

5a) Judicial review: an introduction

Judicial review is a type of court procedure. It is a way of challenging a decision made by a public body. It is when a judge looks at (or 'reviews') whether a public body has acted (or failed to act) lawfully. The children's services department of local council is one example of a public body.

About this advice sheet

This advice sheet provides introductory information about judicial review. Judicial review is a specialist and complex area of law. Anyone thinking about making a claim for judicial review should try to seek advice from a solicitor specialising in that area of law.

This advice sheet looks at:

- [Key facts about judicial review](#)
- [Who can bring a judicial review claim](#)
- [What judicial reviews may be about](#)
- [The court's powers in a judicial review](#)
- [When someone can apply for judicial review of a public body's decision](#)
- [Applying to the court for judicial review and the main stages of judicial review](#)
- [Where to get further information](#)

Key facts about judicial review

1. Is a judicial review a type of appeal?

No. Judicial review is not an appeal process.

In a judicial review, the judge does not look at the merits of your case from scratch. Instead, judicial review is a way of challenging a decision¹ made by a public body, in which a judge:

- Acts as a supervisor, who oversees decisions made by public bodies.
- Has the role of making sure the public body has behaved lawfully.

2. Which court deals with judicial review cases?

A judicial review claim is brought in the Administrative Court. This is part of the High Court. The Administrative Court is mostly based in London. But it also hears cases in Cardiff, Bristol, Birmingham, Leeds and Manchester.²

¹ A reference to a 'decision' here may mean a failure to act, as well as policies, practices or other acts.

² For information, please see: <https://www.judiciary.uk/you-and-the-judiciary/going-to-court/high-court/queens-bench-division/courts-of-the-queens-bench-division/administrative-court/>

3. Where is the law about judicial review found?

The law about judicial review is mainly found in the written decisions of judges. These decisions set principles to be followed. This is often referred to as 'case law' or precedents.³

Judicial review is a complicated area of the law and this note should not be relied upon as legal advice. If you are considering a judicial review claim, you should consult a solicitor specialising in this area of the law.

Who can bring a judicial review claim

4. Who can bring a judicial review claim?

Someone can **only** bring an application for judicial review if they have a 'sufficient interest' in the matter that the claim relates to.⁴ This is often called requiring that a person have 'standing' to bring the claim.⁵ People who are directly and adversely affected by the decision being challenged, will very rarely (if ever) be stopped from bringing a judicial review claim.⁶ People who would have standing to challenge decisions made by children's services, for example, would include parents, kinship carers, guardians or other family members.

5. Who can a judicial review be brought against?

A judicial review may be brought against a public body exercising their public functions.⁷ Examples of public bodies include central government and local councils. Regulators are also public bodies. Examples of regulators are Ofsted (whose job includes inspect schools and children's services departments). NHS Trusts are also public bodies. And so are ombudsmen, such as the Local Government and Social Care Ombudsman.

But not all functions of a public body are 'public' functions. This is often referred to as being the difference between 'public law', on the one hand, and 'private law' on the other. Judicial review is the appropriate type of claim of breaches of public law, and not private law. The table on the next page gives some examples of the difference between the two.

³ See the case of [R v Secretary of State for the Home Department, ex parte Brind \[1991\] AC 696](#), at 751

See also [section 29 and section 31 of the Senior Courts Act 1981](#)

⁴ See [section 31\(3\) of the Senior Courts Act 1981](#)

⁵ See the cases of [R \(Jones\) v Commissioner of Police for the Metropolis \[2019\] EWHC 2957 \(Admin\)](#) and [R \(McCourt\) v Parole Board for England and Wales \[2020\] EWHC 2320](#)

⁶ See, for example, [Administrative Court Guide \(July 2020\), para 5.3.2.3](#)

⁷ See [Rule 54.1\(2\)\(a\) of the Civil Procedural Rules](#); See cases including: [R. v Criminal Injuries Compensation Board Ex p. Lain \[1967\] 2 Q.B. 864](#); [Council of Civil Service Unions v Minister for the Civil Service \[1985\] A.C. 374](#). A judicial review claim may also, in certain circumstances, be brought against private bodies which are exercising functions of a public nature, see the cases of [R. \(on the application of Mullins\) v Jockey Club Appeal Board \(No.1\) \[2005\] EWHC 2197 \(Admin\)](#); [R. v Panel on Take-overs and Mergers Ex p. Datafin Ltd \[1987\] Q.B. 815](#)

The following are examples of public law claims suitable for judicial review	The following are examples of private law claims unsuitable for judicial review
<p>Children’s services create a child protection plan for your child. But children’s services did not carry out any assessment or enquiries before deciding to draw up a plan. The decision to draw up the plan may be challenged by judicial review.</p>	<p>You have been employed by a local council as a finance office for many years. The local council dismisses you because you become pregnant. Your employment relationship is governed by your employment contract. So, the appropriate way of dealing with the council’s unlawful behaviour, is to consider bringing a contract claim in the county court. Or to make a claim in an employment tribunal claim.</p>
<p>The Local Government and Social Care Ombudsman looked at a complaint a father made against a children’s services department. But when looking into the complaint and making their decision, the Ombudsman misunderstood and applied the law in the wrong way. The final decision that the Ombudsman reached can be challenged by judicial review.</p>	<p>You fall and slip on a dangerous pothole on a public road. It is owned and maintained by a local council. You break your leg and are unable to work for six weeks. You can make a personal injury claim which you may bring against the local authority in the county courts.</p>

What judicial reviews may be about

6. What can someone complain about in judicial review?

There are a number of different grounds for judicial review. The key grounds are summarised briefly below. Sometimes the decision that a public body has taken can be challenged on more than one ground. That can be done in a single claim. There doesn’t need to be separate judicial review claims.

It is important to note that there is some overlap between the different grounds of challenge.

Illegality

A public body will act unlawfully if, for example:

- It has acted outside its powers:
A public body can only make decisions it has the power to make. A public body’s powers will usually be set out in Acts of Parliament, and secondary legislation (often referred to as ‘regulations’). If it acts outside the scope of the powers given to it in the legislation, then it will be acting unlawfully.⁸

⁸ See, for example the cases of [Wandsworth London Borough Council v. Winder \[1985\] A.C. 461](#); [Anisminic \[1969\] 2 A.C. 147](#); and the case of [Boddington v British Transport Police \[1998\] UKHL 13](#)

- **It has breached a statutory duty:** A public body will also often be subject to certain duties, imposed by statutes. If it makes a decision in breach of such a statutory duty, it will also have acted illegally. For example, section 11 of the Children Act 2004 imposes a duty on local authorities, in the exercise of their functions, to have regard to the need to safeguard and promote the welfare of children. In a past case, the court held that a local authority had failed to comply with that duty when it set its budget for special education needs. This was because its decision had been driven by concerns about money only, without regard to the welfare of children.⁹
- **It misinterprets the law:** A public body must understand correctly the law that regulates its decision-making power and must give effect to it.¹⁰
- **It takes into account irrelevant considerations or fails to take account of relevant considerations:** A public body must not base its decision upon factors which are irrelevant, and equally, must take account of relevant considerations. Sometimes, legislation will specify what factors must be considered in the exercise of a broad discretionary power. For example, under the Equality Act 2010, a public body must have due regard to the need to eliminate discrimination in making certain decisions. There is an overlap with failures to take account of such factors, and a breach of statutory duty. If relevant factors are not specific in legislation, then the courts will decide whether a public body has taken into account factors which it should not have, or failed to take into account factors it should have.¹¹ For example, children's services would fail to take account of a relevant consideration if it made a decision without taking into account government guidance, such as Working Together 2018.
- **It exercised its power for an unlawful purpose:** If a power given to a public body for one purpose is exercised for a different purpose that power has not been lawfully exercised.¹² For example, in a past case, the court decided that a city council acted unlawfully by using their powers to sell council houses, where doing so meant it would not have enough council houses to meet the statutory housing obligations it had. This was because the city council had only exercised its powers to attempt to get more people to vote for the political party in charge of the council.¹³

Irrationality and proportionality

A public body will also have acted unlawfully if it made a decision that was unreasonable or irrational, in the sense of being so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied their mind to the question to be decided could have arrived at it.¹⁴ This is a very difficult ground to successfully argue.

If the decision made by a public body affects a human right, then it will be required to act 'proportionally'. This means that a public body must justify an interference with a human right as being a means of achieving a proper aim. The interference must be no more than is strictly necessary.

⁹ See the case of [R. \(on the application of KE\) v Bristol City Council \[2018\] EWHC 2103 \(Admin\)](#)

¹⁰ See the case [Council of Civil Service Unions v Minister for the Civil Service \[1985\] A.C. 374](#)

¹¹ See the case of [R. v Somerset CC Ex p. Fewings \[1995\] 1 W.L.R. 1037](#). At 1049 the case says: 'First, those clearly (whether expressly or impliedly) identified by the statute as considerations to which regard must be had. Second, those clearly identified by the statute as considerations to which regard must not be had. Third, those to which the decision-maker may have regard if in his judgment and discretion he thinks it right to do so. There is, in short, a margin of appreciation within which the decision-maker may decide just what considerations should play a part in his reasoning process'

¹² See the case of [Galloway v London Corp \(1866\) L.R. 1 HL 34 at 43](#)

¹³ See the case [Porter v Magill \[2001\] UKHL 67](#)

¹⁴ See the cases of [Associated Provincial Picture Houses Ltd v Wednesbury Corp \[1948\] 1 K.B. 223](#); [CCSU v Minister of the Civil Service \[1985\] AC 374](#)

Unfair procedure

If a public body fails to follow the correct procedures, or has applied the procedures unfairly, in making a decision, then that decision will be unlawful. The requirements of fairness will depend slightly on the circumstances of each case. In general, a fair procedure will usually require the public body to give the subject of a decision prior notice of what it intends to do, and consult it or give it an opportunity to make representations to it (whilst making sure that enough information has been given to them to help them to do so). Where appropriate, a public body may be required to give the person a fair oral hearing. Where a procedure has been set out in legislation, such as an Act of Parliament or regulations, then it must also be followed.

The 'substantial difference' test

Under section 31 of the Senior Courts Act 1981, the court may refuse to give any remedy for a judicial review challenge to an unlawful decision, if it is highly likely the decision would not have been substantially different if it had been made lawfully.¹⁵ An unlawful flaw in a decision-making process may not necessarily have affected the outcome, and so this section gives the court some flexibility in dealing with a claim in such circumstances.

Note: If your complaint is about where a child, subject to care proceedings, should live, you should challenge the care plan within the care proceedings rather than applying for judicial review. You could also discuss your concerns with the Independent Reviewing Officer allocated, who should monitor and review your child's care plan. See our [Care \(and related proceedings\) page](#).

The court's powers in a judicial review

7. What does the court have power to decide or do in a judicial review?

The court has a wide discretion (options) to provide or refuse a remedy if a judicial review claim is successful. The court has a number of different options to choose from. For example, the court may decide:

- To cancel or overturn the decision the public body made. It can direct the public body to retake the decision lawfully. This is called a quashing order.
- To require the public body to act in a certain way. This is called a mandatory order.
- To stop the public body from taking an action that it is planning to take in the future. This is called a prohibiting order.
- To make a statement about what the law is in relation to an issue. This is called a declaration or declaratory relief.

¹⁵ See [section 31\(2A\) of the Senior Courts Act 1981](#). The wording of that section is that the The High Court and Upper Tribunal must refuse to grant relief on an application for judicial review, and may not make any award of damages, if "it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred". The Court can still exercise its discretion to award remedy even if the "no difference" test is satisfied, if it considers that it is appropriate to do so for reasons of exceptional public interest – see [sections 31\(2A\) to 31\(2C\) and sections 31\(3C\) to 31\(3F\) of the Senior Courts Act 1981](#), as introduced by section 84 of the Criminal Justice and Courts Act 2015). See also, for example, the cases of [R \(Goring on Thames Parish Council\) v South Oxfordshire District Council \[2018\] EWCA Civ 860](#) and [Gathercole v Suffolk CC \[2020\] EWCA Civ 1179](#)

Sometimes the court will decide that a particular piece of law made by Parliament (known as an Act of Parliament) is incompatible with one of the human rights set out in the Human Rights Act 1989. Where the court decides that is the case, it may make a statement that the person's right has been breached. This is called a declaration of incompatibility. There is more information about this in advice sheet [5b\) Human Rights Act 1998 claims](#).

8. Does the court ever say a public body should pay compensation?

The court may also order the public body to pay compensation. This often called 'damages'. But the court will not allow a claim for damages if it is the only remedy someone has asked for in their judicial review claim.

Someone who is making a claim for judicial review (the 'claimant') and wants to ask for damages:

- Must ask the court for another remedy as well as asking for damages.¹⁶
- Should explain exactly why they are asking for compensation.
- Should explain what the money they are asking for is necessary to address.¹⁷

9. Will someone bringing a claim for judicial review who is successful, always get the remedy they are asking for?

In some cases, even if the judicial review is successful and the court believes that children's services acted wrongly, it may still refuse to grant the order that you are seeking if there is delay in your application, or the order would not have any practical effect.¹⁸

When someone can apply for judicial review of a public body's decision

10. What should someone think about before applying for judicial review?

Judicial review is a last resort.¹⁹ This means it is important to think about whether everything else that could be done to try and fix the problem, has already been tried. For example, another option might be the right to make a complaint to the Local Government and Social Care Ombudsman.

11. What if someone hasn't tried other options?

The court will take into account whether the person bringing the claim had other options. This is called 'alternative remedies'. A claim for judicial review can be refused if those other option were not tried first.

¹⁶ See [Rule 54.3\(2\) of the Civil Procedure Rules](#)

¹⁷ See [R \(Nazem Fayad\) v Secretary of State for the Home Department \[2018\] EWCA Civ 54](#)

¹⁸ See [Section 31 of the Senior Courts Act 1981](#)

¹⁹ See [R \(Archer\) v Commissioners for Her Majesty's Revenue and Customs \[2019\] EWCA Civ 1021](#)

Example

If children's services handled your personal information incorrectly, and so breached data protection laws, you may have a right to bring a judicial review claim. But first, you should make a complaint to the Information Commissioner's Office, or a data protection claim in the county court, before making a judicial review claim.²⁰

12. Is there any time limit on making a claim for judicial review?

Yes. There is a very strict time limit which applies to making a judicial review.

A claim for judicial review has to be made to the court (known as 'filed' with the court) no later than three months after the grounds to make the claim first arose.²¹ This means that:

- a. The judicial review claim must be made with little or no delay.²²
- b. The judicial review claim cannot be made if it is brought after three months have passed since the decision that is being challenged was made.

The three-month time limit is sometimes described as a long stop. This just means it is the latest a claim should be made. But the law requires a claim is brought promptly. So a claim that is brought at the last minute may not be allowed to go ahead, even if it was made within the three months.

Applying to the court for judicial review

13. What has to happen before starting a claim for judicial review?

First, steps should be taken to try and work things out without needing to go to court. There is a specific set of rules about the steps that have to be taken. This is called the 'Judicial Review Pre-action Protocol'.²³ It is a very important document. It must be very carefully read.

14. What does the Pre-action Protocol say?

- **Alternative dispute resolution:** The parties must see if another form of dispute resolution would be appropriate, such as discussion, negotiation or mediation
- **Pre-action letter:** A letter must be sent to the public body the claim is against. They are known as the 'proposed defendant'. The letter must give a brief summary of the facts and relevant law. It has to set out the date and details of the decision, act or omission being challenged. And say why what was done or decided was wrong. The letter must contain certain information.

²⁰ See [R \(on the application of AB\) v Northumbria Healthcare NHS Foundation Trust \[2020\] EWHC 2287 \(Admin\)](#)

²¹ [Rule 54.5\(1\) of the Civil Procedure Rules](#)

²² See, for example: [R. v Independent Television Commission Ex p. TV NI Ltd, The Times, 30 December 1991](#), [R. v Cotswold DC Ex p. Barrington Parish Council \(1997\) 75 P & C.R. 515 at pp.523-523](#), [Finn-Kelcey v Milton Keynes BC \[2009\] Env. L.R. 17](#) and [R. \(Sustainable Development Capital LLP\) v Secretary of State for Business, Energy and Industrial Strategy \[2017\] EWHC 771 \(Admin\)](#).

²³ See the [Judicial Review Pre-action Protocol Available online](#)

The information needed is all listed in the Pre-action Protocol.²⁴ The proposed defendant should normally be given 14 days to respond to the pre-action letter. But they may ask for more time. The person sending the letter should allow the defendant reasonable time to respond, where that is possible without risking not meeting the three-month time limit to start the case.

The obligation to comply with the pre-action protocol by sending a letter before action and giving the defendant 14 days to reply, does not remove the obligation to bring the claim promptly. If it means that the claim would be lodged outside the 3 month period, the sensible course of action would be to lodge the claim and to explain, in the claim form, why the need for urgency meant that it was not possible to comply with the pre-action protocol.²⁵

15. What happens if a case is very urgent?

If the case is very urgent, it may not always be possible to follow the Protocol fully. But even in urgent cases, it is important that everyone tries to do what the Protocol says. The court will not punish the claimant by making it pay the defendant's costs for non-compliance if:

- The court is satisfied this was not possible, and
- It was not possible because of how urgent the situation was.

16. What court forms need to be used to apply for judicial review?

A special claim form (called "Form N461") needs to be used.²⁶

The court has published guidance on completing the judicial review claim form.²⁷ Help with completing the form options include:

- Contacting Citizens Advice, or
- Seeing a solicitor who specialises in judicial review work.

17. What are the main stages of a judicial review claim?

A judicial review claim involves two stages. The chart on the next page shows what is involved. And the notes underneath the chart provide more detailed information.

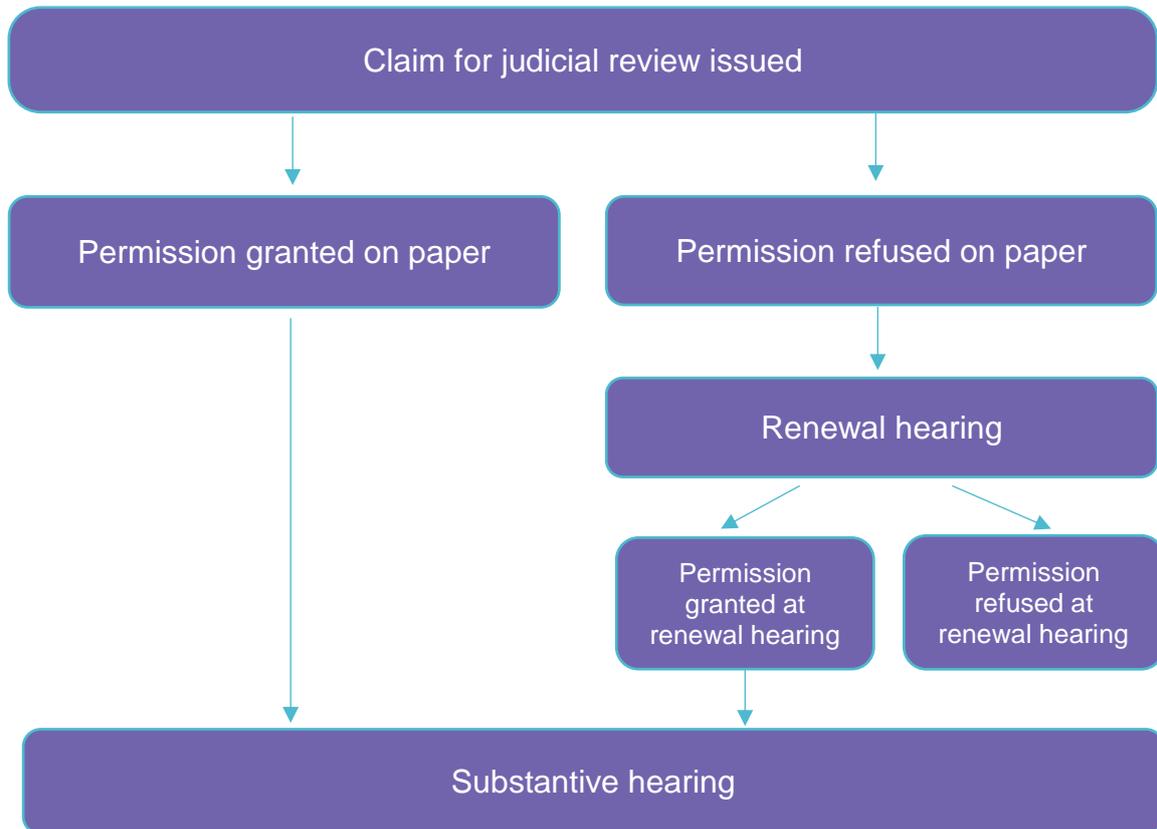
²⁴ See the [Judicial Review Pre-Action Protocol at Annex A](#).

²⁵ See the case of *Finn-Kelcey v Milton Keynes BC* [2009] Env. L.R. 17, para 27

²⁶ Online [Judicial Review claim form](#)

²⁷ See [Court guide to completing the judicial review claim form](#)

The main stages of a judicial review claim:



18. What happens at permission stage?

First, you must be given permission by the court for the case to go to a full hearing of the issues. To get permission, you must show that your claim is arguable. A claim is arguable if it has a realistic chance of success.²⁸

A judge will first read your claim form and decide whether your claim is arguable without a hearing. If the judge gives your claim permission, there will be a hearing to decide whether or not your claim should succeed. The hearing will decide what kind of remedy should be granted.

From reading the claim form, a judge may decide that your claim is not arguable. They may then refuse to allow the claim to proceed to the next stage. If that happens, you are entitled to apply to the court for a hearing to persuade a judge that your case is arguable. This is called a renewal hearing. This is because it involves your application for permission being renewed (made again) before a different judge.

²⁸ See, for example, the case of [Sharma v. Deputy Director of Public Prosecutions & Ors \(Trinidad and Tobago\) \[2006\] UKPC 57](#)

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19. What happens at a substantive hearing?

At a substantive hearing, the judge will hear the arguments in court from the person making the claim and the arguments in response from the public body. The judge will then decide whether the public body did act unlawfully. If they did, the judge will decide what the remedy should be. Even if the judicial review is successful, the court may still refuse to grant the remedy wanted.

This can happen if there was a delay in the claim for judicial review being made, or if the remedy sought is not going to have any practical effect.

20. Is there anything to do whilst waiting for the court to decide the case?

Before the final hearing for judicial review takes place, the court may make an order (called an injunction) to make a public body do something (such as providing you with a service) or to stop a public body doing something while your complaint is being considered by the court. If you want the court to make such an order, you must ask the court when you make your claim.²⁹

²⁹ See [section 37\(1\) and\(2\) of the Senior Courts Act 1981](#) and see the case of *American Cyanamid Co (No 1) v Ethicon Ltd [1975] UKHL 1*

Where to get further information?

Organisation	Contact information
<p>Citizens Advice</p> <p>An independent organisation providing free, confidential and impartial advice. Their goal is to help everyone find a way forward, whatever problem they face.</p>	<p>Website: https://www.citizensadvice.org.uk</p> <p>Telephone:</p> <ul style="list-style-type: none"> For England telephone: 03444 111 444 For Wales telephone: 03444 77 2020 Text Relay users should telephone: 03444 111 445
<p>Civil Legal Advice</p> <p>A free and confidential advice service run on behalf of the government. It provides information directly to the public on a range of common legal issues, helps people find out if they are eligible for free legal advice from a solicitor and helps them find a solicitor.</p>	<p>Website: https://www.gov.uk/civil-legal-advice</p> <p>Telephone:</p> <ul style="list-style-type: none"> 0345 345 4345 - Monday to Friday, 9 am to 8 pm and Saturday 9 am to 12.30 pm Text 'legal aid' and your name to 80010 to ask Civil Legal Advice to call you back. This costs the same as a normal text message.
<p>The Public Law Project Legal Advice</p> <p>This organisation is unable to accept enquiries directly from individual members of the public. But they do however publish on their website an up-to-date list of legal aid providers specialising in public law – judicial review - and national coverage advice organisations.</p>	<p>Website: https://publiclawproject.org.uk/can-we-help/individuals/</p> <p>for a list of legal aid providers specialising in public law – judicial review - and national coverage advice organisations.</p>
<p>The Law Society of England and Wales</p> <p>The Law Society is the independent professional body for solicitors. Its website hosts the 'Find a Solicitor' tool. This is a free service for anyone looking for information about organisations or people providing legal services in England and Wales that are regulated by the Solicitors Regulation Authority (SRA).</p>	<p>Website:</p> <ul style="list-style-type: none"> Homepage: https://www.lawsociety.org.uk/ Find a Solicitor: https://solicitors.lawsociety.org.uk/ <p>Email: info.services@lawsociety.org.uk</p> <p>Telephone:</p> <ul style="list-style-type: none"> Tel: 020 7242 1222 Minicom: 0870 600 1560 <p>Fax: 020 7831 0344</p>