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Remedies in Judicial Review

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29 June 2026

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Discretionary remedies

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Three key sources of information

Senior Courts Act 1981, s.31

Civil Procedure Rules, Part 54

Administrative Court Judicial Review Guide

Key judicial comments

***R (Imam) v Croydon LBC* [2025] AC 335, SC at §41:**

"The existence of a discretion as to the relief to be granted allows a court which finds that there has been a breach of a public law duty to decide, in the light of all the circumstances as appear to the court at the time it applies the law, how individual rights and any countervailing public interests should be reconciled."

***R (A) v North Central London ICB* [2025] PTSR 1799, CA at §64:**

"That discretion is to be exercised according to what is fair and just in the particular case"

Key judicial comments (cont.)

***Imam* at §43:**

"Where a breach of the law is established, the ordinary position is that a remedy should be granted. A court should proceed cautiously in exercising its discretion to refuse to make an order and should take care to ensure that it does so only where that course is clearly justified."

***R (SAG) v SSHD* [2025] HRLR 1, KB:**

"But judicial review is a discretionary remedy and there are circumstances in which it is appropriate to withhold the grant of any remedy. They include where the claim has become academic, or where a remedy would have no practical utility…, or where the claimant has suffered no harm or prejudice, or the grant of a remedy would be contrary to good public administration…"

Statutory curtailment

Senior Courts Act 1981, s.31(2A):

(2A) The High Court—

(a) must refuse to grant relief on an application for judicial review, and

(b) may not make an award under subsection (4) on such an application,

if it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred.

Senior Courts Act 1981, s.31

01

Mandatory

***Imam* at §44:**

“a mandatory order takes a matter out of the hands of the authority and, to that extent, makes the court the primary actor”

02

Prohibitory

***R (Spitalfields Historic Building Trust v Tower Hamlets LBC* [2025] PTSR 700, SC at §87:**

“A court can issue prohibitory relief against a local authority which proposes to take a decision which is tainted by illegitimate bias or predetermination”

03

Quashing

***Imam* at §44:**

“Such an order allows the authority to exercise its own judgment in re-taking a decision, having regard to all relevant interests affected thereby.”

Quashing order; re-determination

Senior Courts Act 1981, s.31

(5) If, on an application for judicial review, the High Court makes a quashing order in respect of the decision to which the application relates, it may in addition–

(a) remit the matter to the court, tribunal or authority which made the decision, with a direction to reconsider the matter and reach a decision in accordance with the findings of the High Court, or

(b) substitute its own decision for the decision in question.

(5A) But the power conferred by subsection (5)(b) is exercisable only if–

(a) the decision in question was made by a court or tribunal,

(b) the quashing order is made on the ground that there has been an error of law, and

(c) without the error, there would have been only one decision which the court or tribunal could have reached.

(5B) Unless the High Court otherwise directs, a decision substituted by it under subsection (5)(b) has effect as if it were a decision of the relevant court or tribunal.

Declaration

01

***CICA v FTT (SEC)* [2018] EWCA Civ 1175**

§7(ii): “In most cases in which a decision has been found to be flawed, it would not be a proper exercise of the court's discretion to refuse to quash that decision”

02

R (Hunt) v North Somerset Council [2015] 1 WLR 3375, SC

§12: “However, in circumstances where a public body has acted unlawfully but where it is not appropriate to make a mandatory, prohibitory or quashing order, it will usually be appropriate to make some form of declaratory order to reflect the court's finding.”

Damages

Senior Courts Act, s.31:

(4) On an application for judicial review the High Court may award to the applicant damages, restitution or the recovery of a sum due if–

(a) the application includes a claim for such an award arising from any matter to which the application relates; and

(b) the court is satisfied that such an award would have been made if the claim had been made in an action begun by the applicant at the time of making the application.

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Judicial Review and Courts Act 2022

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29 June 2026

The Independent Review of Administrative Law ("IRAL")

- Published March 2021 (Lord Faulks). A political response to two SC defeats:
  - Miller (No.1) [2017] UKSC 5 — triggering Article 50 without Parliament was unlawful (8-3)
  - Miller (No.2) [2019] UKSC 41 — the 5-week prorogation of Parliament was unlawful (11-0)
- Government claimed judicial overreach and sought new statutory limits on the courts' JR powers.
- Those ambitions were largely defeated — by the IRAL panel itself, and by sustained lobbying from the Law Society and Bar Council.
- What remains is modest — but practically useful.

IRAL Recommendations

- Panel was small ‘c’ conservative: rejected statutory codification of JR grounds, legislation on non-justiciability, and broad ouster clause reform.

IRAL Report:

> *“…disappointment with the outcome of a case or cases is rarely sufficient reason to legislate more generally”*

- Government rejected those modest proposals and used the report as a springboard for far more radical consultation, proposing:
  - Widening ouster clauses to make JR exclusion easier
  - Prospective-only remedies for some challenges
  - Restricting challenges to secondary legislation

The Government Proposals post IRAL

- Government rejected IRAL and consulted on radical reform — including mandatory prospective-only quashing orders for SIs and a general ouster clause framework.
- Almost all of that was rejected. What the JRCA 2022 actually delivered:
  - **Suspended Quashing Orders** — s.1 JRCA 2022, inserting s.29A SCA 1981
  - **Abolition of Cart Judicial Review** — s.2 JRCA 2022

What has been abandoned?

- **Ouster clauses** — A general legislative framework to make it easier for Parliament to exclude JR for certain decisions. Not enacted.
- **Nullity** — Proposals to legislate on void vs voidable, which would have reduced the court's discretion to treat unlawful acts as having continuing effect. Dropped.
- **Mandatory prospective orders for SIs** — Making prospective-only the default for SI challenges. Also dropped: what survived in s.29A is discretionary, not mandatory.

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“New” Quashing Orders

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29 June 2026

Hansard (1)

Lord Chancellor, Second Reading HC, 26 October 2021:

“The Bill will reform quashing orders so that we can strike a better balance between the essential judicial accountability over the Executive and the ability of an elected Government to deliver their mandate in a lawful but orderly way.

…

This Bill simply remedies that measure of inflexibility by giving the judiciary the power to issue a suspended—or, indeed, a prospective—quashing order, allowing the Government a reasonable period of time to review the orders and/or the legislation itself.”

“Dare I say it, these reforms may have the welcome effect of making our system just a little less adversarial by giving the Government and this House the opportunity to respond swiftly but in a considered manner, rather than effectively being tripped up—sometimes at great cost to the taxpayer and at other times at potential risk to the public.”

Hansard (2)

Parliamentary Under-Secretary of State (Ministry of Justice), Second Reading HL, 7 February 2022:

“provides courts with greater flexibility, allowing them to deal more practically with the ramifications of quashing while delivering justice to claimants. Suspending a quashing order means that courts can, when appropriate, allow a decision-maker to make a new decision before the unlawful act is quashed, or put in place transitional arrangements. Making a quashing order prospective-only enables the court to consider the interests of those who have relied on a decision which is being struck down and prevent a regulatory vacuum arising when secondary legislation is quashed.”

Suspended quashing orders

Senior Courts Act 1981, s.29A:

(1) A quashing order may include provision—

(a) for the quashing not to take effect until a date specified in the order, or

…

(2) … may be made subject to conditions.

(3) … the impugned act is (subject to any conditions under subsection (2)) upheld until the quashing takes effect.

…

(6) Provision under subsection (1)(a) does not limit any retrospective effect of a quashing order once the quashing takes effect (including in relation to the period between the making of the order and the taking effect of the quashing); and subsections (3) and (5) are to be read accordingly.

(7) Section 29(2) does not prevent the court from varying a date specified under subsection (1)(a).

Ahmed v HM Treasury [2010] 2 AC 534, SC

Explanatory Notes:

"90. … The case *Ahmed v HM Treasury (No2)* [2010] UKSC 12 found that suspending a quashing order would be of no effect and in fact pointless, as the performative aspect of the court's judgment was the finding of invalidity due to the decision in question being ultra vires . A quashing order would be merely declaratory.

91. To address this point, subsection (3) of new section 29A provides that using the power under subsection (1)(a) means that the impugned act in question may be treated as valid for all purposes (subject to any conditions imposed by virtue of subsection (2)) until the quashing takes effect."

Examples, in practice

01

***R (Sierotko) v Crown Court at Manchester* [2024] 1 Cr App R 2, KB at §28**:

CTL decision quashed, and suspended because bail needed reconsideration.

02

***Kirklees Council v Secretary of State for Transport* [2024] JPL476, KB at §12:**

Not appropriate to suspend because the impugned Order couldn't stand.

03

***R (Sarcp) v Stoke-on-Trent CC* [2025] PTSR 1311, KB at §93:**

The enactment of s.29A does not override the discretion to refuse relief by reason of delay in bringing a claim.

04

***R (Bernard) v Crown Court at Snaresbrook* [2025] EWHC 3055 (Admin) at §72:**

As *Sierotko*.

Prospective-only quashing orders

Senior Courts Act 1981, s.29A:

(1) A quashing order may include provision—

…

(b) removing or limiting any retrospective effect of the quashing.

(2) … may be made subject to conditions.

…

(4) the impugned act is (subject to any conditions under subsection (2)) upheld in any respect in which the provision under subsection (1)(b) prevents it from being quashed.

…

Cérélia Group Holdings SAS v CMA **[2025] Bus LR 94, CA at §126:** "Even where a decision is to be quashed the court may fashion a temporal remedy. It can declare nullity from inception or prospectively only"

R (Black) v Secretary of State for Justice [2018] AC 215, SC

At §35: “Decisions of this court, or indeed any court, generally operate retrospectively to alter the previous understanding of the law. It may be possible for the court to declare that a new understanding of the law will operate only prospectively… But such a course would be wholly exceptional and the case for doing so has certainly not been made before us. I would therefore decline to abolish the rule or reverse the presumption, although I would urge Parliament, perhaps with the assistance of the Law Commission, to give careful consideration to the merits of doing so.”

Criteria

Senior Courts Act 1981, s.31:

(8) In deciding whether to exercise a power in subsection (1), the court must have regard to—
(a) the nature and circumstances of the relevant defect;
(b) any detriment to good administration that would result from exercising or failing to exercise the power;
(c) the interests or expectations of persons who would benefit from the quashing of the impugned act;
(d) the interests or expectations of persons who have relied on the impugned act;
(e) so far as appears to the court to be relevant, any action taken or proposed to be taken, or undertaking given, by a person with responsibility in connection with the impugned act;
(f) any other matter that appears to the court to be relevant.

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

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Suspended Quashing Orders – the only known use!

- The only civil case using s.29A SCA 1981 (as inserted by JRCA 2022) — the leading and essentially only authority on how the power operates in practice.
- KCC admitted wholesale breaches of its Children Act 1989 duties to unaccompanied asylum-seeking (UAS) children. Almost all UAS children arrive through Kent.
- From July 2021, KCC stopped accepting further UAS children. Two informal protocols emerged — the Kent Protocol and NTS Protocol — including a numbers cap, direct Home Office transfers, and routine hotel accommodation.
- Both protocols held unlawful by Chamberlain J.

ECPAT (UK) [2023] EWHC 2199 Admin

On why suspension was previously impermissible (Para 4):

> *"Until the enactment of the JRCA 2022 it was unorthodox, and arguably impermissible, for a court to grant an order permitting a public body to continue, even for a short time, to do something which it had held to be unlawful."*

On what s.29A now provides:

> *"A remedial flexibility that was previously unavailable … [enabling] the court to deal with situations where one or more public authorities are engaged in conduct that is unlawful but real harm would be caused if that conduct had to stop immediately."*

Relief

Chamberlain J ordered:

- Kent Protocol — quashed, but suspended for 3 weeks under s.29A(1)(a) SCA 1981 to allow orderly transition.
- NTS Protocol — quashed insofar as it permitted Home Office transfers without the originating authority's participation.
- Declaratory relief reflecting all findings of unlawfulness.
- A third (compliance) hearing listed — an unusual step, justified by the scale and complexity of the ongoing breach.

Rationale

Courts ordinarily trust public bodies to comply without supervision. Chamberlain J justified the departure:

> *"The normal position in judicial review is that the court determines the issues before it and then decides what relief to give on one occasion … Even where the court has found that a public authority has acted unlawfully, the public authority can in general be trusted to comply with the judgment … There will be rare occasions when a departure from this approach is justified. Where the power in s.29A(1)(a) to suspend a quashing order is exercised, it may be necessary to hold a further hearing to check that the conditions for suspension have been complied with and to determine whether the suspension should be extended."*

Future use of SQOs?

- ECPAT is the only known use of s.29A in the civil context — a practical demonstration of its utility. Not a soft option: pressure is maintained while managing a controlled transition.
- Enables “rolling” judicial review: ongoing court oversight of compliance — justified here because without it the parties would, as Chamberlain J found, likely revert to impasse.
- Likely to remain rare. The preconditions are demanding: established unlawfulness + real harm from immediate quashing + need for continuing court involvement.
- Practical implication: know when to argue for it (where immediate quashing risks operational chaos) and when to resist it (where delay simply prolongs unlawful conduct).

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Post-*Cart*

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JR?

JR does not lie against a superior court of record: ***Re Racal Communications Ltd*** **[1981] AC 374, HL**

It does lie against a decision of the County Court (inferior court) to refuse permission to appeal: ***R (Sivasubramaniam) v Wandsworth County Court*** **[2003] 1 WLR 475, CA**

It also lies against a decision of the Crown Court (superior court) on appeal from the magistrates' court: ***Re Smalley*** **[1985] AC 662, HL**

And it previously lay against a decision of the Upper Tribunal to refuse permission to appeal: ***R (Cart) v Upper Tribunal*** **[2012] 1 AC 663, SC**

Tribunals, Courts and Enforcement Act 2007, s.11A

(1) Subsections (2) and (3) apply in relation to a decision by the Upper Tribunal to refuse permission (or leave) to appeal further to an application under section 11(4)(b).
(2) The decision is final, and not liable to be questioned or set aside in any other court.
(3) In particular—

(a) the Upper Tribunal is not to be regarded as having exceeded its powers by reason of any error made in reaching the decision;

(b) the supervisory jurisdiction does not extend to, and no application or petition for judicial review may be made or brought in relation to, the decision.

(4) Subsections (2) and (3) do not apply so far as the decision involves or gives rise to any question as to whether—

(a) the Upper Tribunal has or had a valid application before it under section 11(4)(b),

(b) the Upper Tribunal is or was properly constituted for the purpose of dealing with the application, or

(c) the Upper Tribunal is acting or has acted-

(i) in bad faith, or

(ii) in such a procedurally defective way as amounts to a fundamental breach of the principles of natural justice.

...

Judicial consideration

01

R (LA (Albania) v UT
[2024] 1 WLR 1673, CA

The ouster clause is not an impermissible ouster: §§22, 36.

02

R (Chowdhury) v UT (IAC)
[2025] 1 WLR 5507, CA

An example of one of the exceptions in sub.(4) arising.

Why?

Lord Chancellor, Second Reading HC, 26 October 2021:

“To give a sense of scale, on average, there are 750 judicial reviews against the upper tribunal alone each year, the vast majority of which are immigration cases. The success rate is just 3.4%.”

“Our approach will ensure that the 180 judge-days spent on *Cart* reviews, every year, are no longer wasted. In that way, taxpayers’ money is saved and the immigration system can function more effectively.”

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Thank you!

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