies may undertake individual acts (including the award of contracts). However, there is no separate law of administrative contracts: subject to the provisions of any applicable statute, contracts entered into by administrative authorities with private entities are subject to the general law of contract.

I –ORGANIZATION AND ROLE OF THE BODIES, COMPETENT TO REVIEW ADMINISTRATIVE ACTS

A. COMPETENT BODIES

5. Non-judicial bodies competent to review administrative acts

In some cases an administrative authority may review its own decisions, but in all cases judicial review to a court or an appeal to an independent tribunal is available in respect of the authority's decisions, including the decision it has made on review. Judicial review of administrative acts is undertaken either by independent tribunals or by the courts.

6. Organization of the court system and courts competent to hear disputes concerning acts of administration

The Tribunals, Courts and Enforcement Act 2007 created a unified tribunal structure. This consists of the First-tier Tribunal which hears cases at first instance, and the Upper Tribunal, which primarily exercises an appellate jurisdiction.

The First-tier Tribunal determines both disputes between the individual and the state and disputes between private individuals. The majority of its work is concerned with disputes relating to administrative decisions (for example, social security and income tax). It is

divided into a number of Chambers according to subject matter of appeals. There are a number of other individual statutory tribunals which hear appeals against administrative decisions which are yet to become part of the First-tier Tribunal or which it is not intended to incorporate.

The Upper Tribunal is divided into the Administrative Appeals Chamber, the Tax and Chancery Chamber and the Lands Chamber. It hears appeals from decisions of the First-tier Tribunal (and some other first instance tribunals) but also hears some complex first instance cases. As a superior court of record its decisions must be followed by the First-tier Tribunal. There is an appeal from the Upper Tribunal on a point of law, with permission, to the Court of Appeal.

Outside of the system created by the Tribunals, Court and Enforcement Act 2007, statutes constituting particular tribunals will generally provide for onward rights of appeal to either the High Court or the Court of Appeal on questions of law. If there is no right of appeal, decisions of such tribunals will usually be subject to the judicial review jurisdiction of the Administrative Court.

Except where statutory provision is made for an appeal to, or review by, an independent tribunal judicial review of administrative decisions in England and Wales is undertaken by the Administrative Court (which forms part of the Queen's Bench Division of the High Court of Justice).

There is a right of appeal (with permission of the Administrative Court or the Court of Appeal) against a decision of the Administrative Court to the Court of Appeal, Civil Division.

A further right of appeal (with leave of the Court of Appeal or the Supreme Court) extends from decisions of the Court of Appeal to the Supreme Court. Such appeals are restricted to cases raising important questions of principle.

Certain judicial review functions have been given to lower courts. For example, the County Court has jurisdiction to review certain decisions of local authorities in housing matters.

The Tribunals Courts and Enforcement Act 2007 also provides that judicial review applications can be transferred to the Upper Tribunal from the High Court and Court of Session (where other conditions are met).

A diagram showing the organisation of the Courts appears at question 10.

B. RULES GOVERNING THE COMPETENT BODIES

7. Origin of rules delimiting the competence of ordinary courts in the review of administrative acts

Case law delimits the scope of judicial review, which has been broadly summarised above. Some statutes contain provisions restricting judicial review. These provisions are narrowly interpreted by the Courts, but in any event generally are to be found where other means of

independent review is provided, for example by way of appeal to an independent tribunal.

8. Existence and origins of specific rules related to the competence and duties of the administrative courts or tribunals

Statutory jurisdiction to review the functioning of public authorities is conferred on the Administrative Court by section 31 of the Supreme Court Act 1981. The Upper Tribunal's "judicial review" jurisdiction is conferred by sections 15 to 21 of the Tribunals, Courts and Enforcement Act 2007 (which amends the Supreme Court Act 1981 and the Judicature (Northern Ireland) Act 1978).

The Supreme Court Act 1981 does not limit the scope of review by the Administrative Court (save that injunctions and declarations of the applicable law are to be given where "it would be just and convenient" to do so.) The exercise of this jurisdiction is guided by the case law of the High Court, Court of Appeal and House of Lords / Supreme Court.

Certain limited categories of applications for judicial review must be transferred to the Upper Tribunal from the High Court and Court of Session.

The High Court, High Court in Northern Ireland and the Court of Session also have a discretionary power to transfer judicial review cases to the Upper Tribunal where certain conditions are met.

Statutory tribunals have limited jurisdiction and there is no right of appeal (triggering review of an administrative action) unless conferred by statute.

C. INTERNAL ORGANIZATION AND COMPOSITION OF THE COMPETENT BODIES

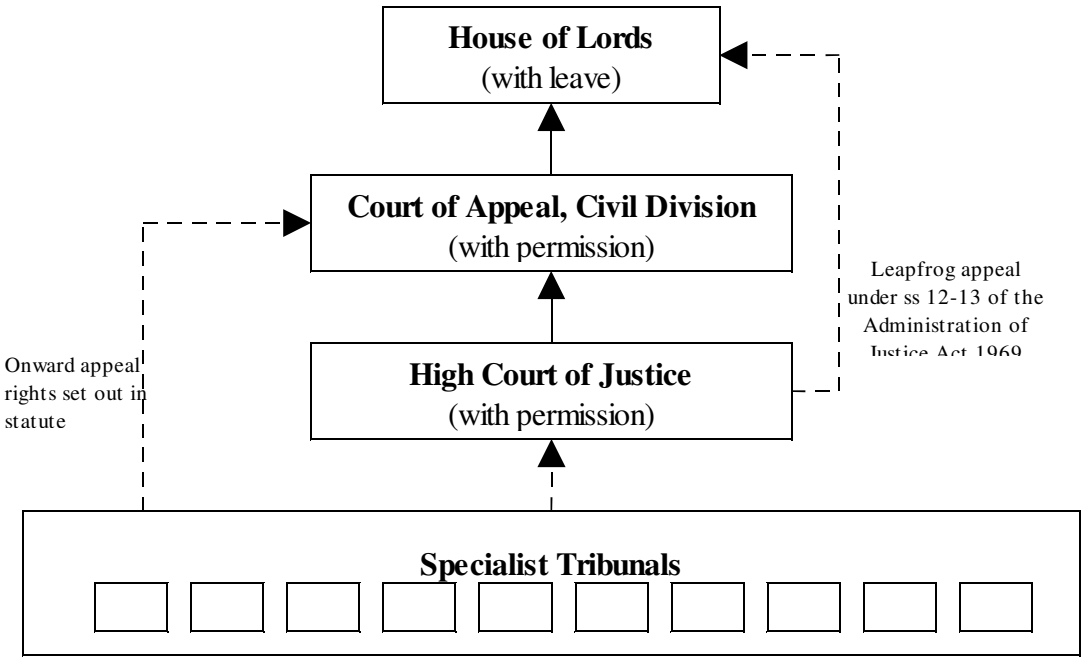
9. Internal organization of the ordinary courts competent to review administrative acts

See the answer to question 10.

10. Internal organization of the administrative courts

Judicial review of administrative action takes place primarily in the Administrative Court. The procedure for appeals from the Administrative Court is described under question 6.

In respect of specialist tribunals charged with review of certain specialised areas of administrative function, the statutes establishing those tribunals may provide for an appeal to an appeal tribunal. In other cases there is an appeal on questions of law to the High Court but also, in some cases, direct to the Court of Appeal. There is also often an appeal on questions of law from appeal tribunals to the High Court or the Court of Appeal.



Tribunals in England and Wales
(Taken from Table C in the 2001 report by Sir Andrew Leggatt entitled "Tribunals for Users". Tribunals described in the report as moribund have been omitted.)

	First-tier tribunals	Appeal tribunal
Citizen and state tribunals		
Immigration	Immigration Judges of the Asylum and Immigration Tribunal[a] Special Immigration Appeal Commission[d]	
Social Security and Pensions	Appeals Service Criminal Injuries Compensation Appeal Panel Pensions Appeal Tribunal Fire Service Pensions Appeal Tribunal Police Pensions Appeal Tribunal	Social Security and Pensions Appeal Tribunal
Land and Valuation	Valuation Tribunal Rent Assessment Committees Leasehold Valuation Tribunal Commons Commissioners Rent Tribunal	Land and Valuation Appeal Tribunal
Financial	General Commissioners of Income Tax VAT and Duties Tribunal Section 703 Tribunal Financial Services and Markets Tribunal[d]	Income Tax, VAT and Duties Appeal Tribunal

Transport	Parking Appeals Service National Parking Adjudication Service	Transport Tribunal
Health and Social Services	Mental Health Review Tribunal Mental Health Review Tribunal (Wales) Protection of Children Act Tribunal Family Health Service Appeal Authority Registered Homes Tribunal	Health and Social Services Appeal Tribunal
Education	Admissions Appeal Panels Special Educational Needs Tribunal Exclusion Appeal Panels Registered Inspectors of Schools Tribunal Registered Nursery Education Inspectors Appeal Tribunal Independent Schools Tribunal	Education Appeal Tribunal
Regulatory	Competition Commission Appeal Tribunal[d] Copyright Tribunal[g] Consumer Credit Licensing Appeals Discipline Committees Estate Agent Appeals Wireless Telegraphy Appeal Tribunal Aircraft and Shipbuilding Industries Arbitration Tribunal Central Arbitration Committee Insolvency Practitioners Tribunal Chemical Weapons Licensing Appeal Tribunal NHS Medicines (Control of Prices and Profits) Tribunal The Information Tribunal Misuse of Drugs Tribunal Foreign Compensation Commission[d] Meat Hygiene Appeals Tribunal Forestry Committees Plant Varieties and Seeds Tribunal Local Government Adjudication Panels	Regulatory Appeal Tribunal[e]
Party and party tribunals		
Employment	Employment Tribunal Police Appeal Tribunal Reserve Forces Appeal Tribunal Reinstatement Umpires	Employment Appeal Tribunal

[a] Applicants may seek an order for reconsideration of their case from a Senior Immigration

Judge and on his refusal from the High Court.
[d] Appeal is direct to the Court of Appeal.
[g] Appeal is direct to the High Court

D. JUDGES

11. Status of judges who review administrative acts

The Administrative Court forms part of the Queen's Bench Division of the High Court of Justice. Only High Court Judges or those authorised to sit as High Court Judges may hear matters in the Administrative Court. Judges with relevant expertise are assigned to the Court by the Lord Chief Justice. There are not different categories of High Court judge for the review of different kinds of administrative authorities.

Judicial Review in the Upper Tribunal must be undertaken by a judicial member of the Upper Tribunal.

Judges and other members of the First-tier and Upper Tribunal are appointed in accordance with Schedule 2 and Schedule 3 (respectively) of the Tribunals Courts and Enforcement Act 2007. Court judges may be requested to assist the First-tier or Upper Tribunal. Other members bring non legal expertise to determining appeals involving the review of administrative action. Only those with the relevant knowledge and expertise are chosen to determine matters.

12. Recruitment of judges in charge of review of administrative acts

Recruitment to the High Court Bench follows the procedures set out in Part 4 of the Constitutional Reform Act 2005. A new statutory body known as the Judicial Appointments Commission is required to select persons for recommendation for appointment by the Lord Chancellor. Section 63 of this Act requires that selection is solely on merit and that selected candidates are of good character.

Once appointed to the High Court Bench, judges are assigned to the list of Administrative Court Judges as appropriate.

Appointment to the First-tier and Upper Tribunal is by the Lord Chancellor, following selection by the Judicial Appointments Commission, in accordance with Schedule 2 and Schedule 3 of the Tribunals Courts and Enforcement Act 2007.

13. Professional training of judges

In England and Wales, judges are appointed from the ranks of practising lawyers or, sometimes, academic lawyers. It is unusual for a High Court judge to be appointed below the age of 50. The majority of High Court Judges were practising barristers (broadly, advocates), although there are several High Court Judges who practised as solicitors, and some who were

Circuit Judges who were promoted to the High Court.

Broadly speaking, legal members of the First-tier and Upper Tribunal are recruited from amongst practitioners (solicitors and barristers) who have at least 5 and 7 years (respectively) of experience in law. It may be appropriate to appoint a person where they are neither a barrister nor solicitor but in the view of the Lord Chancellor, have gained experience in law which makes them suitable for appointment.

Ongoing judicial training is provided by the Judicial Studies Board ("JSB"). The JSB is responsible for the development and delivery of training to judges in the Crown, County and higher courts. It provides some direct training to tribunals judges and those exercising judicial functions in the Magistrates' Courts. Further information can be viewed on its website, www.jsboard.co.uk.

14. Promotion of judges

Circuit judges may be promoted to the High Court. For High Court Judges, the sole prospect of promotion is to be appointed to sit as a judge in the Court of Appeal. Court of Appeal judges may be promoted to the Supreme Court.

First-tier Tribunal Judges may be promoted to the Upper Tribunal. Upper Tribunal Judges may be appointed to the High Court.

Judicial advancement is on merit, as opposed to time served.

15. Professional mobility of judges

High Court Judges may spend a period of time each year "on circuit" hearing criminal and civil cases outside London. The remainder of their time is spent at the Royal Courts of Justice in London. Administrative Court judges may hear ordinary civil claims and criminal cases, but when they do so they do not sit as judges of the Administrative Court but of the court to which the civil claim or criminal case is assigned. They may also sit in the Criminal Divisionor in the Civil Division of the Court of Appeal, in the latter case always with 2 Lord Justices (i.e. more senior judges who are members of the Court of Appeal). Traditionally the work of the Administrative Court has been conducted from the Royal Courts of Justice in London. However, four regional centres were established in April 2009 for the hearing of Administrative Law cases. These regional centres are Birmingham, Manchester, Leeds and Cardiff.

Judges and members of the First-tier and Upper Tribunal may be assigned to different chambers in accordance with a policy on assignment published by the Senior President (and agreed with the Lord Chancellor).

A serving judge (or tribunal member) cannot take up a position in public administration.

E. ROLE OF THE COMPETENT BODIES

16. Available kinds of recourse against administrative acts

The role of the Administrative Court in a claim for judicial review is to review whether the decision complained of was taken in accordance with the law. The Administrative Court will not substitute itself for the decision maker unless it is clear that the public authority would have no choice as to the lawful decision it must make.

Remedies which may be granted by the Administrative Court (by virtue of section 31 of the Supreme Court Act 1981) are as follows:

Quashing order[1] - This is an order of the Court quashing the decision of an inferior court or public body. This may leave the decision maker free, if he is empowered to do so, to take the decision afresh.

Prohibiting order [2] - This is an order of the Court prohibiting the inferior court or decision maker from acting in excess of jurisdiction or contrary to law.

Mandatory order [3] - By a mandatory order, the Court orders any person, corporation or inferior court to do something which relates to his office and forms a public duty[4] .

Injunction – An injunction issued by the Court may prevent a public authority from the imminent commission or continuation of an unlawful acts[5] or force the authority to take steps to rectify an unlawful omission or to put right the damage caused by an unlawful act [6].

Declaration – A declaration states the existing legal position.

Applications may also be made for an order of habeas corpus, which challenges the detention of an individual.

The Administrative Court may also award damages, restitution of property and recovery of sums due.

On an application for judicial review the Upper Tribunal is empowered to grant mandatory orders, prohibition orders, quashing orders, declarations and injunctions and can award damages, restitution or the recovery of sums due - in cases arising under the law of England, Wales or Northern Ireland. In judicial review transferred from the Court of Session the Upper Tribunal has the same powers of review as the Court of Session.

In determining an appeal to a statutory tribunal the tribunal will produce a reasoned judgment setting out its decision in the case. It may also require a party to the dispute to take action. The ordinary courts enforce tribunal decisions in cases of difficulty.

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[1]A quashing order was previously known as certiorari.
[2]prohibiting order was previously known as prohibition.
[3]A mandatory order was previously known as mandamus
[4]The nature of the requirement will depend on the circumstances but it will generally be requiring the tribunal or office holder to exercise a discretion or fulfil his or its obligation.
[5]A prohibitive injunction
[6]In which case, the injunction is mandatory in nature.

17. Existence of mechanisms for the delivery of a preliminary ruling apart from the procedure under the Article 234 of the EC Treaty

There is no formal mechanism for a preliminary ruling as such. However, where there is a genuine dispute between parties as to the applicable law, the Court has jurisdiction to make a declaration as to that law in order to resolve that dispute.

18. Advisory functions of the competent bodies

No judicial body or individual has an official advisory role vis-à-vis the executive or the legislature. The creation of the Supreme Court of the United Kingdom on the 1st of October 2009 has strengthened the constitutional independence of the highest court of appeal in the land by removing the judicial authority of the House of Lords. The new Supreme Court is the final court of appeal in the United Kingdom for civil cases and hears appeals in criminal cases from England, Wales and Northern Ireland.

The government increasingly consults the judiciary over the terms of proposed legislation which affects the administration of the courts or tribunals and the administration of justice. The judiciary may respond to a public consultation by the government on proposed legislation. In addition, judges may be asked, either alone or as part of an ad hoc body, to carry out an official investigation and to report on a matter, and the report so produced may serve as a basis for legislative proposals.

19. Organization of the judicial and advisory functions of the competent bodies

Please see question 18 above.

The question of compatibility of double functions (in so far as they exist) no longer arises as a result of the creation of the United Kingdom Supreme Court. As far as is known, the pre-existing arrangements, whereby the Appellate Committee of the House of Lords was the court of final appeal, were never subject to any consideration by the English Courts or by the European Court of Human Rights. Under the previous arrangements, Lords of Appeal in Ordinary exercised restraint in the expression of any opinions in the legislative chamber which could be seen to affect their independence or impartiality in the exercise of their adjudicative functions. Infact, there is no known case in which a member of the House of Lords has been the subject of an application for his recusal based on his membership of the upper chamber of the legislature.

F. ALLOCATION OF DUTIES AND RELATIONSHIP BETWEEN THE COMPETENT BODIES

20. Role of the supreme courts in ensuring the uniform application and interpretation of law

The First-tier Tribunal is bound to follow decisions of the Upper Tribunal, which in turn is

bound to apply decision of the Court of Appeal as to the law applicable in cases before it.

Other statutory administrative tribunals are bound to apply the law as determined by the Administrative Court (or another division) of the High Court (or of a court superior to the High Court).

Judges of the Administrative Court are bound to apply decisions of the Court of Appeal and the House of Lords / Supreme Court as to the law applicable to cases before them.

These obligations are not in general set out in any instrument, but are observed in practice, and a refusal to apply an applicable precedent decision of a higher court would be an error of law which would be subject to an appeal or application for judicial review.

It is the duty of advocates appearing before the Court or Tribunal to draw the judge's attention to all binding authority on the matters before the Court, whether that authority supports or is contrary to his client's case.

Where there have been conflicting decisions of lower courts, an appeal court or a court hearing a judicial review application will seek to resolve them and to declare the law for future application.

II – JUDICIAL REVIEW OF ADMINISTRATIVE ACTS

A. ACCESS TO JUSTICE

21. Preconditions of access to the courts

It is normally a requirement of judicial review is that there should be no suitable alternative remedy available. Thus, where there is provision for administrative reconsideration of an administrative decision, judicial review will normally be refused until after that reconsideration has taken place. The reconsideration may however itself be the subject of judicial review.

Judicial review will not generally lie where there is an available appeal to an independent tribunal. A person seeking permission to apply for judicial review must generally have a sufficient interest in the decision sought to be reviewed – see the answer to question 23 for further details.

Finally, the application for permission to apply for judicial review must be made promptly and, in any event, unless there is good reason for the delay, not later than 3 months after the grounds to make the claim first arose – see the answer to question 24 for further details. This requirement is flexibly applied.

22. Right to bring a case before the court

The general rule is that any natural or legal person may bring a claim for judicial review. In addition, public interest groups and associations (such as Greenpeace) may and often do bring claims for judicial review. Where an association is unincorporated, the claim for judicial review is often made by an individual on its behalf.

An administrative body may seek judicial review of a decision made by another administrative body.

Generally a right of appeal to a statutory tribunal is given to the person directly affected by the administrative decision, in accordance with Article 6 ECHR where this is applicable.

23. Admissibility conditions

Under section 31(3) of the Supreme Court Act 1981, a claim for judicial review may only be brought by a claimant who has "sufficient interest in the matter to which the application relates". What constitutes "sufficient interest" has been held to be a question of fact and degree and the relationship between the applicant and the matter to which the application relates, having regard to all the circumstances of the case. In practice the requirement of standing is flexibly applied. The Courts have often accepted that pressure groups and charities have sufficient interest to bring judicial review proceedings to challenge decisions which affect their areas of concern and expertise.

However, complaints of a breach of rights conferred by the European Convention on Human Rights may be made only by the person claiming to be the victim of the breach. As mentioned in the answer to question 21, it is generally necessary for there to be no suitable alternative remedy available to the claimant and he must have acted promptly and within the applicable time limit, unless the facts justify an extension of time.

The provision of a right of appeal to a tribunal will usually be given to the person in relation to whom the administrative decision was made.

24. Time limits to apply to the courts

In the case of applications for judicial review to the Administrative Court, rule 54.5(1) of the Civil Procedure Rules 1998 (as amended) provides that, in judicial review claims, the claim form must be filed promptly and in any event not later than three months after the grounds to make the claim first arise. The requirement for promptness means that, even if a claim is lodged before expiry of the long-stop date of three months, it may nevertheless be refused for lack of promptness. The issue of whether the claim was lodged promptly will be for the Court to decide having regard to the circumstances of the case. The Court has power to extend time for good reason.

In principle, time should begin to run from the date that the claimant was informed of the decision in question. Where they were not informed immediately of that decision, the delay in informing them may justify an extension of time to apply for judicial review.

In the case of applications for permission to bring judicial review proceedings in the Upper Tribunal, applications must be made promptly and in any case, no more than three months after the date of the decision to which the application relates (rule 28(2) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Where there is a right of recourse to a tribunal, there will normally be a time limit provided for in statute or under procedural rules.

25. Administrative acts excluded from judicial review

There is no definitive list of the types of decision or of the bodies which purport to take such decisions which are not susceptible to judicial review by the Court. Examples include the following:

- The courts will not question the validity of an Act of Parliament[7] (other than in respect of European Union Law[8] or an Act's compatibility with the European Convention on Human Rights[9]).

- The exercise of the Royal Prerogative powers of the executive in certain circumstances, associated with high administrative or politics, for example a decision to enter into a treaty with a foreign state (unless prohibited by statute), decisions concerning the defence of the country, the granting of honours, the dissolution of Parliament and the appointment of ministers of the Crown.

Where there is no right of appeal to a tribunal provided for in relation to an administrative decision judicial review will generally lie.

26. Screening procedures

In the case of applications to the Administrative Court for judicial review, the claimant must first seek permission from the Court to apply for judicial review under rule 54.4 of the Civil Procedure Rules 1998 (as amended). Generally, permission will be granted if the claim is arguable, i.e. it has a real prospect of success.

The claimant must file with the Court and serve on the defendant public authority the documents referred to under Question 27. The defendant is required to respond to the claim in an acknowledgment of service, in which it may seek to show that the claim is unarguable. The application for permission is normally first considered on the basis of the documents filed by both parties without a hearing. If permission is refused on consideration of the papers, the claimant is entitled to have his application for permission reconsidered at a hearing before a single High Court Judge. The defendant public authority may, but is not obliged to, appear at that hearing.

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[7] For example, see *British Railways Board v Pickin* [1974] 1 All ER 609 (House of Lords)

[8] See, for example, *Equal Opportunities Commission v Secretary of State for Employment* [1994] 1 All ER 910 (House of Lords)

[9] By virtue of s4(2) of the Human Rights Act 1998, it is open to the Court to make a declaration of incompatibility in respect of primary legislation which it considers to be contrary to the ECHR. However, the declaration will not affect the validity, continuing operation or enforcement of any primary legislation passed before or after the Human Rights Act came into force.

If permission to apply for judicial review is granted, the substantive claim will proceed to be heard by the Administrative Court. Both parties are then entitled to file further evidence.

An appeal from a refusal to grant permission by the Administrative Court following a hearing will lie to the Court of Appeal with permission either of the Administrative Court or the Court of Appeal itself. Permission to appeal should be granted if the court considers that the claim has a real prospect of success.

In appeals to the First-tier Tribunal the Tribunal Procedure Rules may provide for strike out of a party's case if it considers there is no reasonable prospect of success. Onward appeals to the Upper Tribunal are on a point of law, with permission from either the First-tier or Upper Tribunal. In some cases there is a right of oral renewal where the Upper Tribunal refuses permission. Onward appeals to the Court of Appeal are on a point of law, with permission, and generally only proceed where the appeal raises an important point of principle or practice.

27. Form of application

The application for permission to apply for judicial review must be made on the appropriate form (N461), which (by virtue of paragraph 5.6 of the Practice Direction to Part 54 of the Civil Procedure Rules 1998 (as amended)) must include or be accompanied by:
- A statement of grounds for bringing a claim for judicial review;
- A statement of the facts relied upon;
- Any application to extend a time limit for making the application (and evidence for that application);
- Any application for procedural directions;
- A time estimate for the hearing;
- A copy of any order which the claimant seeks to overturn;
- If the claim relates to a decision of a lower court or tribunal, an approved statement of reasons of that court or tribunal as to how it reached its decision;
- Copies of any document on which the claimant seeks to rely;
- Copies of relevant legislation; and
- A list of essential documents for advance reading by the Court.

In appeals to the First-tier Tribunal and Upper Tribunal, Tribunal Procedure Rules may require an appellant to use a prescribed form or to include specified information or documents.

28. Possibility of bringing proceedings via information technologies

It is not currently possible for claimants to lodge proceedings via the internet in the Administrative Court. Proceedings may be filed by fax, and in cases of real urgency out of court hours orders are made by a judge on the basis of information provided on the telephone before proceedings have been filed. Video links may be used for claimants or witnesses, and sometimes advocates, who cannot attend court.

In some cases it is possible to lodge an appeal to a tribunal via the internet.

29. Court fees

The initial fee on lodging an application for permission to apply for judicial review is GB£50.00. If permission to apply for judicial review is granted by the Administrative Court, a further fee of GB£180.00 is payable. Additional fees are payable for interlocutory applications and hearings.

A fee of £200 is payable to the Court of Appeal to issue an application for permission to appeal. A further fee of £200 is payable if the Court grants permission to appeal.

A claimant who has not the means to pay these fees may be relieved of the liability to pay them.

Fees are sometimes payable in tribunals.

30. Compulsory representation

Although it is recommended that the claimant is represented by a solicitor and his case advanced in Court by a barrister, the Administrative Court will hear litigants who act in person and wish to argue the claim themselves. Claimants may, and frequently do, argue their case in person before a tribunal.

31. Legal aid

The costs of proceedings can be paid through legal aid. Legal aid is granted by the Legal Services Commission (an independent body) to cover represented litigants' legal fees. Access to legal aid depends on the applicant's financial resources, assessed both on income and capital requirements[10] and by application of a Funding Code. In addition, it is necessary to show that it is reasonable to take the proceedings in question.

A claimant who is dissatisfied with the Service's decision on legal aid may seek review of the decision by a Review Panel. If he is dissatisfied with the decision of the Review Panel, he may seek Judicial Review of the Panel's decision.

Legal aid is available in some, but not all, tribunal proceedings.

32. Fine for abusive or unjustified applications

In court proceedings there is no fine for abusive or unjustified applications, although in the vast majority of cases the losing party will be required to pay some proportion of the winning party's legal costs. The position in tribunal proceedings is similar although in most cases each party bears their own costs irrespective of the outcome.

However, if a litigant repeatedly brings abusive or unjustified applications, the Court may impose a civil restraint order on the litigant, preventing him from (for example) making

[10]Although it should be noted that for certain categories of case (mainly though not exclusively concerned with mental health and children) the income and capital tests do not apply.

further applications in respect of the particular subject matter, or making further applications in that court, without first obtaining the permission of a judge of the court[11].

B. MAIN TRIAL

33. Fundamental principles of the main trial

The following rules of natural justice are enshrined in the common law and, hence, arise from case law:

- That the judge should be independent and impartial, and seen to be so; and
- That no-one should suffer a detriment without a fair opportunity to be heard

Proceedings are adversarial (although may be inquisitorial in some tribunals). In judicial review proceedings before the Administrative Court, each party files document outlining his case and copies of the evidence on which he relies.
These form the basis of the oral hearing. Neither party plays a predominant part in the proceedings. The hearing is in public (cases involving national security or otherwise demanding privacy excepted) and judgment is pronounced in public.

Where the case depends on disputed evidence (which is unusual), a party's witnesses may give evidence orally and may be cross-examined by the other party. In addition, a party is expected to disclose relevant documents, and may be ordered to do so. In tribunal proceedings the procedure is broadly similar although it is much more common to have witness evidence.

All substantive judgments of the Administrative Court, the Court of Appeal and the House of Lords / Supreme Court are posted on the Internet.
The above principles are derived from the common law, but are also to be found in procedural rules. In addition, the Courts and Tribunals, as public authorities, are under a duty to respect the rights of the individual under Articles 5 and 6 of the European Convention on Human Rights. Those rights do not differ substantially from those conferred by the common law.

34. Judicial impartiality

The common law has long recognised as fundamental the principle that a judge must be and be seen to be impartial and independent of the parties and that no one should be a judge in his own cause[12] . An automatic and irrefutable presumption of bias will apply in circumstances where the adjudicator has either a direct financial or proprietary interest in the matter[13] he is concerned with or where his connection with the matter is such that he would be seen as a

[11] A procedure also exists under section 42 of the Supreme Court Act 1981 for the Attorney General to commence a claim (before the Administrative Court) requesting that the Court declare a litigant "vexatious", with the result that (if the claim is successful) the litigant will be prevented from making any application in any court in England and Wales without first obtaining the permission of a High Court Judge.
[12]The common law principle is that bias occurs where there is a departure from that standard of even-handed justice which the law requires from those who occupy judicial office or those who are commonly regarded as holding a quasi-judicial office (Franklin v Minister of Town and Country Planning [1974] 2 All ER 289 at 296).
[13]See R v Bow Street Metropolitan Stipendiary Magistrate ex p Pinochet Ugarte (No. 2)[1999] 1 All ER 577

party to the matter . Bias may also arise where, by reason of some other connection or by his behaviour or conduct, there is a real danger of bias on the part of the judge.

In addition, the common law recognises a doctrine of apparent bias, the test being "whether a fair-minded and informed observer, having considered the relevant circumstances, would conclude that there is a real possibility that the tribunal was biased" [14]. The common law test for apparent bias equates to the requirement for an independent and impartial tribunal enshrined in Article 6(1) ECHR .[15]

A judge must recuse himself from a case before any objection is made if the circumstances give rise to automatic disqualification or he feels personally embarrassed in hearing the case. If, in any other case, the judge becomes aware of any matter which can arguably be said to give rise to a real danger of bias, he should disclose this in advance of any hearing. If an objection is made and there is real ground for doubt, that doubt must be resolved in favour of recusal .[16]
The general rule is that where there is found to be actual or apparent bias, the decision will be set aside on appeal and a retrial ordered before a different judge.

35. Possibility to rely on the new legal arguments in the course of proceedings

At first instance, it is open to the applicant to rely on arguments raised for the first time during the proceedings, provided the relevant evidence is or will be before the court. Generally, however, if it is contended that an administrative tribunal's decision should be set aside on the ground that it made an error of law, the appellant must show that the point in issue was raised before the tribunal

However, on appeal (whether to the Court of Appeal or the Supreme Court), the permission of the Court is required if an appellant wishes to raise an argument or to rely on evidence that was not before the Court below.

36. Persons allowed to intervene during the main hearing

Any other interested person may intervene (with permission of the Court) in a claim, but only if the Court considers that the proposed intervener has a sufficient interest in the claim to do so.

Charities and pressure groups are often granted permission to intervene in cases concerning the areas in which they work.

It is not generally possible for other interested persons to intervene in tribunal proceedings.

[14]Porter v Magill [2002] UKHL 67
[15]See Singh v Secretary of State for the Home Department 2004 SLT 1058
[16]Locabail (UK) Ltd v Bayfield Properties Ltd and another, Locabail (UK) Ltd and another v Waldorf Investment Corp and others, Timmins v Gormley, Williams v HM Inspector of Taxes and others, R v Bristol Betting and Gaming Licensing Committee, ex parte O'Callaghan [2000] 1 All ER 65 (Court of Appeal)

37. Existence and role of the representative of the State ("ministère public") in administrative cases

Generally the answer is No. A public authority may intervene in the same circumstances as any other litigant: see the answer to question 36. Otherwise it will participate only if it is the defendant to the claim.

38. Existence of an institution or a person with a role analogous to the French «Commissaire du gouvernement »

No. However, where there is no one in a position adequately to present the case for a party, and an important question of law is involved, the Court may request that the Attorney General appoint independent counsel (formerly know as an amicus curiae) to assist the Court.

39. Termination of court proceedings before the final judgment

In general, proceedings can come to an end at any time before a decision is reached by the Court if the claimant so wishes (Rule 38.2(1) of the Civil Procedure Rules 1998 (as amended)). The claimant must file a notice of discontinuance at the Court and serve a copy on each other party (Rule 38.3(1)). There are exceptions to the right to discontinue, but they are not material for present purposes.

The death of the claimant will lead to the termination of proceedings if they become academic, for example in a case in which the claimant seeks an order that a public authority provide him with residential accommodation.
Proceedings will also come to an end if the parties settle their differences, or if the defendant concedes the claim.

In tribunal proceedings procedural rules usually allow for withdrawal of a case before conclusion of proceedings or for the disposal of a case by consent of the parties.

40. Role of the court registry in serving procedural documents

Paragraph 6.1 to the Practice Direction to Part 54 of the Civil Procedure Rules 1998 (as amended) provides that the Administrative Court Office will not serve documents on behalf of the parties. The only exception to this is where the Court makes an order granting or refusing permission to apply for judicial review, together with reasons if the matter has been dealt with without a hearing.

In tribunal proceedings tribunals do not generally serve pleadings or documents.

41. Duty to provide evidence

The parties are responsible for providing evidence to the Court or Tribunal and to each other. A tribunal's decision need not be based exclusively on the evidence before it as it may rely on its general expertise and knowledge as this is one of the reasons for specialist tribunals but it

must disclose any such information to the parties before reaching a decision for comment.

42. Form of the hearing

The general rule in the Administrative Court, provided for by Rule 39.2(1) of the Civil Procedure Rules 1998 (as amended), is that hearings are to be in public[17] . Rule 39.2(3) of the Civil Procedure Rules provides that a hearing or any part of it may be held in private if:

- publicity would defeat the object of the hearing;
- it involves matters relating to national security;
- it involves confidential information (including information relating to a criminal investigation or information relating to personal financial matters) and publicity would damage that confidentiality;
- a private hearing is necessary to protect the interests of any child or patient;
- it is a hearing of an application made without notice and it would be unjust to any respondent for there to be a public hearing;
- it involves uncontentious matters arising in the administration of trusts or in the administration of a deceased person's estate; or
- the court considers it to be necessary, in the interests of justice.

Paragraph 1.4 of Practice Direction 39A of the Civil Procedure Rules 1998 (as amended) states that the issue of whether the matter is to be heard in private is one for the judge, having regard to any representations which have been made. By virtue of paragraph 1.4A, the Judge should have regard to Art 6(1) of the ECHR, and may need to consider whether the case is within the exceptions set out in that article.

In practice, very few Administrative Court proceedings are held in private.
Any party to the claim may take part orally in the hearing, either in person or through an advocate with appropriate rights of audience. Advocates are required to provide a short "skeleton argument" in advance of the hearing. These are written submissions which set out, in skeleton form, the arguments to be deployed.

Any person may attend a hearing as a friend of any party, take notes and provide advice to that party. With permission of the Court a non-lawyer may address the court on behalf of a party.

The default position in tribunal proceedings is that hearings are held in public but procedure rules may specify the circumstances in which they can be held in private.

43. Judicial deliberation

Judicial deliberation is undertaken in private solely by the members of the Court or Tribunal who heard the case, following a hearing in open court at which each party has the opportunity to present evidence (if applicable) and to make representations on the issues before the Court or Tribunal. No judge delivers an opinion before judgment is given by all the judges of the Court.

[17]Although note that Rule 39.2(2) provides that the Court is not under an obligation to make special arrangements for accommodating members of the public.

C. JUDGMENT

44. Grounds for the judgment

Judgments take account of the arguments of the parties, and address the points in issue. A judgment should set out the evidence on which the decision is based, with an explanation as to why controversial evidence has been accepted or rejected. The principal legal issues must also be addressed and reasons given for legal conclusions. It is not necessary to address points that are insignificant, i.e. can have no bearing on the result.

Judgment is given by the Judge in open Court either orally immediately following the hearing (an "extempore" judgment) or, if the issues require further deliberation, at a later date, in which case normally the judgment will be handed down in writing. If an oral judgment is given, the parties are entitled to a transcript. Judgments on all substantive hearings are posted on the Internet.

Failure to give adequate reasons for a decision will amount to an error of law which would entitle the losing party to appeal to the Court of Appeal, Civil Division[18] . Generally, Administrative Court judgments would be regarded as giving detailed grounds for the decision. In the case of tribunals, the detail required depends on the subject matter and the nature of the issues.

45. Applicable national and international legal norms

The generally applicable norms are statute law, the common law (derived from decisions of the courts), the European Convention on Human Rights in cases which concern rights under that Convention and EU law in cases concerning Community law. Other treaties that have not been incorporated by statute into domestic law will be taken into account. There is no written constitution in the normal sense, but various statutes (such as the Human Rights Act 1998 and the Constitutional Reform Act 2005) contain constitutional provisions.

46. Criteria and methods of judicial review

The grounds for judicial review are summarised above under question 2.
The Administrative Court will not substitute its decision for that of the public authority, unless it is clear that there was only one decision that the authority could lawfully make. That is rare. The Court will generally respect the liberty of an administrative authority to make any of a range of decisions lawfully open to it, provided it has acted fairly within the scope of its powers and complied with its legal duties. Where the question arises whether the decision of an authority was perverse, or disproportionate (an issue that arises in cases involving rights under the European Convention on Human Rights and possibly elsewhere), the court considers whether other decisions were open to the authority. The Court of Appeal has all the powers of the lower court from which an appeal is brought, as does the Supreme Court .

[18]See Eagil Trust Co Ltd v Pigott-Brown [1985] 3 All ER 129

In appeals to tribunals the focus in usually on whether the administrative decision maker has made a lawful decision although the scope of review can sometimes be wider.

47. Distribution of legal costs

The general rule in court proceedings is that costs follow the event. In general, therefore, the losing party will be required by the Court to pay all, or a proportion, of the costs of the winning party. The issue of costs is at the discretion of the Court and the Court may, therefore, exempt a party from paying costs. The Judge hearing the claim may summarily assess the costs to be awarded, or refer the matter to the Supreme Court Costs Judges for a more detailed assessment. Individual claimants who are in receipt of public funding of their lawyers' fees are in practice exempt from any liability for the costs of a successful public authority defendant.

The general rule in tribunal proceedings is that each party bears their own costs, although there are a number of exceptions to this.

48. Composition of the court (single judge or a panel)

In the Administrative Court, it is usual for the case to be decided by a single High Court judge. However, a Divisional Court of two, and sometimes three, judges, will hear cases of unusual importance. A Court of Appeal Judge will often sit as a member of a Divisional Court.

The composition of tribunal panels in the First-tier and Upper Tribunal is largely determined by the Senior President. Typically a First-tier Tribunal panel determining an appeal consists of one judge and two other members and an Upper Tribunal appeal or judicial review case is determined by one judge, or two or three judges if the matter is particularly complex.

Appeals to the Court of Appeal are almost always heard by three judges of that Court, although it is open to the Court to direct that the Court be constituted by two Lords Justices, or indeed by two Lords Justices and a High Court Judge.

The House of Lords usually sat in a panel of 5 judges. Cases of exceptional importance could be heard by 7 or even 9 members of the Judicial Committee of the House. The Supreme Court intends to follow the same procedure.

49. Dissenting opinions

Yes.

Where a unanimous decision is not possible in tribunal proceedings, the decision of the majority is the decision of the tribunal. Dissenting views may be expressed but they are not attributed to a particular judge or member.

50. Public pronouncement and notification of the judgment

See above under question 44.

D. EFFECTS AND EXECUTION OF JUDGMENT

51. Authority of the judgment. *Res judicata*, *stare decisis*

Most judgments only produce legal effects (as res judicata) as between the parties to the proceedings. However, in certain cases the legal effects are wider, as where secondary legislation is held to be ultra vires and is quashed.

A decision of the Court may be cited as precedent in a subsequent case which involves similar factual and legal issues. The principle of stare decisis applies to all substantive decisions of the Court of Appeal and the House of Lords / Supreme Court, and to decisions of a Divisional Court of the Administrative Court: their decisions are binding on all lower courts and tribunals. As above a decision of the Upper Tribunal is binding on the First-tier Tribunal. In addition, with minor exceptions, a decision of the Civil Division of the Court of Appeal is binding on subsequent Courts of Appeal.

52. Powers of the court in limiting the effects of judgment in time

The Court has the power to limit the effect of its judgment so that it applies prospectively only. It would do so in exceptional circumstances only and in practice this has never been done.

53. Right to the execution of judgment

Public authorities other than central government ("the Crown") are in the same position as private individuals so far as the execution of judgments is concerned. A successful claimant has a right to enforce his judgment, if necessary by legally assured procedures. There are special provisions relating to the execution of judgments against the Crown, contained in the Crown Proceedings Act 1947. In practice, judgments against public authorities are always complied with.[19]

54. Recent efforts to reduce the length of court proceedings

There has been a general effort, as a result of the introduction of the Civil Procedure Rules 1998, to reduce the length of time required for disposal of cases before the Courts to a minimum. Generally, this has been done by increasing the case management powers of the court and requiring the parties to act with expedition.

The Court of Appeal, Civil Division maintains a document listing the periods within which it

[19] There have been a very small number of exceptions, mainly due to accident rather than design.

aims to hear certain categories of case. The current time period within which the Court of Appeal aims to hear judicial review appeals is 8 months from the date on which the appeal is issued by the Civil Appeals Office Registry.

E. REMEDIES

55. Sharing out of competencies between the lower courts and the supreme courts

See above.

The general scheme is that where legislation provides a right of appeal to a tribunal that is the body that reviews the relevant decision. Where there is no right of appeal then judicial review will generally lie. All applications to the High Court for judicial review go to the Administrative Court. The fact that, for example, a senior minister or government department is involved does not affect the level of judge who will hear a case. However, if the point at issue is of public importance or raises a particularly difficult point, a Divisional Court of 2 or 3 judges will normally hear it rather than a single judge.

56. Recourse against judgments

An appeal to the Court of Appeal, Civil Division against a decision of the Administrative Court on a judicial review claim is available on a point of law only. The same applies to appeals from the Court of Appeal to the Supreme Court. Appeals from specialist tribunals to the High Court or the Court of Appeal (as appropriate) are generally available on a point of law only.

F. EMERGENCY AND SUMMARY PROCEEDINGS / APPLICATIONS FOR INTERIM RELIEF

57. Existence of emergency and/or summary proceedings

The Administrative Court maintains a procedure for consideration of urgent judicial review claims. Paragraph 21 of the Administrative Court Guide states that where a claimant seeks urgent consideration, he must specify, on the appropriate form, the need for urgency and the timescale for consideration. If an interim injunction is sought in order to preserve the claimant's position, a draft order is required, together with the grounds for the injunction sought. The claim form and application for urgent consideration must be served on the other parties by fax and post, advising them of the application and that they may make representations. In particularly urgent cases arising out of court hours, a remedy may be obtained by telephone application to a duty judge.

A party applying for urgent consideration of an appeal to the Court of Appeal, Civil Division must state that the matter is urgent in his Appellant's Notice. The matter will then be placed before a Lord Justice for directions as soon as possible following receipt of sufficient papers to allow the Court of Appeal properly to consider the matter.

There are no summary jurisdiction proceedings.

In a number of tribunal jurisdictions, cases must be determined within a short timeframe as provided for in legislation or procedural rules. The Upper Tribunal also has a procedure for dealing with out of hours applications.

58. Requests eligible for the emergency and/or summary proceedings

Requests for urgent consideration often involve an application for an interim injunction to preserve the Applicant's position, for example to prevent the deportation of a failed asylum seeker, or for an order staying proceedings, to prevent the implementation of a challenged administrative decision. A public authority may be required to produce a relevant document or to make a decision it is under a duty to make. Where necessary, a speedy trial may be ordered, which in an extreme case may take place within a week of the bringing of the claim.

59. Kinds of summary proceedings

See answers to questions 10 and 57 above.

III – NON-JUDICIAL SETTLEMENT OF ADMINISTRATIVE DISPUTES

60. Role of administrative authorities in the settlement of administrative disputes

In certain cases, the law provides for an individual to have the right to require an administrative decision to be reviewed internally by a public authority. The review may result in a decision that reverses or confirms the earlier decision. Generally, however, it is open to an administrative authority to review an administrative decision and to change it.

It is open to the parties, pursuant to Paragraph 17 of the Practice Direction to Part 54 of the Civil Procedure Rules 1998 (as amended), to agree a final order disposing of the matter with the consent of the Court. The parties must file two copies of the proposed order, together with a statement of reasons and copies of any authorities relied upon. The Court make an order in the terms provided if it is satisfied on consideration of the documentation provided by the parties that it should do so. There is also usually a process for disposal of tribunal proceedings by consent in procedural rules.

61. Role of independent non-judicial bodies in the settlement of administrative disputes

There are a number of administrative decisions (for example in the National Health Service) which may be the subject of an internal review mechanism provided for by legislation. In respect of the National Health Service there is also a right, in certain circumstances, to bring a complaint to the Health Service Commissioners.

In other areas statute provides an Ombudsman's service, which may be utilised by a claimant in an attempt to resolve his claim without litigation. A decision of the Ombudsman in such cases is generally susceptible to judicial review. Access to the Administrative Court is generally precluded until the exhaustion of any available and suitable review mechanisms Mediation may be sought by the parties, and its use is encouraged by the courts in appropriate circumstances.

62. Alternative dispute resolution

See the previous answer. In addition the Court has a duty, under Rule 1.4 of the Civil Procedure Rules 1998 (as amended) to encourage the parties to use alternative dispute resolution and to facilitate its use if it considers that appropriate. Tribunal procedure rules will also often include a duty to bring mechanisms for alternative dispute resolution to the attention of parties.

IV – ADMINISTRATION OF JUSTICE AND STATISTIC DATA

A. FINANCIAL RESOURCES MADE AVAILABLE FOR THE REVIEW OF ADMINISTRATIVE ACTS

63. Proportion of the State budget allocated to the administration of justice

In 2008-09 Her Majesty's Courts Service received £1,702.5 million in voted expenditure and income from fees, fines and other sources. In 2009-10 it received £1,665.0 from the same sources.

It is not possible to provide average costs in terms of staff, operation and equipment for the Administrative Court.

In 2008-09 The Tribunals Service received £298.7 million in voted expenditure and income from fees, fines and other sources. In 2009-10 it received £234.7 from the same sources. This includes the costs of the Upper Tribunal launched in November 2008.

64. Total number of magistrates and judges

Judges (Courts, including part time members): 3679
Magistrates (lay members): 30000
Tribunal appointments: 7000

65. Percentage of judges assigned to the review of administrative acts

The number of High Court Judges nominated to review administrative acts stood at 46 as at July 2009. The number of Deputy High Court Judges so nominated totalled 68. Lords Justices of Appeal also sit in the Administrative Court from time to time.

66. Number of assistants of judges

No judicial assistants are assigned to the Administrative Court. The Office staff includes the equivalent of 13.66 lawyers responsible for case management.

67. Documentary resources

The Royal Courts of Justice, where the Administrative Court sits, has a library which includes the published law reports of cases decided in England and Wales and Scotland, and textbooks on English Law, including Administrative law. In addition, judges who sit in the Administrative Court have their personal library which includes the law reports and appropriate textbooks.

Staff of the Administrative Court have access to additional textbooks via the internet.

68. Access to information technologies

All judges of the Administrative Court have access to a computer, and through the computer to law reports and some textbooks published on the Internet, and to some textbooks on CDRom.

Computers are used to produce written judgments, either by the Judge or by his clerk (effectively his personal assistant).

Judges and their clerks also have access to certain template orders on their computers which they can use to draw up decisions made in respect of applications determined on the papers only.

69. Websites of courts and other competent bodies

HM Courts Service has a website, within which procedural rules, selected judgments and other documents are also available. Within this website the Administrative Court Office publishes guidance, newsletters and annual reports. Some tribunals also have websites containing similar information.

B. OTHER STATISTICS

70. Number of new applications registered every year

71. Number of cases heard every year by the courts or other competent bodies

72. Number of pending cases

73. Average time taken between the lodging of a claim and a judgment

Judicial Review

Reference Year	Cases Lodged	Cases Disposed of	Average time to decision on permission to apply for judicial review	Average time to substantive decision
2003	5983	5612	7.6 weeks	31.1 weeks
2004	4198	3269	6.8 weeks	32.6 weeks
2005	5354	4391	7.7 weeks	30.3 weeks
2006	6419	5144	11.3 weeks	34.0 weeks
2007	6678	6279	13.0 weeks	38.9 weeks
2008	7057	7716	11.5 weeks	62.3 weeks*

Reviews of Immigration and Asylum Tribunal Decisions (no oral hearing)

Reference Year	Cases lodged	Cases disposed of	Average time to decision
2003	378	293	1.3 weeks
2004	1815	1758	2.4 weeks
2005	4514**	4377	5.2 weeks
2006	3296	2686	6.0 weeks
2007	3730	3462	8.6 weeks

2008	4179	4121	5.0 weeks

**Increase reflects introduction of applications made under Section 103A of the Nationality, Immigration & Asylum Act 2002 from April 2005.

The Tribunals Service

In the financial year 2007/2008 the Tribunals received 635,106 cases, of which 548,592 were disposed of. The figures for 2008/2009 were 630,348 and 568,055 respectively.

The Tribunals Service does not calculate waiting time for hearings and disposals in weeks. However, 75% of applications were dealt with within the target time in 2007/2008 and 69% were dealt with within the target time in 2008/2009.

Other applications/appeals

Reference Year	Cases lodged	Cases disposed of	Average time to decision
2003	571	529	20.7 weeks
2004	596	1416	17.4 weeks
2005	724	969	25.0 weeks
2006	922	893	21.1 weeks
2007	882	1369	27.2 weeks
2008	932	1383	30.6 weeks

Cases Pending – All types

Reference Year	**Cases Pending**
2003	**2708**

2004	**2326**
2005	**3493**
2006	**5591**
2007	**6224**
2008	**5623**

Growth of judicial review from 1980

Year	Cases Lodge	Year	Cases Lodged
1980	**491**	**1995**	**3604**
1981	**533**	**1996**	**3901**
1982	**685**	**1997**	**3739**
1983	**850**	**1998**	**4363**
1984	**915**	**1999**	**4458**
1985	**1169**	**2000**	**4240**
1986	**1189**	**2001**	**4725**
1987	**1529**	**2002**	**5144**
1988	**1229**	**2003**	**5944**
1989	**1580**	**2004**	**4198***
1990	**2129**	**2005**	**5354****
1991	**2089**	**2006**	**6419**
1992	**2439**	**2007**	**6678**

1993	**2886**	**2008**	**7057**
1994	**3208**		

*First full year of the replacement of judicial review by statutory review to challenge refusal of leave to appeal by Immigration Appeal Tribunal.

74. Percentage and rate of the annulment of administrative acts decisions by the lower courts

The Administrative Court:

In 2003 36% of substantive applications (405) for judicial review civil were allowed.

In 2004 32% of substantive applications (113) for judicial review (civil) were allowed.

In 2005 39% of substantive applications (224) for judicial review (civil) were allowed.

In 2006 38% of substantive applications (193) for judicial review (civil) were allowed.

In 2007 48% of substantive applications (242) for judicial review (civil) were allowed.

In 2008 41% of substantive applications (338) for judicial review (civil) were allowed.

75. The volume of litigation per field

Year	Asylum	Asylum Support	Immigration	Planning	Others
2003	**2441**	**1576**	**220**	**323**	**2326**
2004	**3106**	**499**	**434**	**294**	**2277**
2005	**6081**	**125**	**1457**	**305**	**2628**
2006	**5023**	**70**	**2308**	**381**	**2854**
2007	**5048**	**35**	**2998**	**354**	**2844**
2008	**4362**	**88**	**4353**	**386**	**2982**

C. ECONOMICS OF ADMINISTRATIVE JUSTICE

76. Studies or works concerning the influence of judicial decisions against the administrative authorities on public budgets

Not as far as is known.