



CIVIL JUSTICE COUNCIL (CJC) RESPONSE -
DEFENDANT'S DUTY OF CANDOUR &
DISCLOSURE IN JUDICIAL REVIEW PROCEEDINGS

The CJC supports the Lord Chief Justice's proposals for clarifying the requirements of the duty of candour for defendants in Judicial Review proceedings.

The proposals will, in our view:

- assist the interests of justice by enabling the courts to establish the reasoning of the public authority for the decision which is being challenged;
- bring the Practice Direction in line with existing case law;
- offer a proportionate approach, not imposing too onerous a requirement on public authorities that will need to marshal material to defend a claim – in particular allowing the body to voluntarily provide disclosure of relevant documents; and
- offers a sensible approach to the small number of cases in which facts are in dispute by affording the courts discretion to order specific disclosure of material deemed necessary to manage and determine the case effectively.

The consultation paper also refers to the position of claimants and proposes setting out their duty of candour. While we agree this is fair and reasonable, not all claimants will have the benefit of legal aid or legal advice and representation. For that reason, we would recommend the preparation of a short, one page summary of the duty of candour and its application and relevance to claimants in judicial review proceedings. The advice sector should be consulted in the preparation of any such document.

Civil Justice Council
May 2016