



Remedies in Public Law

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Remedies: in outline



Range of court based remedies





Remedies: core principles



Is the court required to grant or refuse a particular remedy?

“The discretion of the court in deciding whether to grant any remedy is a wide one. It can take into account many considerations including the need for good administration, delay, the effect on third parties and the utility of granting new relevant remedy...”

R (Save our Surgery Ltd) v Joint Committee of Primary Care Trusts [2013] EWHC 1011 (Admin), per Nicola Davies J at [4]

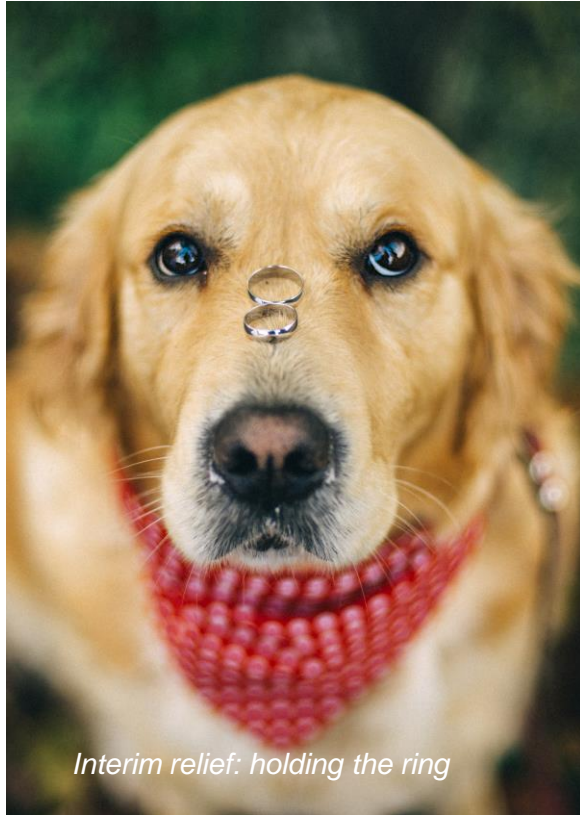
Generally, grant of relief at **discretion** of court

- Court can grant multiple remedies
- Cases where court *may* refuse to grant remedy:
 - Delay and substantial hardship / prejudice / detrimental to good administration: s.31(6)(b) SCA 1981
 - Error of law immaterial to decision / no practical purpose / C suffers no harm or prejudice: Admin Court Guide 2023, §12.9.2

When court cannot grant remedies

- Where “highly likely” outcome for C not substantially different, court must refuse to grant any form of relief, unless appropriate to do so for reasons of “exceptional public interests”: s.31(2A) and s.31(2B) SCA 1981.
- Recent cases emphasise limits:
 - “Very high threshold”: see ***Friends of the Earth v SSESNZ*** [2024] EWHC 995 (Admin), at [128].
 - “A high bar”: ***R (Police and Crime Commissioner for the West Midlands) v SSHD*** [2024] EWHC 604 (Admin), at [40].
- Objective assessment of decision-making process at date of decision: ***R (Widdington Parish Council) v Uttlesford DC*** [2023] EWHC 1709 (Admin), at [122]





Interim relief: holding the ring

Interim relief

- Wide and flexible power to grant
- Examples include interim injunction or, rarely, interim declaration: s.37 SCA 1981; CPR r.25.1(1)(b)
- ***American Cyanamid*** principles amended for public law context – usually centres on balance of convenience
- Recent consideration in Court of Appeal: ***British Standards Institution v RRR Manufacturing Pty Ltd, R (otao)*** [2024] EWCA Civ 530, at [76]
- See Ch. 16 of the Admin Court Guide (2023)



Remedies: recent developments



Statutory changes

- Section 1, Judicial Review and Courts Act 2022 inserted s.29A SCA 1981
- Changes to quashing orders:
 - No longer need be immediate
 - Suspended to later date
 - Retrospective effect removed / limited
 - Order subject to conditions before it takes effect
 - Statutory considerations re: use: s.29A(8) SCA 1981

Consequence: opportunity for public body to correct legal failure identified by court.



Rolling JR and monitoring remedies

- **Moving target:** focus of claim changes where defendant reconsiders / takes new decision
- Need for procedural rigour
- Valid fresh decision can be basis for refusing remedy as a matter of discretion: **R (Caroopen) v SSHD** [2016] EWCA Civ 1307, at [31], [49]-[50]
- Depending on context, rolling JR can be “appropriate” if approached with “care and discipline”: **R (Ali Raja & Anor) v LB Redbridge** [2020] EWHC 1456 (Admin), at [18]

A “continuing remedial role” for the court?

R (ECPAT UK) v Kent CC, SSHD [2023] EWHC 2199 (Admin)

- ECPAT involved issue of suspended quashing order - “remedial flexibility that was previously unavailable” [6].
- Compliance with conditions subject to monitoring by court in series of relief hearings – only on “rare occasions” such an approach “justified” [14].
- Factors in that case included historic failure to comply with legal obligations, history of litigation and ongoing serious consequences of breach.

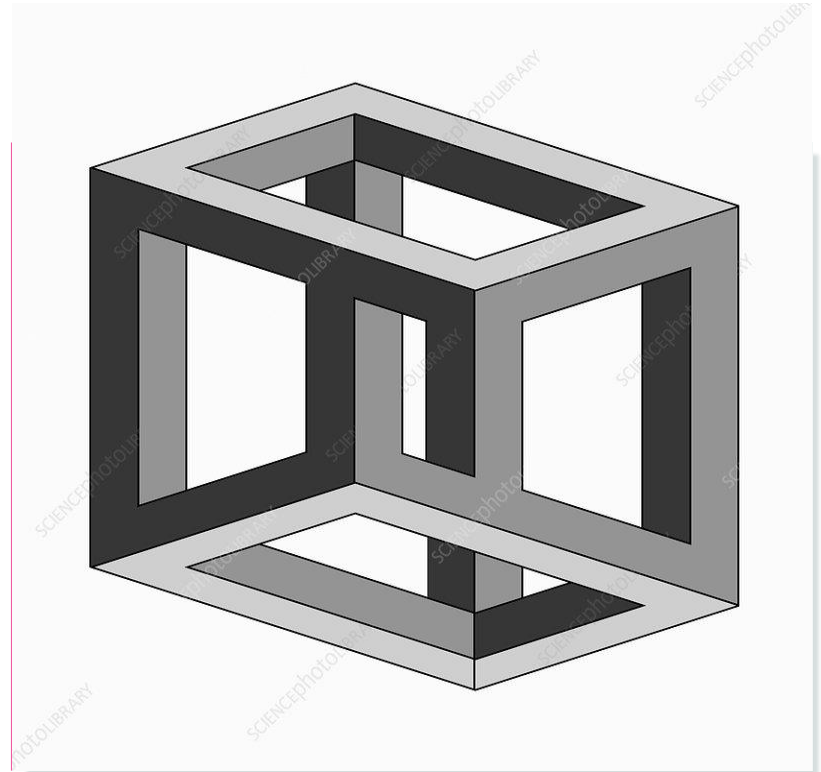


Mandatory orders in the Supreme Court
R (Imam) v Croydon LBC [2023] UKSC 45

Impossibility

Key point – whether it is impossible for the public authority to perform its duty is a question that has to be considered in the real world:

“[62] The authority is the clearing house for meeting all the claims made upon it. A court should be careful not to exceed its own proper role by disrupting without good justification the authority's own attempt to reconcile those claims in a fair way through its ordinary budgeting process, once that has been finalised”



Unduly distorting effect

Key point – the making of a mandatory order gives the statutory duty which it reflects a super-added force, which may have an unduly distorting effect ...

[45] “ ... where a court issues a mandatory order, that order produces legal consequences of its own over and above those inherent in the underlying statutory duty: the order does not simply replicate the effect of the underlying duty. It is appropriate that, when deciding whether to issue a mandatory order, the court should consider whether it is right to create those additional effects in all the circumstances of the case as it presents itself to the court ...”





Alternative Remedies



Court-compelled ADR

"[A]s a matter of law, the court can lawfully stay existing proceedings for, or order, the parties to engage in a non-court-based dispute resolution process ... the court should only stay proceedings for, or order, the parties to engage in a non-court-based dispute resolution process provided that the order made does not impair the very essence of the claimant's right to proceed to a judicial hearing, and is proportionate to achieving the legitimate aim of settling the dispute fairly, quickly and at reasonable cost."

Churchill v Merthyr Tydfil CBC [2024] H.L.R. 8,
per Sir Geoffrey Vos MR [eliding 58 and 62]





Thank you

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