

Challenging commercial restrictions in the time of Covid-19

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Judicial Review: What can it offer?

- Review
 - Public and private law claims
- Procedure
 - Speedy and tailored
- Damages
 - Available
- Costs
 - Relatively efficient process

Judicial Review Procedure

- Timing
 - Tight: 3 months/prompt
- 2 stages: pre and post permission
- Disclosure
 - No automatic disclosure
 - Reliance on FOIA/SARs
- Witness Evidence
 - Limited

Procedure (2)

- Confidential Information
- Alternative Remedy

Costs

- Efficient process
- Fees
- Summary assessment

Remedies

- Quashing Order
- Prohibiting Order
- Mandatory Order
- Declaration
- Stay/Injunction
- Damages

Damages

- Section 31(4) of the Senior Courts Act 1981
- Damages available where:
 - Private law claim in tort, contract or restitution
 - A right to recover a sum due (e.g. a debt) from a public body
 - Damages under the HRA 1998
 - Liable for damages under EU law
- Pleading requirements
- Discretionary

A1P1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties”

A1P1 (2)

- Covers all forms of property (possessions not limited to physical goods)
 - But not future possessions (future income)
- Key concepts: interference, deprivation and control
- Four-stage test:
 - Legitimate aim
 - Rationally connected
 - Less intrusive measure
 - Fair balance