

# Judicial Review in the Cayman Islands

Last reviewed: July 2022

---

Judicial review is a procedure by which the courts, on the application of a party with a sufficient interest, can examine the decisions of public bodies to ensure that they act lawfully and fairly. In recent years, the Cayman Islands has seen a number of cases dealing with an array of public matters, including an appeal of a judicial review decision to the Cayman Islands' highest appellant court, the Privy Council. This guide examines the framework for judicial review proceedings in the Cayman Islands.

## What is judicial review?

Judicial review allows applicants with sufficient interest in a decision or action by a public body to ask the Grand Court (the **Court**) to review the lawfulness of:

- rules and regulations, or other subordinate legislation; or
- a decision, action or failure to act in relation to the exercise of a public function.

Judicial review is a remedy of last resort. It may be used where there is no right of appeal or where all avenues of appeal have been exhausted. Alternative dispute resolution (**ADR**) must always be considered and an applicant issuing judicial review prematurely without having explored ADR may be liable in costs.

## Which decisions can be judicially reviewed?

Decisions of public bodies and other bodies exercising public law functions may be challenged. There are a number of reported cases in the Cayman Islands dealing with an array of applications concerning many types of public function, such as: immigration, human resource management, development and resource consent, financial services regulators, licensing, education and political and constitutional matters.

## Who can make a judicial review claim?

The overriding rule governing the standing of an applicant to apply for judicial review is that, in order to have standing to progress an application, the Court must consider that the applicant has sufficient interest in the matter to which the application relates.

What constitutes a sufficient interest is a mixed question of law and fact and depends on the relationship between the applicant and the complainant. The concept of a sufficient interest is extremely flexible and the Court has held that the more important the issue and the stronger the merits of the application, the more readily the Court will be to grant leave. The essential idea is to exclude 'busybodies' without a direct or personal interest in the decision.<sup>1</sup>

## On what grounds can a claim be made?

The grounds are constantly evolving, but can be generally categorised under four heads:

- (1) **Illegality**: arises where the decision maker misdirects itself in law, exercises a power wrongly or acts beyond its powers (*ultra vires*).

---

<sup>1</sup> *Golden Accumulator Limited and Coral House Limited v Cayman Islands Monetary Authority* [2004-05] CILR 565.

- (2) Irrationality: arises where the decision maker took into account irrelevant considerations or failed to take relevant considerations into account or where no reasonable decision maker could have come to that decision (commonly referred to as *Wednesbury* unreasonableness).
- (3) Procedural impropriety: arises where the decision maker did not adhere to established procedures or failed to adhere to principles of natural justice.
- (4) Proportionality:<sup>2</sup> may arise where the decision was not proportionate.

These grounds are not mutually exclusive.<sup>3</sup>

### **What is the procedure for making a judicial review claim?**

The procedure relating to judicial review in the Cayman Islands is set out in GCR Order 53 (**Order 53**) and is materially supplemented by Practice Direction No 4 of 2013 entitled *Pre-Action Protocol for Judicial Review* (the **Protocol**).

The Protocol applies to all proceedings in the Cayman Islands, but does not affect the strict time limit specified by Order 53 rule 4 which requires that any application for judicial review must be filed promptly and in any event not later than three months after the grounds to make the claim first arose.

The Protocol sets out a code of good practice and contains steps which parties should generally follow before making an application for judicial review. For instance, it requires the parties to consider whether some form of ADR procedure would be more suitable than litigation and also suggests a standard form for the applicant's letter before action (annex A) and the defendant's letter of response (annex B).

If proceedings are necessary, there are two procedural stages to judicial review. The first is the leave stage which must be made *ex parte* by filing a prescribed form and an affidavit which verifies the facts relied on. The applicant has to have a sufficient interest and demonstrate an arguable case.<sup>4</sup> If leave is refused, the application for leave may be renewed within 10 days of the Judge's refusal.

If leave is granted then a substantive hearing will take place. The applicant will be required to serve the application documents on the defendant and all other persons directly affected. The respondent may file evidence in response, although expert evidence is unusual. At a full hearing, the application proceeds by oral argument and cross-examination is unusual.

### **What remedies may be sought?**

The Court has at its disposal a range of powers and remedies in relation to a claim for judicial review, including:

- (5) Mandatory order (mandamus): to require a public body to carry out its legal duties.
- (6) Prohibiting order (prohibition): to restrain the public body from acting beyond its powers.
- (7) Quashing order (certiorari): to set aside the decision.
- (8) Declaration: not imposed by the Court but sets out the rights or legal position between the parties.
- (9) Injunction: often granted as an interim remedy to prevent a public body from acting on a decision.
- (10) Damages: only available in limited circumstances in judicial review. The claim must be included in the statement in support of the application for leave and the Court must be satisfied, if the claim had been made in an action by the applicant, the applicant could have been awarded damages.

---

<sup>2</sup> Section 19(1) of the Cayman Islands Constitution expressly introduces a new ground of proportionality into Cayman judicial review, in providing: *All decisions of public officials must be lawful, rational, proportionate and procedurally fair.*

<sup>3</sup> *Intertrust Corporate Services (Cayman) Limited v Cayman Islands Monetary Authority* FSD 158 2021 (NSJ) 23 June 2021

<sup>4</sup> *BDO Cayman Ltd v Governor in Cabinet* [2016] (2) CILR 324.

## The Cayman Islands Constitution and the Bill of Rights, Freedoms and Responsibilities

The Cayman Islands Constitution was introduced as Schedule 2 to the Cayman Islands Constitution Order, 2009, and came into force on 6 November 2009 (the **Constitution**). The Bill of Rights, contained in Part 1 of the Constitution, came into force three years later on 6 November 2012 (the **BOR**). The BOR sets out the fundamental rights and freedoms of the individual and rules for their enforcement and remedies in the Cayman Islands.

Proceedings may be commenced under sections 23 (Declaration of incompatibility) and 26 (Enforcement of rights and freedoms) of the Constitution by petition or writ under GCR Order 77A (**Order 77A**).<sup>5</sup> For instance, by section 26(1) any person may apply to the Court to claim that government has breached or threatened their rights and freedoms under the BOR within one year of the decision or act complained of (section 26(4)). Care should be taken when considering whether to bring claims under the BOR as, although such claims may be appropriate for breach of personal rights and freedom, judicial review remains the established procedure for review of administrative action.<sup>6</sup>

## Contacts

A full list of contacts specialising in Cayman Islands Litigation and Dispute Resolution can be found [here](#).

---

<sup>5</sup> Order 77A was introduced on 6 November 2012 to give procedural effect to sections 23 and 26 of the Constitution.

<sup>6</sup> See *Coe v Governor* [2014] (2) CILR 465.