Judicial Reviews: a legal challenge to how a decision has been made

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A judicial review is a legal challenge to the way a decision has been made in your asylum, immigration, or human rights application. That will usually be a decision made by the Home Office. It could also be a decision made by a court.

A judicial review is not really about whether the decision was “right”, but whether the law has been correctly applied and the correct procedures have been followed.

On this page, you will find the following information:

What is a judicial review?

A judicial review is a legal challenge to the way a decision has been made in your asylum, immigration, or human rights application. That will usually be a decision made by the Home Office. It could also be a decision made by a court.

Read about Home Office asylum decisions

A judicial review can challenge the way a decision has been made, if you believe it was illegal, unreasonable, irrational, or unfair. It is not really about whether the decision was

“right”, but whether the law has been correctly applied and the right procedures have been followed.

A judicial review is different from an appeal.

If you want to challenge a decision made by the Home Office because you think that decision was wrong – for example, the Home Office did not believe your asylum claim or your evidence in your family life application – you may be able to **appeal** that decision.

If you want to appeal a Home Office decision, see the Appeals page of this guide.

If you want to appeal a First-tier Tribunal decision, see the Upper Tribunal page of this guide.

A judicial review is something you can consider if you want to challenge how a decision was made, or challenge a decision that you do not have the right to appeal.

Most judicial reviews in asylum and immigration cases in England and Wales are heard in a court called the **Upper Tribunal**. In Scotland, judicial reviews are heard in the Outer House of the Court of Session. In Northern Ireland, they are heard at the High Court in Belfast.

Read the Asylum and Immigration Courts page

When to consider bringing a judicial review challenge

- If you have been told your asylum claim will be transferred to another country under the inadmissibility rules, and you want to challenge this decision
- If your asylum or human rights claim has been “certified” by the Home Office (this means you have no right of appeal within the UK)
- If your further submissions for a fresh claim have been rejected with no right of appeal
- If you have been detained unlawfully
- If you have been refused permission to appeal at the Upper Tribunal and you still believe you can demonstrate an error of law has occurred in deciding your application
- To try and challenge an imminent removal. This is called applying for interim relief, also called an injunction. You can read more about this in the ‘injunction’ section of this page below.
- Your immigration application has been refused, you have no right of appeal and an administrative review has not resolved the matter satisfactorily.

Is a judicial review your best option?

Judicial reviews are very complicated and you should always seek legal advice where

possible on applying for a judicial review.

If you are unable to get legal aid for a judicial review, it is possible to represent yourself. However, it is very difficult to represent yourself successfully if you are not legally trained, and there are risks in representing yourself in a judicial review. It might be worth waiting longer to find a lawyer.

For example, you will have to pay the fees yourself and if you lose, you will be responsible for the costs of the proceedings. A bad judgement may also be very unhelpful for your case, and for any future cases. This is because meritless (this means irrelevant) applications are a problem and are being used by the government to justify getting rid of the option to bring a judicial review.

Although it is unusual for people who are unsuccessful in a judicial review to have to pay their costs, you will still be considered as having a “litigation debt” which means the Home Office can refuse future immigration applications that you make.

It may seem like a judicial review is your only legal option, especially if you have no right of appeal or if your removal or deportation is imminent. **This does not necessarily mean it’s the best thing to do in your specific case**.

Think carefully about whether a judicial review is the best way to spend your time, energy, and possibly money. A private lawyer may charge you a lot of money for a judicial review, even if there is little hope that it will help your situation.

Sometimes people see judicial reviews as a way of slowing down the process of removal or deportation. This is understandable when the asylum and immigration system can move so fast and denies you access to justice. A bad application for a judicial review, however, may just speed up the process because a judge may order that any further applications will not prevent your removal or deportation.

Look carefully at your case and the legal process and decide if a judicial review is the right option for you, or if there are better ways of using your resources, or if it would be worth waiting for a longer period of time to find a legal representative.

ACTION SECTION

- Have you considered all of the reasons why you should be allowed to remain in the UK?

- Have you exercised all **your appeal rights**?
- Can you find new evidence for further submissions to be considered as a **fresh claim**?
- Could you work on presenting your case in the strongest way possible to convince a lawyer to take it on, either under legal aid or pro bono (this means for free)?
- Have you talked to your MP about assisting in your case? Read more **here**.

Paying for legal representation

It is difficult to get legal aid for a judicial review. Legal aid is free legal advice and representation.

Read more about Legal Aid

If you have had an appeal hearing or received a decision on the same issue or on a very similar issue in the last 12 months, legal aid for a judicial review will not be available.

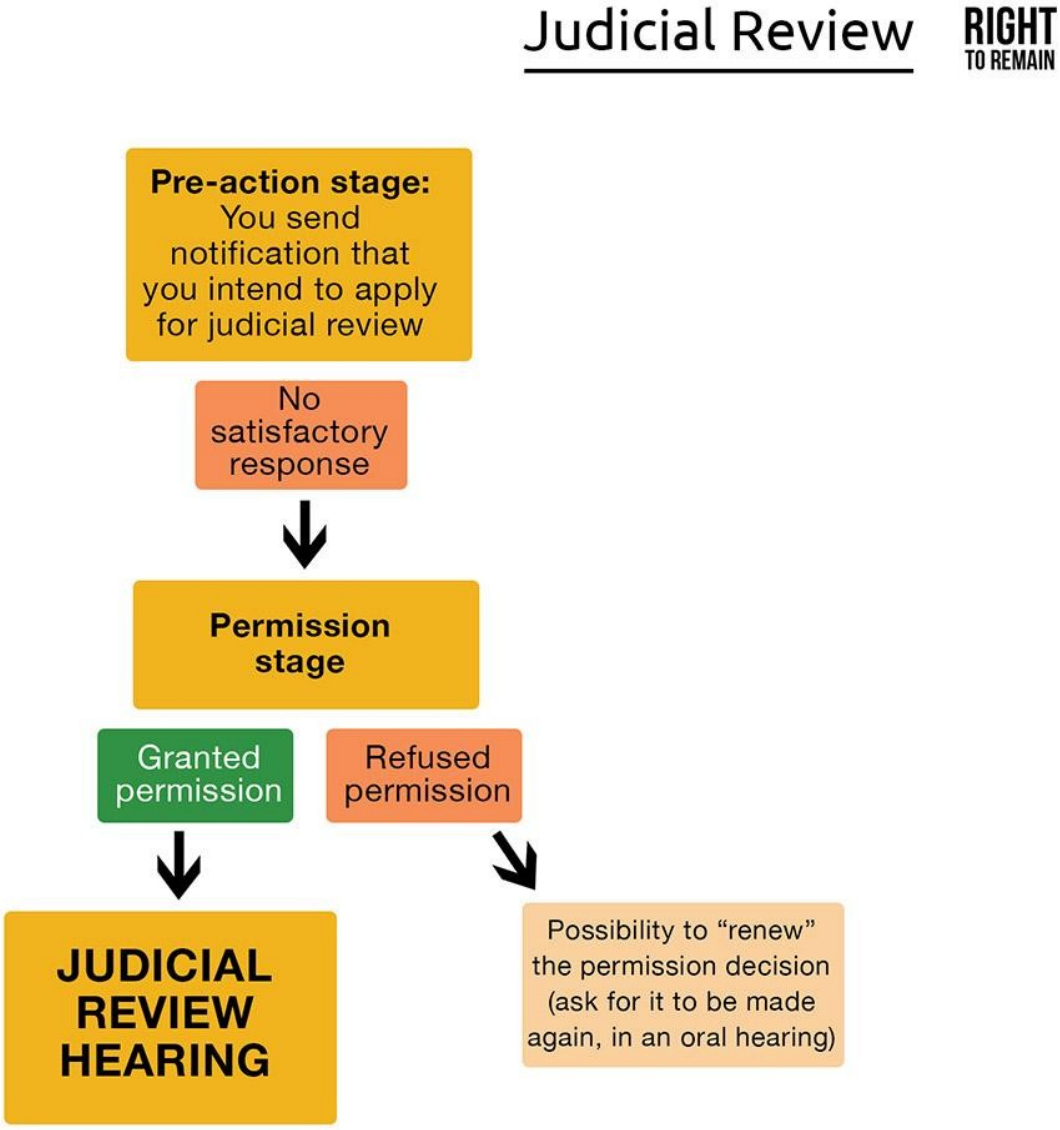
In England and Wales, legal aid lawyers generally only get funding for working on a judicial review if permission to proceed with that judicial review is granted. The Legal Aid Agency (the government department responsible for regulating legal aid) can allow legal aid for work done before permission is granted for a judicial review, but this is very hard to get.

This means that legal aid lawyers taking on a judicial review are taking a risk, and are only likely to do this if they feel you have a strong case. If permission is refused the work that the lawyer has done on a judicial review will remain unpaid.

If your case would not qualify for legal aid under the current rules, you may be able to apply for **exceptional legal aid funding** if you can show that your human rights would be breached if you do not have legal aid.

Because of these restrictions, most people making a judicial review pay for the process themselves.

If you are using a private lawyer, an initial judicial review claim could cost at least £1000-£2000, and will be much more if the case proceeds to a full hearing. You may wish to consider a fixed fee arrangement with the lawyer so the costs won't spiral out of control. Some lawyers also use Conditional Fee Agreements, otherwise known as "No Win No Fee" agreements.



Pre-action stage

If you intend to apply for a judicial review, you should write to inform the Home Office of this, to give the Home Office a chance to withdraw its decision or correct an error without having to go to the point of a judicial review. This is called the 'pre-action' stage. The letter you write to the Home Office is called a 'pre-action protocol' letter (sometimes called a 'PAP') or 'letter before claim'.

If you have a caseworker or solicitor, they should write the pre-action letter for you. They will then usually instruct a barrister (or an advocate in Scotland) to represent you if the judicial review gets to a permission hearing, and then at the full hearing if

permission is granted. You can read about the different types of legal representatives here.

The pre-action stage does not affect the 3-month time limit for applying for a judicial review.

You can use the guidance on the "Pre-Action Protocol for Judicial Review" on the Ministry of Justice website for details of what should be included in the letter.

See also a template pre-action letter with suggested format here. The template letter includes the email address and postal address to send the letter to.

In the letter, you should:

- explain in detail how you think the Home Office has acted unfairly, irrationally ,or unlawfully
- say what you want the Home Office to do to put this right, and when you would like them to do it by
- ask for a response within a time limit, which is usually 14 days.

You are unlikely to receive any response to this letter within the time limit, or if you do it is unlikely to be satisfactory. However, it's still an important stage of the process, and may be used against you if you fail to do it. If you do not receive a response within the time limit, or the response is not satisfactory and you want to continue to apply for a judicial review, you can move on to the permission stage. You can read more about the permission stage below.

Time limits

An application for judicial review should be made as soon as is reasonably possible, and no later than **three months** after the decision that you are trying to challenge was made. In asylum and immigration cases, this decision will usually be the one made by the Home Office.

If you are judicially reviewing an Upper Tribunal decision to refuse permission to appeal a First-tier Tribunal decision (known as a "Cart judicial review"), the time limit for applying in England is just 16 days from the day of the Upper Tribunal refusal.

Fees

If you are not applying for a judicial review through a legal aid lawyer, you have to pay the fees for the judicial review application. It's important to know how much the process may cost. In addition to these fees, you may also be paying for a private lawyer to represent you (see section above).

For up-to-date information on fees and forms for applying for judicial review, go to the judicial review website.

If you do not have any or much income, you can apply for the fees to be reduced.. See the application forms and guidance here.

Permission stage

To have a judicial review hearing, you must apply for permission first. The process described here for applying for permission is for judicial reviews in **England and Wales only**.

You can read more about judicial reviews in Northern Ireland here.

When applying for permission, you need to use the Judicial Review Claim form. At the time of writing, if you are applying for a judicial review that would generally be heard at the Upper Tribunal, you need to use form T480.

You should always check that you are using the correct form and paying the correct fee. Check the Upper Tribunal website for the latest information.

Some judicial reviews are still heard in the Administrative Court. These include challenges to unlawful detention and challenges to decisions made by the Upper Tribunal. If this applies to you, you need to use a different form and apply for permission to the High Court. You can find the application form and guidance here and more information on applying for judicial review at the High Court here.

Remedy: what do you want the court to do?

When completing the judicial review claim form, you need to say what remedy (result) you are seeking in applying for a judicial review.

This needs to be one of the following:

- **Mandatory order**: this makes a public body (like the Home Office) do something the law says it has to do.
- **Prohibiting order**: this stops a public body from taking an unlawful decision or action it has not yet taken.
- **Quashing order**: an order which undoes a decision that has already been made.
- **Injunction**: a temporary order requiring a public body to do something, or not do something, while waiting for a decision to be made in your case.

In immigration judicial reviews, it is most likely that you will seek a **quashing order** or an **injunction**.

A remedy of a quashing order might be to undo a negative Home Office decision. A quashing order might mean the Home Office has to *remake* a decision, for example, on your immigration application. Alternatively, a quashing order might mean that the Home

Office has to remake a decision about whether you have the right to appeal. For example, it may uphold (this means keep) its decision that your further submissions fail to show you need refugee status, but remake the decision about whether you have a right of appeal of that decision.

An injunction is the remedy you would seek to stop the Home Office from removing you from the UK.

Questions in the form

"Who is the applicant?" **You** are the applicant, because you are applying for judicial review.

If you are challenging a decision made by the Home Office, the **respondent** is the Home Office. The form asks you to give the respondent's name and address. If it is the Home Office, the address is:

Litigation Allocation Unit
6 New Square
Bedfont Lakes
Feltham
TW14 8HA

The applicant's "counsel" details. This means your barrister or advocate. If you have a barrister, you should not need to be filling out this form as your legal representative should be completing it for you!

"Is this application being made under the terms of Part 5 of the Senior President of Tribunals' Practice Directions entitled 'Immigration Judicial Review in the Immigration and Asylum Chamber of the Upper Tribunal'?" This refers to judicial reviews challenging **forced removal**: either a removal the Home Office has said they intend to carry out or a removal they have already carried out.

"Is the applicant in receipt of a Civil Legal Aid certificate?" This refers to whether you have legal aid funding for your judicial review. If the answer to this is "yes", your legal representative who is being funded by legal aid should be filling in this form. If the answer is "no", then say so.

"Are you claiming exceptional urgency, or do you need this application determined within a certain time scale?" This might be if you are applying for an injunction to stop a removal, in which case you will also need to fill out an Urgent Consideration form as well (see the section below).

"*Have you complied with the pre-action protocol?*" See the Pre-Action Stage section above.

"*Does this application challenge a Home Office Administrative Review decision?*" Read more about Administrative Reviews here.

"*Does the claim include any issues arising from the Human Rights Act 1998?*" The most common human rights issues that are relevant to asylum/immigration applications are Article 3 and Article 8. Read more here. Read about other human rights grounds that may be relevant to you here.

"Statement of grounds". This is where you set out the legal basis for requiring a judicial review. Remember, you are not just saying you disagree with the Home Office's decision. A judicial review will consider whether the decision was unlawful, unfair, irrational or disproportionate. Read more in the Public Law Project's leaflet guide here.

"Remedy". See the above section on types of remedies available.

"Statement of facts". The guidance notes state that "the facts on which you are basing your claim should be set out in this section of the form, or in a separate document attached to the form. It should contain a numbered list of the points that you intend to rely on at the hearing. Refer at each point to any documents [including a page number] you are filing in support of your claim".

Submitting your permission application

The Upper Tribunal website provides information about how to submit your application and relevant document. Click here to find out more.

When you lodge (this means send in) your application for permission, you must also file **two copies** of the documents you wish to rely on in two separate files called **bundles**. You should number each page of each bundle, and include an index (this means a list of all the documents and their page numbers). The documents should be ordered from **oldest to newest**. So, the oldest documents will be at the top, and the newest documents will be at the bottom.

Once you have submitted your application form to the Upper Tribunal, you must notify and send a copy of the application to the Home Office, including the case reference number and any accompanying documents. This is called "serving" the Home Office with your judicial review. You can learn more about serving your documents on the Home Office here.

You must provide the Upper Tribunal with a written statement of when and how a copy of your bundle (your application and relevant documents) was shared with the Home Office WITHIN 9 DAYS of making the application. To do this, you fill in form T485 which you can find here. If you do not do this, the application will be automatically cancelled.

Permission decision

A judge will usually look at the application and other documents you have included in your permission application to decide whether to grant you permission to proceed with a judicial review hearing or not.

Most decisions are made within around three to four months, unless you are applying for an urgent injunction (see the section below).

If permission is refused

Many judicial review permission applications are refused. For example, 722 civil immigration and asylum applications were lodged for judicial review in 2022. Only 93 were granted permission at the first stage. You can see these statistics here.

This decision is usually made "on the papers". This means that a judge makes a decision based on the application documents rather than through a hearing.

If your application for permission is refused on the papers you may be able to apply to **renew** the decision. This means you are asking the court to reconsider the decision – in an oral hearing rather than on the papers – to not grant you permission for a judicial review of your case. For example, in 2022, of the 93 applications that were initially refused at the permission stage, 17 were granted permission at the renewal stage.

If permission is refused on the papers and your case is deemed as **"totally without merit"**, you will not have the right to apply to renew the decision. It is possible to apply to the Court of Appeal to challenge your case being categorised as totally without merit – but this is very difficult to do without a lawyer, and you will need to think very carefully about whether this is the best use of money if you are going to pay for a lawyer.

You should receive information about the procedure for asking for renewal in the written refusal of permission.

If permission is granted

If you are granted permission to proceed with the judicial review, the Home Office may concede (this means agree) to settle the case outside of court.

A **consent order** will set out the agreement between you and the Home Office. In these circumstances, you will not proceed to a full hearing and the Home Office will usually offer to withdraw their decision on your claim and make a new decision within three months (though they do not always make a new decision within this time and there are often delays).

ACTION SECTION

If you applied for permission for judicial review without a lawyer and have been granted permission, it is now more likely that a legal aid lawyer will agree to take on your case. You can go back to your previous lawyer, or try to **find a new lawyer**. If they take on your case, they will instruct a barrister to represent you in the hearing.

If you cannot find a legal aid lawyer to represent you, you may be able to find a lawyer

to take on your case **pro bono** (this means for free).

The rest of this page assumes that you do not have a lawyer to represent you.

If you are granted permission to proceed to the full judicial hearing, you will receive information about what else you need to submit in advance of the hearing, and about payment of the fee for proceeding with the judicial review.

Remember: if you change address, you must inform the Tribunal/Court. Otherwise they may send vital information to the wrong address.

If you want to rely on additional grounds to those mentioned in your application during your judicial review hearing, you need to give written notice to the Tribunal and the Home Office no later than **seven clear days** before the date of the hearing.

You also need to serve a **skeleton argument** on the Tribunal and the Home Office, no later than **21 working days** before the hearing. Your skeleton argument should include a list of the legal points you wish to raise and any relevant authorities (that means cases) with page references to the passages relied on; a **chronology** of events (this means a list of events in the order that they happened) in your legal case with page references to the bundle of documents; and a list of essential documents (if different from those submitted with the application) so that the Tribunal judge can read through them before the hearing.

You also need to serve a **bundle** of all the relevant documents upon the Tribunal and the Home Office, just like you did when applying for permission (see section above). Serving the bundle means officially submitting/sending it. Keep proof of how and when you did this. The documents should include all those referred to in your skeleton argument. These might include witness statements, any **written submissions** you have drafted and any relevant letters or emails from the Tribunal or from the Home Office.

The hearing

If permission is granted, a **substantive hearing** will take place where a judge will consider the claim in detail.

The hearing will likely happen several months - maybe even years - after you first applied for a judicial review, although this will depend on the urgency of the case.

You need to take your bundle of documents with you to the hearing. It is a good idea to bring several spare copies of your bundle to the court on the day of the hearing.

The evidence in your bundle should be about how the decision made in your case was illegal, irrational or unlawful. In general, the judge will not consider new evidence about your substantive case. This is because the judge will be looking at whether the

Home Office made the right decision *based on the evidence it had at the time the decision was made.*

If you have a lawyer representing you, you will not speak during the hearing (unless you have permission to do so from the judge). This is different than during an appeal hearing, in which you are expected to speak.

If you are representing yourself without a lawyer, you are known as a "litigant in person".

To find out more about preparing for the hearing, read the Bar Council's guidance for "litigants in person" from the Judiciary of England and Wales here.

At the end of the hearing, the judge can give a decision on the day, but that is unusual. The judge usually **reserves** their judgement (this is the name for their decision), which means you will be notified of their decision in writing at a later date.

Outcomes

In a judicial review, the court will **not** replace the Home Office or previous court's decision with what it thinks is the correct decision.

Read below to find out what happens if you are successful in your judicial review, and what you can do if you are unsuccessful.

Successful judicial review

If you win your judicial review hearing, the court will not substitute what it thinks is the correct decision. The case will normally go back to the Home Office or the court found to have made an error.

The Home Office or court may be able to make the same decision again, but this time make the decision following the proper process or considering all relevant case law or evidence reasonably.

If you are applying for emergency relief to stop a removal (see below) and are successful, the court will issue an **injunction** to prevent that removal from taking place for a certain period of time.

If you argued that you needed time to proceed with certain aspects of the legal process, you will need to proceed with those.

If you argued you should not be removed while important other cases that have relevance to your case were waiting to be heard, you should not be removed until that case/those cases are decided. Be aware that the Home Office may move very quickly to remove you if that case is decided in a way that is unhelpful for your case.

Unsuccessful judicial review

If you are not successful in a judicial review, this means that the judge believes that the original decision of the Home Office or previous court was made in a reasonable way. It is possible to ask permission to appeal this judicial review decision at the Court of Appeal.

This is very difficult to do without legal representation.

Could I be removed/deported during the judicial review process?

Unfortunately, submitting an application for a judicial review is **not enough** to prevent a removal or deportation from the UK in every case.

In some cases, if permission is granted for judicial review, proceedings against the removal/deportation will mean that the Home Office will defer (this means delay) the removal/deportation.

However, there are exceptions to this.

The Home Office will **not** defer removal if:

- there has been less than 6 months since a previous judicial review or appeal has been concluded on the **same or similar issues**, or a judicial review or appeal on the **same evidence** even if the legal basis of the challenge is different
- there has been less than 6 months since a previous judicial review or appeal has been concluded and the **issues being raised could reasonably have been raised** at that previous judicial review/appeal
- if the judicial review proceedings are brought during the **three-month removal window** (see the Removal page of this guide). “Removal windows” were a policy whereby someone was given as little as 72 hours notice that they might be removed from the UK at some point during the following 3 months, without any warning. An injunction was required to stop removal. The Court of Appeal has quashed (this means stopped) that policy, thanks to a court case brought by Medical Justice.
- if you are due to be removed on a **charter flight** and bring judicial review proceedings against the removal. An injunction will be needed to stop the removal, like in the Rwanda case in June 2022.

Urgent judicial review: an injunction

If you have been informed by the Home Office that you are liable to (this means at risk of) removal or deportation from the UK, you may be able to apply for an urgent judicial review to try and secure an injunction to prevent this.

An injunction is an emergency, interim measure. It is a temporary order requiring a public body to do something, or not do something, while waiting for a decision to be made in your case.

In applying for an injunction, you would be asking for an action (the removal) to be paused to allow time for a full judicial review hearing or other decision-making process to take place. Asking just for an injunction to stop a flight, without making clear that there is some wider legal argument to pursue, is unlikely to be successful.

For example, it may be argued that the refusal of a fresh claim by the Home Office was unreasonable and an error of law, and that removal should be **stayed** (this means paused) while a judicial review decides if the Home Office must reconsider the fresh claim.

Making the application

To apply for the emergency measure of an injunction, you need to complete two forms:

- The form for permission for a judicial review, unless a judicial review has already been lodged.
- The **Application for Urgent Consideration** form. You can find the form here.

You need to explain why the application is urgent, and how quickly you require the application to be considered. This is likely to be before the end of your removal notice period.

You also need to state the date by which you wish the **substantive hearing** to take place.

You must include a **draft order** with your application. The draft order is what you are suggesting the judge should order (see more in paragraph 2.1-2.14 on pages 11-12 of this document).

For example, you may request that the judge orders that you are not removed on a certain date or within a certain period of time.

You must also explain the **grounds** on which the injunction should be granted. Remember that an injunction is part of a judicial review, so the grounds for the injunction should reflect this. Would your removal be the result of an illegal, unfair or irrational/disproportionate decision?

You should include the **notice** of being liable to removal or deportation, recent relevant Home Office refusals or appeal dismissals, and other relevant evidence to support the application.

The Upper Tribunal website provides information about how to submit your application for urgent consideration and draft order in the "Ask for your application to be considered urgently" section of this page.

The procedure for submitting is different if you are in detention – information is provided in the guidance.

Now read: Other Courts page