



Northern Ireland
Audit Office

The Judicial Review Process in Northern Ireland

**Report by the Comptroller
and Auditor General**

**Published
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This report has been prepared under Article 8 of the Audit (Northern Ireland) Order 1987 for presentation to the Northern Ireland Assembly in accordance with Article 11 of the Order.

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Dorinnia Carville

Comptroller and Auditor General

Northern Ireland Audit Office

4 July 2023

Contents

	Glossary & Abbreviations	4
	Key Facts	6
	Executive Summary	9
Part One	What is a judicial review?	17
	The Crown Solicitor’s Office and the Departmental Solicitor’s Office provide legal services to the majority of public bodies in Northern Ireland	20
Part Two	The judicial review process in Northern Ireland	21
	Pre-action Protocol	22
	The majority of ‘letters before application’ which fall under the remit of the DSO do not progress to judicial review applications	23
	Stage 1 - application for leave to apply for judicial review	23
	Stage 2 - application for judicial review – a substantive hearing	26
	The potential remedies available by judicial review	26
	Appealing the judicial review decision	27
	There are substantial similarities in the judicial review process throughout the United Kingdom and the Republic of Ireland	28
	There are differences in the time limits which apply to some judicial review applications in other jurisdictions	29
	There are differences in how data across the jurisdictions is collected and reported	29
Part Three	The number of judicial reviews in Northern Ireland and the outcomes	31
	Applications for leave to apply for a judicial review (stage 1)	32
	Outcome of stage 1 applications in relation to DSO cases	34
	Applications for a judicial review (stage 2)	35
	Outcome of stage 2 applications in relation to DSO cases	36
	Applicants’ overall success rate in the judicial review process is approximately 13 per cent	37
	The outcome of a substantial number of applications was incorrectly recorded and reported in the Judicial Statistics publications	38

Part Four	The time taken to complete judicial reviews	41
	Some judicial reviews can be completed much more quickly	45
Part Five	The cost of judicial reviews	47
	Over the past five years more than half of applications for civil legal aid for judicial reviews have been granted at a cost of approximately £13.6 million	48
	Judicial reviews have cost departments approximately £10.6 million over the four years to 31 March 2022, almost half of which was expenditure in the Justice sector	49
Part Six	There are opportunities to strengthen the administrative management and oversight of judicial reviews	53
	The management and oversight of judicial reviews varies across departments	54
	There are opportunities to learn from other public bodies and strengthen the administrative management and oversight of judicial reviews	54
Appendices		57
Appendix 1:	Study Methodology	58
Appendix 2:	Cases which demonstrate the grounds for judicial review	59
Appendix 3:	Timeline of a long running application	63
Appendix 4:	Detailed breakdown of the applications in DSO cases disposed of by the court	65
	NIAO Reports 2022 and 2023	67

Glossary & Abbreviations

Affidavit	A statement in writing, made by swearing or affirming before a solicitor, which court rules allow to be used in some cases instead of having a witness come to court.
Counsel	A barrister. Barristers mostly specialise in courtroom advocacy and litigation, and are independent sources of legal advice to their clients.
Crown Solicitor's Office (CSO)	The Crown Solicitor of Northern Ireland is engaged exclusively in legal work for ministers and departments of the UK Government, agencies of UK departments, some non-departmental public bodies and public officers.
CTR	Compassionate Temporary Release
DAERA	Department of Agriculture, Environment and Rural Affairs
DE	Department of Education
DfC	Department for Communities
DfE	Department for the Economy
DfI	Department for Infrastructure
Discovery	Obtaining relevant documents from the other party
DoF	Department of Finance
DoH	Department of Health
DoJ	Department of Justice
Departmental Solicitor's Office (DSO)	The DSO within the Department of Finance provides legal advice, counsel and representation to Northern Ireland Ministers, departments and most of their executive agencies and non-departmental public bodies.
DSO cases	For the purposes of this report, we will refer to judicial review cases which can fall under the remit of the DSO, including those cases dealt with by in-house or private practice solicitors, as DSO cases.
Disposal	Court proceedings are completed.
Granted	The application at stage 1 or 2 has been successful in court.
ICOS	Integrated Court Operations System, a case management database operated by the Northern Ireland Courts and Tribunals Service.

Interrogatories	Where one party applies for the other party to provide written answers on oath to questions.
Judgment	The judge's statement of the court order and his or her reasons for making it. A judgment can be spoken or in writing.
'Letter before application' or Pre-action Protocol letter	In accordance with the Judicial Review Practice Direction 03/2018, before making an application for judicial review, the applicant should send a letter to the proposed respondent. The purpose of this letter is to identify the issues in dispute and establish whether litigation can be avoided. The Practice Direction states that strict compliance with the Pre-action Protocol is expected in all but the most exceptional circumstances.
Litigation	The process of taking a case to a court of law so that a judgment can be made.
NICTS	Northern Ireland Courts and Tribunals Service.
Notice of motion	This notice formally notifies the respondent that the applicant will be requesting a formal determination.
Other disposals	Disposals in this category include applications that are 'Settled on terms endorsed' (the court is not aware of the terms of the settlement); 'Transfer to Writ Action' (this is treated as a final order in the judicial review process); and 'Stay/Deferral' (where the respondent seeks time to make a fresh decision; this is usually treated as a final order in the judicial review process).
Pre-action Protocol (PAP)	A court document setting out the steps the court expects the parties to take before a court case is started (strict compliance is expected in all but the most exceptional circumstances).
PRT	Pre-release Testing
Stage 1 (of judicial review process)	Application for leave to apply for judicial review.
Stage 2 (of judicial review process)	Application for judicial review (substantive hearing).
TEO	The Executive Office

Key Facts

A judicial review examines the legality of how a body arrived at its decision or action, not the merits of the actual decision or action itself. The legal process involves two stages, an application for leave to apply for judicial review (stage 1) and, upon being granted leave by the court, an application for judicial review (stage 2; the substantive hearing). They can range from issues specific to one individual to issues on a departmental policy or project that impact on the wider public.

Key facts covering the period 2017-2022¹ include:



STAGE 1

An application for leave to apply for judicial review.

STAGE 2

An application for judicial review (the substantive hearing)



1,770

applications for leave to apply for a judicial review (stage 1)

1,506

stage 1 applications disposed of by the court (court proceedings are completed)

40%

stage 1 disposals granted leave to apply for a judicial review (stage 2)

515

applications for judicial review (stage 2)

453

stage 2 applications disposed of by the court (court proceedings are complete)

32%

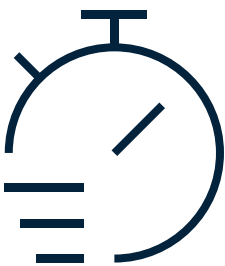
stage 2 disposals granted by the court (the applicant is successful, the court found the respondent (public body) to have acted unlawfully)

¹ 2022 data on judicial statistics is provisional and is subject to revision.



13%

applicants are successful at both stage 1 and stage 2
(applicants overall success rate in the judicial review process)



31 weeks

the average time from application to disposal at stage 1

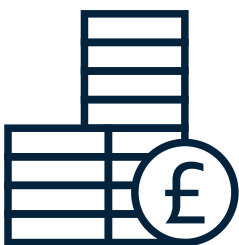
57 weeks

the average time from application to disposal at stage 2



Justice, Communities and Health

sectors with the highest number of judicial review disposals
at stage 1 and stage 2 in DSO cases



**£13.6
million**

spend on legal aid for
judicial review cases in
the period 1 April
2017 – 31 March 2022

**£10.6
million**

estimated Departmental
spend on judicial review
cases in the period 1 April
2018 – 31 March 2022

Executive Summary

Executive Summary

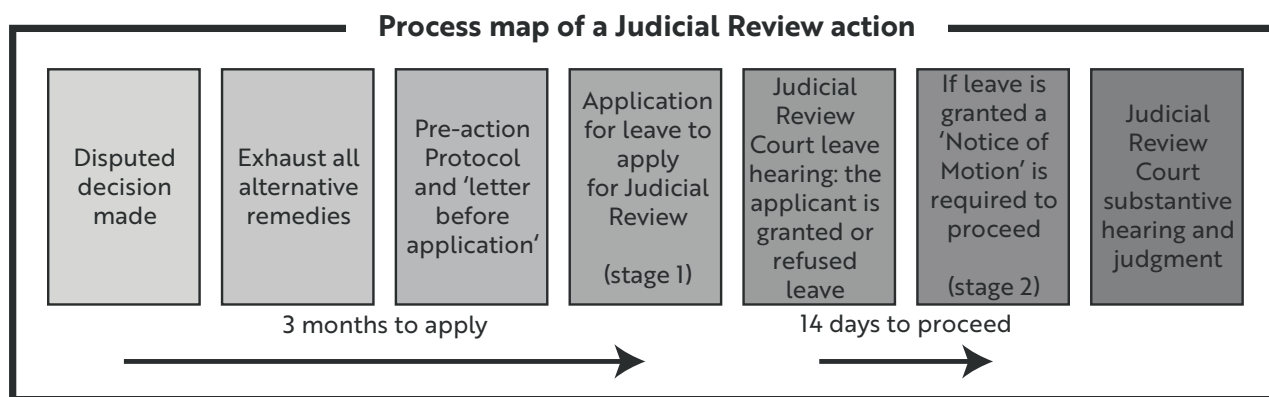
1. Our report on [Major Capital Projects](#) in 2019 found that performance in delivering complex capital projects in Northern Ireland varied, with many suffering cost overruns and/or significant time delays against original estimates. The challenges typically included funding difficulty or uncertainty, legal challenges through the courts, delays with planning or a lack of appetite and capacity within the local construction industry to take on public sector work. With regards to legal challenges, our Major Capital Projects report noted that some stakeholders suggested there was an increasing tendency in Northern Ireland to challenge decisions made by public bodies through judicial review. Legal challenges, whether successful or not, can result in the need to revise plans, refresh environmental impact assessments and re-work business cases for approval.
2. Whilst recognising that the public and organisations with an interest must be allowed the opportunity to contest projects on environmental or other issues, the Public Accounts Committee expressed concerns about the extent to which judicial reviews delay, and add costs to, public sector projects.

Scope of this report

3. This is an informative report which provides an overview of: the judicial review process in Northern Ireland; the number of judicial reviews; the outcomes; the time taken to complete the judicial review process; and the associated costs. Several case studies are included within the report. It is important to note that this report does not set out to challenge the principle or process of judicial review, nor to review or question any of the court's decisions. Our methodology is included at **Appendix 1**.

Judicial review is an important means of holding public decision makers to account

4. A judicial review examines the legality of how a body arrived at its decision, not the merits of the actual decision itself. The Judicial Review Court examines whether the body observed all the relevant legal rules, standards and requirements and acted within the limits of its powers. Based on its consideration of the evidence the court can order the decision or action to be set aside (quashed) and require the body to follow a lawful process to come to a decision. Alternatively it has the power to require a public body to take specific action, or indeed to refrain from taking certain action. The process map shows the various stages in the judicial review process in Northern Ireland. Each stage is considered in more detail in **Part Two** of this report.



Source: Based on the process map in *Judicial Review in Northern Ireland: A guide for non-governmental organisations*, The Public Interest Litigation Support Project, 2012.

The number of applications had been decreasing since 2017 before increasing significantly in 2021

5. Between 2017 and 2022 there were 1,770 applications to seek leave to apply for a judicial review (stage 1 of the judicial review process). In 2017, 310 applications were received. This decreased to 268 applications in 2020 before increasing significantly in 2021 when there were 344 applications at this stage of the process. The number then decreased again in 2022 to 290 applications. Almost two-thirds of the total applications (1,139 applications) related to Northern Ireland Departments, Executive Agencies and non-departmental bodies, with the Justice sector having the most applications (593 applications).
6. During the same period there were 515 applications for a judicial review substantive hearing (stage 2 of the judicial review process). As with stage 1, the number of applications had been decreasing since 2017 when there were 92 applications. This decreased to 66 applications in 2020, followed by a sharp increase in 2021 when there were 121 applications at stage 2 of the process. The number then dropped to 96 applications in 2022. Between 2017 and 2022 the majority of the total number of stage 2 applications received (292 applications) related to Northern Ireland Departments, Executive Agencies and non-departmental bodies, with the Justice sector having most applications (139 applications).
7. The increase in applications in 2021 appears to have been the cumulative effect of small changes in the number of applications against a wide range of public sector bodies in Northern Ireland. The Departmental Solicitor's Office told us that the decrease in applications in 2020, and the subsequent increase in 2021, could have been a result of restrictions associated with Covid-19, including the impact of lockdown and furlough on Solicitor's offices.
8. The figures show that the number of applications in respect of judicial reviews has been decreasing and as such does not support the view that there is an increasing appetite to challenge decisions made by public bodies through judicial review (see **paragraph 1**). It is however important to note that the data is not collated in a way which enables us to quantify how many applications relate to major capital projects.

In the majority of cases, judicial reviews do not find in favour of the applicant

9. Between 2017 and 2022 the court disposed of 1,506 stage 1 applications for judicial review. 'Disposed' is a legal term meaning the case is completed. 40 per cent (601 applications) were granted leave to apply for a judicial review (stage 2). During the same period, the court disposed of 453 applications for judicial review at stage 2 of the process. Only one third (144 applications) were granted.

Some of the data included within the Judicial Statistics publications was not accurate and was subsequently revised

10. The Integrated Court Operations System (ICOS) is a live operating system used in each court tier to process every part of court business. The data held in the ICOS system is used to produce an annual [Judicial Statistics publication](#) which presents statistics for the Northern Ireland Courts and Tribunals Service (NICTS) for the calendar year. Quality checks and processes should be in place to ensure the accuracy of this data. However, there were errors in how the outcomes of judicial reviews in 2017, 2018 and 2019 had been categorised and reported in the Judicial Statistics publications for a substantial number of cases. We found that the outcome of a significant proportion of stage 1 and stage 2 applications for judicial review had been incorrectly categorised on ICOS and presented an inaccurate account of the success, or otherwise, that applicants had in challenging the actions and decisions of public bodies. We note that the necessary amendments have now been made in the Judicial Statistics publications along with a [statistical notice](#) to explain the revisions. The figures included in paragraphs 5,6 and 9 reflect the corrected figures.



Recommendation 1

Data held and published by organisations should be relevant, accurate and reliable. We recommend that the Department of Justice puts in place appropriate quality processes and checks over the data entered onto ICOS by NICTS staff. Appropriate training and guidance should be provided to relevant staff within the NICTS.

Based on data over the past six years, it takes on average more than a year for a case to progress through both stages of the judicial review process

11. Whilst some cases will be treated as urgent and prioritised by the court, the average time taken for cases to be disposed at stage 1 has ranged from an average of 22 weeks to 38 weeks over the six years 2017-2022 (an overall average of 31 weeks). Over the same period, the average time taken for cases to be disposed at stage 2 has ranged from 45 weeks to 80 weeks (an overall average of 57 weeks). We recognise that there will be variations in the time taken for the court to dispose of cases given that the individual circumstances and complexity of the issues subject to challenge will vary in each case. The time associated with the court proceedings can have a significant impact in terms of delay to public bodies progressing projects or decisions.

The cost of judicial review

12. The judicial review process involves costs to both the applicant and the respondent. In the [Public Accounts Committee sessions](#) on Major Capital Projects, witnesses told the Committee that, in Northern Ireland, objections can be raised at very little cost to the challenger.
13. The Department of Justice advised that it keeps the costs of judicial review fees in Northern Ireland under review. They were last increased in October 2019. NICTS intends to move to annual inflationary uplifts to court fees. Court fees on issuing judicial review proceedings in Northern Ireland, for each stage of the process, are £261. In England and Wales, the court fees are £154 at stage 1 application and £770 for continuing a judicial review after permission has been granted (stage 2). We were unable to find directly comparable information for other jurisdictions. It is important to note that these court fees are only one small element of the cost to the applicant and there will be other costs, including significant costs for legal representation throughout the process.
14. There are costs to the public purse which cannot be readily quantified including: those associated with the impact of judicial reviews in delaying or changing the decisions and actions of public bodies; or the time spent by the staff in the respondent Department, the judiciary and the NICTS on these legal challenges. The costs which can be quantified include:
 - The provision of legal aid. Whilst some judicial reviews will be privately funded by the applicant, others will be funded by legal aid at a cost of £13.6 million between 2017-18 and 2021-22. (An average cost of £2.7 million per year).
 - An estimated cost to Northern Ireland departments for legal services in defending judicial reviews of £10.6 million between 2018-19 and 2021-22. (An estimated average cost of £2.65 million per year).

There are many similarities in the judicial review process throughout the United Kingdom and the Republic of Ireland

15. During the Public Accounts Committee sessions which followed our 2019 report on Major Capital Projects, there were suggestions that when compared to other jurisdictions, it was perceived to be easier to take a judicial review in Northern Ireland. As part of our review we sought to compare the arrangements in Northern Ireland against other United Kingdom jurisdictions and the Republic of Ireland.
16. We have drawn on the work of an expert panel established by the United Kingdom government to undertake an [Independent Review of Administrative Law \(IRAL\)](#) with the remit to consider whether reforms to judicial review are necessary and to deliberate on any recommendations for reform. The panel (March 2021) noted substantial similarities in judicial review across Northern Ireland, England and Wales, and Scotland, including: in the understanding of its constitutional function and purpose; in the grounds of review; in procedures, the rules on standing; and in the available remedies. We also noted substantial similarities with the judicial review process in place in the Republic of Ireland.
17. The Rules of the Court of Judicature (NI) 1980 require that applications for leave to apply for a judicial review (stage 1) should normally be made to the Court within three months from the date of the decision under challenge. A difference that we noted in England and Wales, is that where the application for judicial review relates to a decision made by the Secretary of State or local planning authority under the planning acts, the claim form must be filed not later than six weeks after the grounds to make the claim first arose. We also noted, that in the Republic of Ireland, there are two types of judicial review. In addition to the conventional judicial review, there is statutory judicial review which applies to areas including planning and environmental matters. In these applications, shorter time limits are in place for applications for leave, and higher thresholds are applied by the High Court when considering whether to allow leave.

There are opportunities for public sector bodies to strengthen the administrative management and oversight of their judicial reviews and to share learning

18. We found that the approach to the management and oversight of judicial reviews varies across Northern Ireland departments. The management of judicial reviews is largely decentralised to individual business units and in most bodies there is limited collation of management information in relation to judicial reviews. There are also variations in the extent of reporting to senior management and those charged with governance.



Recommendation 2

Given the importance of judicial reviews, their potential impact, including reputational damage, and the associated costs, in our view, there are benefits to be gained by strengthening the management and oversight of these legal challenges. We recommend that all public sector bodies consider the good practice identified in this report and review their approach to the oversight of judicial reviews. This should include the development, collation and monitoring of management information in relation to costs, numbers, progress and outcomes.

19. Data in relation to judicial reviews is not collated in a way that allows easy identification of the grounds on which a judicial review is taken or categorised in a way which enabled us to identify the subject matter of judicial reviews. For example, we were unable to identify all judicial reviews that related specifically to major capital projects or draw out any themes from the matters being challenged through judicial reviews. Similarly, where a judicial review application is granted, we were unable to comment on whether there were any themes or commonality in the reasons underpinning the decision of the judge. Several departments emphasised that each case is examined on its own merits and can be very particular to the facts which are not always transferable to other cases. However, in the absence of information on the subject matter of judicial reviews, or the grounds on which a judicial review is taken or subsequently granted, it is difficult to assess if lessons are being learned.
20. The Departmental Solicitor's Office (DSO), provides legal advice, counsel and representation to Northern Ireland Ministers, departments and most of their executive agencies and non-departmental public bodies, in a wide range of litigation, including judicial review. In addition, DSO provides training and presentations on legal subjects. Throughout this review, the importance of the close working between these bodies and DSO in managing and progressing judicial reviews was strongly emphasised. As DSO is involved in a wide range of judicial reviews throughout central government in Northern Ireland, it is uniquely placed to identify themes or recurrent issues and lessons which could be shared more widely across the public sector.



Recommendation 3

We consider that DSO is well placed to identify themes arising in judicial reviews within its remit, and we recommend that as part of its ongoing engagement and training, it shares this knowledge across the bodies it represents, highlighting areas for learning and also good practice.

“Judicial review is an important means of holding public decision makers to account. It examines the legality of how a body arrived at its decision, not the merits of the actual decision itself.”

Northern Ireland Audit Office

Part One:
**What is a
judicial review?**

What is a judicial review?

- 1.1** The decisions and actions of public sector bodies impact all our lives, for example, through the provision and quality of infrastructure (roads, water supply, sewers), public transport, education and health care. The way the public sector exercises its powers and implements public policy is governed by a regulatory framework, which may include legislation (both primary and subordinate), policy rules, standards and operating procedures.
- 1.2** A public sector body's regulatory framework will often define its remit and duties as well as the limits of its powers, how it will make decisions and take actions. This framework will also include the provision of a complaints process, for the dissatisfied client, user, or member of the public. Complainants, dissatisfied with the outcome of the complaints process, may wish to take their complaint further through an application to the Ombudsman² or through a statutory right of appeal. Where the complaint is about the legality of the process underpinning the public body's decision or action, the complainant can, as a remedy of last resort, apply to have it examined by the Judicial Review Court, a specialist court within the Northern Ireland High Court³.
- 1.3** As a specialist type of litigation, judicial review is the subject of a [Practice Direction \(No. 3/2018\)](#) that sets out the practice and procedures of the Judicial Review Court and which complements the relevant provisions of the Rules of the Court of Judicature (NI) 1980 ([the Rules of Judicature](#)⁴). All parties to a judicial review have a responsibility to be aware of, and comply with, these rules and procedures.
- 1.4** The decisions of any public, private or voluntary body that is performing a public function can be the subject of judicial review. A body is performing a public function when it makes a decision or takes an action which is public in nature, usually as a result of exercising a statutory power. Judicial review is most commonly used to challenge decisions or actions, but it can also be used to challenge:
- a formal written or informal unwritten policy of a body;
 - an act or omission of a body;
 - a letter from a body stating that it will or will not do something; and
 - Acts of the Northern Ireland Assembly and other legislation.

The Judicial Review Court is not appropriate for the resolution of disputed factual issues, such as those raised in clinical negligence or complex procurement cases.

2 Complaints may be raised with the Northern Ireland Ombudsman (for complaints of injustices as a result of poor administration or the wrong application of rules by government departments and public bodies e.g. executive agencies, local councils, health services and education service); the Office of the Police Ombudsman; and the Prisoner Ombudsman.

3 The Judicial Review Court, a specialist court within the King's Bench Division of the High Court. The Lady Chief Justice assigns a senior Judicial Review judge and other High Court judges to the Judicial Review Court.

4 [Practice Direction 03-18](#) states that familiarity with [The Rules of the Court of Judicature \(NI\) 1980](#) Orders 1, 24, 38, 41, 53, 54, 59, 62, 119 and 120 is essential for all judicial review practitioners.

1.5 A judicial review is not an appeal of the merits of a decision or action, or indeed a means of appealing the decision of another Court (see **Case Study A**). It is a legal challenge based on the grounds that the body has acted improperly in coming to its decision or action. Acting improperly includes:

- **Illegality** - for example, by making a mistake in applying the law or by not doing something required by law.
- **Irrationality** - for example, the decision is so illogical that no reasonable person could have arrived at such a decision.
- **Procedural unfairness** – for example, by failing to comply with established or agreed procedures.
- **Contrary to legitimate expectations** - an individual's legitimate expectation can be established from specific representations made by the body to the individual that it would act in a certain way or the past practice of the body.

This is a summary of available grounds and judicial review actions can be taken on more than one ground. Case examples for the grounds of **illegality, irrationality** and **procedural unfairness** are included at **Appendix 2**. The Departmental Solicitor's Office (DSO) told us that they could find no examples of judicial review judgments, in which DSO had acted for a Department, where the applicant had succeeded on grounds of **legitimate expectation**. **Case Study D** (page 27) summarises a case which was originally granted on the grounds of **legitimate expectation** but subsequently successfully appealed by the Department of Education.

Case Study A:

A judicial review is not a means of challenging the decision of another division of the High Court



Judgment reference - Neutral Citation No: [2018] NIQB 25; delivered 15/03/2018

The applicant, who was self-representing, sought to challenge a decision and order made by a judge of the Family Division of the High Court to dismiss his appeal against a decision of another court concerning the care of his children.

The judge dismissed the application as the judicial review jurisdiction of the High Court is not available to challenge the decisions and orders of other divisions of the High Court.

Source: NIAO summary of the court judgment.

- 1.6** The **applicant** for a judicial review can be an individual, group or company that has 'standing'. This means that for decisions challenged on human rights grounds, the applicant must be a 'victim' of the disputed decisions and, for all other challenges, the applicant must have 'sufficient interest in the matter' (must generally be affected by the disputed decision or be a special interest group/non- government organisation).

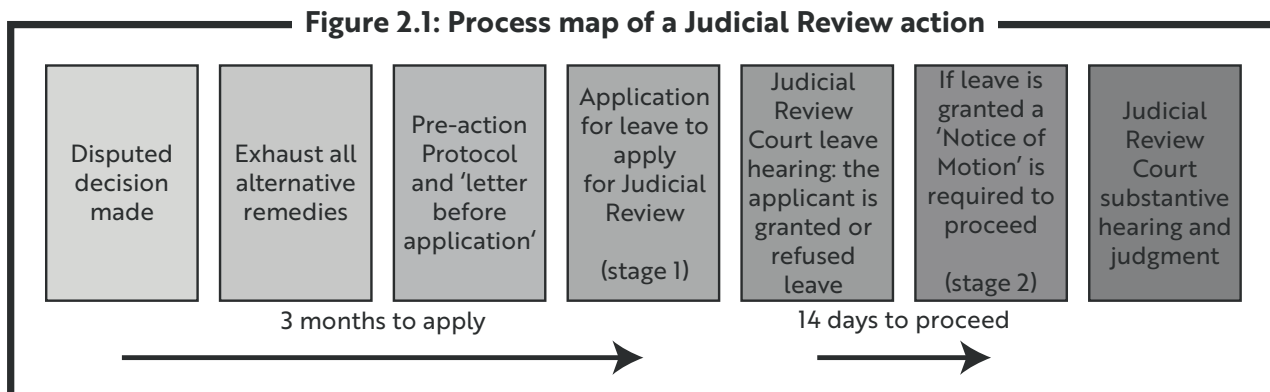
The Crown Solicitor's Office and the Departmental Solicitor's Office provide legal services to the majority of public bodies in Northern Ireland

- 1.7** Legal services on behalf of respondents (the bodies responsible for the action or decision subject to challenge) to judicial reviews in Northern Ireland are mainly provided by the Crown Solicitor's Office (CSO) and the Departmental Solicitor's Office (DSO). In recent years there has been a relatively even split between the number of judicial review cases falling under each remit.
- 1.8** The CSO provides legal services to Ministers and departments of the UK Government, agencies of UK departments and to some non-departmental public bodies and public officers. These include the Chief Constable of the Police Service for Northern Ireland, the Northern Ireland Policing Board, the Probation Board for Northern Ireland and the Civil Service Commissioners for Northern Ireland. In this report, we will refer to these as CSO cases.
- 1.9** The DSO within the Department of Finance provides legal advice, counsel and representation to Northern Ireland Ministers, departments and most of their executive agencies and non-departmental public bodies, through a service level agreement. The DSO represents these bodies in a wide range of litigation, including judicial review. Some bodies, including the Health and Social Care bodies, local councils, the NI Housing Executive and the Public Prosecution Service, choose instead to have their own in-house solicitors or private practice solicitors to represent them. In this report we will refer to applications which can fall under the remit of the DSO, including those applications dealt with by in-house or private practice solicitors, as DSO cases.

Part Two:
**The judicial
review process
in Northern
Ireland**

The judicial review process in Northern Ireland

2.1 **Figure 2.1** outlines the various stages in the judicial review process in Northern Ireland. Each stage is considered in more detail below.



Source: Based on the process map in *Judicial Review in Northern Ireland: A guide for non-governmental organisations*, The Public Interest Litigation Support Project, 2012

Pre-action Protocol

2.2 Having exhausted all alternative remedies, including the body's complaints process and when considering making a judicial review application the potential applicant must, if there is time to do so⁵, send a detailed letter to the body before taking any further action. This is known as a 'letter before application' and is part of the Pre-action Protocol for judicial review⁶. The Pre-action Protocol seeks an exchange of detailed correspondence between the applicant and the respondent (the public body) and is expected to be a genuine attempt to resolve matters and avoid court proceedings. The letter should:

- detail the matters being challenged and how it is alleged the body has gone wrong;
- detail the information and documents being sought e.g. this may include a request for fuller explanation of the decision being challenged; and
- detail the action that the respondent should take, including the remedy that is being sought.

At this stage in the complaints process the public body will have taken legal advice, and may have engaged counsel, to assist in preparing its response to the 'letter before application'.

⁵ If time is of critical importance, it may not be possible to follow the Pre-action Protocol in its entirety e.g. a prisoner applying for compassionate temporary release may fall into this category.

⁶ The Pre-action Protocol is an integral part of [Practice Direction 03-18 – Judicial review](#).

The majority of 'letters before application' which fall under the remit of the DSO do not progress to judicial review applications

2.3 The DSO maintains a file for each 'letter before application' received. For the purposes of our report, the DSO reviewed a sample of 204 Pre-action Protocol files⁷ and determined that approximately two-thirds of the letters before application (141 of the 204) did not progress to the initiation of judicial review proceedings. There can be a variety of reasons why 'letters before application' do not proceed to a judicial review. These include: the normal disputes or appeals process had not been fully pursued in the first instance; the public body's response may satisfy the complainant; the case may be conceded by the department and it agrees to reconsider the decision; or it might be because the applicant has no funds to pursue the case. Those that remain unsatisfied with the response and wish to proceed further with their challenge through the courts may apply for judicial review.

Stage 1 - application for leave to apply for judicial review

2.4 Following the conclusion of the Pre-action Protocol, there are two key stages to the judicial review process. The applicant seeks the court's leave (or permission) to apply for judicial review (stage 1) before being able to progress to a substantive hearing (stage 2).

2.5 The application for leave to apply for a judicial review (stage 1) should normally be made to the court within three months from the date of the decision under challenge. Documents in support of a stage 1 application must be lodged with the court for the judge to consider (there may also be an oral hearing) before deciding whether leave should be granted. This stage in the process is used to identify and filter out claims which may be trivial or without merit.

2.6 The judge may decide not to grant leave where the criteria for a judicial review have not been met and reasons commonly include:

- The application was not lodged with the court within the judicial review time limit of three months.
- The applicant did not have standing (**paragraph 1.6**).
- The other party (the proposed respondent) was not performing a public function at the time.
- There was an alternate remedy which the applicant should have tried first (see **Case Study B**).
- No arguable case was presented to the court (see **Case Study C**).

7

The files for Pre-action Protocol letters received in three sample time periods, October-December 2020, April-June 2021 and April-June 2022, were reviewed for records of judicial review proceedings.

Case Study B:

The judicial review, as the 'remedy of last resort', could not proceed until appeals on related matters had concluded.



Judgment reference - Neutral Citation No: [2019] NIQB 49; delivered 01/05/2019

The applicant was challenging the refusal of Land and Property Services (the proposed respondent) to comply with a determination of the Appeals Tribunal of November 2017. That determination was followed by two further decisions by Land and Property Services, in December 2017 and March 2018, upon its discovery of new information. The further decisions were under appeal, however, the Appeals Tribunal adjourned the hearing of the appeals in June 2018. One of the reasons given for the adjournment was that the applicant indicated that he was proceeding with a judicial review of the Land and Property Services' failure to implement the Tribunal decision of November 2017.

The judge considered there was a connection between the first Tribunal decision in the applicant's favour (November 2017) and the two unresolved appeals relating to the subsequent decisions of Land and Property Services. The judge stated that as judicial review is a remedy of last resort, the Tribunal should have ensured that the appeals were exhausted before the judicial review continued.

The judge made an order staying the judicial review proceedings pending completion of the two appeals.

The applicant's successful appeal was heard by the Appeals Tribunal on 27 February 2023. The office of the Judicial Review Court will be contacted with this update and a request that the judicial review is dismissed.

The Department's legal costs are approximately £12,100 (at May 2023).

Source: NIAO summary of the court judgment and information provided by the Department of Finance.

Case Study C:

In addition to setting out his reasoning why the applicant had no arguable case, the judge outlined the principles underpinning judicial review.



Judgment reference - Neutral Citation No: [2019] NIQB 5; delivered 15/01/2021

The application concerned a child with complex needs; the applicant was the child's mother. The child normally attends a special school but, due to Covid, the school was closed for a period and the applicant had to provide alternative care.

The Health and Social Care Trust paid a rate of £12.91 per hour in respect of the agreed hours of care for the child. The applicant's claim was that she should receive £21 per hour of care, because that was the rate charged by her chosen carer. The judge outlined the principles underpinning the judicial review process before dealing with the specifics of the case. He stated that:

- In a leave application, the applicant need only establish an arguable case which has been described as a modest threshold.
- As a public law challenge, the onus is on the applicant to establish an arguable case.
- The focus will be on any issues of illegality, irrationality or procedural irregularity.

The judge's consideration included:

- that the Trust's payment rate was within the statutory scheme and the relevant regulations;
- that the rate of £12.91 per hour could in no way be considered irrational. There is a clear and logical basis for it as it is a rate assessed annually by the Health and Social Care Board which was a body with appropriate expertise;
- that the Trust's assessment in this case was that there is no justification for departing from its standard rate of £12.91 per hour;
- that there was no evidential basis for saying that a higher rate would provide the care for the applicant; and
- that the applicant opts into a scheme that envisages provision of care and not the provision of care by a particular carer and the rate charged by that carer.

The judge determined there was no arguable case in the application and refused leave to apply for judicial review.

The Department of Health told us that the Directorate of Legal Services Solicitor work on this judicial review falls within a block contract arrangement between the Directorate of Legal Services and the Trust, and the counsel's fees were £6,333.

Source: NIAO summary of court judgment and information provided by the Department of Health.

Stage 2 - application for judicial review – a substantive hearing

- 2.7** The applicant has 14 days, from leave (or permission) being granted, to initiate the second stage of the judicial review process (a substantive hearing) by lodging a Notice of Motion with the Court. This notifies the opposing party that the applicant will be requesting a formal determination. The notice is delivered to the Court and also served on the opposing party. If the document is not lodged within 14 days, the leave will lapse. Following the lodgement of the Notice of Motion, the parties submit affidavits (a written statement by an individual sworn to be true) explaining their position. There may be several rounds of written evidence in response to these. In addition, there may occasionally be requests for discovery (obtaining relevant documents from the other party); and interrogatories (where one party applies for the other party to provide written answers to questions). The judicial review judge manages and sets a timetable for the process and the date for the hearing.
- 2.8** Usually the substantive hearing relies on evidence by way of affidavit only, and oral evidence is not given at the hearing. It is for the applicant to prove that it is more probable than not that the decision was unlawful. The judge's decision is usually given in writing at a later date.

The potential remedies available by judicial review

- 2.9** If the judicial review finds a body's decision or decision-making procedure was unlawful, the Court may make one of the following orders by way of remedy:
- **Quashing order (certiorari)**– this is the most commonly requested remedy. It strikes down or sets aside the unlawful decision made by the body. The body must then re-take the decision, in a lawful manner.
 - **Prohibition order** – this forbids the body from taking an unlawful decision or action.
 - **Mandatory order** – this requires the body to perform a particular action it has the duty to perform.
 - **Declaration** - the Court may simply declare what the law is or declare the respective rights of the parties without making any further order.
 - **Injunction** – this either restrains a body from acting in a certain way or compels a body to act in a certain way.
 - **Award of Damages** – the Court can award financial compensation, however, this is rare. When damages are awarded, it tends to be in an application taken on human rights grounds⁸.

8 The Judicial Review in Northern Ireland: A guide for non-governmental organisations, The Public Interest Litigation Support Project (PILS Project), 2012.

Appealing the judicial review decision

2.10 There are three stages in a judicial review when a party can appeal a decision of the Judicial Review Court:

- Appeal of the decision to refuse leave;
- Appeal of an interlocutory decision (an application for discovery or to permit cross-examination of the person who has sworn affidavit evidence); and
- Appeal of the final decision (following the 'substantive hearing').

The applicant and respondent have a right of appeal against a refusal to grant leave and the final decision to the Northern Ireland Court of Appeal (see **Case Study D**).

Case Study D:

The Department of Education successfully appealed in part (on the applicant's legitimate expectation grounds) a judicial review judgment.



Judgment reference - Neutral Citation No: [2011] NIQB 30; delivered 25/3/2011

Applicant: Board of Governors of Loreto Grammar School, Omagh
Respondent: Department of Education

Loreto Grammar School took a judicial review action against the Minister for Education. The school challenged the Minister's decision to refuse funding for the construction of a new school on the site of the existing school. The school argued that a previous Minister had promised to provide the funding to the school and, as such, the school had a legitimate expectation that the funding be provided and the new school built.

When the case was first heard, the Judicial Review Court agreed with the school that it had a legitimate expectation that a new school, financed by public funding, would be built on the existing site by a certain date. The court, therefore, held that the Minister's decision was unlawful.

The Department of Education then appealed the court's decision, arguing that the previous Minister's promise was conditional. It stated that the previous Minister's promise was dependent on the availability of funds and on the policy decisions of the present government and could not, therefore, give rise to a legitimate expectation.

The Court of Appeal agreed with the Department of Education on the legitimate expectation arguments. It held that, with a project of this scale, duration and ambition, details of the project would develop and change over time. As such, assessment of the project was ongoing and would require detailed approval. The court held that the school had no legitimate expectation since no legitimate expectation could arise until final approval for funding was given. However, the Court of Appeal held that the Department's decision on other grounds was flawed and made an order quashing the Department's decision.

The Department's costs for the judicial review, including applicant costs, Departmental Solicitor's Office and Counsel costs totalled £251,610.

There are substantial similarities in the judicial review process throughout the United Kingdom and the Republic of Ireland

- 2.11** In July 2020, an expert panel was established by the government to undertake an [Independent Review of Administrative Law \(IRAL\)](#) with the remit to consider whether reforms to judicial review are necessary and to deliberate on any recommendations for reform. In its report (March 2021), the panel noted substantial similarities in judicial review across the three legal jurisdictions in the United Kingdom⁹, including in the understanding of its constitutional function and purpose; in the grounds of review; in procedures, the rules on standing; and in the available remedies. The panel noted that a “progressive” feature of judicial review proceedings in Northern Ireland, which has no counterpart in England and Wales or Scotland, is the emphasis placed on the “consensual resolution” of cases. In granting leave to apply for a judicial review, it is open to the judge to specifically highlight apparent weaknesses in either party’s case and to urge consensual resolution.
- 2.12** The IRAL reported that Northern Irish responses to its call for evidence referred to reforms having recently been made to judicial review following a comprehensive [review of the civil justice system in Northern Ireland](#); and that the overall message from responses was that ‘practice and procedures in judicial review in Northern Ireland are in good health, with no persuasive case for change apparent’. Following public consultation on the IRAL’s review report, the UK government brought in legislation, the Judicial Review and Courts Act 2022 (28 April 2022). It includes two sections¹⁰ relating to judicial review.
- 2.13** [Judicial review also forms part of administrative law in the Republic of Ireland](#) and there are many similarities in the process and purpose: it examines the legality of the public body’s process in arriving at its decision or action; it comprises two stages, an application for leave to apply for judicial review and, if leave is granted, an application for judicial review (the substantive hearing); and applications are generally decided on the basis of written evidence.

9 The three legal jurisdictions are: Northern Ireland; England and Wales; and Scotland.

10 DoJ and DSO informed us that Section 1 ‘Quashing Orders’ applies to Northern Ireland, but as it refers to senior Courts in England and Wales it has no practical effect/impact in Northern Ireland; and Section 2 ‘Exclusion of review of Upper Tribunal’s permission-to-appeal decisions’ also applies to Northern Ireland subject to an exception in the Tribunals Courts and Enforcement Act 2007.

There are differences in the time limits which apply to some judicial review applications in other jurisdictions

2.14 As noted in **paragraph 2.5** applications for leave to apply for a judicial review (stage 1) should normally be made to the court within three months from the date of the decision under challenge. A difference that we noted in England and Wales, is that where the application for judicial review relates to a decision made by the Secretary of State or local planning authority under the planning acts, the claim form must be filed not later than six weeks after the grounds to make the claim first arose. We also noted, that in the Republic of Ireland, there are two types of judicial review. In addition to the conventional judicial review, there is statutory judicial review which applies to areas including planning and environmental matters. In these applications, shorter time limits are in place for applications for leave, and higher thresholds are applied by the High Court when considering whether to allow leave.

There are differences in how data across the jurisdictions is collected and reported

2.15 We found that there are differences in how data across the jurisdictions is collected and reported. Combined with different population sizes and differing roles and responsibilities of government departments across the United Kingdom and the Republic of Ireland, the opportunity for meaningful comparisons is limited. As such, we have not compared the number of judicial reviews; the outcomes; the time taken to conclude judicial reviews and the costs to government across the jurisdictions.

“There are two key stages to the judicial review process. The applicant seeks the court’s leave (or permission) to apply for a judicial review (stage 1) before being able to progress to a substantive hearing (stage 2).”

Northern Ireland Audit Office

Part Three:
**The number of
judicial reviews
in Northern
Ireland and the
outcomes**

The number of judicial reviews in Northern Ireland and the outcomes

- 3.1** The Northern Ireland Courts and Tribunals Service (NICTS), an executive agency of the Department of Justice in Northern Ireland (DoJ), carries out the administrative functions in support of Northern Ireland's courts and tribunals. This support includes the management of the Integrated Court Operations System (ICOS), a case management database that is the basis for the annual Judicial Statistics publications¹¹. These publications provide statistical information in relation to the criminal, civil and family business conducted by the NICTS. In relation to judicial reviews, the Judicial Statistics publications record: the number of stage 1 and stage 2 judicial review applications; the average time interval from issue of the application to disposal (proceedings are completed by the Judicial Review Court); the number of disposals in the year; and the outcome¹².
- 3.2** Judicial reviews can range from issues specific to one individual member of the public, to those which can affect the wider public. As such, the number of judicial reviews does not necessarily equate to impact. For example, one judicial review in respect of a major capital project such as a major roads scheme could have more impact on the public than several actions brought by individuals in respect of their own circumstances.

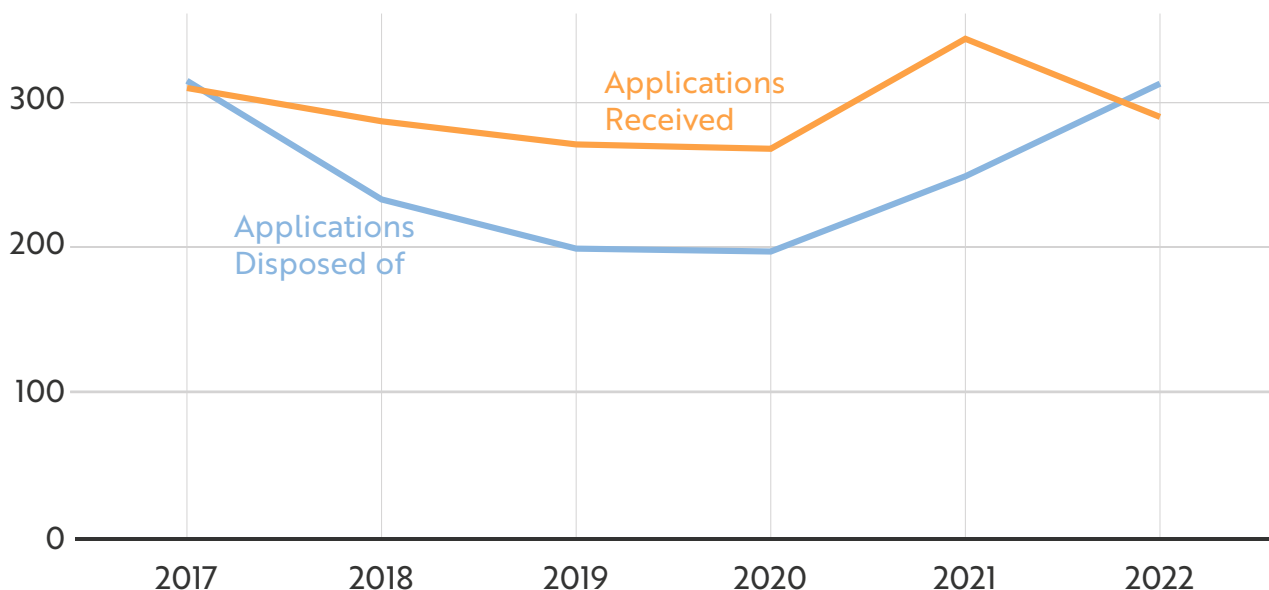
Applications for leave to apply for a judicial review (stage 1)

- 3.3** Between 2017 and 2022 there were 1,770 applications to seek leave to apply for a judicial review (stage 1) in Northern Ireland. As shown in **Figure 3.1**, the number of applications had been decreasing since 2017, before a significant increase in 2021 when there were 344 applications at this stage of the process. The number of applications decreased again in 2022. Almost two-thirds of the total applications (1,139 applications) were DSO cases and half of these were against public bodies in the Justice sector (593 applications).
- 3.4** Between 2017 and 2022 the court disposed of 1,506 stage 1 applications for judicial review. Disposed is a legal term meaning the case is completed. As shown in **Figure 3.1**, for several years the number of applications received has been much higher than the number of applications disposed of by the court. DoJ told us that this is being managed through the allocation of more judges and three court sittings on some days.

¹¹ The Judicial Statistics publication is designated a National Statistics publication by the UK Statistics Authority.

¹² From 2021, the outcome information was dropped from the annual published information following a consultation exercise with end users. It is still included in the quarterly bulletins available on the DoJ website.

Figure 3.1: The number of applications for leave to apply for a judicial review received and disposed of (stage 1) (all cases)



Source: NICTS Judicial Statistics annual publications, ‘Statistical Notice’ Revisions to Judicial Statistics 2017, 2018 and 2019, and the 2022 Quarterly Statistics publications (provisional statistics)

3.5 **Figure 3.2** shows that the majority of applications (894 applications) disposed of by the court between 2017 and 2022 were withdrawn, refused or dismissed and 40 per cent (601 applications) were granted leave to apply for a judicial review (stage 2).

Figure 3.2: The Judicial Review Court disposed of 1,506 stage 1 applications in the past six years, 2017-2022 (all cases)

DISPOSAL TYPE	NUMBER OF DISPOSALS
Withdrawn/Refused/Dismissed	894
Granted	601
Other	11
Total	1,506

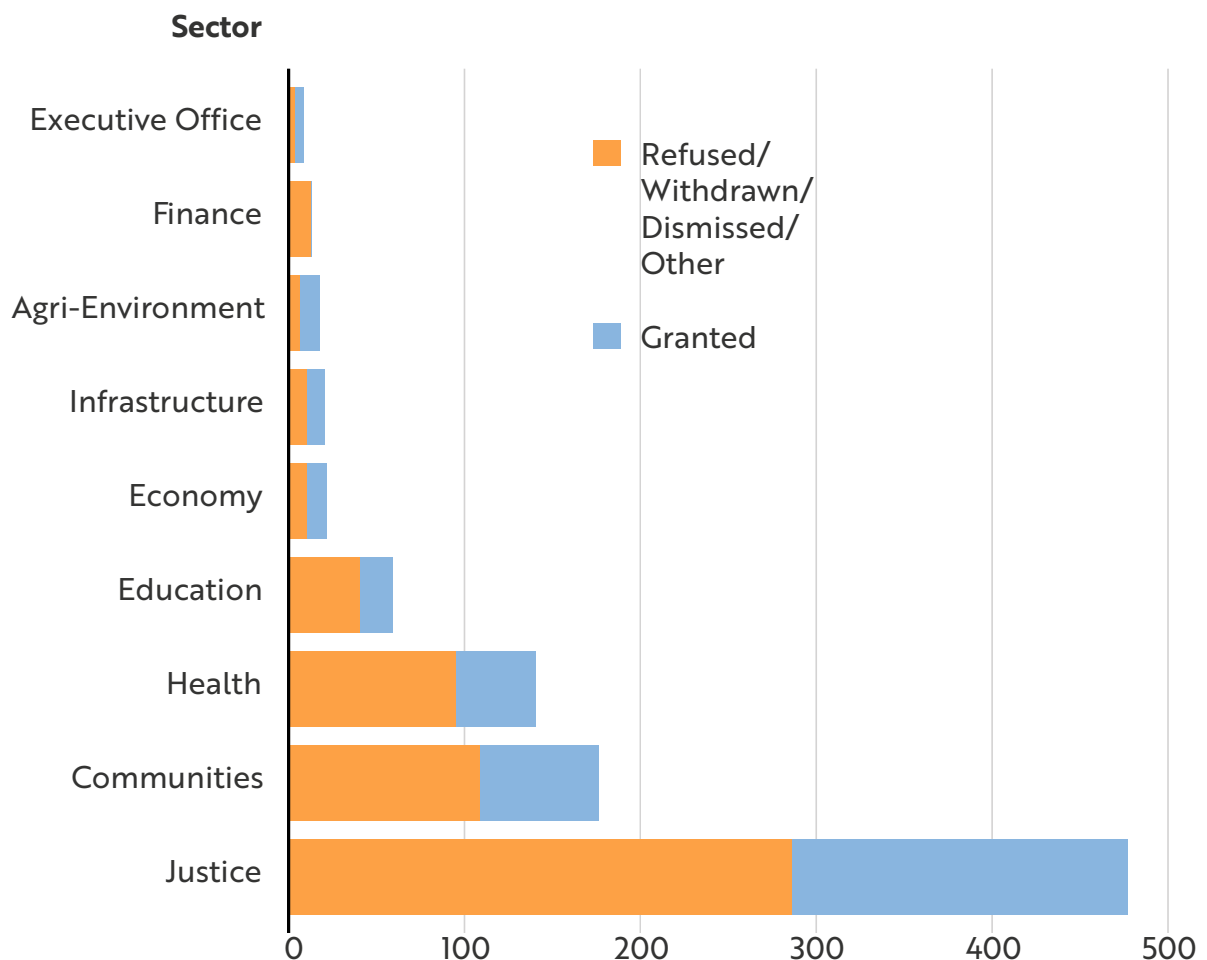
Source: NICTS Judicial Statistics annual publications, ‘Statistical Notice’ Revisions to Judicial Statistics 2017, 2018 and 2019, and the 2022 Quarterly Statistics publications (provisional statistics).

Note: ‘Other’ disposals include: applications that are ‘Settled on terms endorsed’ (the court is not aware of the terms of the settlement); ‘Transfer to Writ Action’ (this is treated as a final order in the judicial review process); and ‘Stay/Deferral’ (where the respondent seeks time to make a fresh decision; this is treated as a final order in the judicial review process).

Outcome of stage 1 applications in relation to DSO cases

3.6 Of the 1,506 stage 1 applications disposed of by the court, 946 related to DSO cases¹³. As shown in **Figure 3.3** below, over half the applications disposed of in DSO cases were in the Justice sector; followed by Communities and Health. The vast majority of applications in Communities were local council matters (131 of 178 applications) and in Health the vast majority of applications related to matters in the Health and Social Care Trusts (122 of 143 applications). The majority of the applications were withdrawn or unsuccessful, with 38 per cent (363 applications) granted leave to apply for a judicial review substantive hearing (stage 2). Further details are at **Appendix 4**.

Figure 3.3: Analysis of the 946 applications for leave to apply for judicial review (stage 1) disposed of by the Judicial Review Court, 2017-22 (DSO cases)



Source: NIAO summary of NICTS Analytical Services Group’s data analysis of the NICTS case management database (ICOS)

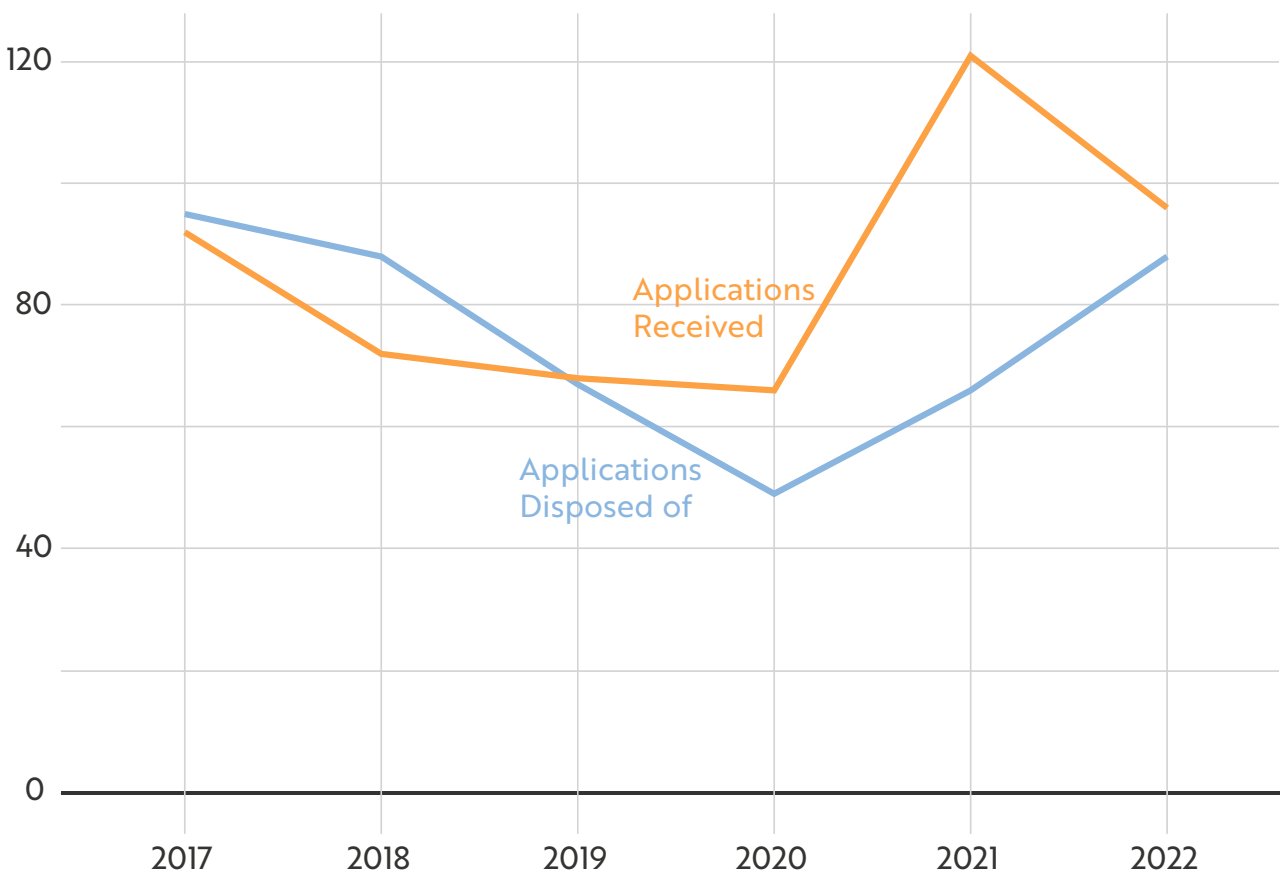
¹³ There were a total of 1,506 ‘applications for leave to apply for judicial review’ (stage 1) disposed of in 2017-2022. These comprised 490 in relation to CSO cases (the defendant was represented by the Crown Solicitor); 70 in relation to private companies; and 946 in relation to DSO cases.

Applications for a judicial review (stage 2)

3.7 Not all applications that are granted at stage 1 will progress to stage 2 of the judicial review process. As noted at **paragraph 3.5**, 601 applications were granted leave to apply for a judicial review (stage 2) between 2017-2022. However, in that period only 515 applications for a judicial review substantive hearing (stage 2) were received. Between 2017 and 2022, over half of the total stage 2 applications received (292 of the 515 applications) were in DSO cases and almost half (139) of these were applications taken against public bodies in the Justice sector.

3.8 As with stage 1, the number of applications at stage 2 had been decreasing since 2017 when there were 92 applications. There was a spike in applications in 2021 when 121 applications were received – the highest number of stage 2 applications recorded in the past 6 years (see **Figure 3.4**). The increase in applications in 2021 appears to have been the cumulative effect of small changes in the number of applications against a wide range of public sector bodies in Northern Ireland.




Figure 3.4: The number of applications for a judicial review received and disposed of (stage 2) (all cases)



Source: NICTS Judicial Statistics annual publications, ‘Statistical Notice’ Revisions to Judicial Statistics 2017, 2018 and 2019, and the 2022 Quarterly Statistics publications (provisional statistics)

3.9 Between 2017 and 2022, the court disposed of 453 applications for judicial review at stage 2 of the process. **Figure 3.5** shows that the majority of those that proceed to a substantive hearing are withdrawn or unsuccessful, with the court finding in the applicants favour (granted) in 144 (32 per cent) of the disposals.

Figure 3.5: The Judicial Review Court disposed of 453 stage 2 applications in the past six years, 2017-2022 (all cases)

DISPOSAL TYPE	NUMBER OF DISPOSALS
Withdrawn/Refused/Dismissed	299 
Granted	144 
Other	10 
Total	453

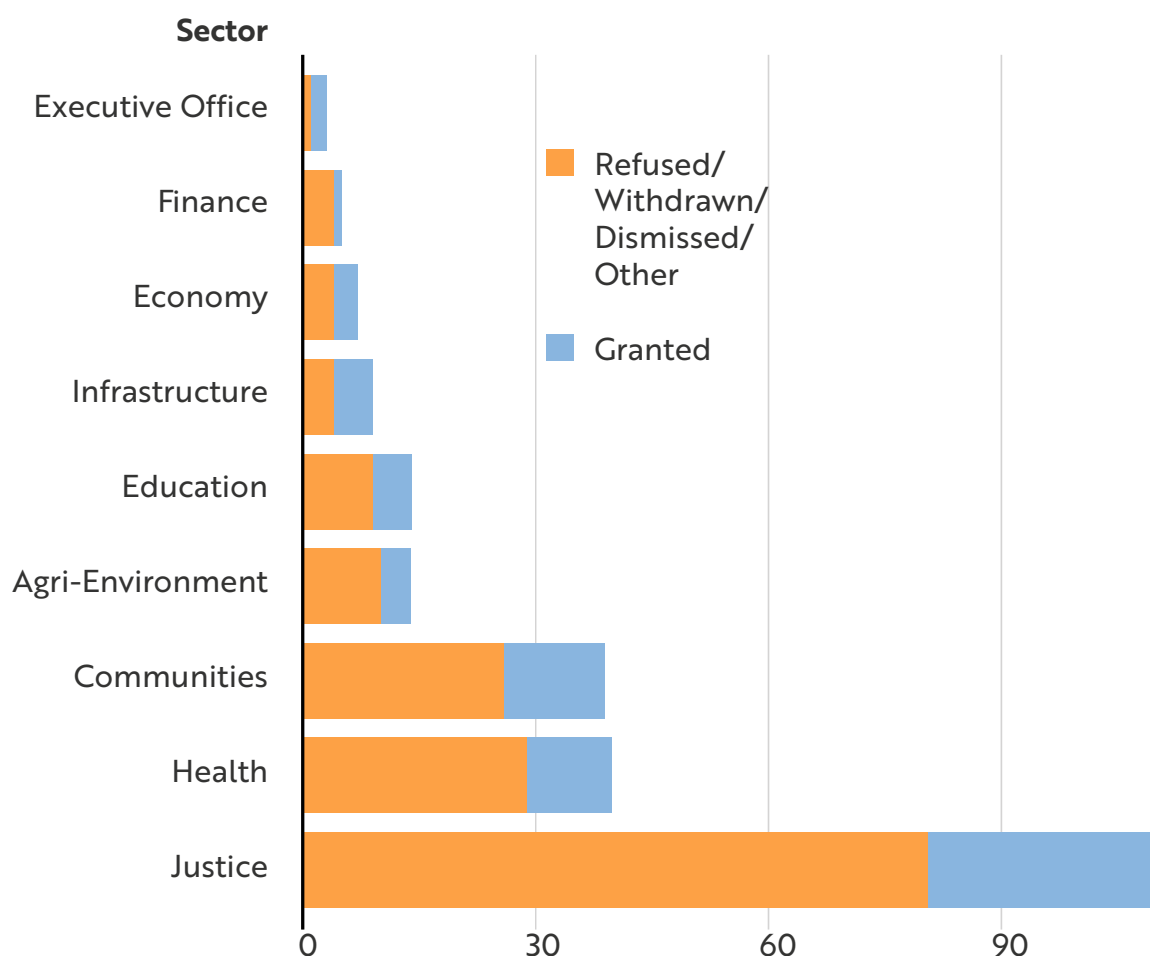
Source: NICTS Judicial Statistics annual publications, 'Statistical Notice' Revisions to Judicial Statistics 2017, 2018 and 2019, and the 2022 Quarterly Statistics publications (provisional statistics)

Outcome of stage 2 applications in relation to DSO cases

3.10 Of the 453 stage 2 applications for judicial review disposed of by the court between 2017 and 2022, 242 were DSO cases¹⁴. As shown in **Figure 3.6**, following on from stage 1, most of the applications were in the Justice sector, followed by Health (31 of 40 applications related to Health and Social Care Trust matters) and Communities (23 of 39 applications related to local council matters). The majority of applications were successfully defended with approximately one third (30 per cent) being found in favour of the applicant. Further details are at **Appendix 4**.

¹⁴ There were a total of 453 'applications for judicial review' (stage 2) disposed of in 2017-2022, these comprised 199 CSO cases (the respondent was represented by the Crown Solicitor); 12 in relation to private companies; and 242 DSO cases.

Figure 3.6: Analysis of the 242 applications for judicial review (stage 2) disposed of by the Judicial Review Court, 2017-22 (DSO cases)



Source: NIAO summary of NICTS Analytical Services Group’s data analysis of the NICTS case management database (ICOS)

3.11 As noted in **paragraph 2.10**, either party to a judicial review can seek to appeal the Judicial Review Court’s judgment to the Northern Ireland Court of Appeal. In the past 6 years there were 168 judicial review appeals. This equates to appeals against approximately 9 per cent of the total (stages 1 and 2) judicial review disposals in the period. A breakdown of the appeals (for example DSO and CSO cases or the stage of the process the judicial review is at when it is appealed) and the outcome of the appeals were not readily available, however, we were told that when the Court of Appeal finds against a judicial review decision the result is captured in the annual judicial review statistics.

Applicants’ overall success rate in the judicial review process is approximately 13 per cent

3.12 As noted at **paragraph 3.5**, 40 per cent of applicants were successful at stage 1 and just under a third (32 per cent) were then successful at stage 2 (see **paragraph 3.9**). The overall success rate is approximately 13 per cent (this is an approximate estimation using the success rates at each stage (32 per cent of the 40 per cent successful at stage 1)) i.e.

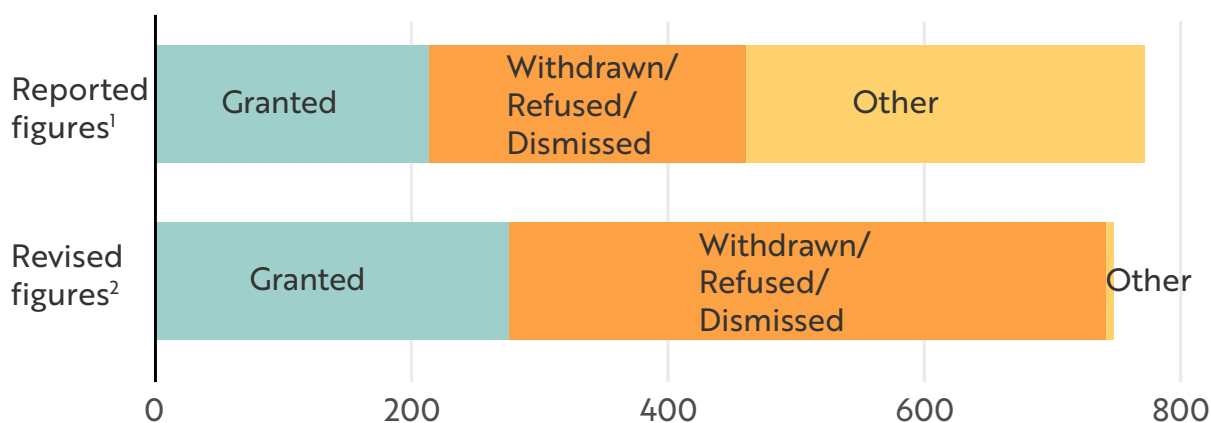
approximately 1 in 8 applicants that commence the judicial review process are successful in their challenges to the legality of public bodies' decisions or actions.

3.13 The figures at **paragraph 3.12** relate to DSO and CSO cases. When considering the outcomes associated with DSO cases, the success rate for applicants is slightly lower. As noted at **paragraph 3.6**, 38 per cent of applications at stage 1 in DSO cases were granted and just under a third (30 per cent) were then successful at stage 2 (see **paragraph 3.10**). The overall success rate is approximately 11 per cent (this is an approximate estimation using the success rates at each stage (30 per cent of the 38 per cent successful at stage 1)) i.e. approximately 1 in 9 applicants that commence the judicial review process are successful in their challenges.

The outcome of a substantial number of applications was incorrectly recorded and reported in the Judicial Statistics publications

3.14 During our review we collated information from the annual Judicial Statistics publications and noted that the outcome of a significant proportion of applications at both stage 1 and stage 2 of the judicial review process were categorised as "other" in the statistics. The NICTS subsequently reviewed the figures for 2017-2019 and identified a number of errors in the previously published figures. The overall number of disposals had been overstated by 29 and almost all the disposals that had been categorised as "other" were incorrectly categorised. As shown in **Figure 3.7**, 305 out of 311 "other" disposals of applications for leave to apply for judicial review (stage 1) were re-categorised. **Figure 3.8** shows that 140 out of 148 disposals of applications for judicial review (stage 2) categorised as "other" were subsequently re-categorised.

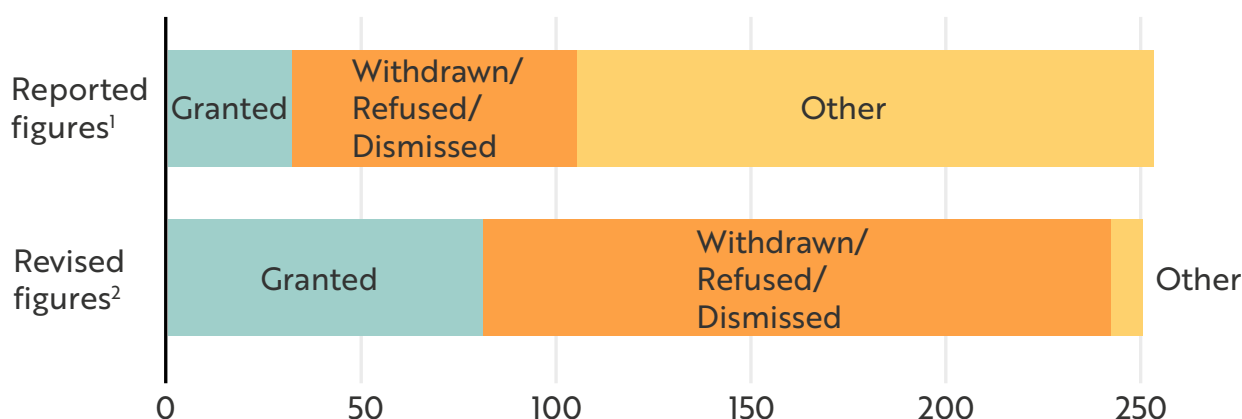
Figure 3.7: Revisions to the reported disposals of applications for leave to apply for judicial review (stage 1), 2017-2019 (all cases)



Source: ¹ Figures are from the original NICTS Judicial Statistics annual publications.

² Figures provided by NICTS and reported in a 'Statistical Notice' Revision to Judicial Statistics 2017, 2018 and 2019.

Figure 3.8: Revisions to the reported disposals of applications for judicial review (stage 2), 2017-2019 (all cases)



Source: ¹ Figures are from the original NICTS Judicial Statistics annual publications.

² Figures provided by NICTS and reported in a 'Statistical Notice' Revision to Judicial Statistics 2017, 2018 and 2019.

3.15

As shown in **Figures 3.7** and **3.8** above, the errors in the previously reported statistics presented an inaccurate account of the success, or otherwise, that applicants had in challenging the actions and decisions of public bodies. NICTS told us that the issue was due to a repeated error in the processing of judicial review disposals when recording the outcome on its ICOS case management database. We note that the necessary amendments have now been made in the Judicial Statistics publications along with a [statistical notice](#) to explain the revisions.



Recommendation 1

Data held and published by organisations should be relevant, accurate and reliable. We recommend that the Department of Justice puts in place appropriate quality processes and checks over the data entered onto ICOS by NICTS staff. Appropriate training and guidance should be provided to relevant staff within the NICTS.

“Approximately 1 in 8 applicants (13%) that commence the judicial review process are successful in their challenges.”

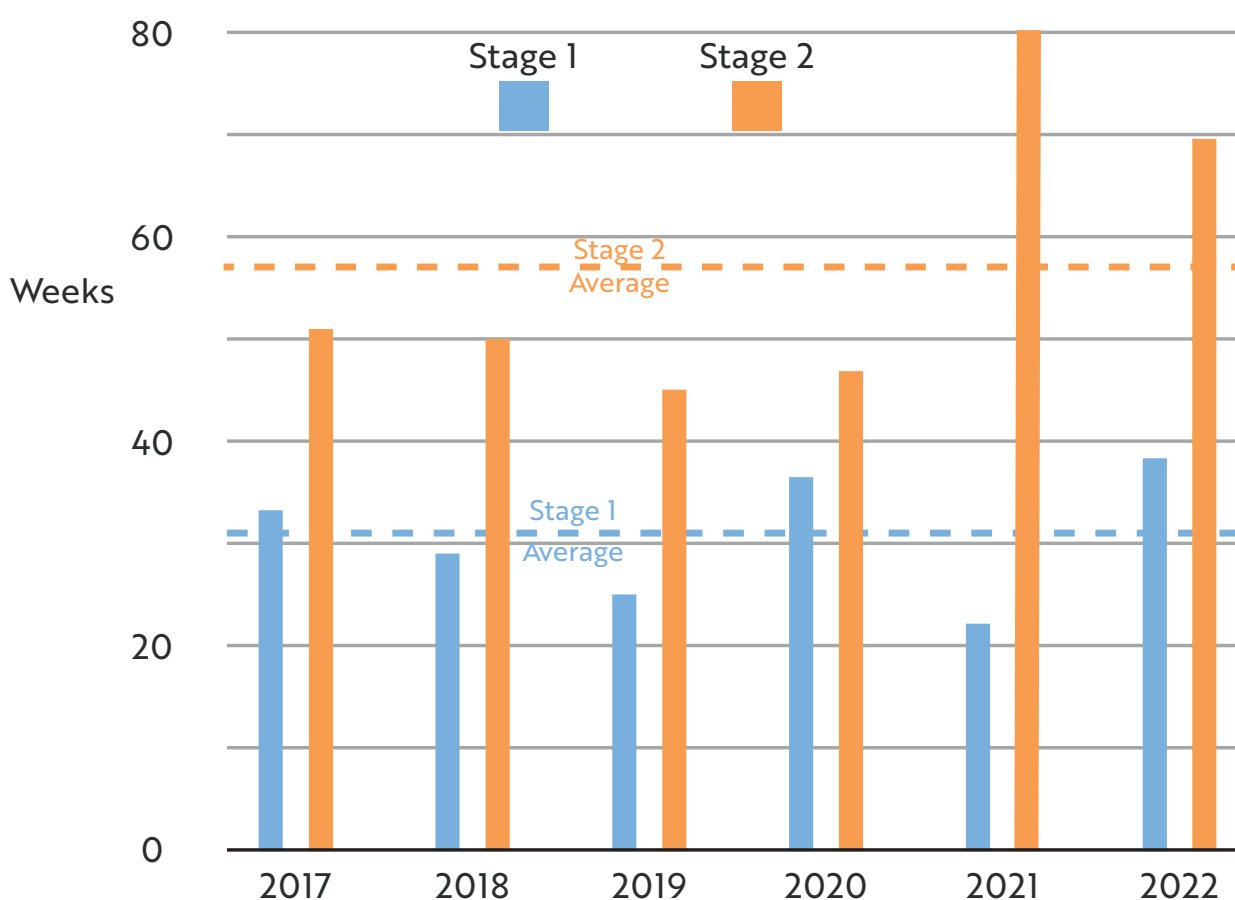
Northern Ireland Audit Office

Part Four:
**The time taken
to complete
judicial reviews**

The time taken to complete judicial reviews

4.1 The NICTS told us that in dealing with a case justly, the Judicial Review Court will manage all applications fairly and expeditiously. As shown in **Figure 4.1**, over the past six years, the average time taken for applications to be disposed at stage 1 has ranged from an average of 22 weeks to 38 weeks (an overall average of 31 weeks over the six years 2017-2022). Over the same period, the average time taken for applications to be disposed at stage 2 has ranged from 45 weeks to 80 weeks¹⁵ (an overall average of 57 weeks).

Figure 4.1: Average time intervals in weeks for judicial review applications' issue to disposal (all cases)

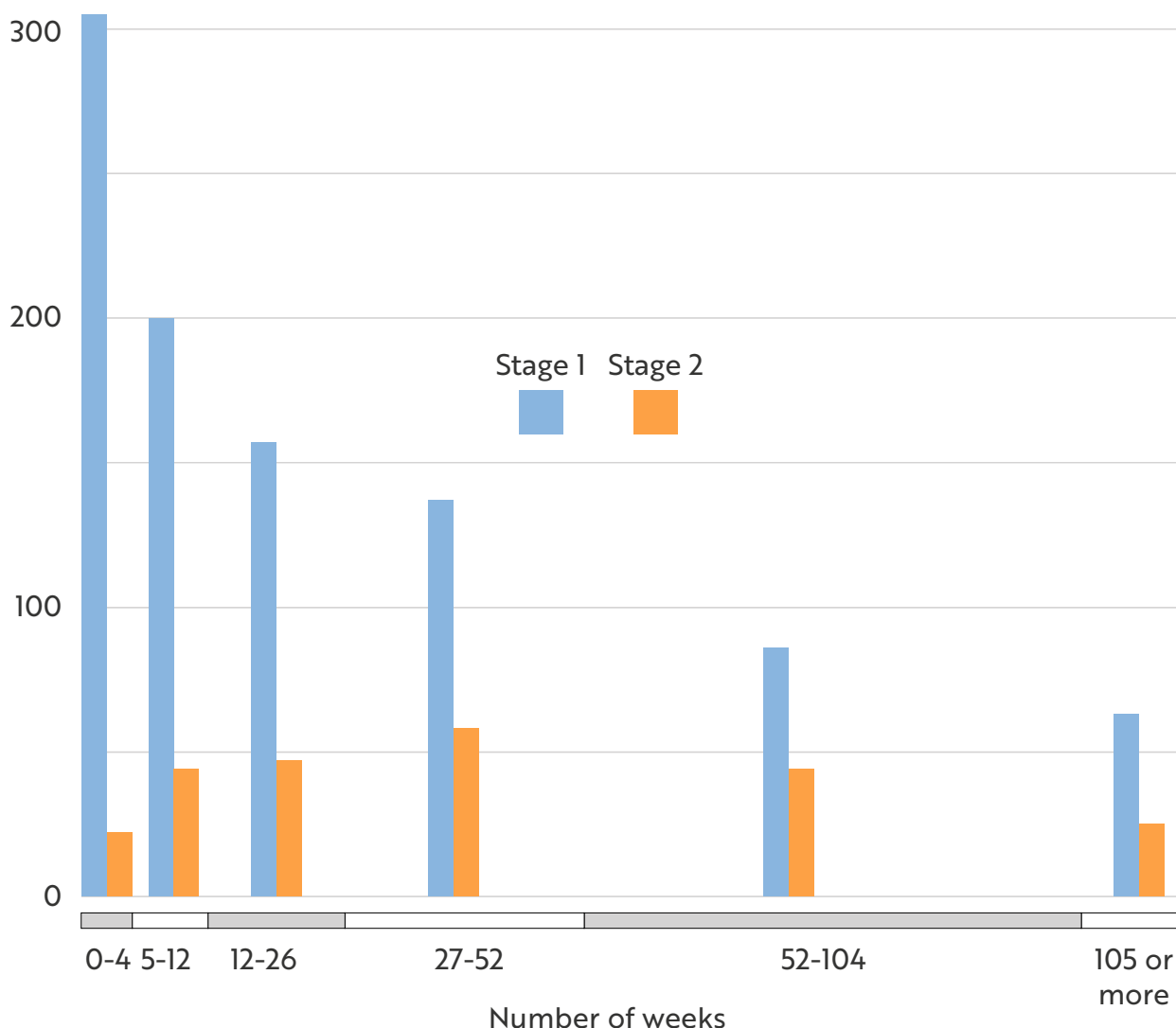


Source: NICTS Judicial Statistics annual publications, ‘Statistical Notice’ Revisions to Judicial Statistics 2017, 2018 and 2019, and the 2022 Quarterly Statistics publications (provisional statistics)

4.2 The figures above include DSO cases and CSO cases. In relation to DSO cases only, **Figure 4.2** analyses the time taken to complete judicial reviews between 2017 and 2022. This shows a very wide range in the time taken for applications to be disposed of by the court. While half of applications (53 per cent) at stage 1 are processed within 12 weeks, some applications (16 per cent) take over a year to be disposed of by the court. Stage 2 applications tend to take longer than stage 1 applications to disposal, with almost half being disposed of by 26 weeks, while some 29 per cent take over a year to disposal.

¹⁵ The length of time would be slightly more than this as applicants are permitted up to fourteen days from being granted permission to apply for judicial review to issuing papers to the Court.

Figure 4.2: Stage 1 and stage 2 applications analysed by length of time to disposal for the past six years, 2017-2022 (DSO cases)



Source: NIAO summary of NICTS Analytical Services Group’s data analysis of the NICTS case management database (ICOS)

4.3 At February 2023, a total of 332 ‘live’ judicial review applications were recorded on the NICTS database¹⁶. The 332 applications included 214 DSO cases (140 stage 1 applications and 74 stage 2 applications). At February 2023, the longest running stage 1 application had been live for 243 weeks, with the longest running stage 2 application being live for 231 weeks (plus a further 47 weeks at stage 1). We discussed these applications with the DSO who provided detail to demonstrate why some applications can take a long time to conclude and how they seek to monitor and progress applications. The progress of one of the long standing applications has been summarised below (**Case Study E**), with a more detailed timeline at **Appendix 3**.

¹⁶ This includes all ‘applications for leave to apply for judicial review’ (Stage 1) and ‘applications for judicial review’ (Stage 2) not yet disposed by the court at the date of the data download by NICTS Analytical Services Group on 7 February 2023. The number of active applications recorded during other data downloads were 303 active applications on 9 September 2022; 333 active applications on 4 April 2022; 337 applications on 2 August 2021; 293 active applications on 3 February 2020. Note: The NICTS told us that this ‘live’ data is not routinely published. It is management information rather than Official Statistics. As such, it has not been subject to the validation checks normally applied to NICTS data prior to publication and may be subject to revision.

Case Study E:

Summary of the progress of the longest running live application for judicial review (stage 2)



Stage 2 long running application - NICTS case reference: 17/086149

The applicant was challenging the Department for the Economy's decision to reject his application for preliminary accreditation to operate a Combined Heat and Power Plant. The applicant's Pre-action Protocol letter was received by DSO on 4 July 2017 and then followed-up with court papers for the application for leave to apply for judicial review being served on DSO on 5 October 2017. Leave was granted in May 2018 and the applicant proceeded to make an application for judicial review in June 2018 which remained active at 7 February 2023, some 231 weeks later (a total of 278 weeks including 47 weeks at stage 1). The last significant action in the case was the court granting the applicant an adjournment, pending the outcome of Court of Appeal cases relating to the Renewable Heating Incentive (RHI) scheme.

During the application for leave stage, the case had two dates for court adjourned. In November 2017 the adjournment was to allow the applicant's counsel to obtain further information and in May 2018 the adjournment was to allow the applicant's counsel to amend the application.

During the application for judicial review, there have been numerous court listings of the case; some listings proceeded e.g. an administrative review of the case and a hearing to amend the application, and other planned court hearings were adjourned e.g. to allow the applicant's counsel to consider documents or due to difficulties in availability of counsel. In September 2021 the court granted the applicant time to file replying affidavit and to await the outcome of the Court of Appeal cases relating to the RHI scheme.

In the related cases, the Court of Appeal delivered their judgment on 21 February 2023 and found for the department in each case. However, the applicants in those related cases have since made an application for permission to appeal the decision of the Court of Appeal to the UK Supreme Court. A decision on that application is expected in early autumn 2023.

The department informed us costs associated with this judicial review totalled £13,598 to date.

Further details on the ongoing engagement from 2017 to date are included at **Appendix 3**.

Source: NIAO summary of the application's progress provided by DSO and the Department for the Economy.

Some judicial reviews can be completed much more quickly

- 4.4** DSO told us that applicants can seek urgent consideration of a case and must make a request through their application statement and separately to the Court Office explaining why urgent processing is required. A respondent in a case can also apply to the Judicial Review Office seeking urgent consideration of the case. DSO explained there is no legal definition as to what constitutes the basis for an application requiring urgent consideration but suggested it could draw on case law and common sense. For example, unless the application is treated as urgent, the judicial review will not be dealt with justly. The court prioritises stages 1 and 2 of urgent applications and will convene urgent, out of hours hearings when required. The data available does not specifically identify urgent applications so we were unable to quantify.
- 4.5** In some instances an urgent case may have a rolled-up hearing. In rolled-up hearings, the judge, usually with the consent of the parties, disposes of the need to have a separate leave hearing and goes straight to a full hearing of the case, dealing with both the grant of leave and the substantive challenge in the judgment. There have been 80 rolled-up hearings in the past six years (2017-2022), with the majority relating to applications by prisoners for compassionate temporary release (CTR) in situations where time is of critical importance and CTR has been refused by the prison governor (see **Case Study F**) and applications relating to children not being allocated a place in a particular school. In these circumstances the judicial review is often disposed of on the same day or very shortly thereafter.

Case Study F:

The court gives its judgment on the day of the application for judicial review.

**The Judicial Review Court dismissed the application for leave to apply for judicial review (there was no written judgment) on 12 April 2023**

Applicant: a sentenced prisoner
Respondent: Department of Justice (Northern Ireland Prison Service)

The applicant, a prisoner whose partner's grandmother's funeral was to take place on 13 April 2023, applied on the 7 April 2023 to the Governor of Magilligan Prison for compassionate temporary release (CTR) under a scheme operated by the Northern Ireland Prison Service. The decision to refuse CTR was made on the 7 April 2023. The application for leave to apply for judicial review was submitted along with a 'certificate of urgency', dated 12 April 2023.

On 12 April 2023, the Judicial Review Court dismissed the applicant's leave to apply for judicial review having decided the negative factors considered by the Northern Ireland Prison Service in their refusal letter of 7 April 2023 were substantial and therefore that when one weighed up the decision it is not arguable that it is in anyway wrong. The judge ruled that the case was therefore without merit.

Respondent costs were awarded against the applicant to be taxed in default of agreement and not to be enforced without further order of the Court. A legal aid order was made in respect of the applicant's costs.

The Northern Ireland Prison Service informed us that its legal costs were £1,050.

Source: NIAO summary of information provided by the Northern Ireland Prison Service.

Part Five: The cost of judicial reviews

The cost of judicial reviews

- 5.1** The judicial review process involves costs for both the applicant and respondent. The Judicial Review Court has the discretion to determine whether costs are payable by one party or another; and when they are to be paid. If the court decides to make an order for costs, the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party. In deciding what order to make about costs, the court will have regard to the conduct of all the parties and whether a party has succeeded on part of the case.
- 5.2** Court fees on issuing judicial review proceedings in Northern Ireland, for each stage of the process, are £261. [In England and Wales, the court fees](#) are £154 at stage 1 application and £770 for continuing judicial review after permission has been granted (stage 2). It is important to note that these court fees are only one small element of the cost to the applicant and there will be other costs, including significant costs for legal representation throughout the process.
- 5.3** Costs to the public purse include:
- legal aid to applicants for judicial reviews of approximately £2.7 million per year (see [paragraphs 5.4 – 5.5](#));
 - legal costs to departments as respondents to judicial reviews of approximately £2.65 million per year (see [paragraph 5.6](#));
 - the potential financial impact of judicial review in delaying or changing the decisions and actions of public bodies; and
 - the time spent by the staff in the respondent Department, the judiciary and the NICTS on these legal challenges. While judicial reviews require considerable work, they comprise a relatively small component of the overall annual work programme and we have not attempted to estimate these costs.

Over the past five years more than half of applications for civil legal aid for judicial reviews have been granted at a cost of approximately £13.6 million

- 5.4** Whilst some judicial reviews will be privately funded by the applicant¹⁷, others will be funded by legal aid. Legal aid is the provision of public funds to support those who cannot afford to pay for legal advice and/or representation in court¹⁸. Legal aid is administered by the Legal Services Agency Northern Ireland, an executive agency of the Department of Justice.

¹⁷ Applicants not in receipt of legal aid can apply to the court for a protective costs order that limits the amount of the respondents costs they are liable to pay if they lose. A protective costs order is a matter for the Judicial Review Court's discretion and it must satisfy itself that, among other things, the issues raised are of a general public importance and if the order is not made, the applicant will probably discontinue the proceeding. Protective costs orders are usually, but not always, restricted to challenges involving an environmental issue, but they can also be granted where the subject matter of the case is a matter of public interest.

¹⁸ There are a number of excluded categories of cases from legal aid e.g. representations in respect of defamation or the recovery of debt.

5.5 The Legal Services Agency told us that during the five years to 31 March 2022, there had been 1,591 civil legal aid applications and 827 legal aid certificates/applications were granted¹⁹ (52 per cent success rate) in respect of judicial review cases (all cases). In the same period, civil legal aid expenditure for judicial review cases was approximately £13.6 million²⁰, an average of £2.7 million per year (3 per cent of the average annual overall legal aid expenditure of £83 million). The Legal Services Agency calculated that the average cost in legal aid for a case requiring representation in court was approximately £20,000²¹. In cases where the court determines that the respondent will pay the applicants costs, there will be no cost to the legal aid fund.

Judicial reviews have cost departments approximately £10.6 million over the four years to 31 March 2022, almost half of which was expenditure in the Justice sector

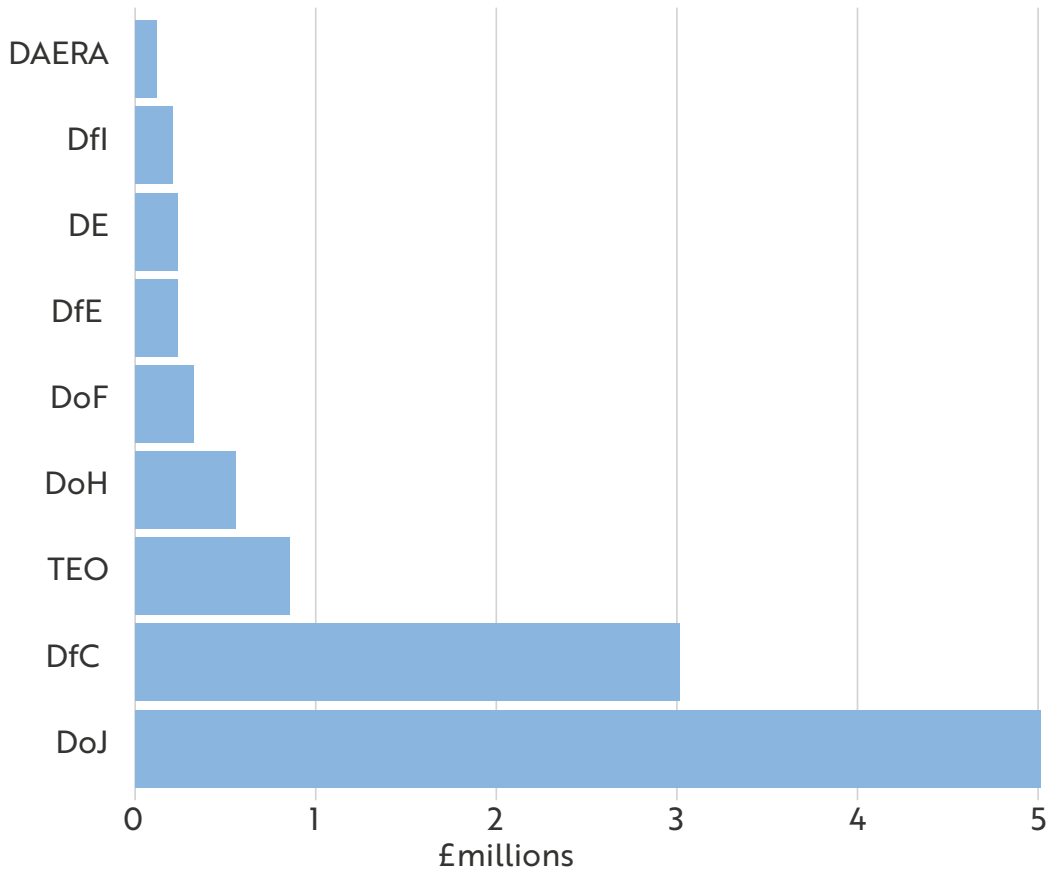
5.6 The level of expenditure on judicial reviews by departments is not readily available as these costs are recorded along with all other legal expenses. We asked departments to review their judicial reviews and Account NI information to provide details of expenditure on judicial reviews. The expenditure figures provided by departments are not complete and include a mixture of estimates and actuals. The figures show departments spent in the region of £10.6 million on legal costs defending judicial reviews for the four years to 31 March 2022. As previously noted, the majority of judicial reviews are in the Department of Justice and, as shown in **Figure 5.1**, this correlates with the majority of associated spend also being in this Department. While the court, at its discretion, can award costs to a department following the loss of a judicial review by the applicant, no department identified any income received in relation to judicial reviews during the four years to 31 March 2022.

19 The volume of applications exclude requests for advice and assistance support from individuals considering the feasibility of taking a judicial review. The Legal Services Agency provided management information from its case management system.

20 Expenditure includes advice and assistance costs to assist individuals considering taking a judicial review.

21 The average legal aid paid in cases closed during the period April – September 2022.

Figure 5.1: Estimated departmental expenditure on judicial reviews in the past four years (2018-19 to 2021-22) (DSO cases)



Source: Departments

Note: Expenditure includes costs relating to DSO, counsel, court fees, expert witnesses etc, covering all aspects of the process from 'letter before application' through to closure of the case and any type of costs as directed by the court.

5.7

In addition to the legal costs associated with judicial reviews, there are also costs associated with delays in implementing decisions or taking necessary actions while awaiting the outcome of judicial review and, where necessary, acting on the court's decision. It is not possible to quantify these costs. **Case Study G** outlines the timeline associated with two judicial reviews relating to Casement Park, one of the major capital projects included within our 2019 report.

Case Study G:

Casement Park



One of the projects included in our 2019 report on Major Capital Projects was Casement Park. The redevelopment of Casement Park forms part of the 'Regional Stadia and Sub-Regional Stadia Programme for Soccer' project that was designated in 2015 by the NI Executive as one of its seven flagship projects. In March 2011, the Executive had endorsed plans that envisaged the completion of the regional Stadia Programme development within the 2011-12 to 2014-15 budgetary period. The Regional Stadia to be redeveloped were the Kingspan Stadium (Ravenhill) which officially re-opened in May 2014; the National Football Stadium (Windsor Park) which officially re-opened in October 2016; and Casement Park. While contractors were appointed in December 2013 for Casement Park's redevelopment by the Ulster Gaelic Athletic Association, construction works have yet to commence and the stadium has remained closed since 2013.

Planning permission for the Casement Park redevelopment was granted on 16 January 2014 by the Department of the Environment (Planning Service). The redevelopment included the erection and construction of a 38,000 seater stadium. The redevelopment has been the subject of two judicial reviews by local residents, specifically the Mooreland and Owenvarragh Residents Association (referred to in this report as the residents group).

The timeline associated with Casement Park and the judicial reviews is set out below:

January 2014 - Planning permission for 38,000 capacity stadium.

April 2014 – Residents group commenced judicial review proceedings.

December 2014 – Outcome of judicial review. The applicant (the residents group) was successful in its judicial review. The court found that the Department had erred in a number of ways. Planning approval quashed. (See also **Appendix 2**, case example on illegality).

2015 & 2016 – Project assessment review and revisions to project.

February 2017 - A revised planning application for a circa 34,186 capacity stadium was submitted.

July 2021 - Planning approval granted.

October 2021 – Residents group commenced judicial review proceedings.

May 2022 – Outcome of judicial review. The applicant (the residents group) was unsuccessful in its challenge.

The department informed us that the costs of the judicial reviews and associated proceedings were £171,581.

Source: NIAO summary of judgments and information provided by the Department for Infrastructure.

“Departments spent approximately £10.6 million on legal costs defending judicial reviews for the four years to 31 March 2022.”

Northern Ireland Audit Office

Part Six:
There are opportunities to strengthen the administrative management and oversight of judicial reviews

There are opportunities to strengthen the administrative management and oversight of judicial reviews

The management and oversight of judicial reviews varies across departments

- 6.1** There is a wide range of organisations in Northern Ireland delivering public services. These organisations will differ in their internal structure, policies and procedures, and the types of services that they deliver, however, there is an expectation that all will deliver public services to a high standard. Many factors contribute to the ability to provide a high standard of public service, including an organisation's internal management and administration.
- 6.2** Good administration by a public body means 'getting it right'; keeping proper and appropriate records (to be open and accountable) and ensuring it learns lessons from complaints and uses these to improve services and performance (seeking continuous improvement)²².
- 6.3** We asked departments how they manage, monitor and report on judicial reviews internally. The departments told us that there is largely a decentralised approach to the management of judicial reviews, with the relevant business unit responsible for the day-to-day management of the cases. The importance of close working between departmental staff, DSO and counsel, in managing and processing judicial reviews was strongly emphasised. Some bodies, primarily under the Department of Justice, told us that they have the added benefit of in-house legal staff that can advise, or take the lead on behalf of the Department.
- 6.4** The decision on whether to defend or concede a case is guided by counsel's advice. If the decision is to defend the case, the DSO and counsel will guide the relevant departmental official through the process.
- 6.5** We found that the extent and nature of internal monitoring and reporting of judicial reviews to senior management varied across departments, ranging from weekly to quarterly updates. Judicial reviews are not routinely reported to those charged with governance and the timing of notifications to Ministers varied.

There are opportunities to learn from other public bodies and strengthen the administrative management and oversight of judicial reviews

- 6.6** We sought details on the arrangements in place to identify and learn lessons from judicial reviews to minimise the likelihood of similar challenges recurring. The detail received varied across departments. Some told us that all judgments are reviewed to identify any appropriate learning or any implications for guidance, practice or training needs, which are then disseminated internally. We also noted in the responses that some practical lessons have been learned, such as the importance of good record-keeping.

- 6.7** Several departments emphasised that each case is examined on its own merits and can be very particular to the facts which are not always transferable to other cases. Where specific procedural lessons can be learned, departments told us that they are usually most relevant to the business area in which the issue arose and there may be no obvious read-across to other areas of business.
- 6.8** During our review we identified several examples of good practice which we encourage all public bodies to consider.

Examples of good practice identified during our review

The Department of Education told us that the Directorate responsible for development proposals and area planning decisions has developed a procedure for the consideration of judicial reviews once received, and this is available for use by departmental staff within other directorates. The Department of Education also told us that its business units have rolling up-to-date logs of ongoing judicial reviews.

The Department for the Economy told us that it is considering the development of a more central approach to the management of judicial reviews. It is developing a central database and a legislative unit which will have responsibility for overseeing and providing advice to enable a more collaborative departmental approach.

The Department for Communities advised us that from January 2022 it had introduced an additional governance step whereby judicial reviews have been reported to the Departmental Management Board at each Board meeting and routinely reported to the Audit and Risk Committee.

The Department of Justice told us that in 2016, the Northern Ireland Prison Service (NIPS) asked the DSO to provide judicial review training/awareness for all prison Governors to assist them in their decision-making. The NIPS subsequently asked DSO to provide an in-house senior legal adviser on long term secondment to engage with Governors on an ongoing basis to provide legal training to assist in their decision making; the senior legal adviser also supports policy development which can reflect on issues emerging through legal challenges or following a judgment. It considers that this approach has resulted in fewer Pre-action Protocol letters proceeding to judicial review and, where applications for judicial review are made, NIPS has a much higher rate of successfully defending the case in court.

Source: NIAO summary of departmental responses



Recommendation 2

Given the importance of judicial reviews, their potential impact, including reputational damage, and the associated costs, in our view there are benefits to be gained by strengthening the administrative management and oversight of these legal challenges. We recommend that all public sector bodies consider the good practice examples identified and review their approach to the oversight of judicial reviews. This should include the development, collation and monitoring of management information in relation to costs, numbers, progress and outcomes.

- 6.9** We found that data in relation to judicial reviews is not collated in a way that allows easy identification of the basis for a judicial review (on what grounds it is taken) or categorised in a way which enabled us to identify the main types of action or decision which are the subject of judicial review. For example, we were unable to identify all judicial reviews that related specifically to major capital projects or draw out any themes from those cases. We are therefore unable to comment on whether the same types of issues arise on a recurrent basis and if lessons are indeed being learned by the public sector bodies.
- 6.10** Throughout this review, the importance of the close working between DSO and the public sector bodies it represents was strongly emphasised. As DSO provides legal advice, counsel and representation to Northern Ireland Ministers, departments and most of their agencies and non-departmental public bodies, it is involved in a wide range of judicial reviews. It is therefore uniquely placed to identify themes or recurrent issues and lessons which could be learnt more widely across the public sector.



Recommendation 3

We consider that DSO is well placed to identify themes arising in cases within its remit, and we recommend that as part of its ongoing engagement and training, it shares this knowledge across the bodies it represents, highlighting areas for learning and also good practice.

Appendices

Appendix 1:

Study Methodology (paragraph 3)

The main elements of our review methodology were as follows:

- We conducted desk research on the judicial review process, and liaised with the Departmental Solicitor's Office (DSO, Department of Finance) and the Department of Justice (DoJ).
- We collated and analysed statistics on judicial reviews from the Northern Ireland Courts and Tribunal Service (NICTS) Judicial Statistics publications and analysis conducted for NIAO by the NICTS Analytical Services Group. We worked with NICTS to agree the analysis and breakdown of DSO cases by departments for inclusion in the report.
- We selected a number of DSO cases to demonstrate the range of matters being challenged in judicial review applications and the court's conclusions and determinations.
- We engaged with representatives from departments to discuss their management of cases and specifically the availability of information on expenditure, management, oversight and learning in relation to judicial reviews – this was followed up with a formal request for summary information.
- We engaged with the Legal Services Agency on the provision of legal aid in judicial review cases.
- We have noted a number of useful publications which we have drawn on throughout this report including:
 - *A guide to proceedings in the High Court for people without a legal representative*, Northern Ireland Courts and Tribunals Service, 31 March 2017.
 - *Judicial Review in Northern Ireland: A guide for non-governmental organisations*, The Public Interest Litigation Support Project, 2012.
 - *The Judge Over Your Shoulder (JOYS)*, 6th edition 2022, The Government Legal Department.
 - *The Independent Review of Administrative Law*, Chair: Lord Edward Faulks QC, March 2021.

Appendix 2:

Cases which demonstrate the grounds for judicial review (paragraph 1.5)

Paragraph 1.5 sets out the available grounds for judicial review:

1. Illegality;
2. Irrationality;
3. Procedural unfairness; and
4. Contrary to legitimate expectations.

The case examples below demonstrate challenges on the grounds of illegality, irrationality and procedural unfairness. See **Case Study D** in the body of the report (page 27) for an example of a challenge on the grounds of **legitimate expectations**.

Case Example: Illegality

The Mooreland and Owenvarragh Residents' Association sought leave to apply for a judicial review (stage 1) on 14 April 2014. On 22 May 2014, the judge gave the residents' group leave to pursue their claim for judicial review, and the judicial review was completed on 15 December 2014.

The outcome of the application for judicial review, including details of the body acting improperly in making its decision by not using a lawful approach (**illegality**) is summarised below.

Judgment Reference - Judicial review [2014] NIQB 130; Ref: HOR9421; delivered 15/12/2014

**Applicant: Mooreland and Owenvarragh Residents' Association
(the residents' group)**

Respondent: Department of the Environment (Planning Service)

The court stated that the challenge by the applicant (the residents' group) was wide-ranging and concerned primarily with the processing of the planning application by the Department of the Environment. It encompassed a broad range of issues including planning policy, proposed use, the Planning (Environmental Impact Assessment) Regulations, and Japanese knotweed and asbestos which were on the old Casement site.

The applicant was successful in its judicial review. The court found that the Department erred in a number of ways. Primarily it failed under domestic and European law to make a proper assessment of the effects of a capacity audience attending the new stadium on the locality and the adjoining road traffic network. The judge ruled that there was convincing evidence that the new stadium would sell out for certain matches and/or events. The Planning Service sought to assess the effects of a capacity crowd attending the new ground, based on the difference between 32,600 spectators attending the old Casement Park and 38,000 spectators at the new Casement Park – that is a difference of 5,400 additional spectators. The Judge determined that was **neither a fair nor lawful approach** because the evidence made it clear that a crowd of 32,600 was never going to attend the present Casement Park. The judgment also noted that the Planning Service failed to tell the Minister that the police who had been consulted and who had responded in some detail, had forecast traffic chaos and risk to life if there was a capacity 38,000 crowd attending the new Casement Park. There was also no attempt made to assess the significant effects of the additional uses to which the new Casement Park was to be put, including the conference, bar and restaurant facilities. The judge also noted less serious errors relating to the proposed plan for dealing with the Japanese knotweed and asbestos.

Source: NIAO summary of court judgment

Case Example: Irrationality

Judgment Reference - Judicial review [2020] NIQB 28; Ref: KEE11217; delivered 25/3/2020

Applicant: Barnwell Farms Ltd

Respondent: Department of Agriculture, Environment and Rural Affairs

An application for the agricultural Basic Payment Scheme was rejected on 23 March 2016 as the Department determined that the applicant did not satisfy a key eligibility requirement, namely he did not demonstrate he was an 'active farmer'. Before making its decision, the Department obtained additional information from the applicant and asked him to attend a panel interview. The Department considered the extent of the agricultural activity was not commensurate with all the land being claimed.

The applicant challenged the Department's decision through its Review of Decisions procedure. The Department's Independent Panel recommended that the Department's decision should be changed and the Basic Payment Scheme application be accepted. It was the view of the Independent Panel that there was sufficient evidence that it was an active farm. The Department did not accept the Independent Panel recommendation. It remained the Department's view, based on comments of the Principal Agricultural Inspector and the numerous technical assessments of the farm, that it had not been satisfactorily shown that the farm took all the decisions and bore all the risks and benefits in relation to the selling of grass, and the original decision would not be changed.

The applicant commenced the judicial review process. The court found the Department's reasons for rejecting the application did not engage with the core issues raised by the applicant and determined by the Independent Panel, and **this inadequacy also impacted on the rationality** of the decision as there was no certainty that the core issues had been properly addressed – these were valid grounds for quashing the decision. The court ordered the matter be remitted back to the Department with a direction to reconsider it and reach a decision in accordance with the ruling of the court. The court stated the revised reasoning would inform the rationality of the final decision.

The Department informed us that it was agreed that the applicant could submit additional evidence before the decision was retaken. On consideration of the additional evidence, in conjunction with the technical advisor's assessment, the original decision was overturned.

The Department informed us that staff were made aware of the judgment; it has not reviewed other 'active farmer' cases as a result of this case; and there are no similar judicial reviews.

The cost of the judicial review process to the Department was £84,534: £21,870 for DSO and counsel costs for the Department and £66,664 in respect of legal costs for the applicant that the Department was ordered to pay.

Source: NIAO summary of judgment and information provided by the Department of Agriculture, Environment and Rural Affairs.

Case Example: Procedural unfairness

Judgment Reference - Judicial review [2022] NIQB 5; Ref: COL11732; delivered 24/1/2022

Applicant: A prisoner

Respondent: Northern Ireland Prison Service

The applicant, a prisoner with a release date of 6 October 2022, was permitted by the prison governor to avail of four days of Pre-release Testing (PRT) over a six-month period. PRT is a scheme which permits a prisoner to be temporarily released from custody with a view to assisting them in transition from prison to outside life.

In accordance with the plan, the prisoner successfully completed PRT on 16 June, 6 July and 8 September 2021. On 17 September 2021 the applicant was administered medication in the prison healthcare centre. The nurse administering the medication alleged the applicant sought to conceal the medication. The governor did not instigate formal disciplinary procedures under the prison rules, however he considered that, as the person responsible for the applicant's multi-disciplinary case conferencing and his future progress concerning PRT, the applicant should be suspended from PRT. This decision was conveyed to the applicant on 29 September 2021.

On 6 October 2021 the applicant instructed his solicitor to challenge the decision to suspend the applicant from the PRT scheme. The solicitor's letter to the governor stated that the applicant denied the allegations of concealment of his medication. The governor responded that the suspension from PRT was a result of concealment of medication, and he had spoken to the nurse and she confirmed that she witnessed this; that to participate in PRT, an individual has to demonstrate appropriate good behaviour, and this was not the case; and that a further period of assessment was required before any further decisions could be made. The solicitor sought further explanation from the governor on the matters he raised and, in addition, the prisoner made a complaint about the suspension of his PRT.

In his conclusions, the judge stated he had concerns relating to the failure of the governor to seek an account from the applicant of his alleged misconduct, with the applicant being denied any right to participate in the decision-making process. He stated that it was a fundamental principle of fairness that a person who may be affected by a decision should have the opportunity to make representations on his own behalf. The judge stated that whilst a suspension may be justified in certain circumstances, at the very least it should be followed up with an opportunity for the individual to give his version of events. The judge considered that the applicant had **established a significant procedural unfairness**.

The court granted a declaration that the decision to suspend the applicant from the PRT was **unlawful as being procedurally unfair**.

Costs for the judicial review totalled £25,860 - comprising £7,684 for the Northern Ireland Prison Service's legal costs and £18,176 for the applicant's costs.

Source: NIAO summary of judgment and information provided by the Northern Ireland Prison Service.

Appendix 3:

Timeline of a long running application (paragraph 4.3)

NICTS case reference 17/086149 (Case Study E)

The applicant is challenging the Department for the Economy's (DfE) decision to reject his application for preliminary accreditation to operate a Combined Heat and Power Plant. This was rejected by the DfE on 31 May 2017 and by the Office of Gas and Electricity Markets on 9 June 2017. It was rejected because DfE had not obtained approval from the European Commission for the Combined Heat and Power Plant tariffs introduced in the 2015 Renewable Heat Incentive Regulations. The applicant is challenging on the grounds of unlawfulness, legitimate expectation, and failure to provide reasons for its decision to reject the application.

The **Case Timeline** is as follows:

- 4 July 2017 – The applicant's Pre-action Protocol letter (dated 3 July 2017) received by DSO.
- 5 October 2017 – Court papers for the **application for leave to apply for judicial review** served on DSO.
- 23 November 2017 – Leave application listed for court but adjourned at request of applicant as he wanted further information from DfE.
- 23 January 2018 - DfE issued a reply with information to the applicant.
- 18 April 2018 – In court for mention (following the DSO's request), adjourned to 27 April 2018 (subsequently moved to 30 April).
- 30 April 2018 – In court for Leave Hearing. Leave not dealt with as on 29 April applicant's Counsel asked for adjournment to amend the leave application (Order 53 Statement).
- 30 May 2018 – In court for Leave Hearing. **Leave granted.**
- Consultations in July were followed with the Department's affidavit being served on 20 August 2018.
- 18 October 2018 – Court mention. Applicant's Counsel asked for an adjournment to allow him to consider documents. Applicant to write to the DSO by 16 November and the DSO to reply by 30 November.
- The DSO wrote to Court on 23 January 2019 to ask for listing as applicant had not written as directed.
- 28 January 2019 - Court wrote to applicant requiring compliance by 4 February 2019 and listed case for 20 February 2019.
- Case was not included in the list of 20 February, agreed to re-list on 25 February; court emailed on 6 March that no date had been fixed.
- 15 April 2019 – In response to the applicant's request to list the case for mention, the court asked the applicant to get a date agreed.

Case Timeline continued

- 21 August 2019 - The DSO wrote to court outlining the history of attempts to agree a date for listing and asked for the case to be listed for mention in September.
- 16 October 2019 – The DSO wrote a reminder to the court.
- 17 October 2019 – The court listed the case for mention on 4 November 2019. Applicant’s Counsel unavailable on 4 November and the case was re-listed for 6 November.
- 5 November 2019 - The applicant requested a short adjournment to allow counsel to consult.
- 6 November 2019 – The court listed the case for hearing on 4-5 February 2020 and for hearing of application to amend Order 53 Statement on 18 December.
- 17 December 2019 – The court adjourned the amendment application to 4 February 2020 and moved the substantive hearing to 27 and 28 April 2020.
- 23 April 2020 – Court adjourned hearing due to the Covid-19 lockdown
- 27 May 2020 – The court granted the applicant an adjournment to allow his counsel to take instructions.
- 4 June 2020 - An agreed position paper was sent to the court stating that the case was not urgent (in the light of Covid-19) and listing outstanding timetabling matters re further affidavit evidence and the Renewable Heat Incentive Inquiry.
- 11 September 2020 – Due for court mention but did not taken place as applicant’s Counsel was not available. Email from court listing the case for amendment application on 2 November 2020.
- 2 November 2020 – Court hearing on amendment application, the judgment (given on 5 November) refused the application to amend; the judge directed that a litigation timetable be agreed within 7 days for a hearing in February 2021.
- 8 February 2021 – In the absence of agreed timetable the applicant emailed Court asking for available dates in March/April.
- February-April 2021 – Attempts at agreeing a date that suit all the parties. Listed for 14 and 15 September 2021.
- 18 August 2021 – Draft affidavit from DfE’s Counsel to update court.
- 26 August 2021 – Approved draft affidavit served on applicant.
- 1 September 2021 – Applicant asks for adjournment to allow them time to file replying affidavit and to await the outcome of Court of Appeal cases relating to the Renewable Heat Incentive scheme.
- 8 September 2021 – **Court granted the adjournment with no further listing date provided.**

In the related cases, the Court of Appeal delivered their judgment on 21 February 2023 and found for the department in each case. However, the applicants in those related cases have since made an application for permission to appeal the decision of the Court of Appeal to the UK Supreme Court. A decision on that application is expected in early autumn 2023.

Source: NIAO summary of the application’s progress provided by DSO and the Department for the Economy.

Appendix 4: Detailed breakdown of the applications in DSO cases disposed of by the court (paragraphs 3.6 and 3.10)

Figure 3.3 analyses the 946 applications for leave to apply for a judicial review (stage 1) in DSO cases which were disposed of by the court between 2017 and 2022. The table below provides a detailed breakdown of the disposals.

Table 1: Analysis of the 946 applications for leave to apply for judicial review (stage 1) disposed of by the Judicial Review Court, 2017-22 (DSO cases)

Sector	Disposals number (%)	Disposals Granted (%)	Sub- Sector	Disposals number	Disposals Granted
Health	143 (15%)	46 (13%)	Health (excluding Health and Social Care Trusts)	21	11
			Health and Social Care Trusts	122	35
Agriculture, Environment & Rural Affairs	18 (2%)	11 (3%)	Agriculture, Environment & Rural Affairs	18	11
Infrastructure	21 (2%)	10 (3%)	Infrastructure	21	10
Economy	22 (3%)	11 (3%)	Economy (excluding NIAUR)	15	9
			NI Authority for Utility Regulation (NIAUR)	7	2
Finance	14 (1%)	1 (-)	Finance	14	1
Executive Office	9 (1%)	5 (1%)	The Executive Office (excluding Independent Bodies)	6	4
			Independent Bodies	3	1
Justice	481 (51%)	192 (53%)	Justice (excluding NI Prison Service and Independent Bodies)	165	74
			NI Prison Service	182	63
			Independent Bodies (the Public Prosecution Service accounted for 56 disposals)	134	55
Communities	178 (19%)	68 (19%)	Communities (excluding NI Housing Executive and Councils)	39	13
			NI Housing Executive	8	3
			Local Councils	131	52
Education	60 (6%)	19 (5%)	Education (excluding Education Authority)	14	3
			Education Authority	46	16
TOTAL	946 (100%)	363 (100%)		946	363

Source: NIAO analysis based on information from NICTS Analytical Services Group

Figure 3.6 analyses the 242 applications for judicial review (stage 2) in DSO cases which were disposed of by the court between 2017 and 2022. The table below provides a detailed breakdown of the disposals.

Table 2: Analysis of the 242 applications for judicial review (stage 2) disposed of by the Judicial Review Court, 2017-22 (DSO cases)

Sector	Disposals number (%)	Disposals Granted (%)	Sub- Sector	Disposals number	Disposals Granted
Health	40 (17%)	11 (15%)	Health (excluding Health and Social Care Trusts)	9	2
			Health and Social Care Trusts	31	9
Agriculture, Environment & Rural Affairs	14 (6%)	4 (5%)	Agriculture, Environment & Rural Affairs	14	4
Infrastructure	9 (4%)	5 (7%)	Infrastructure	9	5
Economy	7 (3%)	3 (4%)	Economy (excluding NIAUR)	5	1
			NI Authority for Utility Regulation (NIAUR)	2	2
Finance	5 (2%)	1 (1%)	Finance	5	1
Executive Office	3 (1%)	2 (3%)	The Executive Office	3	2
Justice	111 (45%)	30 (40%)	Justice (excluding NI Prison Service and Independent Bodies)	52	11
			NI Prison Service	27	8
			Independent Bodies (the Public Prosecution Service accounted for 10 disposals)	32	11
Communities	39 (16%)	13 (18%)	Communities (excluding NI Housing Executive and Councils)	13	5
			NI Housing Executive	3	1
			Local Councils	23	7
Education	14 (6%)	5 (7%)	Education (excluding Education Authority)	6	2
			Education Authority	8	3
TOTAL	242 (100%)	74 (100%)		242	74

Source: NIAO analysis based on information from NICTS Analytical Services Group

NIAO Reports: 2022 and 2023

NIAO Reports 2022 and 2023

Title	Date Published
2022	
Planning in Northern Ireland	01 February 2022
The COVID-19 pandemic: Supply and procurement of Personal Protective Equipment to local healthcare providers	01 March 2022
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