



Judicial review proceedings

June 2025

Guidance note

Introduction

1. There are a number of remedies available to a dissatisfied taxpayer, the most obvious being the statutory appeal system before the First-tier Tribunal (FTT) (see guidance note: Appealing a direct tax decision; guidance note: Appealing an indirect tax decision; and guidance note: Overview of the Tax Tribunals system). Of the other remedies, one of the most important is judicial review.
2. Judicial review is not a remedy that is specific to tax. It is a general mechanism for the courts to hold bodies that exercise public functions to account. As HMRC is a public body exercising public functions, its decisions are subject to judicial review and it can therefore, in appropriate circumstances, be a useful weapon in the armoury of the taxpayer.
3. This note discusses:
 - when judicial review might be appropriate
 - who may seek it
 - the practicalities of applying for judicial review (including timing – it is vital to act quickly when applying for judicial review)
 - some common grounds for judicial review, and
 - the remedies available in judicial review.

When might it be useful

4. A key restriction on the use of judicial review is that a person applying for judicial review should have no alternative sufficient remedy. Judicial review is a discretionary remedy, and the High Court may refuse permission to a taxpayer to bring judicial review proceedings if an adequate alternative remedy exists¹. Where a statutory appeal mechanism exists, such as an appeal to the FTT, a taxpayer may not be able to pursue an application for judicial review of a decision taken by HMRC.

¹ *R v Customs and Excise Commissioners and London VAT Tribunal, ex parte Menzies* [1990] STC 263; *R v London VAT and Duties Tribunal, ex parte Conoco Ltd* [1995] STC 468; and *Harley Development Inc v Commissioner of Inland Revenue* [1996] 1 WLR 727, [1996] STC 440.

5. A combination of two factors means that it is frequently necessary for a taxpayer to bring a “protective” application for judicial review that is then stayed behind a statutory appeal (or that is heard first, with the statutory appeal stayed behind the judicial review). These factors are:
 - 5.1 the strict time limits for bringing an application for judicial review (discussed further in the “Timing” section below), and
 - 5.2 the limited jurisdiction of the tax tribunals to consider public law arguments (discussed further in the “Forum” section below).
6. Where there is no alternative remedy, such as a statutory right of appeal available, judicial review may be the only remedy available to a taxpayer. The following are examples of such a situation:
 - where an accelerated payment notice or follower notice has been issued
 - where HMRC issues an information notice under Schedule 36, Finance Act 2008, and that information notice was approved by the FTT (see guidance note: How to respond to an information notice request – Schedule 36, Finance Act 2008)
 - where HMRC applies its discretion to refuse to apply an extra-statutory concession, and
 - where HMRC obtains a search and seizure warrant pursuant to the Police and Criminal Evidence Act 1984 (see guidance note: HMRC Dawn Raids - a step-by-step guide to managing an HMRC dawn raid and guidance note: HMRC criminal investigations).

The above is not an exhaustive list.

Who may seek judicial review

7. An applicant for judicial review must have “standing” to bring a claim. That is, they must have “*sufficient interest in the matter to which the application relates*”². This has been given a broad interpretation³ that can extend to campaign groups raising issues of public importance. A taxpayer directly affected by a decision of HMRC should have standing to seek judicial review.

Practicalities

Timing

8. A significant proportion of applications for judicial review fall at the first hurdle (the permission stage) not because of any weakness in the application itself but because they are out of time.
9. An application for judicial review of a decision must be filed “*promptly ... and in any event not later than 3 months after the grounds to make the claim first arose*”⁴.
10. However, issuing the claim form is not the first step in seeking judicial review. Parties are strongly encouraged to comply with a pre-action protocol (which itself requires leaving HMRC, or whichever authority’s decision is to be subject to judicial review, sufficient time to respond substantively to a pre-action protocol letter)⁵. The application needs to be accompanied by grounds for judicial review, and typically these will be supported by a witness statement (or statements) setting out the background to the matter and providing the factual information for the court to determine whether it should grant permission to proceed with the claim.

It is therefore vital to engage quickly in circumstances that might lead to an application for judicial review.

² Section 31(3), Senior Courts Act 1981.

³ *R v Foreign Secretary ex p World Development Movement* [1995] 1 All ER.

⁴ CPR 54.5(1).

⁵ Failure to do so may result in adverse costs consequences – see Rule 44.2(5)(a) of the Civil Procedure Rules.

Forum

11. The High Court has an inherent supervisory jurisdiction, and this extends to judicial review⁶. Most judicial review applications are brought in the High Court.
12. The Upper Tribunal also has a statutory jurisdiction to consider judicial review arguments⁷.
13. The FTT is a creature of statute and has not been granted jurisdiction to exercise judicial review. In very limited circumstances, it has been held that the FTT can consider public law arguments relating to legitimate expectation⁸ in specific situations where these arguments are required to determine a statutory appeal. However, this by no means amounts to a stand-alone public law jurisdiction and the ability of the FTT to hear such arguments is limited. A taxpayer wishing to pursue public law arguments should consider bringing judicial review proceedings even if these are then to be stayed behind a statutory appeal.

Steps to bring a judicial review

14. As noted above, a claimant should follow the pre-action protocol steps which require, amongst other things, a letter before action to be sent.
15. The next step is to seek permission from the court. This “gateway” test is normally determined on the papers (ie without an oral hearing), although if permission is refused the decision can be reconsidered at an oral hearing unless the court refuses permission to proceed and records the fact that the application is totally without merit⁹.
16. Under CPR 54.14, if permission is granted, the defendant must file and serve a detailed response within 35 days of being served with the order granting permission.
17. The court can exercise its case management powers to order a ‘rolled-up’ hearing of the application for permission and the substantive judicial review application itself. This is more likely to happen where judicial review is sought on multiple grounds and the court considers it likely that permission will be granted in respect of at least one of grounds.
18. The substantive hearing is usually heard by a single judge. Witness statements are generally taken as read, unless there is a dispute over the credibility of a witness.

Practical benefits

19. Apart from the ability to have a court review a decision taken by HMRC, an application for judicial review may result in other advantages.

Duty of candour

20. The parties in a judicial review owe a “duty of candour”, that is, a duty to be open and transparent with each other and with the court regarding the subject-matter of the dispute. This can include a requirement to disclose documents. Given that HMRC already has significant information-gathering powers, this duty tends to benefit taxpayers more than HMRC, and engaging the duty of candour can frequently give rise to a requirement for HMRC to disclose material that it would not otherwise have disclosed.
21. In *R (Rettig Heating Group UK Ltd) v HMRC* [2024] UKUT 315 (TCC), the Upper Tribunal considered if the duty of candour extends to requiring public authorities to disclose internal discussions and considerations had when making decisions. On this occasion the answer was no, but there could be circumstances where this would be required to address allegations of bias, failure to consult or improper purposes.

⁶ Section 31, Senior Courts Act 1981.

⁷ Section 15, Tribunals Courts and Enforcement Act 2007; Rule 28(1), Tribunal Procedure (Upper Tribunal) Rules 2008.

⁸ *KSM Henryk Zeman SP Zoo v HMRC* [2021] UKUT 182 (TCC).

⁹ Civil Procedure Rule 54.12(7).

Engagement of different personnel

22. While some appeals to the FTT are dealt with by HMRC officers, judicial review proceedings are dealt with by HMRC's Solicitor's Office. This means that a "fresh pair of eyes" will look at the matter (and usually more than one "fresh pair of eyes" as HMRC will invariably instruct counsel to defend judicial review proceedings). Where HMRC has acted unconscionably, therefore, this can prompt a fresh assessment of its position. Strong judicial review cases frequently do not progress beyond the permission stage, as HMRC may acknowledge its past conduct.

Grounds for judicial review

Illegality

23. Where HMRC has acted beyond its powers, or has abused its powers, its decision may be reviewed by the courts. This can include HMRC seeking to resile from specific representations made to a taxpayer in the full knowledge of all facts and circumstances (where the taxpayer therefore has a legitimate expectation of being treated in a particular way)¹⁰.
24. Enforcement of a legitimate expectation by judicial review will generally require:
- a representation to have been made by HMRC that is capable of enforcement
 - an unambiguous statement being made by HMRC to an individual or group, and
 - reliance by the taxpayer on that statement to their detriment.

Irrationality

25. If HMRC makes a decision that is so unreasonable that no reasonable authority in its position could have made such a decision, that decision may be subject to judicial review¹¹.

Procedural impropriety

26. Where an authority has not followed the relevant statutory procedure, or has failed to give reasons or to consider representations, or has failed to observe rules of natural justice, judicial review may be granted¹².
27. The above is not an exhaustive list of grounds and where HMRC has acted in a way that seems manifestly unfair it is worth considering and taking legal advice on whether an application for judicial review should be made.

If judicial review is granted what are the remedies available?

28. If an application for judicial review is successful, the court can grant the following remedies:
- a mandatory order, requiring the authority whose decision is being reviewed to do something, such as remake its decision
 - a prohibitory order, requiring the authority to refrain from doing something that it lacks the power to do
 - a quashing order, setting aside the authority's decision
 - a declaration, which states the rights of the parties or a principle of law
 - an injunction, restraining a party from acting in a way that it is not allowed to
 - damages, but only where no other cause of action is available that might remedy the applicant's complaint.

¹⁰ *Preston v Inland Revenue Commissioners* [1985] STC 282; *R v Inland Revenue Commissioners, ex parte MFK Underwriting Agencies Ltd* [1989] STC 873; and *R v Inland Revenue Commissioners, ex parte Unilever Plc* [1996] STC 681.

¹¹ *Associated Provincial Picture Houses v Wednesbury Corp* [1947] EWCA Civ 1.

¹² *Council of Civil Service Unions v Minister for Civil Service* [1985] 1 AC 374.

Top tips

- If considering making an application for judicial review, check that no alternative remedy is available.
- An applicant for judicial review must have “standing” to bring a claim, that is, they must have sufficient interest in the matter to which the application relates.
- An application for judicial review must be made promptly and in any event not later than 3 months after the grounds to make the claim first arose.
- If making an application for judicial review, ensure you comply with the judicial review pre-action protocol.
- Carefully identify appropriate grounds for judicial review.

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