**What is a Judicial Review?**

A Judicial Review (JR) is where a person asks the Court to look at a decision made or an action taken by a public body. A public body is an organisation that does work for the government, for example, HM Revenue and Customs, or a local council.

A JR is not about asking the Court to make a decision instead of the public body, but asking the Court whether the decision was made correctly, based on three reasons:

1) The decision is unlawful (it does not fit in with existing law);

2) The decision is irrational (the decision does not make sense or is disproportionate);

3) The decision was not taken correctly (it was not made in line with rules).

A JR must relate to a decision that affects you.

Judges cannot make decisions about how the government spends money, and cannot make decisions instead of governments. The outcome of a successful JR might be that the public body must make the decision again, this time making in line with the law, and any other rules that apply.

**…**

**What is the Public Sector Equality Duty?**

The Equality Act 2010 tells public bodies to try to reduce discrimination against people with ‘*protected characteristics*’ (such as disability, age, gender, etc.). This is called the Public Sector Equality Duty (PSED).

For people with protected characteristics, the PSED says that public bodies must:

a) try to stop discrimination;

b) work towards equality, and;

c) improve connections (‘*foster good relations*’) with people that do not have a protected characteristic.

The way that public bodies show that they have thought about the PSED is by writing an Equality Analysis. This says what issues the public body has thought about, and what action they have taken to try to reduce discrimination, promote equality, and to foster good relations between different groups.

**…**

**Judicial Review analysis: David Buxton v Secretary of State for Work and Pensions [2018]**

Please read / watch “*What is a Judicial Review*?” and “*What is the Public Sector Equality Duty*?”before you read / watch this.

**The Court Case**

David Buxton, Chief Executive of Action for Disability, asked the Court to look at the decision taken by the Department for Work and Pensions (DWP) to cap his Access to Work award. Mr Buxton thought that the decision was wrong for two reasons:

1) That the DWP had not given enough thought to the PSED when they decided to cap the Access to Work award, and;

2) That the DWP had indirectly discriminated against Mr Buxton, and other Deaf people, by putting a cap on Access to Work awards, because most of the people who are capped are Deaf people. (Indirect discrimination is when one group of people are accidentally affected in negative way by something.)

**The decision**

The Court did not agree with Mr Buxton. Here is a summary of what the Court said about each of the reasons above.

*1) That the DWP had not given enough thought to the Public sector Equality Duty (PSED) when they decided to cap the Access to Work award:*

Mr Buxton had asked for permission to change the reasons why he disagreed with the DWP’s decision (called submitting an amendment). The Judge decided not to let Mr Buxton change this, but the Judge explained what he would have decided, if he had given him permission to change the reasons.

i) The DWP had written two Equality Analyses about the cap (in 2015 and 2018). The Judge said that these showed that the DWP had thought about the fact that Deaf people would be affected by the cap, and DWP had promised to keep reviewing the effect of the cap on Deaf people.

ii) The Judge said that the amount of detail in the DWP’s two Equality Analyses was enough. He did not agree that the DWP should have thought more, or done more research about the effect of the cap on Deaf people’s ability to work.

iii) The Judge said that it was appropriate that the DWP had thought about the need for employers to pay some money towards Deaf people’s access costs (as a reasonable adjustment) and that DWP did not have to know lots of information about whether employers are paying for access costs or not.

*2) That the DWP had indirectly discriminated against Mr Buxton, and other Deaf people, by putting a cap on Access to Work awards, because most of the people who are capped are Deaf people.*

i) The Judge said that the cap does indirectly discriminate against Deaf people.

ii) DWP argued that it was reasonable to make a change that affected one group more (Deaf people), because the government had decided that Access to Work should help a larger number of people.

iii) The Judge agreed with DWP that it was acceptable that the cap indirectly discriminates against Deaf people, because DWP needed to help more people to have Access to Work funding. Because the amount of money the government gives Access to Work stayed the same, DWP needed to take money away from some Access to Work users so that they can use it for new customers.

iv) The Judge said that Access to Work had thought about a lot of ways to help Deaf people to manage with a capped award, and that the new (higher) cap was enough money for a Deaf person to have full time BSL support (with one interpreter) for 230 days per year.

**DeafATW comments on the judgment**

One thing that the Judge did not talk about was the fact that the aim of Access to Work is to pay for access costs that are more than a ‘reasonable adjustment’. A reasonable adjustment is the money or changes an employer can afford to make to help a disabled person do their job.

This means that Access to Work should help people whose access costs are very expensive.

Instead, Access to Work pays a lot of very small awards (the average award is around £3,500), which most employers could afford to pay, and reduces the awards of Deaf people.

When the Judge thought about how reasonable it is to decide to take some money away from high-cost awards (mostly Deaf people) and give it to new Access to Work customers, it would have been better if he had explained why it is reasonable to take away money from the people with the highest access costs, who the scheme should help the most.

The Judge used the word ‘*draconian*’ to describe the 2015 cap, which made it seem that he thought that the 2015 cap was set too low. If the DWP had not raised the cap in April 2018, it is possible that the Judge would have felt differently about whether or not it was reasonable for DWP to take money away from Deaf people. But we cannot know for sure if the Judge would have said the cap was set too low.

If the judge had agreed with either of Mr Buxton’s two reasons why he was not happy with the decision to cap his award, what might have happened?

The Judge cannot (is not allowed) to tell the DWP what decision to make, i.e. cannot tell them to make the cap higher or remove the cap.

Instead, the Judge could tell DWP to make the decision again, and tell them that they must think more carefully about the effect on Deaf people. This does not mean that the decision would have to be different. It could be a different decision or the same decision again.