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<b>Meeting name</b>	BSC Panel
<b>Date of meeting</b>	13 January 2005
<b>Paper Title</b>	ELEXON REPORT
<b>Purpose of Paper</b>	For Information
<b>Synopsis</b>	This paper sets out the legal view as to whether the any outcome of judicial review negates the need for the Authority to revisit its original decision.

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## **1. BACKGROUND**

1.1 At the meeting of the Panel of 13 January 2005<sup>1</sup>, a Panel member requested legal advice in relation to the possible outcomes of judicial review. Namely, whether there is any outcome of judicial review that would remove the need for the Authority to look again at its original determination in relation to an Approved Modification or Rejected Modification Proposal.

## **2. JUDICIAL REVIEW OUTCOMES**

2.1 The purpose of judicial review is not to replace the decision that has been questioned. Judicial review is concerned with the legality of how the decision was reached and not the merits. The High Court which determines the judicial review can only compel the decision-maker, in this case the Authority, to look at its decision again.

2.2 Set out below is a list of the remedies for judicial review and their effect.

- Certiorari or a quashing order. This is an order that quashes the original decision and is negative and retrospective in nature. The effect of the quashing order renders a decision null and void. This means it is as if the decision never happened.
- Mandamus or a mandatory order. This is only forward-looking as it orders a public authority to act in a particular way. For example, the mandatory order could compel the Authority to look again at how it reached its decision.
- Prohibition or a prohibiting order. This is an order that prevents a body from making a decision that would be capable of being quashed by certiorari. The order is both protective and forward-looking. For example, the prohibition order could prohibit implementation of the decision.
- Declaration. This is not a remedy per se, but just clarifies the legal position.
- Injunctions. These are temporary or permanent and will be forward looking.
- Damages. These can only be obtained (in conjunction with one of the other remedies), if they would be available against the public authority in a civil claim.

## **3. LEGAL ANALYSIS/CONCLUSION**

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<sup>1</sup> Panel Meeting 088

## **Annex 6 to P180 Modification Report**

- 3.1 All three main remedies (quashing, mandatory and prohibition orders) would require the Authority to revisit its original decision. The Authority would **have to make a declaration of some kind** following the determination of the judicial review. The Authority could not merely opt for inaction. For example, the Authority may re-examine the reasons for its original decision, and decide differently or reach the same conclusion as in its original decision.
- 3.2 A lot would depend on the terms of the High Court's judgement. However, the Authority **would always be required to make a decision and in accordance with its duties give notice of that decision**, following any judgement upon judicial review of an Approved Modification or Rejected Modification Proposal.

**Melanie Henry**

**Legal Adviser**