Judicial Review
A Practical Guide

Third Edition

Hugh Southey QC
Amanda Weston
Jude Bunting
Raj Desai

With a Foreword by Sir Adrian Fulford
Published by LexisNexis

LexisNexis
Regus
Terrace Floor
Castlemead
Lower Castle Street
Bristol BS1 3AG

Whilst the publishers and the author have taken every care in preparing the material included in this work, any statements made as to the legal or other implications of particular transactions are made in good faith purely for general guidance and cannot be regarded as a substitute for professional advice. Consequently, no liability can be accepted for loss or expense incurred as a result of relying in particular circumstances on statements made in this work.

© RELX (UK) Limited, trading as LexisNexis 2017

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any way or by any means, including photocopying or recording, without the written permission of the copyright holder, application for which should be addressed to the publisher.

Crown Copyright material is reproduced with kind permission of the Controller of Her Majesty's Stationery Office.

British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library.

ISBN 978 1 78473 096 3

Typeset by Letterpart Limited, Caterham on the Hill, Surrey CR3 5XL

Printed in Great Britain by Hobbs the Printers Limited, Totton, Hampshire SO40 3WX
FOREWORD

Judicial Review, which involves the supervision by the courts of the legality of our public administration, is one of the bulwarks ensuring that the freedoms and rights of those living in England and Wales are upheld. Critical public law controls are exercised by the judiciary over the executive – namely, the departments of state that are run by ministers, as well as local authorities and quangos. When public powers, created or recognised by law, are exercised by executive government, these have legal limits and it is for the courts to ensure that what happens is lawful. As Lord Hoffmann observed in the Alconbury case ‘when ministers or officials make decisions affecting the rights of individuals, they must do so in accordance with the law. The legality of what they do must be subject to review by independent and impartial tribunals’ (paragraph 73).

The growth in the number of cases in recent years has been a real source of concern for the judiciary and the Ministry of Justice. One notable statistic is that between 2000 and 2013 the number of judicial review applications that were lodged increased over threefold, from around 4,200 in 2000 to over 15,600 in 2013. This growth was particularly driven by applications for judicial review in the field of immigration and asylum, and to ease the burden on the Administrative Court many of the cases in these two areas have been transferred to the Upper Tribunal.

Although there are numerous practitioners who specialise in judicial review, claims can arise unexpectedly in many different fields, with the result that lawyers with little familiarity with judicial review have found themselves involved in public law litigation. Simply by way of example, the Human Rights Act 1998 placed primary responsibility to respect rights under the European Convention on public authorities, with the result that judicial review has become a frequently used means of resolving disputes in this area.

This book has many strengths, including most particularly the evident underlying scholarship, but I consider its greatest strength is that it provides an invaluable practical guide on all the stages in the judicial review process. From the beginning of a claim right through to the end, it assists the practitioner on most, if not all, of the points that are likely to arise. It operates both as a manual and as a source of answers to the many questions that exercise those undertaking these cases. And I cannot overstress how important it is that these claims are advanced, and resisted, competently and professionally. In the recent
past, Green J expressed a concern that is felt by many judges who sit in the Court of Appeal, the Administrative Court and in the Upper Tribunal:

‘The facts … reflect what has become an all too familiar and depressing pattern in which legal representatives demonstrate a lack of care and concern for the substantive and procedural rules governing claims for judicial review. They suggest, in our view, a deliberate disregard for the professional duties that all legal representatives owe to the Court, and in the present case to the Tribunal.’ Re Sandbrook Solicitors [2015] EWHC 2473 (Admin)

This book, if read and followed, will assist considerably in reducing the instances when litigants or their representatives attempt to advance cases incompetently or negligently. I commend it to hardened regulars in the field as well as those with less familiarity with judicial review, whether they are judges or practitioners. It is an invaluable guide to the entirety of the process.

Sir Adrian Fulford
August 2017