

## Constitutional and Administrative / Public Law

### ANATOMY OF A CHALLENGE BY WAY OF JUDICIAL REVIEW

#### \* START : APPLICATION PROCESS \*

**Ex Parte Application** : Under Civil Procedure Rule 54 + Practice Direction 54

**3 month time bar/limit** (Discretion of court to extend)

**3 Compulsory Tests** to be passed – fail any one and you are out

- **Public Law Issue** (O'Reilly v Mackman)
- **Standing**; and (Gouriet v Union of Post Office Workers) : McInnes v Onslow Fane
- **Arguable case** that justice requires an answer to  
No effective **ouster clause**. (Anisminic v Foreign Compensation Board)  
Potential stay under CPR for **mediation** under Cowl v Plymouth

#### GROUNDS FOR ESTABLISHING ULTRA VIRES

Council for Civil Service Unions v Minister of State for Civil Service (GCHQ) Diplock

<b>Illegality</b> Contrary to Public Policy	<b>Irrationality</b> S.S. Education v Thameside	<b>Procedural Impropriety</b>
<b>ABSENCE / ABUSE OF POWER</b>	<b>UNREASONABLENESS WEDNESBURY</b>	<b>NATURAL JUSTICE</b>
<ul style="list-style-type: none"> <li>▪ <b>No Jurisdiction or Power</b></li> <li>▪ <b>Beyond power</b> A.G. v Fulham : Congrieve</li> <li>▪ <b>Unlawful Delegation</b> Allingham v Min of Ag</li> <li>▪ <b>Surrender of discretion</b> Policy overriding discretion</li> <li>▪ <b>Failure to carry out duty</b> Padfield v Min of Ag</li> <li>▪ <b>Abuse of discretion</b></li> <li>▪ <b>Bad faith</b></li> <li>▪ <b>Breach of Human Rights</b></li> <li>▪ <b>Wrong Purpose</b></li> </ul>	<p style="text-align: center;">Taking into account irrelevant factors or a failure to take into account relevant factors : to reach a decision no reasonable decision maker could have reached. Lord Greene</p> <p style="text-align: center;"><b>PROPORTIONALITY</b> A ground under E.C. Law. Abuse of Power by going further than needed to solve the harm. R v HS ex p Brind Established international law concept.</p>	<p style="text-align: center;"><b>Natural Justice includes</b></p> <ul style="list-style-type: none"> <li>▪ <b>Bias : <i>Nemo Iudex in causa sua</i></b> Dimes v GJC : Pinochet</li> <li>▪ <b>Hearing : <i>Audi alterem partem</i></b> Liverpool Taxi : Cooper Ridge v Baldwin</li> <li>▪ <b>Pre-requisites not fulfilled</b> Aylesbury Mushroom Farm</li> <li>▪ <b>Error of Law on face of record</b> R v NCT ex p Shaw</li> </ul>

#### REMEDIES

(difficult to establish any breach if no reasons given)

<b>QUASHING ORDER</b> <i>Certiorari</i>	<b>ENFORCEMENT ORDER</b> <i>Mandamus</i>	<b>PROHIBITION</b>	<b>HABEAS CORPUS</b> R v Louise Collins	<b>DECLARATION</b>	<b>DAMAGES</b> EC Law Only ECJ+ ECHR
Undoes a decision as if it never happened	Makes an authority fulfil its statutory duty Padfield v Min Ag	Stops an authority acting unlawfully	Let us have the body	Explains / declares what the law is.	Free - Movement Discrimination Etc.