

Public Law Fact Sheet

What is public law?

In the modern world government activity affects almost every area of life: 'public power' is exercised by everyone from the Prime Minister and officials in central government departments like the Home Office, through to local councils and NHS hospitals. Even private companies doing outsourced jobs like running schools and prisons can be performing public functions – sometimes unwittingly!

Public law governs the relationship between individuals and the state. It plays an important part in protecting people and companies against abuses of public power by the government.

Because public power can come in so many forms, public law comes up in all sorts of situations. It is there in everything from how national exams like GCSEs are graded to whether a local authority can force you to sell your house to make way for a new road or leisure centre. Public bodies also have duties to safeguard human rights like the right to a fair trial, privacy and freedom of religion, so public law is constantly engaged in sensitive areas, including counter terrorism and policing.

Two examples of big areas involving public law are judicial review and public inquiries/inquests.

Judicial Review: When people carrying out public functions, such as MPs or local councillors, make decisions they have to comply with a host of duties and

Public Law Fact Sheet

obligations, including: (i) acting within the powers given to them by law; (ii) exercising those powers reasonably; and (iii) doing so in line with fair procedures.

If someone believes the rules have not been followed, they can challenge the decision by asking a court to hear a special kind of case called a 'judicial review'. Following a judicial review, the judge may decide that the decision maker has acted unlawfully and, if so, cancel the decision. Sometimes the judge can even decide that the law under which the decision was taken is itself invalid.

Judicial review is not about a judge deciding he can make a better decision than the original decision maker – if the decision is lawfully made then it must stand. That is because as long as a particular decision is legal its pros and cons are a political question.

Solicitors who do judicial review work deal with a great variety of subjects and their cases are often in the press and public eye. Some huge decisions have been challenged in the last few years:

- *R (on the application of Miller) v Secretary of State for Exiting the European Union* - you might remember that, not long after the Brexit referendum, the government wanted to start the two year Brexit process by triggering 'Article 50' without asking Parliament for permission first. The court decided that could not happen until Parliament had been involved.
- *R (on the application of DSD and NBV) v Parole Board of England and Wales* - In another very controversial case, the court reversed a decision by the Parole Board to release from prison John Worboys, who had been convicted

Public Law Fact Sheet

of 19 serious sexual offences, because it failed to take account of relevant considerations and carry out further inquiry.

Public Inquiries and Inquests: When a major scandal happens or an event happens which is of serious public concern (e.g. events which cause the loss of multiple lives such as public transport crashes) the government or someone else in authority, like the Football Association or a parliamentary Select Committee may set up an inquiry to establish what has happened and try to identify lessons to be learned. If the inquiry is set up by a minister under legislation it will have powers like a court to force people to hand over relevant documents and compel witnesses to testify.

In recent years big public inquiries have been called to address the decision to go to war in Iraq; phone hacking and other unethical conduct by media organisations; historical child sexual abuse and many more matters. Inquiries like these can last for years. Solicitors can be asked to work for the chair of the inquiry and help carry out its investigations, or else they can be asked to provide legal advice to those who were involved in the matters under investigation or otherwise want to participate. It is quite common for public inquiries to play out alongside police and regulatory investigations, televised Select Committee hearings and other media coverage so solicitors and their clients often have to think carefully about how all these elements interact.

The Grenfell Tower tragedy is a good example of the kind of event that can lead to a public inquiry. Grenfell was a high-rise local authority tower block in West London

Public Law Fact Sheet

that suffered a catastrophic fire on 14 June 2017. The building was virtually destroyed and many people died. It later emerged that new cladding fixed to the outside of the concrete building might have contributed to the sudden spread of the fire. There were also questions about how the emergency services responded to the rapidly escalating situation on the night. The Grenfell Tower Inquiry was set up under legislation to establish the facts and make recommendations as to the action needed to prevent a similar tragedy happening again. The Chairman is a senior judge and will report to the Prime Minister. Participants are likely to include the local authority, residents who escaped the fire, families of victims, fire fighters and police officers, cladding manufacturers and fire wardens.

Inquests are hearings presided over by Coroners to make decisions about the death of individuals. Like public inquiries, they can be high profile – for example in the case of victims of terrorist attacks or of health scandals within hospitals. Many similar issues can arise.

What skills does a public lawyer need?

To be a good public lawyer you need to have a keen interest in politics and current affairs and stay on top of the news and changes in legislation and government policy. It helps to have a feel for the priorities people carrying out public functions may have as well as to appreciate why their decisions may have serious consequences for those affected. Public law cases are often very urgent or involve working with lots of specialist information and documents.

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Public Law Fact Sheet

Because public law comes up in all sorts of situations your next case might be in a new and unfamiliar context. That means you need to be adaptable and able to get to grips with a lot of new information quickly.

You also need to be thorough, as well as methodical and analytical with your work. In addition, good written skills are needed for putting together reports and drafting documents for the court or public inquiry. Since the subject matter is often sensitive and attracts media attention, good public lawyers also need to be especially discreet. You will need good client handling and inter-personal skills.

A day in the life of a public lawyer

In a typical day a public law solicitor is likely to be involved in a wide range of activities. A few times a week it is common to meet with clients or barristers to discuss the way forward in a particular case and agree or adjust key tactical/strategic decisions. Such meetings last at least an hour but can sometimes take half a day. At other times there is likely to be legal research to do and documents to work on.

You might have a hand in drafting a note of advice, some court papers such as an application, instructions to barristers or a witness statement. It is also quite common for public law solicitors to find themselves overseeing preparation of bundles of documents for use at trial, liaising with other parties in the case by telephone and email, or getting ready to attend a hearing. It is important to stay up to date so when

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Public Law Fact Sheet

time allows you might try to attend a seminar and conference, or to write a short article or blog about a recent development.

Please note: The materials on the resources pages are in no way purporting to be a comprehensive analysis of any of the areas of law they cover. They provide a high level overview of various legal concepts which the students will be tested on for the purposes of the Legal Apprentice competition.