JUDICIARY FOR
ENGLAND AND WALES

# The Administrative Court Judicial Review Guide 2018

July 2018

## Contents

## Foreword to the 2018 Edition

This is the third edition of the Judicial Review Guide. It is an invaluable roadmap to the practice and procedure of the Court. It is intended to assist all who are involved in proceedings before it. Good practice is identified and pitfalls foreshadowed. I have no doubt as to its utility.

A very significant amount of work has gone into producing this edition of the Guide and I am particularly indebted to Mr Justice Supperstone (as lead Judge of the Court), Mr Justice Lewis and Mrs Justice Whipple for their input, to Jessica Pressman, the Administrative Court Office lawyer who marshalled the amendments, and to Ellen Dean who oversaw the production of the Guide. I also thank David Gardner, formerly a lawyer in the Administrative Court Office in Cardiff, who was responsible for much of the original research and drafting of this Guide. A number of other Judges and court staff have had input and I am grateful to all those who played a part in ensuring this edition of the Guide is up to date and comprehensive.

**The Right Honourable Sir Brian Leveson,**

**President of the Queen's Bench Division**

## Preface to the 2018 Edition

This Guide provides a general explanation of the work and practice of the Administrative Court. It is designed to make it easier for parties to conduct judicial reviews in the Administrative Court, by drawing together into one place the relevant statutory provisions, rules of procedure, practice directions, and case law on procedural aspects of judicial review. It provides general guidance as to how litigation in the Administrative Court should be conducted in order to achieve the overriding objective of dealing with cases justly and at proportionate cost.

The Guide has been prepared with all Court users in mind, whether they are persons who lack legal representation (known as "litigants in person") or persons who have legal representation. We invite all Court users to follow this Guide when they prepare and present their cases.

In recent years, the Administrative Court has become one of the busiest specialist Courts within the High Court. It is imperative that Court resources (including the time of the judges who sit in the Administrative Court) are used efficiently. That has not uniformly been the case in the past where the Court has experienced problems in relation to applications claiming unnecessary urgency, over-long written arguments, and bundles of documents, authorities and skeleton arguments being filed very late (to name just a few problems). These and other bad practices will not be tolerated. This Guide therefore sets out in clear terms what is expected. Sanctions may be applied if parties fail to comply.

Since the last edition of the Guide the Court of Appeal has given a number of judgments addressing issues of procedure in public law cases: *Talpada* [2018] EWCA Civ 841 (on the need for procedural rigour in public law proceedings); *Liberty* [2018] EWHC 976 (Admin) (on applications for extension of time for skeleton arguments and to rely on further evidence); *Fayad* [2018] EWCA Civ 54 (on pleading claims for damages under the Human Rights Act 1998 in a claim for judicial review); and *Hickey* [2018] EWCA Civ 851 (on the need for a proper application to amend grounds of appeal).

This new edition of the Guide also includes at Annex 4 the current Listing Policy (from June 2018) for the Administrative Court, and at Annex 5 the current ACO Costs Guidance (April 2016).

We welcome any constructive feedback on the Guide. That feedback should be sent to the Senior Legal Managers in the Administrative Court Office, by email to administrativecourtoffice.guidefeedback@hmcts.x.gsi.gov.uk. We plan to update this Guide from time to time, as appropriate.

**The Honourable Mr. Justice Supperstone, Judge in Charge of the Administrative Court,**

**The Honourable Mr Justice Lewis**

**The Honourable Mrs Justice Whipple DBE**

**Royal Courts of Justice, July 2018**

# Part A: Preliminary Matters

## 1. Introduction

### 1.1. The Judicial Review Guide

1.1.1. This Guide has been prepared under the direction of the lead Judge of the Administrative Court and provides a general explanation of the work and practice of the Administrative Court with particular regard to judicial review. The Guide is designed to make it easier for parties to conduct judicial reviews in the Administrative Court. The definition of public law and administrative law is beyond the scope of this Guide and reference should be made to the many academic and practitioner texts on the subject for further reading.

1.1.2. The Guide must be read with the Civil Procedure Rules ("CPR") and the supporting Practice Directions. Litigants and their advisers are responsible for acquainting themselves with the CPR; it is not the task of this Guide to summarise the CPR, nor should anyone regard this Guide as a substitute for the CPR.

1.1.3. The Guide does not have the force of law, but parties using the Administrative Court will be expected to act in accordance with it.

1.1.4. The Guide is intended to be applicable in the Administrative Court and the Administrative Court Offices across England and Wales.

1.1.5. The contents of the Guide, including any websites, email addresses, telephone numbers and addresses, are correct at the time of publication. The Guide will be updated from time to time.

### 1.2. The Civil Procedure Rules

1.2.1. The overriding objective set out in CPR 1.1(1) is central to civil proceedings, including judicial reviews. It requires the parties and the Court to deal with cases justly and proportionately, including at proportionate cost.

1.2.2. The CPR are divided into Parts. A particular Part is referred to in the Guide as CPR Part 54, etc., as the case may be. Any particular rule within a Part is referred to, for example, as CPR 54.12(2). The current CPR can be viewed on the Government's website via www.gov.uk/courts-tribunals/administrative-court.

1.2.3. The judicial review procedure is mainly (but not exclusively) governed by CPR Part 54 and the associated practice directions. CPR Part 54 and the associated practice directions are required reading for any litigant considering judicial proceedings. More details on these provisions will be given throughout this Guide.

### 1.3. Practice Directions

1.3.1. Most Parts of the CPR have an accompanying practice direction or directions, and other practice directions deal with matters such as the pre-action Protocols.

1.3.2. The practice directions are made pursuant to statute and have the same authority as the CPR themselves. However, in case of any conflict between a rule and a practice direction, the rule will prevail. Each practice direction is referred to in the Guide with the number of any part that it supplements preceding it; for example, one of the practice directions supplementing CPR Part 54 is referred to as CPR PD 54A. A reference to a particular sub-paragraph of a practice direction will be referred to as, for example, CPR PD 54A paragraph 5.1.

1.3.3. The key associated practice directions to CPR Part 54 are CPR PD 54A (Judicial Review Practice), CPR PD 54D (Venue for Claims), and CPR PD 54E (Planning Court). These practice directions are required reading for any litigant considering judicial proceedings. More details on these provisions will be given throughout this Guide.

## 1.4. Forms

1.4.1. CPR PD 4 lists the forms generally required to be used under the CPR.

1.4.2. The Practice Direction contains 3 tables. Table 1 lists the "N forms" that are referred to and required by the CPR and the Practice Directions. Tables 2 and 3 list forms that are not relevant to this Guide. Other forms may be provided by the Administrative Court Office and are not available online (for example, form 86b – see paragraph 8.4 of this Guide).

1.4.3. The relevant N forms that are directly relevant to judicial review proceedings are:

| | |
|---|---|
| N461 | Judicial Review claim form |
| N461(PC) | Judicial Review claim form (Planning Court) |
| N462 | Judicial Review acknowledgment of service |
| N462(PC) | Judicial Review acknowledgement of service (Planning Court) |
| N463 | Judicial Review – application for urgent consideration |
| N463(PC) | Judicial Review – application for urgent consideration (Planning Court) |

1.4.4. The following general N forms are also required in a judicial review application:

| | |
|---|---|
| N215 | Certificate of service |
| N244 | Application notice |
| N260 | Statement of costs (Summary Assessment) |
| N279 | Notice of discontinuance |
| N434 | Notice of change of legal representative |

1.4.5. The forms contained in CPR PD 4 are available in the various practitioners' textbooks and at the Administrative Court website: www.gov.uk/courts-tribunals/administrative-court.

1.4.6. There are a few forms which are not set out in the rules that practitioners must use. One form of importance in judicial review is that for an out of hours application (see paragraph 16.3 of this Guide).

## 1.5. Fees

1.5.1. By virtue of the Civil Proceedings (Fees) Order 2008 No. 1053 (L. 5) (as amended) the Administrative Court Office is required to charge fees at certain stages in proceedings or when a party requests an order from the Court. The relevant fees (at the time of publication) are outlined in Annex 2.[1] Current fees can also be checked at the Administrative Court website at www.gov.uk/courts-tribunals/administrative-court.

[1] The fees are set out in schedule 1 of the Civil Proceedings (Fees) Order 2008 (as amended).

1.5.2. Some litigants may be entitled to the remission of fees.[2] Guidance on whether you may be entitled to fee remission can be found on form EX160A and litigants can apply online at www.gov.uk/help-with-court-fees.This Guide will only refer to fees, but a litigant should be aware that fee remission is potentially available for all fees save for copying charges (except for vexatious litigants and persons subject to Civil Restraint Orders where different rules apply, see paragraph 4.56 of this Guide).

1.5.3. Court fees should not be confused with costs between parties, which can be considerably more than the Court fees. Costs are discussed in this Guide in chapter 23.

1.5.4. A litigant in person will be expected to comply with the requirements to use the right form and to pay fees, just like a represented litigant. Litigants in person should therefore make themselves familiar with those parts of this Guide which are relevant to their claim and with the applicable requirements.

## 1.6. Calculating Time Limits

1.6.1. Any reference to days in the CPR or in this Guide will be a reference to clear, calendar days, unless stated otherwise. Therefore, when calculating time limits, every day, including weekends and bank holidays, will count, except for the day of the act or order itself (see CPR 2.8 for more detail and examples).

1.6.2. Any reference in the CPR or in this Guide to service of a document does not mean the date that the document is actually received. The date of service is set as the second working day after the day that the document was sent.[3]

## 1.7. The Administrative Court

1.7.1. The Administrative Court is part of the Queen's Bench Division of the High Court (one of the three divisions of the High Court, together with the Chancery Division and Family Division). The Administrative Court hears the majority of applications for judicial review[4] and also some statutory appeals and applications which fall outside the remit of this Guide.

1.7.2. Judicial review is the procedure by which an individual, company, or organisation may challenge the act or omission of a public body and ensure that the public body meets its legal obligations.

1.7.3. The Rt Hon Sir Brian Leveson is the President of the Queen's Bench Division. Mr. Justice Supperstone is the judge in charge of the Administrative Court.

1.7.4. Some cases in the Administrative Court come before a Divisional Court, usually consisting of one Lord Justice of Appeal (or the President) and one High Court Judge.

1.7.5. Judicial reviews which challenge planning decisions are heard in the specialist Planning Court, a part of the Administrative Court.

## 1.8. The Administrative Court Office

1.8.1. The administration of judicial review cases in the Administrative Court is dealt with by the Administrative Court Office ("ACO"). All documentation must be filed with the ACO and all enquiries on cases must be directed to the ACO (not directly to the judiciary).

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2 The fee remission provisions are set out in schedule 2 of the Civil Proceedings (Fees) Order 2008 (as amended).

3 CPR 6.14 and CPR 6.26

4 See paragraphs 5.5 and 5.6 of this Guide where the exceptions are discussed

1.8.2. The ACO and its staff are a part of Her Majesty's Courts and Tribunals Service ("HMCTS"), which in turn is an executive agency of the Ministry of Justice ("MOJ"). There are ACOs in Birmingham Civil Justice Centre, Cardiff Civil Justice Centre, Leeds Combined Court Centre, Manchester Civil Justice Centre, and in the Royal Courts of Justice in London. Contact details for the ACOs can be found in Annex 1 to this Guide.

1.8.3. As outlined in CPR PD 2A paragraph 2 the ACO in London is open for business from 10 a.m. to 4.30 p.m. (10 a.m. to 4.00 p.m. for the other ACOs) on every day of the year except;

(a) Saturdays and Sundays;

(b) Good Friday;

(c) Christmas Day;

(d) A further day over the Christmas period determined in accordance with the table specifically annexed to the Practice Direction. This will depend on which day of the week Christmas Day falls;

(e) Bank holidays in England and Wales;

(f) Such other days as the Lord Chancellor, with the concurrence of senior judiciary, may direct.

## 1.9. The Judiciary and the Master

1.9.1. The judiciary in the Administrative Court consists of the High Court Judges (The Honourable Mr/Mrs Justice .....) and other judges or practitioners who have been authorised to sit in the Administrative Court. This Guide will simply refer to judges rather than differentiating between these judges. The judges are addressed in Court as my Lord/my Lady.

1.9.2. In the Royal Courts of Justice there is also a Master of the Administrative Court, currently Master Gidden (addressed in Court as Master). Masters generally deal with interim and pre-action applications, and manage the claims so that they proceed without delay.

## 2. The Parties

**2.1.** This part of the Guide is intended to give guidance on who should be the parties in a claim for judicial review. Identifying the parties correctly ensures that pre-action discussions are occurring between the proper persons (see reference to the pre-action Protocol at paragraph 5.2 of this Guide). It also ensures that the proper parties are referred to on any Court documents.

### 2.2. The Parties

2.2.1. Claimant(s)

2.2.1.1. Claimants tend to be persons aggrieved by the public law decisions of public bodies who wish to challenge those decisions in the Administrative Court (see reference to 'standing' at paragraph 5.3.2 of this Guide).

2.2.1.2. The claimant in judicial review proceedings can be any individual or incorporated company (also known as a corporation). Partnerships are able to bring proceedings in the name of the partnership.

2.2.1.3. The Court may allow unincorporated associations (which do not have legal personality) to bring judicial review proceedings in their own name. But it is sensible, and the Court may require, that proceedings are brought in the name of one or more individuals, such as an office-holder or member of the association, or by a private limited company formed by individuals. A costs order may be, and often is, made against the party or parties named as claimant(s).

2.2.1.4. Public bodies can be claimants in judicial review proceedings. The Attorney General has a common law power to bring proceedings. Local authorities may bring proceedings by virtue of s.222 of the Local Government Act 1972.

2.2.2. Defendant(s)

2.2.2.1. The Defendant in judicial review proceedings is the public body / public office which made the decision under challenge (or failed to make a decision where that failure is challenged), not the individual within that public body or public office.

2.2.2.2. Where the decision is made by a Government Department it is the relevant Secretary of State who is the defendant. Therefore, even if the decision challenged is that of a civil servant working in, for example, the Home Office, the defendant would be the Secretary of State for the Home Department.[5]

2.2.2.3. Where the decision maker is a Court or Tribunal it is the Court or Tribunal which must be the defendant. The opposing party in the underlying case is named as an 'Interested Party' (see below at 2.2.3).

[5] The whole system of departmental organisation and administration is based on the constitutional notion that the decision of a government official is constitutionally that of the Minister, who alone is answerable to Parliament. This principle is called the "Carltona principle" based on the case of *Carltona Ltd v Commissioners of Works* [1943] 2 All ER 560

2.2.3. Interested Parties

2.2.3.1. An interested party is defined as any person (including a corporation or partnership), other than the claimant or defendant, who is directly affected by the claim.[6] For example, where a claimant challenges the decision of a defendant local authority to grant planning permission to a third party, the third party has a direct interest in the claim and must be named as an interested party.

2.2.3.2. Where the defendant is a Court or Tribunal, any opposing party in the lower Court or Tribunal would be an interested party in the judicial review.[7]

2.2.3.3. Interested parties must be included in pre-action correspondence and named in the claim form. Interested parties must also be served with the claim form, as required by CPR 54.7(b).

2.2.4. Interveners

In judicial review proceedings the Court retains a power to receive evidence and submissions from any other persons. Any person can apply, under CPR 54.17(1), to make representations or file evidence in judicial review proceedings. Potential interveners should be aware that any application must be made promptly [8] and that there are costs considerations (see paragraph 23.7 of this Guide).

## 2.3. Multiple Claimants / Defendants / Interested Parties

2.3.1. A claim for judicial review may be brought by one claimant or, in appropriate circumstances, by more than one claimant. It may, for example, be appropriate for the claim to be brought by more than one claimant where a number of different individuals are affected by the decision challenged.

2.3.2. A claim may be brought against one defendant or, in appropriate circumstances, against two or more defendants. This may, for example, be appropriate where two or more bodies are responsible for the decision under challenge.

2.3.3. There may, exceptionally, be appropriate circumstances in which a number of different challenges by different claimants against different defendants can be combined within one single claim for judicial review. This will, generally, only be appropriate if the different challenges can be conveniently dealt with together.

2.3.4. If a claimant considers that any person is directly affected by the claim, they must identify that person as an interested party and serve the claim form on that person.[9] A defendant must also identify in its acknowledgement of service a person who the defendant considers is an interested party because the person is directly affected[10] and the Court will consider making that person an interested party when considering permission.

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6 CPR 54.1(2)(f).

7 CPR PD 54A

8 CPR 54.17(2)

9 CPR 54.6 and 54.7

10 CPR 54.8(4)(1)

2.3.5. Where a person who is a potential defendant or interested party has not been named or served with the claim form, the Court may direct that they be added as a party, that the claim be served on that person, and the person may make representations or lodge an acknowledgement of service if the person so wishes.[11]

## 2.4. Case Titles

2.4.1. In judicial review proceedings the case title differs from other civil proceedings to reflect the fact that judicial review is the modern version of a historical procedure whereby Her Majesty's Judiciary, on her behalf, acted in a supervisory capacity. Technically a judicial review is brought by the Crown, on the application of the claimant, to ensure that powers are being properly exercised. The case title reflects this:[12]

The Queen (on the application of Claimant X) -v- Defendant Y

2.4.2. The case title is sometimes written as follows:

R (on the application of Claimant X) -v- Defendant Y

Or

R (Claimant X) -v- Defendant Y

2.4.3. The Crown will not involve itself in any way in the claim on behalf of the Claimant. The inclusion of the Queen's name in the title is purely formal.

[11] CPR 19.2(2) & CPR 19.2(4). In an appropriate case, ACO lawyers would have power to make such an order under CPR 54.1A. For the requirement to serve the papers on a new party, see CPR PD 5A paragraph 3.1. For removal of parties, see CPR 19.2(3). In an appropriate case, ACO lawyers would have powers to make such an order under CPR 54.1A.

[12] This form of the case title is stipulated in Practice Direction (Administrative Court: Establishment) [2000] 1 W.L.R. 1654.

## 3. Litigants in person

### 3.1. General

3.1.1. Many cases in the Administrative Court are now conducted by parties who do not have professional legal representation and who represent themselves ("litigants in person"). It is important for litigants in person to be aware that the rules of procedure and of practice apply to them in the same way as to parties who are represented by lawyers. The Court will have regard to the fact that a party is unrepresented and will ensure that that party is treated fairly, as explained below. Many forms of help are available for individuals who wish to seek legal advice before bringing claims for judicial review.

3.1.2. Represented parties must treat litigants in person with consideration at all times during the conduct of the litigation. Represented parties are reminded of the guidance published by the Bar Council, CILEx and the Law Society (see: http://www.lawsociety.org.uk/Support-services/Advice/Articles/Litigants-in-person-new-guidelines-for-lawyers-June-2015/).

3.1.3. Litigants in person must show consideration and respect to their opponents, whether legally represented or not, to their opponents' representatives, and to the Court.

### 3.2. Obligation to Comply with Procedural Rules

3.2.1. A litigant in person will be expected to comply with the Civil Procedure Rules ("CPR"), and the provisions of this Guide apply to them. Litigants in person should therefore make themselves familiar with those parts of this Guide which are relevant to their claim and also with the applicable provisions of the CPR.

3.2.2. For example, the requirement to provide all relevant information and facts (described at paragraph 14.1 of this Guide under the heading "Duty of Candour") applies to all litigants and includes documents and facts which are unfavourable to the litigant. This requirement applies to litigants in person in the same way as it applies to litigants with representation. Similarly, the requirement to set out grounds of challenge in a coherent and well-ordered Grounds of Claim (see paragraph 6.3.4.1 of this Guide) applies to litigants in person in the same way as it applies to litigants with representation. Litigants in person may be penalised if they do not comply with the rules.

3.2.3. Generally, it is the duty of all parties to litigation, whether represented or not, to bring relevant matters to the attention of the Court and not to mislead the Court. This means for example that parties must not misrepresent the law and must therefore inform the Court of any relevant legislation or previous Court decisions which are applicable to their case and of which they are aware (whether favourable or not to their case). In addition there is a particular duty when an application is made to the Court without the other party being present or notified in advance (usually in cases of urgency). Here the litigant is under a duty to disclose any facts or other matters which might be relevant to the Court's decision, even if adverse to their case, and specifically draw the Court's attention to such matters (described at paragraph 14.1 of this Guide under the heading "Duty of Candour").

3.2.4. A litigant in person must give an address for service in England or Wales in the claim form. It is essential that any change of address is notified in writing to the Administrative Court Office ("ACO") and to all other parties to the case, otherwise important communications such as notices of hearing dates may not arrive.

## 3.3. The Hearing

3.3.1. It is very important that litigants in person give copies of any written document which sets out their arguments (known as a "skeleton argument") which they intend to rely on, and any other material (for example, reports of cases) in support of their arguments, to the Court and to their opponents in good time before the hearing. Litigants in person should familiarise themselves with the rules about skeleton arguments at chapter 17 of this Guide. If they do not follow these rules, the Court may refuse to hear the case, or may adjourn the case to allow the other party or parties proper time to consider and respond to the late skeleton or material, in which case the litigant in person may be ordered to pay the costs incurred by the adjournment.

3.3.2. Litigants in person should identify in advance of the hearing the points which they consider to be their strongest points, and they should put those points first in their skeleton argument and in any oral submissions to the Court.

3.3.3. At the hearing, the litigant in person will be asked to give their name(s) to the usher or in-court support staff if they have not already done so.

3.3.4. The case name will be called out by the court staff. The hearing will then begin.

3.3.5. At the hearing, the claimant usually speaks first, then the defendant speaks, and then the claimant has an opportunity to comment on what the defendant has said. Sometimes the judge may think it is sensible, depending on the circumstances, to vary that order and, for example, let the defendant speak first.

3.3.6. At the hearing, the judge may make allowances for any litigant in person, recognising the difficulties that person faces in presenting his or her own claim. The judge will allow the litigant in person to explain his or her case in a way that is fair to that person. The judge may ask questions. Any other party in court, represented or not, will also have an opportunity to make submissions to the judge. At the end of the hearing, the judge will usually give a ruling, which may be short. The judge will explain the order he or she makes. Representatives for other parties should also explain the court's order after the hearing if the litigant in person wants further explanation.

## 3.4. Practical Assistance for Litigants in Person

3.4.1. Neither the court staff nor the judges are in a position to give advice about the conduct of a claim. There is however a great deal of practical help available for litigants in person.

3.4.2. The Personal Support Unit ("PSU") is a free and independent service based in a number of court buildings which support litigants going through the court process without legal representation. The PSU do not give legal advice and will not represent a litigant, but will assist by taking notes, discussing the workings of the court process, and providing assistance with forms. There are PSUs in each of the court centres in which the majority of judicial reviews are heard (Birmingham Civil Justice Centre, Bristol Civil Justice Centre, Cardiff Civil Justice Centre, Leeds Combined Court Centre, Manchester Civil Justice Centre, and the Royal Courts of Justice in London) as well as some other court buildings. For more information see https://www.thepsu.org/.

3.4.3. The Citizens Advice Bureau ("CAB") provides advice on a wide range of issues at drop in centres, by telephone, and online (see https://www.citizensadvice.org.uk/).

3.4.4. There is a Citizens Advice Bureau at the Royal Courts of Justice which may be able to offer some advice. It is situated on the ground floor, on the left hand side of the main hall (see http://www.rcjadvice.org.uk/).

3.4.5. There are a number of guides available designed to help litigants in person. Amongst these are: the Bar Council Guide to representing yourself in Court (see: http://www.barcouncil.org.uk/media/203109/srl_guide_final_for_online_use.pdf) and the QB Interim Applications Guide (see: https://www.judiciary.gov.uk/publications/guide-self-represented-qbd/).

## 3.5. Legal Representation and Funding

3.5.1. There are a number of solicitors firms in England and Wales that conduct judicial review litigation. Further, there are a number of barristers in both England and Wales that will give advice without referral by a solicitor, acting on a direct access basis. Details of these legal professionals can be found on the Law Society (http://www.lawsociety.org.uk/) and Bar Council (http://www.barcouncil.org.uk/) websites respectively.

3.5.2. There are three ways that legal representation can be provided: fee paid representation, legal aid, and Pro-bono representation (free legal representation).

3.5.3. Fee Paid Representation

3.5.3.1. Legal representatives will act for a party that will pay their fees directly. Fee paid representation is generally conducted at an agreed hourly rate or by agreeing a fixed fee in advance.

3.5.3.2. Alternatively, some legal representatives will act for a party under a conditional fee agreement ("CFA"). CFAs are commonly known as "no win, no fee" agreements. The individual firm or barrister will be able to confirm the basis on which they will act.

3.5.3.3. Some lawyers will be prepared to undertake a specific piece of work for payment, short of representing the client for the whole of the case. For example, a lawyer may be prepared to draft a skeleton argument for the case which the litigant in person can then use for the hearing, or appear at a particular hearing. This is sometimes called "unbundled" work.

3.5.4. Legal Aid (Civil Cases)

3.5.4.1. The individual firm or barrister will be able to confirm whether they can work on a legal aid basis and whether a particular claimant will be entitled to apply for legal aid.

3.5.4.2. There are three types of legal aid: legal help, which can be used to give limited, initial advice and assistance; investigative representation, which can be used to investigate a potential claim in greater depth than that under legal help; and full representation, which can be used to issue and conduct judicial review proceedings.

3.5.4.3. Litigants in person who may be eligible for legal aid can contact Civil Legal Advice ("CLA"). Litigants can telephone the CLA helpline to find their nearest CLA Information Point on 0345 345 4 345. This service is funded by the Legal Aid Agency ("LAA"). The LAA is open from Monday to Friday, 9am to 8pm, and on Saturday, 9am to 12:30pm. Members of the public can also text 'legalaid' and their name to 80010 to get a call back. This costs the same as a normal text message. An online 'eForm' process for applying for legal aid is available. Telephone 0300 200 2020 or email contactcivil@legalaid.gsi.gov.uk.

3.5.4.4. To obtain full representations, and thus engage the legal representative to conduct the judicial review proceedings, the claimant will be required to pass two eligibility tests:

3.5.4.4.1. Financial Eligibility: The Legal Aid Agency will assess the claimant's disposable income and capital. If the claimant's income and/or capital amount to more than the set sum then legal aid will not be available.

3.5.4.4.2. Merits Criteria: The Legal Aid Agency will consider the merits of the proposed claim. If the Legal Aid Agency considers that the proposed claim lacks the requisite merit then legal aid will not be available.

3.5.5. Legal Aid (Criminal Cases)

Judicial review proceedings are not incidental to lower court proceedings and thus any representation order granted in the lower court will not cover judicial review proceedings.[13] A representation order may not be granted by the Administrative Court itself, although legal aid may be available from the Legal Aid Agency.

3.5.6. Pro-Bono Advice and Representation

3.5.6.1. Some solicitors firms and barristers will offer limited free advice on the prospects of a claim. The individual solicitor or barrister will be able to confirm if they are prepared to give advice on such terms.

3.5.6.2. There are some specialist organizations that arrange for free advice and representation. The largest are:

3.5.6.2.1. The National Pro-Bono Centre (http://www.nationalprobonocentre.org.uk/);

3.5.6.2.2. The Bar Pro-Bono Unit (http://www.barprobono.org.uk/);

3.5.6.2.3. Law Works (https://www.lawworks.org.uk/).

3.5.6.3. A potential litigant should note that pro-bono organizations are overwhelmed with applications and cannot offer assistance to everyone. Further, the application process can be lengthy. The Administrative Court is unlikely to stay a claim or grant an extension of time to file a claim to await the outcome of an application for pro-bono advice or representation.

## 3.6. McKenzie Friends

3.6.1. A litigant in person may have the assistance of a non-legally qualified person, known as a 'McKenzie Friend'. Where a McKenzie friend assists, the litigant in person must be present at the hearing and will be responsible for the conduct of his case at that hearing. But the McKenzie friend may provide some assistance.

3.6.2. Guidance on McKenzie Friends was given in Practice Guidance (McKenzie Friends: Civil and Family Courts)[14] which established that a McKenzie Friend may:

3.6.2.1. Provide moral support for litigant(s) in person;

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[13] Regulation 20(2)(a) of the Criminal Legal Aid (General) Regulations 2013

[14] [2010] 1 W.L.R. 1881, [2010] 4 All ER 272, and see https://www.judiciary.gov.uk/publications/mckenzie-friends/

3.6.2.2. Take notes;

3.6.2.3. Help with case papers; and

3.6.2.4. Quietly give advice on any aspect of the conduct of the case.

3.6.3. The Practice Note also established that a McKenzie Friend may not:

3.6.3.1. Act as the litigant's agent in relation to the proceedings;

3.6.3.2. Manage litigants' cases outside Court, for example by signing Court documents; or

3.6.3.3. Address the Court, make oral submissions or examine witnesses.

3.6.4. The Court can, however, give permission to a person who is not a party and who has no rights of audience to address the Court. But this is only done in exceptional cases, on an application being made, and where it is shown to be in the interests of justice that such permission should be given.

3.6.5. A litigant who wishes to attend a hearing with the assistance of a McKenzie Friend should inform the Court as soon as possible indicating who the McKenzie Friend will be. The proposed McKenzie Friend should produce a short curriculum vitae or other statement setting out relevant experience, confirming that he or she has no interest in the case and understands the McKenzie Friend's role and the duty of confidentiality.

3.6.6. The litigant in person and the McKenzie Friend must tell the Court if the McKenzie Friend is being paid for his or her assistance and be ready to give details of that remuneration. The Court may stop a McKenzie friend from assisting if the Court believes there is good reason to do so in any individual case. It is unlawful for a person who is not authorised to do so to give paid or unpaid legal advice or representation in respect of immigration matters.[15]

3.6.7. If the Court considers that a person is abusing the right to be a McKenzie friend (for example, by attending in numerous claims to the detriment of the litigant(s) and/or the Court) and this abuse amounts to an interference with the proper processes of the administration of justice, the Court may make an order restricting or preventing a person from acting as a McKenzie friend.[16]

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[15] s.84 Immigration and Asylum Act 1999

[16] *Noueiri* [2001] 1 W.L.R. 2357

## 4. Vexatious Litigant Orders and Civil Restraint Orders

**4.1.** The Court has power to make a civil restraint order ("CRO") under CPR PD 3C in relation to any person, alternatively to make an order under s.42 of the Senior Courts Act 1981 (a "vexatious litigant").

**4.2.** The effect of either of those orders is to require the person subject to that order to obtain the permission of the Court to start proceedings before they may commence a judicial review.

**4.3.** This application is distinct from the application for permission to apply for judicial review.

**4.4.** If a person who is subject to such an order fails to make an application for permission to start proceedings, the application for permission to apply for judicial review (or the application for an interim or pre-action order) will be dismissed without further order. The Court may also consider the filing of the application to be a contempt of Court.

**4.5.** The application for permission to start proceedings must be made by filing an application notice (N244 or PF244)[17] with the Administrative Court Office with the relevant fee.

**4.6.** The fee is not subject to fee remission and must be paid. If permission to start proceedings is later granted and the applicant is able to claim fee remission then the fee can be refunded.[18]

**4.7.** The application notice should state:[19]

4.7.1. The title and reference number of the proceedings in which the order was made;

4.7.2. The full name of the litigant and his/her address;

4.7.3. The fact that the litigant is seeking permission pursuant to the order to apply for permission to apply for judicial review (or whatever interim or pre-action order is sought);

4.7.4. Explain briefly why the applicant is seeking the order; and

4.7.5. The previous occasions on which the litigant has made an application for permission must be listed.[20]

**4.8.** The application notice must be filed together with any written evidence on which the litigant relies in support of his application.[21] Generally, this should be a copy of the claim papers which the litigant requests permission to file.

**4.9.** If the litigant is a vexatious litigant, there is no need to serve an application on any other intended litigants unless directed by the Court to do so.[22] It may be considered to be good practice to do so nonetheless.

**4.10.** If the litigant is subject to a CRO then notice of the application must be given to the other intended litigants, which must set out the nature and the grounds of the application, and they must be given 7 days to respond to the notice before the application for permission is filed. Any response must be included with the application.[23]

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17 CPR PD 3A paragraph 7.2, CPR PD 3C paragraph 2.6, CPR PD 3C paragraph 3.6, CPR PD 3C paragraph 4.6

18 Paragraph 19(3), schedule 2, Civil Proceedings (Fees) Order 2008

19 CPR PD 3A paragraph 7.3

20 CPR PD 3A paragraph 7.5

21 CPR PD 3A paragraph 7.4

22 CPR PD 3A paragraph 7.7

23 CPR PD 3C paragraph 2.4-2.6, CPR PD 3C paragraph 3.4- 3.6, CPR PD 3C paragraph 4.4-4.6

**4.11.** The application will be placed before a judge who may, without the attendance of the litigant:[24]

4.11.1. Make an order giving the permission sought;

4.11.2. Give directions for further written evidence to be supplied by the litigant before an order is made on the application;

4.11.3. Make an order dismissing the application without a hearing; or

4.11.4. Give directions for the hearing of the application.

**4.12.** The Court will dismiss the application unless satisfied that the application is not an abuse of process and there are reasonable grounds for bringing the application.[25]

**4.13.** For vexatious litigants, an order dismissing the application, with or without a hearing, is final and may not be subject to reconsideration or appeal.[26]

**4.14.** For those subject to a CRO, there is a right of appeal (see chapter 25 of this Guide for appeals), unless the Court has ordered that the litigant has repeatedly made applications for permission pursuant to the CRO which were totally without merit, and the Court directs that if the litigant makes any further applications for permission which are totally without merit, the decision to dismiss the application will be final and there will be no right of appeal, unless the judge who refused permission grants permission to appeal.[27]

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[24] CPR PD 3A paragraph 7.6, CPR PD 3C paragraph 2.6, CPR PD 3C paragraph 3.6, CPR PD 3C paragraph 4.6

[25] s.42(3) of the Senior Courts Act 1981

[26] CPR PD 3A paragraph 7.6 and s.42(4) of the Senior Courts Act 1981

[27] CPR PD 3C paragraph 2.3(2) and 2.6(3), CPR PD 3C paragraph 3.3(2) and 3.6(3), CPR PD 3C paragraph 4.3(2) and 4.6(3)

## 5. Before Starting the Claim

### 5.1. General Considerations

5.1.1. Before bringing any proceedings, the intending claimant should think carefully about the implications of so doing. The rest of chapter 5 of this Guide considers the practical steps to be taken before issuing a claim form, but there are a number of general considerations, including personal considerations.

5.1.2. A litigant who is acting in person faces a heavier burden in terms of time and effort than does a litigant who is legally represented, but all litigation calls for a high level of commitment from the parties. This should not be underestimated by any intending claimant.

5.1.3. The overriding objective of the CPR is to deal with cases justly and at proportionate cost. In all proceedings there are winners and losers; the loser is generally ordered to pay the costs of the winner and the costs of litigation can be large (see chapter 23 of this Guide for costs).

5.1.4. Part B of this Guide outlines the procedure when bringing a claim. This section will outline the considerations before bringing a claim, including the pre-action procedure, factors which may make bringing a claim inappropriate, costs protection, the timescales in which proceedings should be started, and the duties of the parties concerning the disclosure of documents.

### 5.2. The Judicial Review Pre-action Protocol

5.2.1. So far as reasonably possible, an intending claimant should try to resolve the claim without litigation. Litigation should be a last resort.

5.2.2. There are codes of practice for pre-trial negotiations. These are called “Protocols”. The appropriate pre-action Protocol in judicial review proceedings is the Judicial Review Preaction Protocol, which can be viewed on the Government’s website via http://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_jrv. This is a very important document which anyone who is considering bringing a claim should consider carefully.

5.2.3. It is very important to follow the Judicial Review Pre-action Protocol, if that is possible, before commencing a claim. There are two reasons for this. First of all, it may serve to resolve the issue without need of litigation or at least to narrow the issues in the litigation. Secondly, failure to follow the Protocol may result in costs sanctions being applied to the litigant who has not followed the Protocol.

5.2.4. A claim for judicial review must be brought within the relevant time limits fixed by the CPR. The Protocol process does not affect the time limits for starting the claim (see paragraph 5.4 of this Guide). The fact that a party is using the Protocol would not, of itself, be likely to justify a failure to bring a claim within the time limits set by the CPR or be a reason to extend time. Therefore, a party considering applying for judicial review should act quickly to comply with the Protocol but note the time limits for issue if the claim remains unresolved.

5.2.5. The Protocol may not be appropriate in urgent cases (e.g., where there is an urgent need for an interim order) but even in urgent cases, the parties should attempt to comply with the Protocol. The Court will not apply cost sanctions for non-compliance where it is satisfied that it was not possible to comply because of the urgency of the matter.

5.2.6. Stage one of the Protocol requires the parties to consider whether a method of alternative dispute resolution (“ADR”) would be more appropriate. The Protocol mentions discussion and negotiation, referral to the Ombudsman and mediation (a form of facilitated negotiation assisted by an independent neutral party).

5.2.7. Stage two is to send the defendant a pre-action letter. The letter should be in the format outlined in Annex A to the Protocol. The letter should contain the date and details of the act or omission being challenged and a clear summary of the facts on which the claim is based. It should also contain the details of any relevant information that the claimant is seeking and an explanation of why it is considered relevant.

5.2.8. The defendant should normally be given 14 days to respond to the pre-action letter and must do so in the format outlined in Annex B to the Protocol. Where necessary the defendant may request the claimant to allow them additional time to respond. The claimant should allow the defendant reasonable time to respond, where that is possible without putting the time limits to start the case in jeopardy.

## 5.3. Situations where a Claim for Judicial Review May Be Inappropriate

5.3.1. There are situations in which judicial review will not be appropriate or possible. These should be considered at the outset. Litigants should refer to the CPR and to the commentary in academic works on administrative law. The following are some of those situations in outline:

5.3.2. Lack of Standing (or *Locus Standi*)

5.3.2.1. A person may not bring an application for judicial review in the Administrative Court unless that person has a "sufficient interest" in the matter to which the claim relates.[28]

5.3.2.2. The issue of standing will generally be determined when considering permission but it may be raised and determined at any stage.

5.3.2.3. The parties and/or the Court cannot agree that a case should continue where the claimant does not have standing.[29] Nor does the Court have a discretion. A party must have standing in order to bring a claim.

5.3.2.4. The sufficient interest requirement is case specific and there is no general definition.[30] Those whom a decision directly and adversely affects will seldom (if ever) be refused relief for lack of standing. Some claimants may be considered to have sufficient standing where the claim is brought in the public interest.

5.3.3. Adequate Alternative Remedy

5.3.3.1. Judicial review is often said to be a remedy of last resort.[31] If there is another method of challenge available to the claimant, which provides an adequate remedy, the alternative remedy should generally be exhausted before applying for judicial review.

5.3.3.2. The alternative remedy may come in various guises. Examples include an internal complaints procedure or a statutory appeal.

5.3.3.3. If the Court finds that the claimant has an adequate alternative remedy, it will generally refuse permission to apply for judicial review.

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[28] s.31(3) of the Senior Courts Act 1981

[29] This principle has been confirmed in a number of other cases, for example in *R.* v *Secretary of State for Social Services* ex parte *Child Poverty Action Group* [1990] 2 Q.B. 540 at 556 and more recently in *R (Wylde)* v *Waverley Borough Council* [2017] EWHC 466 (Admin) from paragraph 19 onwards.

[30] *Inland Revenue Commissioners* v *National Federation of Self-Employed and Small Businesses Ltd* [1982] A.C. 617

[31] See *R.* v *Epping and Harlow General Commissioners* ex parte *Goldstraw* [1983] 3 All E.R. 257 at 262, *Kay* v *Lambeth London Borough Council* [2006] 2 A.C. 465 at 492 (paragraph 30), and more recently in *R. (Gifford)* v *Governor of Bure Prison* [2014] EWHC 911 (Admin) at paragraph 37.

5.3.4. The Claim is Academic

5.3.4.1. Where a claim is purely academic, that is to say that there is no longer a case to be decided which will directly affect the rights and obligations of the parties,[32] it will generally not be appropriate to bring judicial review proceedings. An example of such a scenario would be where the defendant has agreed to reconsider the decision challenged.

5.3.4.2. Only in exceptional circumstances where two conditions are satisfied will the Court proceed to determine an academic issue. These conditions are: (1) a large number of similar cases exist or are anticipated, or at least other similar cases exist or are anticipated; and (2) the decision in a judicial review will not be fact-sensitive.[33]

5.3.5. The Outcome is Unlikely to be Substantially Different.

The Courts have in the past refused permission to apply for judicial review where the decision would be the same even if the public body had not made the error in question. Section 31(3C)-(3F) of the Senior Courts Act 1981 now provides that the Courts must refuse permission to apply for judicial review if it appears to the Court highly likely that the outcome for the claimant would not be substantially different even if the conduct complained about had not occurred. The Court has discretion to allow the claim to proceed if there is an exceptional public interest in doing so.

5.3.6. The Claim Challenges a Decision of one of the Superior Courts.

5.3.6.1. The Superior Courts[34] are the High Court, the Court of Appeal, and the Supreme Court. They cannot be subject to judicial review.

5.3.6.2. Where the Crown Court is dealing with a trial on indictment it is a Superior Court and its actions are not subject to judicial review.[35] Otherwise, its functions are subject to judicial review.

## 5.4. Time Limits

5.4.1. The general time limit for starting a claim for judicial review requires that the claim form be filed promptly and in any event not later than 3 months after the grounds for making the claim first arose.[36] It must not be presumed that just because the claim has been lodged within the three month time that the claim has been made promptly, or within time.[37]

5.4.2. When considering whether a claim is within time a claimant should also be aware of two important points:

5.4.2.1. The time limit may not be extended by agreement between the parties (although it can be extended by the Court, see paragraphs 5.4.4 and 6.3.4.4 of this Guide);[38]

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32 *R.* v *Secretary of State for the Home Department* ex parte *Salem* [1999] 1 AC 450

33 *R. (Zoolife International Ltd)* v *The Secretary of State for Environment, Food and Rural Affairs* [2008] A.C.D. 44 at paragraph 36

34 See the discussion of the differences between inferior and superior Courts in *R* v *Chancellor of St. Edmundsbury and Ipswich Diocese* ex parte *White* [1948] 1 K.B. 195.

35 ss,1, 29(3), and 46(1) of the Senior Courts Act 1981.

36 CPR 54.5 (1)

37 See for example *R.* v *Cotswold District Council* ex parte *Barrington Parish Council* [1998] 75 P. & C.R. 515

38 CPR 54.5(2)

5.4.2.2. The time limit begins to run from the date the decision to be challenged was made (not the date when the claimant was informed about the decision).[39]

5.4.3. There are exceptions to the general time limit rule discussed above. These include the following:

5.4.3.1. Planning Law Judicial Reviews:[40] Where the claim relates to a decision made under planning legislation the claim must be started not later than six weeks after the grounds to make the claim first arose. Planning Legislation is defined as the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990 and the Planning (Consequential Provisions) Act 1990.

5.4.3.2. Public Contract Judicial Reviews:[41] Where the claim relates to a decision under the Public Contracts Regulations 2015 S.I. 2015/102, which governs the procedure by which public bodies may outsource public services (sometimes referred to as 'procurement'), the claim must be started within the time specified by r. 92 of those Regulations, which is currently 30 days from the date when the claimant first knew or ought to have known that grounds for starting the proceedings had arisen. Note that this time limit begins to run from the date of knowledge, in contrast to the general rule where the relevant date is the decision date itself. For further guidance on Public Contract Judicial Reviews, see paragraph 5.7 of this Guide.

5.4.3.3. Judicial Review of the Upper Tribunal:[42] Where the defendant is the Upper Tribunal the claim must be started no later than 16 days after the date on which notice of the Upper Tribunal's decision was sent to the applicant. Again, note the difference from the general rule, here the time limit is calculated from the date the decision was sent, not the date it was made.

5.4.3.4. Judicial Review of a decision of a Minister in relation to a public inquiry, or a member of an inquiry panel.[43] The time limit for these challenges is 14 days unless extended by the Court. That shorter time limit does not apply to any challenge to the contents of the inquiry report, or to a decision of which the claimant could not have become aware until publication of the report. [44]

5.4.4. Extensions of Time

5.4.4.1. CPR 3.1(2)(a) allows the Court to extend or shorten the time limit even if the time for compliance has already expired.

5.4.4.2. Where the time limit has already passed, the claimant must apply for an extension in section 8 of the claim form (form N461). The application for an extension of time will be considered by the judge at the same time as deciding whether to grant permission.

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39 *R.* v *Department of Transport ex parte Presvac Engineering* [1992] 4 Admin. L.R. 121

40 CPR 54.5(5).

41 CPR 54.5(6),

42 CPR 54.7A(3)

43 s.38 (1) of the Inquiries Act 2005

44 s. 38(3) of the Inquiries Act 2005

5.4.4.3. The Court will require evidence explaining the delay. The Court will only extend time if an adequate explanation is given for the delay, and if the Court is satisfied that an extension of time will not cause substantial hardship or prejudice to the defendant or any other party, and that an extension of time will not be detrimental to good administration.

## 5.5. Judicial Review of Immigration and Asylum Decisions

5.5.1. Since the 1st November 2013 the Upper Tribunal (Immigration and Asylum Chamber) ("UT(IAC)") has been the appropriate jurisdiction for starting a judicial review in the majority of decisions relating to immigration and asylum, not the Administrative Court (see Annex 1 for UT(IAC) contact details).

5.5.2. The Lord Chief Justice's Practice Direction[45] requires filing in, or mandatory transfer to, the UT(IAC) of any application for permission to apply for judicial review and any substantive application for judicial review that calls into question the following:

5.5.2.1. A decision made under the Immigration Acts or any instrument having effect, whether wholly or partly, under an enactment within the Immigration Acts, or otherwise relating to leave to enter or remain in the UK. The Immigration Acts are defined as: Immigration Act 1971, Immigration Act 1988, Asylum and Immigration Appeals Act 1993, Asylum and Immigration Act 1996, Immigration and Asylum Act 1999, Nationality, Immigration and Asylum Act 2002, Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, Immigration, Asylum and Nationality Act 2006, UK Borders Act 2007, the Immigration Act 2014; or

5.5.2.2. A decision made of the Immigration and Asylum Chamber of the First-tier Tribunal, from which no appeal lies to the Upper Tribunal.

5.5.3. All other immigration and asylum matters remain within the jurisdiction of the Administrative Court.[46] Further, even where an application comes within the classes of claim outlined at paragraph 5.5.2 above, an application which falls within any of the following classes must be brought in the Administrative Court:

5.5.3.1. A challenge to the validity of primary or subordinate legislation (or of immigration rules);

5.5.3.2. A challenge to the lawfulness of detention;

5.5.3.3. A challenge to a decision concerning inclusion on the register of licensed Sponsors maintained by the UKBA;

5.5.3.4. A challenge to a decision as which determines British citizenship;

5.5.3.5. A challenge to a decision relating to asylum support or accommodation;

5.5.3.6. A challenge to the decision of the Upper Tribunal;

5.5.3.7. A challenge to a decision of the Special Immigration Appeals Commission; and

5.5.3.8. An application for a declaration of incompatibility under the s.4 of the Human Rights Act 1998.

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[45] Lord Chief Justice's Practice Direction; Jurisdiction of the Upper Tribunal under s.18 of the Tribunals, Courts and Enforcement Act 2007 and Mandatory Transfer of Judicial Review applications to the Upper Tribunal under s.31A(2) of the Senior Courts Act 1981, dated 21st August 2013 and amended on the 17th October 2014, available at: https://www.judiciary.gov.uk/publications/lord-chief-justices-direction-regarding-the-transfer-of-immigration-and-asylum-judicial-review-cases-to-the-upper-tribunal-immigration-and-asylum-chamber/

[46] See paragraph 5.5.4. of this guide for an example.

5.5.3.9. A challenge to a decision which is certified (or otherwise stated in writing) to have been taken by the Secretary of State wholly or partly in reliance on information which it is considered should not be made public in the interests of national security.

5.5.4. Challenges to decisions made under the National Referral Mechanism for identifying victims of human trafficking or modern slavery[47] are not immigration decisions. They fall within the jurisdiction of the Administrative Court.

## 5.6. Judicial Review of First-tier Tribunal Decisions

5.6.1. Since the 3rd November 2008 the Upper Tribunal (Administrative Appeals Chamber) ("UTAAC") has been the appropriate jurisdiction for starting a judicial review that challenges certain decisions of the First-tier Tribunal, not the Administrative Court (see Annex 1 for UT(AAC) contact details).

5.6.2. The Lord Chief Justice's Practice Direction[48] requires filing in, or mandatory transfer to, the UT(AAC) of any application for permission to apply for judicial review and any substantive application for judicial review that calls into question the following:

5.6.2.1. Any decision of the First-tier Tribunal on an appeal made in the exercise of a right conferred by the Criminal Injuries Compensation Scheme in compliance with s.5(1) of the Criminal Injuries Compensation Act 1995 (appeals against decisions on reviews); and

5.6.2.2. Decisions of the First-tier Tribunal where there is no right of appeal to the Upper Tribunal and that decision is not an excluded decision within paragraph (b), (c), or (f) of s.11(5) of the 2007 Act (appeals against national security certificates).

5.6.3. The direction does not have effect where an application seeks a declaration of incompatibility. In that case the Administrative Court retains the jurisdiction to hear the claim.

## 5.7. Public Contract Judicial Reviews

5.7.1. Where a decision made under the Public Contract Regulations 2015 is challenged, claimants may consider it necessary to bring proceedings for judicial review in the Administrative Court as well as issuing a claim in the Technology and Construction Court ("TCC"). Where this happens, the claim will, unless otherwise directed by the lead judge of the Administrative Court or of the TCC, proceed in the TCC before a TCC judge who is also designated to sit in the Administrative Court.

5.7.2. If this occurs, the claimant must:

5.7.2.1. At the time of issuing the claim form in the ACO, by letter to the ACO, copied to the lead judge of the Administrative Court and the lead judge of the TCC, request transfer of the judicial review claim to the TCC;

5.7.2.2. Mark that letter clearly as follows: "URGENT REQUEST FOR TRANSFER OF A PUBLIC PROCUREMENT CLAIM TO THE TCC";

5.7.2.3. If not notified within 3 days of the issue of the claim form that the case will be transferred to the TCC, contact the ACO and thereafter keep the TCC informed of its position.

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[47] Published by the National Crime Agency at http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/national-referral-mechanism

[48] Lord Chief Justice's Practice Direction, Practice Direction (Upper Tribunal: Judicial Review Jurisdiction), pursuant to s.18(6) of the Tribunals Courts and Enforcement Act 2007

5.7.3. This procedure is to apply only when claim forms are issued by the same claimant against the same defendant in both the Administrative Court and the TCC simultaneously (ie within 48 hours of each other).

5.7.4. When the papers are transferred to the TCC by the ACO in accordance with the procedure outlined above, the lead judge of the TCC will review the papers as soon as reasonably practicable. The lead judge of the TCC will then notify the claimant and the ACO whether he/she considers that the two claims should be case managed and/or heard together in the TCC.

5.7.5. If he or she decides that is so, the claim for judicial review will be case managed and determined in the TCC.

5.7.6. If he or she decides that the judicial review claim should not proceed in the TCC, he or she will transfer the judicial review claim back to the Administrative Court and give his/her reasons for doing so, and the claim for judicial review will be case managed and determined in the Administrative Court.

## 5.8. Abuse of Process

5.8.1. It may be an abuse of process to file a judicial review in the Administrative Court, on the basis that under the Lord Chief Justice's practice direction it falls within its jurisdiction and not the jurisdiction of UT(IAC). An example would be a judicial review which purports to fall within the detention exception where there is no obvious distinct merit to that aspect of the claim.[49]

[49] See *R (Ashraf)* v *Secretary of State for the Home Department* [2013] EWHC 4028 (Admin)

# PART B: THE CLAIM

## 6. Starting the Claim

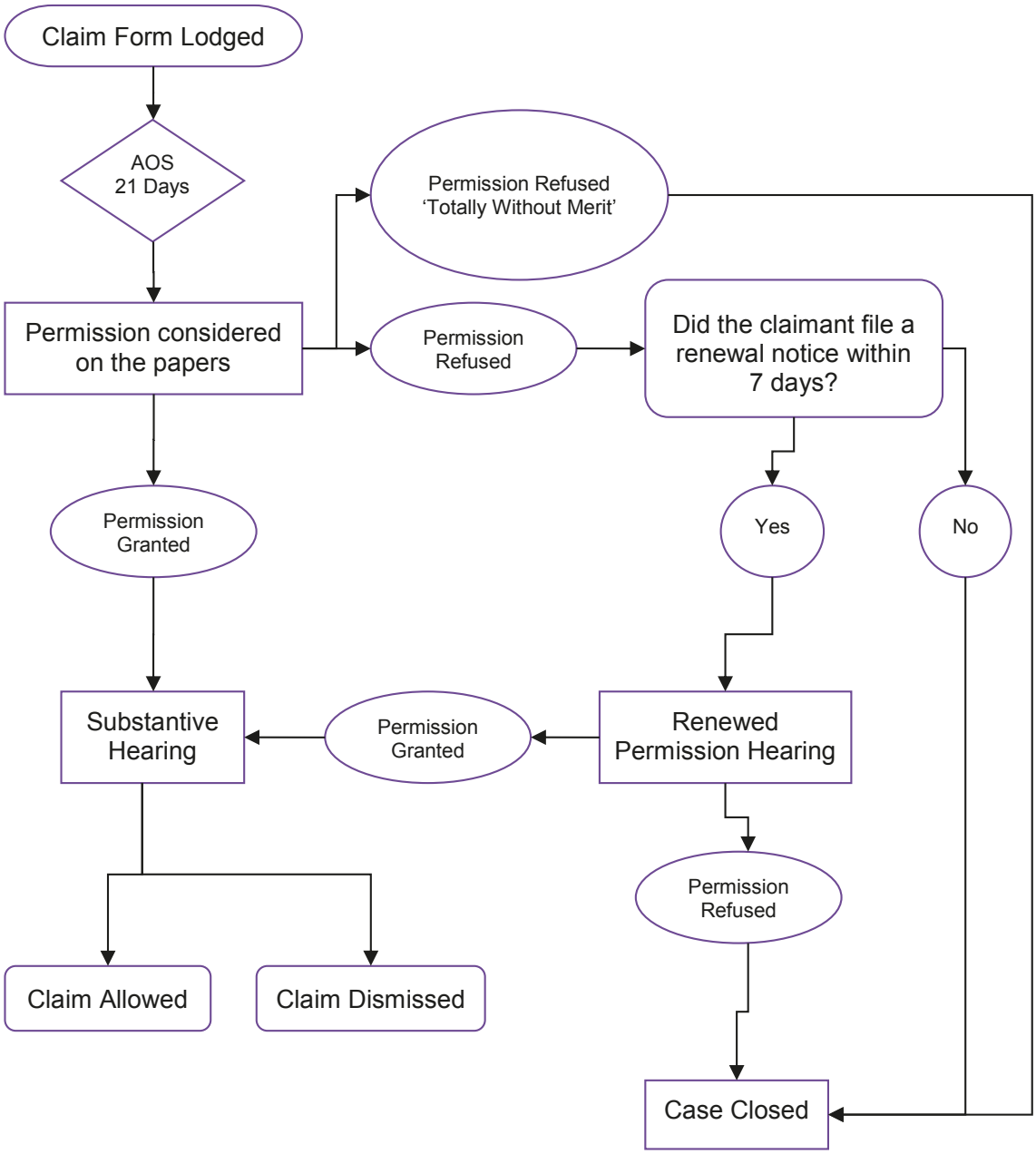
### 6.1. Overview of Judicial Review Procedure

6.1.1. Judicial review is a two stage process which is explained further in this Guide. First the claimant must obtain permission (sometimes referred to as 'leave') to apply for judicial review from the Court. If permission is granted by the Court then the second stage is the substantive claim.

6.1.2. Unlike a number of other civil and criminal proceedings the judicial review process does not incorporate a case management conference, although one may be ordered by a judge. The Court expects the parties to liaise with each other and the ACO to ensure that the claim is ready for the Court. An open dialogue between the parties and the staff of the Administrative Court Office is essential to the smooth running of the case.

6.1.3. The following flow diagram may be used as a quick guide to the judicial review process. Full details of each stage are outlined later in this Guide:

## Judicial Review Process[50]




[50] © David Gardner, reproduced with kind permission of The University of Wales Press from *Administrative Law and the Administrative Court in Wales*

## 6.2. Issuing the Claim

6.2.1. All judicial review claims must be started by issuing a claim form in the ACO. Where a claim form is received in the ACO on an earlier date than the date of issue, then, for the purposes of the judicial review time limits (see paragraph 5.4 of this Guide), the claim is begun on the earlier date.[51] This earlier date will also be noted on the claim form by the ACO. All other relevant time limits will run from the date of issue shown by the Court seal.

6.2.2. If the claimant has lodged the claim in the ACO in Cardiff, the claim may be lodged in Welsh or English.

6.2.3. When issuing the claim form, it must be accompanied by the relevant fee. If the relevant fee is not paid, the claim form and any accompanying documentation will be returned.

6.2.4. If the claim form is returned in accordance with 6.2.3 above, it is not considered to have been issued for the purposes of the judicial review time limits (see paragraph 5.4 of this Guide).

## 6.3. Required Documentation

6.3.1. The claimant must file one copy of the completed judicial review claim form to be retained by the ACO. If the claim is later listed before the Divisional Court a second/third copy will be required.

6.3.2. The claimant must also file an additional copy of the claim form for every defendant and interested party in the claim. The additional copies will be sealed and returned to the claimant to serve on the defendant(s) and interested parties (see paragraph 6.8 of this Guide for service, and see Annex 3 for a list of addresses for service on government departments).

6.3.3. The claimant is required to apply for permission to apply for judicial review in the claim form. The judicial review claim form automatically includes this application in section 4 of the claim form. The claimant must also specify the judicial review remedies sought (see chapter 11 of this Guide for remedies). There is space for this in the claim form at section 7.

6.3.4. The claim form must be accompanied by certain documents, which must be with the claim form when it is filed. The required documents are:

6.3.4.1. A detailed statement of the claimant's grounds for bringing the claim for judicial review (which can be outlined in section 5 of the claim form or in an attached document). This document should be as short as possible, while setting out the claimant's arguments. The grounds must be stated shortly and numbered in sequence. Each ground should raise a distinct issue in relation to the decision under challenge.[52] Arguments and submissions in support of the grounds should be set out separately in relation to each ground.

6.3.4.2. Where the claim includes a claim for damages under the Human Rights Act 1998, the claim for damages must be properly pleaded and particularised.[53]

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[51] CRP PD 7A paragraphs 5.1 and 5.2

[52] *R (Talpada) v SSHD* [2018] EWCA Civ 841 emphasised the need for a clear and succinct statement of the grounds, in the context of appeals, see [68]. See also *Hickey v Secretary of State for Work and Pensions* [2018] EWCA Civ 851 at [74].

[53] *R (Nazem Fayad) v SSHD* [2018] EWCA Civ 54 at [54] – [56]. Claims for damages that are not adequately particularised may give rise to consequences in costs for the claimant.

6.3.4.3. A statement of the facts relied on (which can be outlined in section 9 of the claim form, or in an attached document, or in an attached document incorporated with the grounds in a detailed statement of facts and grounds);

6.3.4.4. Any application to extend the time limit for filing the claim form (which can be made in section 8 of the claim form or in an attached document);

6.3.4.5. Any application for directions (which can be made in section 8 of the claim form or in an attached document);

6.3.4.6. Any written evidence in support of the claim or application to extend time;

6.3.4.7. A copy of any decision letter or order that the claimant seeks to have quashed;

6.3.4.8. Where the claim for judicial review relates to a decision of a Court or Tribunal, an approved copy of the reasons for reaching that decision;

6.3.4.9. Copies of any documents on which the claimant proposes to rely;

6.3.4.10. Copies of any relevant statutory material; and

6.3.4.11. A list of essential documents for advance reading by the Court (with page references to the passages relied on).

6.3.5. The documentation must be provided in an indexed and paginated bundle.

6.3.6. One copy of the documentation bundle is to be provided to be retained by the Court.

6.3.7. As the ACO, since the 28th February 2017, has only required one copy of the claim form, documentation bundle, and any other documentation filed, it must retain this documentation for the Court file. As such, claim documentation cannot be returned after the claim has finished. The parties should ensure they have made their own copies of the claim documentation for their reference. The exception to this is where a party has been required to file an original document (such as a deed or identification document). When returning this document the ACO may copy the document before returning and retain the copy on the court file.

6.3.8. If the claim form is not accompanied by the documentation outlined at paragraph 6.3.4 above without explanation as to why and detail of when it will be provided, the ACO may, at its discretion, return the claim form without issuing it.

6.3.9. If the claim form is returned in accordance with 6.3.8 above, it is not considered to have been issued for the purposes of the judicial review time limits (see paragraph 5.4 of this Guide).

6.3.10. If the documentation required as outlined at paragraph 6.3.4 above is not filed with a claim form which is issued by the ACO, but at a later date, it has been filed out of time. As such, it must be accompanied by an application to extend time to file the documentation. Such an application must be made on an application notice with the relevant fee (see paragraph 12.7 of this Guide).

## 6.4. Duty of Candour

6.4.1. There is a special duty which applies to parties to judicial review known as the 'duty of candour' which requires the parties to ensure that all relevant information and all material facts are put before the Court.[54] This means that parties must disclose any information or material facts which either support or undermine their case.

6.4.2. It is very important that you comply with the duty of candour. The duty is explained in more detail below at paragraph 14.1 of this Guide.

## 6.5. Disclosure

6.5.1. The duty of candour ensures that all relevant information is before the Court. The general rules in civil procedure requiring the disclosure of documents do not apply to judicial review claims. However, the Court can order disclosure, exceptionally, in a particular claim.

6.5.2. An application may be made in the course of a judicial review claim for disclosure of specific documents or documents of a particular class or type. A Court may order disclosure (under CPR 31.12(1)) of documents where this is necessary to deal fairly and justly with a particular issue.[55] An application under CPR 31.12(1) is made in accordance with the principles discussed in paragraph 12.7 of this Guide.

6.5.3. In practice, orders for disclosure of documents are rarely necessary in judicial review claims. The disclosure of documents may not, in fact, be necessary to allow the Court to consider a particular issue. Furthermore, a defendant may have disclosed the relevant documents (either before proceedings begin or as part of its evidence provided during proceedings (see paragraph 14.1 of this Guide on the duty of candour)).

## 6.6. Where to Issue the Claim (Appropriate Venue)

6.6.1. There are five ACOs in England and Wales in which a claim may be issued. They are situated in Birmingham Civil Justice Centre, Cardiff Civil Justice Centre, Leeds Combined Court Centre, Manchester Civil Justice Centre, and in the Royal Courts of Justice in London. Contact details for the ACOs can be found in Annex 1 to this Guide.

6.6.2. The general expectation is that proceedings will be administered and determined in the region with which the claimant has the closest connection.[56] As such the claim should be filed in the ACO with which the claimant has the closest connection.

6.6.3. Any claim started in Birmingham will normally be determined at an appropriate Court in the Midlands, in Cardiff in Wales, in Leeds in the North-East of England, in London at the Royal Courts of Justice; and in Manchester, in the North-West of England.

6.6.4. Claims where the claimant has the closest connection to the South West of England should be issued in the ACO in Cardiff Civil Justice Centre. The administration of the claim will take place in Cardiff, but all hearings will (unless there are exceptional circumstances) take place in the South West of England (principally in Bristol).

6.6.5. Whilst it is not encouraged, the claimant may issue a claim in a different region to the one with which he/she has the closest connection. The claimant should outline why the claim has been lodged in a different region in section 4 of the claim form. The decision should be justified in accordance with the following considerations:

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[54] See the discussion of this principle in *R. (Al-Sweady)* v *Secretary of State for Defence* [2010] H.R.L.R. 2 at 18

[55] As discussed in *R.* v *Secretary of State for Foreign and Commonwealth Affairs* ex parte *World Development Movement Ltd* [1995] 1 W.L.R. 386 at 396-397.

[56] CPR PD 54D paragraph 5.2

6.6.5.1. Any reason expressed by any party for preferring a particular venue;

6.6.5.2. The region in which the defendant, or any relevant office or department of the defendant, is based;

6.6.5.3. The region in which the claimant's legal representatives are based;

6.6.5.4. The ease and cost of travel to a hearing;

6.6.5.5. The availability and suitability of alternative means of attending a hearing (for example, by videolink);

6.6.5.6. The extent and nature of media interest in the proceedings in any particular locality;

6.6.5.7. The time within which it is appropriate for the proceedings to be determined;

6.6.5.8. Whether it is desirable to administer or determine the claim in another region in the light of the volume of claims issued at, and the capacity, resources and workload of, the Court at which it is issued;

6.6.5.9. Whether the claim raises issues sufficiently similar to those in another outstanding claim to make it desirable that it should be determined together with, or immediately following, that other claim; and

6.6.5.10. Whether the claim raises devolution issues and for that reason whether it should more appropriately be determined in London or Cardiff.

6.6.6. There are a number of exceptions to the general rule on venue outlined in paragraph 6.6.2 above. The exceptions can be found in CPR PD 54D paragraph 3.1. They are not repeated here as they do not relate to judicial review proceedings.

6.6.7. If the claim is issued in an ACO thought not to be the most appropriate, it may be transferred by judicial order, often made by an ACO lawyer. The Court will usually invite the views of the parties if it is minded to transfer the claim to a different venue. The defendant and any interested party can address the issue of venue in their summary grounds.

## 6.7. Filing Documents by Fax and Email

6.7.1. The Administrative Court Office will accept the service of documents by email provided:

6.7.1.1. The document being filed does not require a fee;

6.7.1.2. The document, including attachments, does not exceed the maximum which the appropriate court office has indicated it can accept by email[57];

6.7.1.3. The email, including any attachments, is under 10Mb in size.

6.7.2. Where a document may be emailed it must be emailed to the appropriate ACO general inbox (see the contacts list at Annex 1).[58] Any party filing a document by email should not also file a hard copy unless instructed;

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[57] In many instances, 50 pages, but parties should check with the appropriate court office.

[58] CPR PD 5B paragraph 2.1 and 2.2

6.7.3. A document may be filed by fax where it needs to be filed urgently. Hearing bundles and/or documents which require a fee should only be faxed in an emergency and must be accompanied by an undertaking to pay the fee. Any party filing a document by fax should not also file a hard copy unless instructed;[59]

6.7.4. Paragraph 6.7.1 above also applies to skeleton arguments, which must be sent to the dedicated skeleton arguments email address for the relevant ACO (see the contacts list at Annex 1). Also see chapter 17 of this Guide on skeleton arguments.

6.7.5. Any document filed by fax or email after 4pm will be treated as filed on the next day the ACO is open.[60] If any party intends to file documents by fax, that party should first telephone the relevant ACO to ensure that the fax machine is available, and that there is someone there to receive the document.

6.7.6. An email sent to the Court must include the name, telephone number and address / email address for contacting the sender and it (including attachments) must be in plain or rich text format rather than HTML. Where proceedings have been started, it must also clearly state the Court's reference number for the case, the names of the parties and the date and time of any hearing to which the email relates.

6.7.7. The ACO or a judge may give instructions or order that a document is to be filed by email or fax in circumstances other than those outlined above.

## 6.8. Serving the Claim Form

6.8.1. The claimant must serve a sealed copy of the claim form with a copy of the bundle of documentation filed alongside the claim form on the defendant(s) and any interested parties within 7 days of the claim being issued.

6.8.2. The claim form is deemed to have been served on the second business day after it is sent by post, sent by document exchange, faxed, emailed, or delivered personally. The claimant may only serve by fax or email if the party being served has agreed to service in such a form.

6.8.3. All Government Departments should be served at the office as stipulated under the Crown Proceedings Act 1947 (reproduced at Annex 3 of this Guide). Local authorities should be served at their main offices with a note that papers should be directed to the authority's legal department (see CPR PD 54A, paragraph 6.2(b)).

6.8.4. If the party to be served is outside of the UK or the claimant wishes to apply to dispense with service of the claim form there are separate provisions to those outlined at paragraph 6.8.2 above. In such scenarios the claimant should consider CPR 6.16 (for dispensing with service) and CPR 6.30 - 6.34, CPR 6.36 - 6.37, and CPR PD 6B (for serving outside of the UK).

6.8.5. Once the claimant has served the papers on the defendant(s) and any interested party or parties the claimant must confirm this with the ACO by filing a certificate of service (form N215) within 21 days of service of the claim form. If, after 28 days of lodging the claim form, the Administrative Court Office has not received a certificate of service or an acknowledgment of service from the defendant, then the case will be closed.

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[59] CPR PD5A paragraph 5.3

[60] CPR PD5A paragraph 5.3(6) and CPR PD 5B paragraph 4.2

6.8.6. If a claim is closed because the claimant fails to file a certificate of service within time, the claim will only be reopened by judicial order. Such an order must be applied for on an application notice with the relevant fee (see paragraph 12.7 of this Guide). In the application the claimant must explain why the certificate of service was not filed on time, whether the failure caused any prejudice to any party or any delay to the judicial review process, and outline the reasons why the claim should be reopened.

## 6.9. Additional Provisions for Vexatious Litigants or Persons Subject to a Civil Restraint Order

6.9.1. If a claimant is subject to a civil proceedings order made under s.42 of the Senior Courts Act 1981 or is subject to a civil restraint order made under CPR 3.11 then the claimant must apply for permission to start proceedings before he/she may file an application for permission to apply for judicial review.

6.9.2. Such an application must be made on form N244 or PF244 and be accompanied by the relevant fee. This fee is not subject to fee remission, but it can be refunded if permission to start proceedings is granted.

6.9.3. The requirements for vexatious litigants or persons subject to a civil restraint order are discussed in greater detail in chapter 4 of this Guide.

## 6.10. Amending the claim after it has been issued but before permission to apply for judicial review

6.10.1. If the claimant wishes to file further evidence, amend or substitute their claim form or claim bundle, or rely on further grounds after they have been filed with the ACO then the claimant must apply for an order allowing them to do so. To apply the claimant must make an application in line with the interim applications procedure discussed at paragraph 12.7 of this Guide.

6.10.2. The Court retains a discretion as to whether to permit amendments and will often be guided by the prejudice that would be caused to the other parties or to good administration.

6.10.3. In *R (Bhatti) v Bury Metropolitan Borough Council* [2013] EWHC 3093 (Admin) the Court warned that, where the defendant has agreed to reconsider the original decision challenged (thus effectively agreeing to quash the decision challenged without the intervention of the Court) it may not be appropriate to stay the claim or seek to amend the claim. Instead, it may be more appropriate to end the claim (see chapter 22 of this Guide) and, if the claimant seeks to challenge the new decision, to commence a new claim. The exceptions to this principle, where the Court may be prepared to consider the challenge to the initial decision, are narrow, and apply only where:

6.10.3.1. The case raises a point of general public importance; and

6.10.3.2. The point which was at issue in relation to the initial decision challenged remains an important issue in relation to the subsequent decision.[61]

6.10.4. If the defendant has agreed to and already made a new decision which the claimant seeks to challenge, it may be more convenient for the parties and the Court to amend the claim to allow for the new decision to be challenged.[62] The claimant should note the following guidance (as observed at paragraph 22 of *R (Hussain) v Secretary of State for Justice* [2016] EWCA Civ 1111):

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[61] *R (Bhatti) v Bury Metropolitan Borough Council* [2013] EWHC 3093 and *R (Yousuf) v Secretary of State for the Home Department* [2016] EWHC 663 (Admin)

[62] *R (Hussain) v Secretary of State for Justice* [2016] EWCA Civ 1111

6.10.4.1. The Court can impose a condition requiring the re-formulation of the claim and the re-preparation of any bundles of material, so as to eliminate any irrelevant surplus material and to work from a single set of papers. Any draft order or draft consent order seeking amendment of the claim in these circumstances should typically include a provision allowing for a new, amended claim bundle to be filed or, ideally, be accompanied by a copy of the proposed amended claim bundle.

6.10.4.2. The Court retains discretion to permit amendments and may make an assessment that overall the proper conduct of proceedings will best be promoted by refusing permission to amend and requiring a fresh claim to be brought.

6.10.4.3. The Court will be astute to check that a claimant is not seeking to avoid complying with the any time limits by seeking to amend rather than commence a fresh claim.

6.10.4.4. A claimant seeking permission to amend would also be expected to have given proper notice to all relevant persons, including interested parties.

## 7. The Acknowledgement of Service

### 7.1. The Acknowledgement of Service

7.1.1. Any defendant or interested party served with the claim form who wishes to take part in the application for permission to apply for judicial review must file and serve an acknowledgement of service.[63]

7.1.2. When filing an acknowledgement of service form N462 must be used.

7.1.3. Filing an acknowledgment of service is wise for any defendant and any interested party in order for the Court to know if that person intends to contest the claim, but it is not mandatory.

7.1.4. If a party fails to file an acknowledgment of service within the relevant time limit (see paragraph 7.2 below) this will have three effects on the claim:

7.1.4.1. The papers will be sent to a judge to consider whether to grant permission to the claimant to apply for judicial review without having heard from the party who has failed to file the acknowledgement of service;

7.1.4.2. In the event that the judge does not grant or refuse permission outright, but directs that permission falls to be considered at an oral hearing (see paragraph 8.2.5 of this Guide), or if the judge refuses permission and the claimant applies for reconsideration at an oral hearing (see paragraph 8.4 of this Guide), the party may not take part in that hearing without the permission of the Court;[64] and

7.1.4.3. The judge considering any substantive application for judicial review may consider that party's failure to submit an acknowledgement of service when considering costs (see chapter 23 of this Guide for costs).[65]

7.1.5. If the party does not file an acknowledgment of service and permission is subsequently granted (see paragraph 8.2.2 and chapter 10 of this Guide), the party may still take part in the substantive application for judicial review.[66]

7.1.6. If the claim was started in or has been transferred to the ACO in Cardiff, the acknowledgement of service and any evidence may be lodged in Welsh or English.

### 7.2. Time Limits

7.2.1. The acknowledgment of service must be filed at the ACO within 21 days of the claim papers being served.[67] The 21 day time limit may be extended or shortened by judicial order. If appropriate, a judge may also consider permission to apply for judicial review without waiting for an acknowledgment of service.

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63 CPR 54.8(2)

64 CPR 54.9(1)(a)

65 CPR 54.9(2)

66 CPR 54.9(1)(b)

67 CPR 54.8(2)(a)

7.2.2. The parties cannot agree between themselves to extend the deadline,[68] it can only be extended by an order of the Court. An application for an extension of time must be made in accordance with the interim applications procedure and on payment of the relevant fee (see paragraph 12.7 of this Guide). Alternatively, the application can be made retrospectively in the acknowledgment of service in section D, provided permission has not already been considered.

7.2.3. The acknowledgment of service must be served on all other parties no later than 7 days after it was filed with the ACO.

7.2.4. As soon as an acknowledgement of service has been filed by each party to the claim, or upon the expiry of the relevant time limit, the papers will be sent to a judge who will consider whether to grant permission to apply for judicial review by considering the papers alone (see chapter 8 of this Guide).

7.2.5. The judicial review procedure does not allow for the claimant to respond to the acknowledgment of service during the paper application process. The ACO will not delay consideration of permission on the basis that the claimant may wish to reply. Any replies that are received before a case is sent to a judge to consider permission will be put before the judge but it is a matter for the judge as to whether he/she is willing to consider the reply.

## 7.3. Contents

7.3.1. The acknowledgment of service must:

7.3.1.1. Set out the summary grounds for contesting the claim, if the party does contest it.[69] These must be as concise as possible. The summary grounds of defence may be part of the acknowledgment of service in section C, or they may be included in an attached separate document.

7.3.1.2. State if the party is intending to contest the application for permission on the basis that it is highly likely that the outcome for the claimant would not have been substantially different if the conduct complained of had not occurred, by ticking the box in section A, and set out the summary of the grounds for doing so.[70]

7.3.1.3. State, in section B, the name and address of any person the party believes to be an interested party.[71]

7.3.1.4. State, in section E, if the party contests the claimant's application for an automatic costs limit under the Aarhus Convention (see paragraph 24.4 of this Guide), if one was made.

7.3.2. Evidence may be filed with the acknowledgment of service but it is not required.

7.3.3. If the party does not intend to contest the claim they should make it clear in section C of the acknowledgment of service whether they intend to remain neutral or would in principle agree to the decision being quashed. This information will allow the Court to manage the claim properly. If the party does agree in principle to the decision being quashed then the parties should attempt to agree settlement of the claim at the earliest opportunity.

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[68] CPR 54.8(3)

[69] CPR 54.8(4)(a)(i)

[70] CPR 54.8(4)(a)(ia)

[71] CPR 54.8(4)(a)(ii)

### 7.4. Defendant's Applications

When lodging the acknowledgment of service the party may request further directions or an interim order from the Court in section D.[72] Examples of applications that may be made at this stage are for the party's costs of preparing the acknowledgment of service and for the discharge of any previously made injunctions.

[72] CPR 54.8(4)(b)

## 8. Permission to Apply for Judicial Review

### 8.1. The Application

8.1.1. 8.1.1. The claimant must obtain permission from the Court to apply for judicial review. If permission is granted, the claim will usually proceed to a full hearing on those grounds on which permission has been granted (this is often referred to as the substantive hearing – see chapter 10 of this Guide).

8.1.2. In the first instance the claim papers (comprising the papers filed by the claimant and any acknowledgment(s) of service) are sent to a judge. The judge will then consider the papers and determine whether to grant permission to apply for judicial review.

8.1.3. The Court will refuse permission to apply for judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success,[73] although there are a number of orders the Court can make before ultimately determining this question (see paragraph 8.2 of this Guide).

8.1.4. Even if a case is thought to be arguable, the judge must refuse permission if the judge considers that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred.[74]

8.1.5. If the Court considers that there has been undue delay in bringing the claim then the Court may refuse permission.[75] Delay is discussed further at paragraph 5.4 of this Guide.

### 8.2. Court Orders on Permission

8.2.1. There are a number of different orders that may be made by the judge following consideration of the papers. The following are the most common orders made by judges considering permission to apply for judicial review, but they are not exhaustive.

8.2.2. Permission Granted

The judge has determined that there is an arguable case on one of more grounds. The case will proceed to a substantive hearing of the application for judicial review on those grounds on which permission is granted. In this event, the judge will usually give directions for the substantive hearing.

8.2.3. Permission Refused

The judge has determined that none of the grounds advanced by the claimant are arguable and as such the claim should not proceed to a substantive hearing. When permission is refused on the papers, the judge will record brief reasons for that decision in the order.[76] The judge may order the claimant to pay the defendant's costs of preparing an acknowledgement of service at this stage (see paragraph 23.4 of this Guide).

8.2.4. Permission Granted in Part

8.2.4.1. 8.2.4.1. In some cases, the judge may decide that some of the grounds advanced by the claimant are arguable but others are not. The judge will direct the matter to proceed to a substantive hearing on the arguable grounds only.

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[73] Description of the test taken from *Sharma v Brown-Antoine* [2007] 1 W.L.R. 780

[74] s.31(3F) of the Senior Courts Act 1981

[75] s.31(6)(a) Senior Courts Act 1981

[76] CPR 54.12(2)

8.2.4.2. The claimant can request that the refused grounds are reconsidered for permission at an oral hearing (see paragraph 8.4 of this Guide).

8.2.4.3. The claimant may not raise or renew grounds at the substantive hearing where permission has not already been granted unless the court (unusually) permits that to occur.[77]

8.2.5. Permission adjourned to an oral hearing on notice

The judge has made no determination on the application for permission. Instead the application for permission will be considered at an oral hearing in Court with the claimant and any other parties who wish to make representations to the Court attending. The hearing will take a similar form to that of a renewed permission hearing (see paragraph 8.4 of this Guide).

8.2.6. Permission adjourned to a 'rolled up hearing'.

8.2.6.1. The judge has made no determination on the application for permission. Instead the application for permission will be considered in Court with the substantive hearing to follow immediately if permission is granted.

8.2.6.2. In practice, at the rolled up hearing the judge will not necessarily consider permission then the substantive hearing one after another formulaically. The judge is more likely to hear argument on both points together and give a single judgment, but the manner in which the hearing is dealt with is within the discretion of the judge.

8.2.6.3. When preparing documentation for a rolled up hearing the parties should apply the same rules as apply when preparing for a substantive hearing (see chapter 9 of this Guide). This is because, despite the fact that permission has not yet been granted or refused, substantive consideration of the application for judicial review will, if appropriate, take place on the same day. Thus, the documentation before the Court should be the same as if the hearing was the substantive hearing.

8.2.6.4. Where a rolled up hearing is ordered the claimant will be asked by the ACO to sign an undertaking to pay the fee for the substantive application for judicial review which would then become payable in the event that the judge later grants permission.

8.2.7. The application for permission is to be resubmitted.

The judge has made no determination on the application for permission. Instead the judge will request the parties perform some act (such as file additional documents or representations) or await some other event (such as the outcome of a similar case). Once the act or event has been performed, or when the time limit for doing so has expired, the papers will be resubmitted to the judge to consider permission on the papers.

## 8.3. Totally Without Merit Orders

8.3.1. If the judge considers that the application for permission is 'totally without merit' then he/she may refuse permission and certify the claim as being totally without merit in the order.

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[77] *R (Talpada) v SSHD* [2018] EWCA Civ 841 at [23] and [68].

8.3.2. The term 'totally without merit' has been defined broadly and applies to a case that it is bound to fail, not one that is necessarily abusive or vexatious.[78]

8.3.3. Where a case is certified as totally without merit there is no right to a renewed oral hearing[79] (see paragraph 8.4 of this Guide) and the claim is concluded in the Administrative Court, albeit appeal rights do apply (see paragraph 25.3 of this Guide).

## 8.4. Reconsideration at an Oral Hearing

8.4.1. If permission is refused the claimant should consider the judge's reasons for refusing permission on the papers before taking any further action.

8.4.2. If the claimant takes no further action then, seven days after service of the order refusing permission, the ACO will simply close the case. If the Court has directed the parties to file written submissions on costs or has given directions in relation to any other aspect of the case, the claim will remain open until the costs or that other aspect are resolved. If there is an interim or costs order in place at that time, and unless the Court has directed otherwise, it will continue in effect (even though the case is closed administratively) and the parties will have to apply to set aside that order (see paragraph 12.7 of this guide).

8.4.3. If, having considered the reasons, the claimant wishes to continue to contest the matter they may not appeal, but they may request that the application for permission to apply for judicial review be reconsidered at an oral hearing (often referred to as a renewed hearing).[80]

8.4.4. When the ACO serves an order refusing permission to apply for judicial review on the papers it will also include a renewal notice (form 86b). If the claimant wishes to have their application for permission to apply for judicial review reconsidered at an oral hearing they should complete and send this form back to the ACO within seven days[81] of the date upon which it is served. The claimant should send a copy of the 86b to any party that filed an acknowledgement of service.

8.4.5. The Claimant must provide grounds for renewing the application for permission, and must in those grounds address the judge's reasons for refusing permission by explaining in brief terms why the claimant maintains those reasons are wrong. It is not sufficient simply to state that renewal is sought on the original grounds, without seeking to explain the asserted error in the refusing judge's reasons. If the refusing judge's reasons are not addressed, the judge may make an adverse costs order against the claimant at the renewal hearing and/or impose any other sanction which he/she considers to be appropriate.[82]

8.4.6. Upon receipt of the renewal notice the ACO will list an oral hearing (see paragraph 13.2.1 of this Guide on listing). The hearing cannot, without judicial order, take place without all parties being given at least two days' notice of the hearing.[83] The ACO will send notice to all parties of the date of the hearing.

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78 *R. (Grace)* v *Secretary of State for the Home Department* [2014] 1 W.L.R. 3432, and *Samia W v Secretary of State for the Home Department* [2016] EWCA Civ 82

79 CPR 54.12(7)

80 CPR 54.12(3)

81 CPR 54.12(4)

82 See, in an extradition context, *Roby Opalfvens v Belgium* [2015] EWHC 2808 (Admin), at [14]

83 CPR 54.12(5)

8.4.7. The renewed hearing is normally a public hearing that anyone may attend and observe and will take place in Court before a judge. The only issue at the hearing is the arguability of the claim or particular grounds, so hearings are expected to be short, with the parties making succinct submissions.

## 8.5. Time Estimate for Renewed Hearing:

8.5.1. The standard time estimate for a renewed permission hearing is 30 minutes to include the Court giving judgment, if that is appropriate, at the end of the hearing.

8.5.2. If either party reasonably believes that the renewed hearing (including judgment) is likely to last more than 30 minutes, that party should inform the ACO as soon as possible of that fact, and of that party's revised time estimate (including judgment). Failure to inform the ACO may result in the hearing having to be adjourned on the hearing day for lack of Court time, in which event the Court will consider making a costs order against the party or parties which should have notified the Court of the longer time estimate.

8.5.3. Even where a party informs the Court that the renewed hearing is likely to take more than 30 minutes, the Court will only allocate such Court time as it considers appropriate, bearing in mind the pressure on Court time from other cases. In any event, it is rare that permission hearings will be allocated a time estimate over two hours.

## 8.6. Procedure at Renewal Hearings

8.6.1. The defendant and/or any interested party may attend the oral hearing. Unless the Court directs otherwise, they need not attend.[84] If they have not filed an acknowledgement of service, they will have no right to be heard, although the Court may nonetheless permit them to make representations (see paragraph 7.1.4 of this Guide).[85]

8.6.2. Where there are a number of cases listed before a judge in any day, an attempt will be made to give a time marking for each case. This may be shown on the daily cause list or the judge's clerk may contact the parties and/or their representatives. Alternatively, at the start of the day's list, the judge may release the parties and/or their representatives until a specific time later in the day.

8.6.3. At the hearing, the judge retains discretion as to how the hearing will proceed. Subject to that discretion, generally, the hearing will follow a set pattern:

8.6.3.1. The claimant will speak first setting out his/her grounds and why he/she contends they are arguable;

8.6.3.2. The defendant(s) will speak second setting out why the grounds are not arguable or other reasons why permission should not be granted;

8.6.3.3. Any interested parties will speak third to support or contest the application for permission;

8.6.3.4. The claimant is usually given a right to a short reply;

8.6.3.5. The decision refusing or granting permission, and, if appropriate, any further directions or orders will usually be announced at the conclusion of the hearing.

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[84] CPR PD 54A paragraph 8.5

[85] CPR 54.9(1)(a)

8.6.4. Any party before a hearing in the Administrative Court in Wales has the right to speak Welsh or English. The guidance outlined at paragraph 10.3 of this Guide also applies to permission hearings.

8.6.5. The test for granting permission at an oral hearing is the same as the one applied by the judge considering permission on the papers (see paragraph 8.1.3 of this Guide).

8.6.6. In the event that permission is refused at the renewed hearing then the claim has ended in the Administrative Court (subject to any appeal – see paragraph 25.3 of this Guide). In the event that the judge does give permission then the case will proceed to the substantive hearing, which will take place on a later date (unless the hearing was "rolled up" (see paragraph 8.2.6 of this Guide), in which case the substantive hearing will follow immediately). The date for the hearing may be ordered by the judge or listed by the ACO (see paragraph 13.2.2 of this Guide for listing).

## 8.7. Alternative Procedure Where the Upper Tribunal is the Defendant

8.7.1. In some claims the Upper Tribunal will be the appropriate defendant. This will generally only arise where the Upper Tribunal has refused permission to appeal against the decision of the First-tier Tribunal, because all other decisions of the Upper Tribunal are subject to a right of appeal, which should be exercised instead of applying for judicial review. Where the claimant wishes to challenge the decision of the Upper Tribunal when it has refused permission to appeal from a decision of the First-tier Tribunal the judicial review procedure is amended by CPR 54.7A. The claimant should read all of CPR 54.7A. The most important points are outlined below.

8.7.2. The Court will only grant permission to apply for judicial review if it considers:

8.7.2.1. That there is an arguable case which has a reasonable prospect of success that both the decision of the Upper Tribunal refusing permission to appeal and the decision of the First Tier Tribunal against which permission to appeal was sought are wrong in law; and

8.7.2.2. That either the claim raises an important point of principle or practice or there is some other compelling reason to hear the claim.[86]

8.7.3. The general procedure in CPR Part 54 will apply, save for the following amendments:

8.7.3.1. The application for permission may not include any other claim, whether against the Upper Tribunal or not and any such other claim must be the subject of a separate application;[87]

8.7.3.2. The claim form and the supporting documents must be filed no later than 16 days after the date on which notice of the Upper Tribunal's decision was sent to the applicant, not the normal three months;[88]

8.7.3.3. If the application for permission is refused on paper there is no right to a renewed oral hearing (see paragraph 8.4 of this Guide), albeit appeal rights do then apply (see paragraph 25.3 of this Guide).[89]

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[86] CPR 54.7A(7)

[87] CPR 54.7A(2)

[88] CPR 54.7A(3)

[89] CPR 54.7A(8)

8.7.3.4. If permission to apply for judicial review is granted and if the Upper Tribunal or any interested party wishes there to be a hearing of the substantive application, it must make a request for such a hearing no later than 14 days after service of the order granting permission, in which case the ACO will list a substantive hearing. If no request for a hearing is made within that period, the Court will make a final order quashing the Upper Tribunal's decision without a further hearing.[90] The case will then return to the Upper Tribunal to consider permission to appeal again.

8.7.4. In claims against the Upper Tribunal there are discrete documents required by CPR 54.7A(4) that must be filed with the claim. If the documents required by CPR 54.7A(4) are not provided with the claim form the Court is unlikely to allow additional time for them to be submitted and may refuse permission to apply for judicial review on the grounds that it does not have sufficient information to properly consider the claim. The Court is very unlikely to order additional time to submit the documents in the absence of an application for extension of time to file the required documents (such applications, whilst not encouraged, should be made on the claim form, see paragraph 15.2 of this Guide for details, or by way of separate application, see paragraph 12.7 of this Guide for details).

8.7.5. The list of documents required by CPR 54.7A is as follows:

8.7.5.1. The decision of the Upper Tribunal to which the judicial review claim relates and any documents giving reasons for the decision;

8.7.5.2. The grounds of appeal to the Upper Tribunal and any documents sent with them;

8.7.5.3. The decision of the First Tier Tribunal, the application to that Tribunal for permission to appeal, and its reasons for refusing permission to appeal; and

8.7.5.4. Any other documents essential to the claim.

[90] CPR 54.7A(9)

## 9. After Permission

### 9.1. Directions for Substantive Hearing

9.1.1. When permission to apply for judicial review is granted, the claim will proceed to the substantive hearing on a later date.

9.1.2. Unless the judge orders a particular date for the hearing, the ACO will list the substantive hearing as soon as practicable (see paragraph 13.2.2 of this Guide for listing; see also Annex 4 for the Administrative Court Listing Policy).

9.1.3. When granting permission a judge will often give directions as to how the case will progress to the substantive hearing, including:

9.1.3.1. The time within which the defendant or interested party or parties should file detailed grounds of resistance and any evidence on which they intend to rely at the hearing;

9.1.3.2. Who should hear the case, and specifically whether it should be heard by a Divisional Court (a Court with two or more judges),

9.1.3.3. Other case management directions including a timetable for skeleton arguments, trial bundles and authorities bundles to be lodged.

9.1.4. Judicial directions will supersede any standard directions. If the judge does not make any directions, the following standard directions apply:

9.1.4.1. The claimant must pay the relevant fee to continue the application for judicial review. Failure to do so within 7 days of permission being granted will result in the ACO sending the claimant a notice requiring payment within a set time frame (normally 7 more days). Further failure will result in the claim being struck out without further order.[91]

9.1.4.2. Any party who wishes to contest or support the claim must file and serve any detailed grounds and any written evidence within 35 days of permission being granted.[92] The defendant may rely on their summary grounds as the detailed grounds. If doing so they should inform the Administrative Court Office and the other parties in writing within the time set for filing the detailed grounds.

9.1.4.3. The claimant must file and serve a skeleton argument no less than 21 working days[93] before the substantive hearing (see paragraph 17.2 of this Guide for the contents of the skeleton argument).[94]

9.1.4.4. The defendant and any other party wishing to make representations at the substantive hearing must file and serve a skeleton argument no less than 14 working days before the substantive hearing.[95]

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91 CPR 3.7(1)(d), (2), (3), & (4)

92 CPR 54.14(1)

93 CPR PD 54A paragraph 15 refers to "working" days. This is different from the normal presumption in the CPR that days means "calendar" days, save for periods of time of less than 5 days, see CPR 2.8(3). It is a feature of the CPR that if the judge, when granting permission, expressly orders the skeleton argument to be filed "21 days" before the substantive hearing, then it must be provided 21 calendar days, not working days, before the substantive hearing. This is because CPR 2.8(3) applies to all judicial orders.

94 CPR PD 54A paragraph 15.1

95 See footnote 89 above

9.1.4.5. The claimant must file a paginated and indexed bundle of all relevant documents required for the hearing of the judicial review when filing the skeleton argument[96] (21 working days before the hearing unless judicial order allows for a different time period). The bundle must include those documents required by the defendant and any other party who is to make representations at the hearing.[97] The parties should be liaising as far before the substantive hearing as possible to agree what is required in the agreed bundle.

## 9.2. Amending the Claim

9.2.1. If the claimant wishes to file further evidence or rely on further grounds then the claimant must ask for the Court's permission to do so.[98] To seek permission the claimant must make an application in line with the interim applications procedure discussed at paragraph 12.7 of this Guide.[99]

9.2.2. This rule also applies to other parties who are filing documents outside the 35 day time limit (discussed at paragraph 9.1.4.2 of this Guide).

9.2.3. The application may be dealt with in advance of the substantive hearing or at the hearing itself. The decision on when the application should be dealt with is ultimately a judicial one, but the parties should indicate a preference when lodging the application.

9.2.4. The Court retains a discretion as to whether to permit amendments. In *R (Bhatti) v Bury Metropolitan Borough Council* [2013] EWHC 3093 (Admin) the Court warned that, where the defendant intended to reconsider the original decision challenged, it may not be appropriate to seek a stay or to amend the claim. Instead, it may be more appropriate to end the claim (see chapter 22 of this Guide) and, if the claimant seeks to challenge the new decision, to commence a new claim. The exceptions to this principle, where the Court may be prepared to consider the challenge to the initial decision, are narrow, and apply only where:

9.2.4.1. The case raises a point of general public importance; and

9.2.4.2. The point which was at issue in relation to the initial decision challenged remains an important issue in relation to the subsequent decision.[100]

9.2.5. If the defendant has made a new decision which the claimant seeks to challenge, it may in some circumstances be more convenient for the Court to permit parties to amend the claim to allow a challenge to the new decision.[101] Where permission is granted to amend the claim after permission to apply for judicial review has been granted, the parties should ensure that the substantive hearing bundle only includes relevant documentation. Any documentation that is only relevant to the initial decision should not form part of the bundle. The claimant should note the following guidance (as observed at paragraph 22 of *R (Hussain) v Secretary of State for Justice* [2016] EWCA Civ 1111):

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96 CPR PD 54A paragraph 16.1

97 CPR PD 54A paragraph 16.2

98 CPR 54.15 and CPR 54.16(2) respectively. See also *R (Talpada) v SSHD* [2018] EWCA Civ 841 at [23] and [68].

99 See *Hickey v The Secretary of State for the Work and Pensions* [2018] EWCA CIV 851 at [73]-[74]

100 *R (Bhatti) v Bury Metropolitan Borough Council* [2013] EWHC 3093, and see *R (Yousuf) v Secretary of State for the Home Department* [2016] EWHC 663 (Admin)

101 *R (Hussain) v Secretary of State for Justice* [2016] EWCA Civ 1111

9.2.5.1. The Court retains discretion to permit amendments and may make an assessment that overall the proper conduct of proceedings will best be promoted by refusing permission to amend and requiring a fresh claim to be brought.

9.2.5.2. The Court will be astute to check that a claimant is not seeking to avoid complying with the any time limits by seeking to amend rather than commence a fresh claim.

9.2.5.3. A claimant seeking permission to amend would also be expected to have given proper notice to all relevant persons, including interested parties.

## 9.3. Action if an Interpreter is Required

9.3.1. If a party or witness requires an interpreter it is generally the responsibility of that party or the party calling the witness to arrange for the attendance of and to pay for the interpreter.

9.3.2. The ACO can arrange an interpreter to attend free of charge to the party seeking an interpreter's assistance where:

9.3.2.1. The party is a litigant in person who cannot address the Court in English (or Welsh if the case is proceeding in Wales) and the party cannot afford to pay for an interpreter, does not qualify for legal aid and does not have a friend or family member who the judge agrees can act as an interpreter; and

9.3.2.2. The judge agrees that an interpreter should be arranged free of charge to that party; or

9.3.2.3. In such other circumstances as ordered by the Court.

9.3.3. It is the responsibility of the party which requests an interpreter free of charge to that party to make the request in writing as soon as it becomes clear that a hearing will have to be listed and an interpreter is required.

9.3.4. The party which requests an interpreter free of charge must inform the ACO in writing that an interpreter is required and the party must state which language the interpreter will be required to translate into English and vice versa (or into Welsh and vice versa if the case is proceeding in Wales: see paragraph 10.3 of this Guide for use of the Welsh language).

9.3.5. Where the party does not notify the Court that an interpreter is required and a hearing has to be adjourned to arrange for an interpreter to attend on another occasion, the Court may make an adverse costs order against the party requiring an interpreter (see paragraph 23.1 of this Guide).

## 9.4. Responsibility for Production of Serving Prisoners and Detained Persons

9.4.1. Where a serving prisoner or a detained person is represented by counsel it is generally not expected that the serving prisoner or detained person will be produced at Court, unless the Court orders otherwise.

9.4.2. Where the serving prisoner or detained person is acting without legal representation, it is the responsibility of the serving prisoner or detained person to arrange for their attendance at Court or for a video-link to be arranged between the Court and prison or detention centre. The serving prisoner or detained person must make the request that they be produced at Court for the hearing or that a video-link should be arranged, to the prison or detention centre authorities, as soon as they receive notice of the hearing. The prison or detention centre authorities are responsible for considering requests for production, for arranging production of a person at Court, and for arranging video-links.

## 9.5. Specific Practice Points

Reference should be made to the guidance contained under Part C of this Guide, Specific Practice Points, which gives detailed guidance on skeleton arguments (at chapter 17), documents (at chapter 18) and authorities (at chapter 19).

## 10. Substantive Hearing

### 10.1. Format of the Hearing

10.1.1. The hearing is generally a public hearing which anyone may attend and observe. The hearing normally takes place before a single judge, unless the Court orders the case to be heard by a Divisional Court (see paragraphs 1.7.4 and 13.3 of this Guide on Divisional Courts).

10.1.2. The Court will decide how the hearing should proceed. Most hearings follow the following sequence:

10.1.2.1. The claimant will speak first setting out the arguments in support of the grounds of claim.

10.1.2.2. The defendant will speak second setting out the arguments in support of the grounds of defence;

10.1.2.3. Any interested parties and/or interveners will speak third to support, contest, or clarify anything that has been said; and

10.1.2.4. The claimant will have a right to reply to the other parties' submissions.

### 10.2. Evidence

10.2.1. Evidence before the Court will nearly always consist of witness statements and written evidence without allowing oral evidence to be given and without cross examination of witnesses.

10.2.2. The Court retains an inherent power to hear from witnesses.[102] If a party seeks to call or cross-examine a witness, an application should be made in accordance with the interim applications procedure outlined in section 12.7 of this Guide. As a matter of practice, it is only in very exceptional cases that oral evidence is permitted in a judicial review. Permission will be given only where oral evidence is necessary to dispose of the claim fairly and justly.[103]

### 10.3. Use of the Welsh Language

10.3.1. A hearing before the Administrative Court in Wales is subject to the provisions of s.22 of the Welsh Language Act 1993 and as such any person addressing the Court may exercise their right to speak in Welsh. This right applies only to hearings in Wales and so, if the party seeks to exercise this right they should start the claim in the ACO in Cardiff or seek transfer of the claim to the ACO in Cardiff.

10.3.2. Under the Practice Direction Relating to the Use of the Welsh Language in Cases in the Civil Courts in Wales, the Court may hear any person in Welsh without notice of the wish to speak in Welsh, providing all parties and the Court consent.[104]

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[102] See the comments of Munby J (as he then was) in *R. (PG)* v *London Borough of Ealing* [2002] A.C.D. 48 at paragraphs 20 and 21.

[103] *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs* [2012] EWHC 2115 at 14. An example of permission for cross examination being given is *R (Jedwell) v Denbighshire CC* [2015] EWCA Civ 1232. But the Court of Appeal has since reaffirmed that this should be viewed as an exceptional course, see Hallett LJ in *R (Talpada) v SSHD* [2018] EWCA Civ 841 at [2]; Underhill LJ at [54].

[104] Paragraph 1.2 of the Practice Direction Relating to the Use of the Welsh Language in Cases in the Civil Courts in Wales

10.3.3. In practice, the parties should inform the Court as soon as possible,[105] preferably when lodging the claim papers, if any person intends to speak in Welsh. This will allow the Court to make proper directions and allow the ACO in Cardiff to make practical arrangements.

10.3.4. There are bi-lingual judges who can consider such claims, but nonetheless, it is likely that an order will be made for simultaneous translation, where a translator appears in Court translating into English and Welsh.[106]

## 10.4. Judicial Review Without a Hearing

If all parties agree, the substantive consideration may take place without a hearing, and the judge will decide the claim by considering the papers alone. The parties should inform the ACO in writing if all parties have agreed to this course of action. The judge, on consideration of the papers, may refuse to make a decision on the papers and order an oral hearing.

## 10.5. Threshold for Relief

10.5.1. To succeed in the claim the claimant must show that the defendant has acted unlawfully.

10.5.2. Even if a claimant establishes that the defendant has acted unlawfully, the Court has a discretion whether to grant a remedy or not.

10.5.3. The Court will not grant relief where it appears to the Court to be highly likely that the outcome for the claimant would not have been substantially different if the conduct complained of had not occurred.[107]

## 10.6. Judgment and Orders

10.6.1. When the hearing is concluded the Court will usually give judgment in one of two ways:

10.6.1.1. Orally, then and there, or sometimes after a short adjournment (this is referred to as an 'ex tempore' judgment).

10.6.1.2. The Court may give judgment in writing sometime after the hearing (this is referred to as a 'reserved' judgment).

10.6.2. A reserved judgment will be 'handed down' at a later date. The hand down procedure is governed by CPR PD 40E. Unless the Court otherwise directs, at least two working days before the hand down date the judge will provide a copy of the judgment to legal representatives in the case.[108] That draft is confidential and any breach of that confidentiality is a contempt of court. The legal representatives may then propose any typographical corrections.[109]

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[105] Paragraph 1.3 of the Practice Direction Relating to the Use of the Welsh Language in Cases in the Civil Courts in Wales

[106] This was the format ordered in *R. (Welsh Language Commissioner)* v *National Savings and Investments* [2014] P.T.S.R. D8 and is in line with HMCTS's Welsh language scheme 2013-2016, paragraph 5.26.

[107] s.31(2A) of the Senior Courts Act 1981

[108] CPR PD 40E paragraph 2.3

[109] Ibid, paragraph 3.1

10.6.3. After the draft judgment has been circulated the parties are obliged to attempt to agree the form of the final order and any consequential orders[110] (usually costs and permission to appeal – see chapters 23 and 25 of this Guide). The parties should submit an agreed order, which should include the terms of any orders made by the judge in Court and the terms of any agreed consequential orders, by 12 noon the day before the hand down date.[111] If the parties can agree a final order then they need not attend the hand down hearing.[112]

10.6.4. If consequential orders cannot be agreed then the Court will decide consequential orders by considering representations. This may be done in one of two ways:

10.6.4.1. The parties may attend Court on the date of handing down and make representations orally. The Court will then decide on consequential orders. The parties should inform the ACO in good time if they intend to do this as time will need to be allocated for the judge to hear representations. Such a hearing would usually last for 30 minutes, rather than the 5 minutes set aside for a simple hand down; or

10.6.4.2. The parties may agree a final order that allows them to make written representations within a set time period on consequential orders, which the Court will then consider and, at a later date, make an order based on those written representations alone.

10.6.5. The final judgment will then be handed down in Court. In practice this is a short hearing at which the judge makes the final copy of the judgment available and endorses it. The judge will not read the judgment verbatim. The judge will adjourn any consequential matters which remain to be dealt with at a later date.

10.6.6. The ACO will send sealed copies of any orders approved by the judge to the parties. Until an order has been approved and sealed the parties should not assume that any agreed orders will be approved. It is the sealed order itself that holds legal force as opposed to the judgment and it is the order that must be enforced if a party fails to comply with the terms.

10.6.7. All substantive judgments are made publicly available at the website www.bailii.org which does not charge a fee for access.

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110 Ibid, paragraph 4.1

111 CPR PD 40E paragraph 4.2

112 Ibid, paragraph 5.1

## 11. Remedies

**11.1.** When the claimant starts a claim he/she must state in section 7 of the claim form what remedy he/she seeks from the Court in the event that he/she is successful. There are six remedies available to a successful claimant in judicial review proceedings, all of which are listed in sections 31(1) and 31(4) of the Senior Courts Act 1981 as well as CPR part 54. This section of the Guide will discuss those remedies.

### 11.2. Mandatory Order

11.2.1. A mandatory order is the order the Court can make to compel a public body to act in a particular way.

### 11.3. Quashing Order

11.3.1. A quashing order quashes, or sets aside, the decision, thereby confirming that the challenged decision has no lawful force and no legal effect.

11.3.2. After making a quashing order the Court will generally remit the matter to the public body decision maker and direct it to reconsider the matter and reach a fresh decision in accordance with the judgment of the Court.[113]

11.3.3. The Court has power to substitute its own decision for the decision which has been quashed.[114] This power is only exercisable against the decisions of the inferior Courts or Tribunals, only on the grounds of error of law, and only where there is only one possible decision now open to the decision maker.

### 11.4. Prohibiting Order

11.4.1. A prohibiting order prohibits a public body from taking an action that the public body has indicated an intention to take but has not yet taken.

### 11.5. Ordinary Declarations

11.5.1. A declaration is a statement by the Court as to what the law on a particular point is or is not. Using the declaratory remedy the Administrative Court can examine an act (including an act announced but not yet taken) of a public body and formally declare that it is lawful, or unlawful.

11.5.2. A declaration does not have any coercive effect although a public body is expected to comply with the declaration. A declaration can be a remedy on its own,[115] or can be granted in combination with other remedies.

11.5.3. A declaration will not be granted where the question under consideration is a hypothetical question, nor where the person seeking the declaration has no real interest in it, nor where the declaration is sought without proper argument (e.g. in default of defence or on admissions or by consent).[116]

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[113] As outlined in s.31(5)(a) of the Senior Courts Act 1981 and CPR 54.19(2)(a)

[114] Under s.31(5)(b) of the Senior Courts Act 1981 and CPR 54.19(2)(b)

[115] CPR 40.20

[116] *Re F* [1990] 2 A.C. 1

## 11.6. Declaration of Incompatibility

11.6.1. If the Court determines that any Act of Parliament is incompatible with a Convention right, that is a right derived from the European Convention on Human Rights 1950 ("ECHR") which in incorporated into the law of the United Kingdom by the Human Rights Act 1998, it may make a declaration of incompatibility.[117]

11.6.2. A declaration of incompatibility may be made in relation to subordinate legislation if the Court is satisfied that (disregarding any possibility of revocation) the Act of Parliament concerned prevents removal of the incompatibility.[118]

11.6.3. The principles behind ordinary declarations (see paragraph 11.5 of this Guide above), such as the requirement that a declaration will not be made in hypothetical circumstances, apply.[119]

11.6.4. A declaration of incompatibility does not affect the validity, continuing operation or enforcement of the provision in respect of which it is given and it is not binding on the parties to the proceedings in which it is made.[120] The declaration acts to inform Parliament of the incompatibility of that provision with a Convention right.

11.6.5. The claimant must state in the remedies section of the claim form (section 7) if they are applying for a declaration of incompatibility, giving precise details of the Convention right which has allegedly been infringed, and the domestic law provision which is said to be incompatible.[121]

11.6.6. The claimant should consider making the Crown, via the relevant Secretary of State, an interested party if a declaration of incompatibility is sought. In any event, where an application for a declaration of incompatibility has been made the Court may order that notice should be given to the Crown.[122] If the Court is considering making a declaration of incompatibility and the Crown is not already a party, the Court must inform the relevant Secretary of State and allow him/her at least 21 days[123] to consider whether to intervene and make representations.[124]

## 11.7. Injunctions

11.7.1. An injunction is an order to act in a particular way (a positive injunction) or to refrain from acting in a particular way (a negative injunction). It is a remedy that is not confined to judicial review, although it is available in judicial review.

## 11.8. Damages

11.8.1. Whilst primarily a private law remedy, the Administrative Court has power to award damages.

11.8.2. The right to seek damages in judicial review proceedings is subject to two provisos:

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117 ss.4(1) and 4(2) of the Human Rights Act 1998

118 ss.4(3)and 4(4) of the Human Rights Act 1998

119 See, for example, *Taylor* v *Lancashire County Council* [2005] 1 W.L.R. 2668

120 s.4(6) of the Human Rights Act 1998

121 CPR PD 16 paragraphs 15.1(2)(a), (c)(i), & (d)

122 CPR 54A PD paragraph 8.2 & CPR PD 19A paragraph 6.1

123 CPR 19.4A(1)

124 s.5(1) of the Human Rights Act 1998

11.8.2.1. The claimant may only seek damages if they are also seeking another remedy, not just damages alone;[125] and

11.8.2.2. The claimant may only seek damages if a private law claim for damages on the same basis would have succeeded (had it been brought in the County Court or appropriate division of the High Court).[126]

11.8.2.3. Where the claim includes a claim for damages under the Human Rights Act 1998, the claim for damages must be properly pleaded and particularized.[127]

11.8.3. Where the assessment and award of damages is likely to be a lengthy procedure the general practice of the Administrative Court is to determine the judicial review claim, award the other remedy sought (if appropriate), and then transfer the claim to either the County Court or appropriate division of the High Court to determine the question of damages.

## 11.9. Multiple Remedies

11.9.1. The Court may grant more than one remedy where it is deemed appropriate.

## 11.10. Remedies Where the Outcome Would Not Be Substantially Different

11.10.1. If the claimant is successful in judicial review proceedings, but the Court considers that it is highly likely that the outcome for the claimant would not be substantially different even if the unlawful decision by the public body was set aside or remedied, the Court must refuse to grant any form of relief and must not award damages, except in exceptional public interest cases.[128]

## 11.11. Discretionary Remedies

11.11.1. Remedies in judicial review proceedings are within the discretion of the Court.

11.11.2. Even where a claimant shows that a defendant has acted unlawfully, the Court may refuse to grant a remedy, in particular where:[129]

11.11.2.1. The claimant has delayed in filing the application for judicial review and the Court considers that the granting of the remedy sought would be likely to cause substantial hardship to, or would substantially prejudice the rights of any person, or would be detrimental to good administration.[130]

11.11.2.2. The error of law made by the public body was not material to the Court's decision.

11.11.2.3. The remedy would serve no useful practical purpose.

11.11.2.4. The claimant has suffered no harm or prejudice.

11.11.3. The principles on discretionary remedies discussed above do not apply to the award of damages.

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[125] CPR 54.3(2).

[126] s.31(4) of the Senior Courts Act 1981

[127] *R (Nazem Fayad) v SSHD* [2018] EWCA Civ 54 at [54] – [56]. Claims for damages that are not adequately particularised may give rise to consequences in costs for the claimant.

[128] s31(2A) Senior Courts Act 1981 and s31(2B) Senior Courts Act 1981

[129] See *R. (Baker)* v *Police Appeals Tribunal* [2013] EWHC 718 (Admin)

[130] s.31(6)(b) Senior Courts Act 1981

## 12. Case Management

### 12.1. Case Management in the Administrative Court

12.1.1. All proceedings in the Administrative Court, from the start of the claim to the end, are subject to the overriding objective outlined in CPR 1.1. The overriding objective requires all cases to be dealt with justly and at proportionate cost.

12.1.2. Dealing with a case justly and at proportionate cost includes:[131]

12.1.2.1. Ensuring that the parties are on an equal footing;

12.1.2.2. Saving expense;

12.1.2.3. Dealing with it in ways which are proportionate to the amount of money involved, to the importance of the case, to the complexity of the issues, and to the financial position of each party;

12.1.2.4. Ensuring that it is dealt with expeditiously and fairly;

12.1.2.5. Allotting to it an appropriate share of the Court's resources, while taking into account the need to allot resources to other cases; and

12.1.2.6. Ensuring compliance with rules, practice directions and orders.

12.1.3. In ensuring that the overriding objective is complied with, the Court must actively manage cases,[132] which includes (but is not limited to) the following:

12.1.3.1. Encouraging the parties to co-operate with each other in the conduct of the proceedings;

12.1.3.2. Identifying the issues at an early stage;

12.1.3.3. Deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;

12.1.3.4. Deciding the order in which issues are to be resolved;

12.1.3.5. Encouraging the parties to use an alternative dispute resolution procedure if the Court considers that appropriate and facilitating the use of such procedure;

12.1.3.6. Helping the parties to settle the whole or part of the case;

12.1.3.7. Fixing timetables or otherwise controlling the progress of the case;

12.1.3.8. Considering whether the likely benefits of taking a particular step justify the cost of taking it;

12.1.3.9. Dealing with as many aspects of the case as it can on the same occasion;

12.1.3.10. Dealing with the case without the parties needing to attend at Court;

12.1.3.11. Making use of technology; and

12.1.3.12. Giving directions to ensure that the trial of a case proceeds quickly and efficiently.

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[131] CPR 1.1(2)

[132] CPR 1.4

12.1.4. The parties are required to help the Court to further the overriding objective.[133]

12.1.5. This chapter of the Guide is intended to provide more detail on what is expected from the Court, the ACO, and the parties in order to further the overriding objective.

## 12.2. Duties of the Parties

12.2.1. The parties must make efforts to settle the claim without requiring the intervention of the Court. This is a continuing duty and whilst it is preferable to settle the claim before it is started, the parties must continue to evaluate the strength of their case throughout proceedings, especially after any indication as to the strength of the case from the Court (such as after the refusal or grant of permission to apply for judicial review). The parties should consider using alternative dispute resolution (for example, mediation) to explore settlement of the case, or at least to narrow the issues in the case.

12.2.2. CPR Part 54 does not provide for a formal case management hearing in judicial review proceedings, although the parties may apply for an interim order or the Court may make case management orders with or without a hearing. It is not uncommon for the first time the parties appear in Court before the judge to be the final hearing of the claim. As such, the parties have a duty to ensure that they maintain effective, constructive, and regular communication with each other and the ACO (see also paragraph 14.1 of this Guide on the Duty of Candour).

12.2.3. The parties must comply with the procedural provisions in the CPR, the relevant Practice Directions and orders of the Court (including orders by an ACO lawyer). If a party knows they will not be able to do so they should inform the ACO and the other parties as soon as possible and make the application to extend the time limit as soon as possible (in accordance with the interim applications procedure in paragraph 12.7 of this Guide).

12.2.4. If a party is aware that they may need to apply for an interim order (extending time as per paragraph 12.2.3 above or for interim relief in accordance with chapter 15 of this Guide) they should inform the other parties and the ACO as soon as they know they may need to make the application. The application should then be made as quickly as possible. Delay in making an application and/or a failure to put the ACO and the other parties on notice, especially where it requires urgent consideration, is a factor which may weigh against the granting of the order.

12.2.5. The parties should, if possible, agree the form of any case management order and/or interim relief and file an agreed consent order, which will be subject to the Court's approval. A fee is payable when submitting a consent order and the reasons for requesting the order should be included in an accompanying application notice (N244 or PF244).

12.2.6. The parties should also comply with any requests from ACO staff members (such as requests for documents or information). Whilst these requests do not have the force of an order of the Court, failure to comply with such a request may be a factor considered by a judge or ACO lawyer that weighs against granting an interim order, permission to apply for judicial review, substantive relief, or costs.

12.2.7. If the parties are aware that a case is likely to settle without the further involvement of the Court they should inform the ACO as soon as possible.

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[133] CPR 1.3

12.2.8. The parties and their legal representatives should ensure compliance with the CPR, Practice Directions and rules. Of particular importance are: the duty of candour, the requirement to make full disclosure of all material facts (see paragraph 14.1 of this Guide), and the procedures for bringing urgent cases before the Court, see chapter 16 of this Guide.

## 12.3. Role of the Administrative Court Office Staff

12.3.1. The staff members in the ACO handle the day to day running of the ACO from the start of the process to the finish. One of their duties is to ensure that the cases are properly managed by requesting missing or late documents from the parties and by referring problematic issues to an ACO lawyer, the Master, or a judge.

12.3.2. The ACO staff members are not legally qualified and cannot give legal advice on the merits of the claim. Staff members may be able to assist with the basic judicial review procedure. However, any advice from a member of staff as to procedure must not be considered to circumvent any legal provision (be that provision in statute, case law, the CPR, or a Court order) or the provisions of this Guide. Parties and the Court are responsible for the conduct of proceedings and the parties will not be able to rely on the advice of the ACO as a reason for not complying with legal provisions.

12.3.3. The ACO staff may contact the parties to request information or specific documents if that information or document is required under the CPR or is thought to be necessary to allow the Court to properly consider or case manage the claim. The parties should comply with any requests unless they are unable to do so, when written reasons should be given for the failure.

12.3.4. The ACO staff have a duty to ensure that cases are being managed in accordance with the overriding objective. As such, where it appears that a case is not being managed in accordance with the overriding objective they have a duty to either make enquiries of the parties to establish the proper further course of action and/or to refer the case to an ACO lawyer or judge to consider further case management. Examples (but not an exhaustive list) of scenarios in which ACO staff may act as such are:

12.3.4.1. The claim appears to have been filed and/or issued in the Administrative Court under the judicial review provisions when it appears the claim should properly have been filed and/or issued in another Court or under a different provision;

12.3.4.2. The parties have failed to comply with procedural provisions in the CPR or a Court order;

12.3.4.3. The claim has been stayed for some time without a satisfactory update from the parties;

12.3.4.4. The staff member has concerns over the conduct of the parties.

## 12.4. Role of the Administrative Court Office Lawyers

12.4.1. An ACO lawyer must be a qualified solicitor or barrister. The role of the ACO lawyer is as a non-partisan lawyer, subject to the duties of an officer of the Court (as all lawyers are). Therefore, whilst employed by HMCTS, their primary duty is to the Court. The role in itself is three-fold:

12.4.1.1. To provide advice on practice and procedure in the Administrative Court to whoever requires it; be that judges, ACO staff, practitioners, or litigants;

12.4.1.2. To provide legal research and updates for the judges of the Administrative Court; and

12.4.1.3. To communicate with the parties and exercise delegated judicial powers to ensure that cases in the Administrative Court are managed properly.

12.4.2. As an ACO lawyer is independent of the parties he/she cannot give advice on the merits of the claim. An ACO lawyer may draw the parties' attention to provisions or precedents that may have an impact on the claim. If this is done the parties should consider what is said, but this should not be considered to be formal legal advice or a determination on the law. The parties have responsibility for the conduct of their own claim and the decision on the law is the preserve of the judge who considers the claim.

12.4.3. An ACO lawyer has a duty to ensure that the case is managed in accordance with the overriding objective and may enter into discussions with the parties or make case management orders (when applied for, when a case is referred to them by an ACO staff member, or of his/her own volition) to further the overriding objective and properly manage the case. Any order of an ACO lawyer will always be made after consideration of the papers without a hearing.

12.4.4. The specific powers that the ACO lawyer may use are delegated by the President of the Queen's Bench Division[134] and include:

12.4.4.1. Determining when an urgent application should be referred to a Judge.

12.4.4.2. Adding, removing, or correcting parties other than interveners.

12.4.4.3. Extending or abridging the time for the filing of any document required by the CPR, Practice Direction or court order.

12.4.4.4. Extending the time of any procedural step required of a party.

12.4.4.5. Directing the filing of any document required for the proper disposal of the case.

12.4.4.6. Dismissing a claim or application when a party has failed to comply with any order, rule or Practice Direction.

12.4.4.7. Determining applications for relief from sanctions.

12.4.4.8. Determining applications to stay proceedings by consent or otherwise.

12.4.4.9. Mandatory transfer of claims to the Upper Tribunal.

12.4.4.10. Order that the Court is minded to transfer the claim to a different region, which order will result in transfer in the event that no objection is received.[135]

12.4.4.11. Determining applications by solicitors to come off record.

12.4.4.12. Determining applications to vacate or adjourn hearings.

12.4.4.13. Determining any application for an agreed judgment or order for the disposal of the proceedings.[136]

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[134] CPR 54.1A(1)

[135] Where an objection is received the final decision on transfer will be taken by a judge.

[136] ACO lawyers will only be able to approve if permission has already been granted as they are subject to the restriction under CPR 54.1A(3)(a)

12.4.5. If a party is not content with an order of the ACO lawyer then CPR 54.1A(5) provides that the party may request that the order is reviewed by a judge. Such a review may take place on the papers or by way of an oral hearing in Court.[137] The choice of how the review takes place is the choice of the party requesting the review. The request for a review must be made by filing the request in writing (a letter or application notice may be used) within 7 days of the date on which the party was served with the ACO lawyer's order.[138] As long as the request is filed within 7 days (or such time as allowed by the order) there is no fee. If it is filed out of time then an application must be made to file the request out of time and it must be made on an application notice (N244 or PF244) with the relevant fee.

## 12.5. Role of the Master of the Administrative Court

12.5.1. The Master has the power to make any order allowed under the CPR unless the CPR expressly states that the Master may not make such an order. In judicial review proceedings this means that the Master generally deals with interim applications that do not come within the powers delegated to the ACO lawyers. This includes, but is not limited to:[139]

12.5.1.1. Making interim orders relating to case management or interim remedies (including applications to vary bail conditions, provided the prosecutor does not oppose the variation);

12.5.1.2. Determining liability for costs and making summary assessments of costs (see chapter 23 of this Guide for costs); and

12.5.1.3. Making orders relating to applications from vexatious litigants for permission to start or continue claims for judicial review (see paragraphs 4.10 and 4.12 of this Guide).

12.5.2. The Master may make orders with or without a hearing.[140]

12.5.3. The Master is under a duty to case manage the claim in accordance with the overriding objective. To this end the Master may request enquires are made of the parties by an ACO lawyer or ACO staff member or he/she may make case management orders (when applied for, when a case is referred to him/her by an ACO staff member or ACO lawyer, or of his/her own volition).

12.5.4. Any challenge to the terms of an order made by the Master without a hearing must be made by applying for reconsideration of the order at an oral hearing.[141] The application must be made on form N244 or PF244 and the relevant fee is payable. The hearing will be listed before a judge in Court. See paragraph 15.4 of this Guide for further details.

12.5.5. A challenge to an order made by the Master at an oral hearing must be made by appealing to a High Court judge (see paragraph 25.6 of this Guide on appeals).[142]

## 12.6. Role of the Judiciary

12.6.1. Judges of the Administrative Court have all the powers of the High Court under statute, the CPR, and under the inherent jurisdiction of the Court.

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137 CPR 54.1A(5) & (6)

138 CPR 54.1A(7)

139 CPR 2.4(a) and CPR PD 2B paragraphs 3.1(c) and 3.1A

140 CPR 23.8

141 *R. (MD (Afghanistan)* v *Secretary of State for the Home Department* [2012] 1 W.L.R. 2422

142 CPR PD 52A paragraph 4.3

12.6.2. In ensuring that the overriding objective is complied with, the Court must actively manage cases (see paragraph 12.1 of this Guide).

12.6.3. Any challenge to the terms of a case management order made without a hearing must be made by applying for reconsideration at a hearing (see paragraph 15.5 of this Guide). Any challenge to an order made at an oral hearing must be appealed (see paragraph 25.6 of this Guide).

## 12.7. Applications Once a Claim has Commenced

12.7.1. An application for directions or an interim order can be made at any time after commencement of the claim.[143] For pre-commencement applications, see paragraph 16.4 of this Guide; for applications for interim relief, chapter 15 of this Guide.

12.7.2. To make such an application:

12.7.2.1. The application must be filed with the ACO on an application notice (N244 or PF244 are the most commonly used).

12.7.2.2. The application must be accompanied by payment of the relevant fee.

12.7.2.3. The application must be accompanied by evidence stating why the direction or order is required.

12.7.2.4. A draft order should be enclosed with the application.

12.7.3. Where possible, a copy of the application, evidence and accompanying draft order should be sent to the proposed defendants and interested parties to give them notice that the application is being made. Where the application has been made without giving notice to the other parties then the evidence supporting the application should explain why the application has been made without giving notice.

12.7.4. In the application notice the applicant may request the application be considered at a hearing or by a judge considering the papers. In either event, the ACO will send the papers to a judge, master, or ACO lawyer to consider in the first instance. A judicial order may be made on the papers alone if it is thought that a hearing would not be appropriate. Otherwise, a hearing may be listed to hear the application. Such a hearing is usually listed at short notice (see paragraph 13.2.3 of this Guide).

12.7.5. It is the responsibility of each party to indicate the likely length of the hearing to determine the application (if the application is determined at a hearing). The length of hearing should include time for giving judgment.

12.7.6. If the parties are able to agree the form of any case management order then the application may be made by consent. If the parties can agree then this is preferable to making a contested application, although the Court retains discretion as to whether to grant or refuse the order or to make the order in a varied form. Applications made by consent in this way are made in accordance with the procedure outlined at paragraph 22.4 of the Guide (which deals with consent orders to end the claim, but the procedure is identical).

[143] CPR Part 23

12.7.7. Where a rule or court order expressly states that the parties may make an "application" (for example, "*the claimant may make an application for permission to admit further evidence within 21 days*") then the procedure outlined in this paragraph will be applicable. If the application is made within any applicable time limit then the relief from sanction principles (see paragraph 12.9 of this Guide) will not apply. Where a rule or court order allows for "representations" (for example, "*the claimant may make representations on costs within 7 days*") then it is permissible to file the written representations without the need for the formal application process. Such representations, if emailed, should come in the form of an attached word document. If the representations are not received within any applicable time limit then an application must be made, in accordance with this paragraph and paragraph 12.9, to extend the time limit.

## 12.8. Applications for the Claim to be Stayed

12.8.1. If either party wishes to stay a claim, an application must be made to the Court for that to occur (see paragraph 12.7 of this Guide for the procedure for making applications). Save in exceptional circumstances, an application for stay should be made on notice to the other parties, and their agreement to it should be sought before the application is made.

12.8.2. The duration of the proposed stay must be made clear in the application notice. Usually, a stay is sought pending the outcome of a particular event (for example, the conclusion of a related Tribunal appeal or a lead case in the Court of Appeal) or for a specific period of time (not usually exceeding a few weeks or months).

12.8.3. A stay will not normally be permitted to enable the defendant to reconsider the decision under challenge in the claim. Where the defendant agrees to reconsider, the judicial review should generally be withdrawn. A fresh claim can then be brought if the claimant wishes to challenge the reconsideration.[144] In any event, the Court's permission will be required to amend the claim form in light of any subsequent decision (see paragraphs 6.10 (pre-permission) and 9.2 (post-permission) of this Guide for further guidance on this principle).

## 12.9. Relief from Sanctions

12.9.1. Where a party has failed to comply with a provision under the CPR, Practice Direction or an order of the Court, which specifies a sanction for non-compliance or a sanction can otherwise be implied, and the party wishes to set aside the sanction, that party must apply for relief from sanction.[145] If they do not then the Court may refuse to consider that party's case[146] and/or make an adverse costs order against the party.[147] An implied sanction is a sanction that is not expressly imposed by a rule or direction but the consequence of a failure to comply would be the same as if the rule expressly imposed a sanction for non-compliance (for example, if a party fails to file an appeal notice or renewal notice within the relevant time period, and does not obtain an extension of time from the Court, the claim cannot proceed; the implied sanction is therefore one of striking out).[148]

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144 See *R (Bhatti) v Bury Metropolitan Borough Council* [2013] EWHC 3093, and *R (Yousuf) v Secretary of State for the Home Department* [2016] EWHC 663 (Admin)

145 CPR 3.8(1) and *R (Hysaj) v Secretary of State for the Home Department* [2014] EWCA Civ 1633. In *Hysaj* a failure to file an appellant's notice in time required an application to extend time to file the notice retrospectively or the appeal could not progress. The Court of Appeal held that the relief from sanctions provisions applied as the lack of ability to appeal unless an extension of time was granted was an implied sanction. In *R (Fayad) v SSHD* [2018] EWCA Civ 54 where the Court of Appeal confirmed at [22] that the approach to be adopted to applications for extension of time in judicial review cases was that set out in *Denton v TH White Ltd* [2014] EWCA Civ 906, citing *Hysaj*. See also *R (The National Council on Civil Liberties, Liberty) v SSHD and SSFCO (Procedural Matters)* [2018] EWHC 976 (Admin) at [3].

146 CPR 3.4(2)(c)

147 CPR 44.2(4)(a), CPR 44.2(5)(c) and CPR 44.4(3)(a)(i)

148 See *Sayers v Clarke Walker* [2002] EWCA Civ 645 and *Altomart Ltd v Salford Estates (No.2) Ltd* [2014] EWCA Civ 1408.

12.9.2. An application for relief from sanction must be made in line with the interim applications procedure (see paragraph 12.7 of this Guide). The application for relief from sanction may be considered by an ACO lawyer, the Master, or a judge.

12.9.3. When considering whether to grant an application for relief from sanction, the ACO lawyer, the Master, or a judge, must consider the principles outlined in *Mitchell v News Group Newspapers Ltd* [2013] EWCA Civ 1537 and *Denton v T.H. White Ltd* [2014] EWCA Civ 906.[149] These cases should be considered if making such an application, but, in summary, the Court will consider the application in three stages:

12.9.3.1. Identify and assess the seriousness and significance of the failure to comply with any rule or Court order. If the breach is neither serious nor significant, the Court is likely to grant relief.

12.9.3.2. Consider why the default occurred. If there is a good reason for it, the Court will be likely to decide that relief should be granted, but merely overlooking the deadline is unlikely to constitute a good reason.

12.9.3.3. Evaluate all the circumstances of the case, so as to enable the Court to deal justly with the application including consideration of the first two factors. Particular weight is to be given to the need for litigation to be conducted efficiently and at proportionate cost and to enforce compliance with rules, practice directions and orders.

## 12.10. Abuse of the Court's Process

12.10.1. The Court has a duty to ensure that the Court's process is not abused. If a party, a legal representative, or any other person acts in a way thought to be inappropriate the Court may, in an appropriate case:

12.10.1.1. Strike out statements of case;[150]

12.10.1.2. Make an adverse costs order requiring the person to pay a party's costs (see paragraph 23.1 of this Guide);[151]

12.10.1.3. Make a wasted costs requiring a legal representative to pay a party's costs (see paragraph 23.13 of this Guide);[152]

12.10.1.4. Refer a legal representative to their regulatory body to consider further sanctions;[153]

12.10.1.5. Make a Civil Restraint Order (see chapter 4 of this Guide).[154]

12.10.2. Before making any of the above orders, the Court will usually give the relevant party, legal representative, or third party the opportunity to make representations on the appropriateness of such an order.

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[149] See, in addition, footnote 151

[150] CPR 3.4(1)(c)

[151] CPR 44.2(4)(a), CPR 44.2(5)(c) and CPR 44.4(3)(a)(i)

[152] Section 51(6) Senior Courts Act 1981 and CPR 46.8

[153] *R (Hamid) v SSHD* [2012] EWHC 3070 (Admin)

[154] CPR 3.11, CPR PD 3c, and CPR 23.12

12.10.3. Scenarios which may be considered to be an abuse of process include, but are not limited to:[155]

12.10.3.1. Acting in bad faith or with an improper purpose.

12.10.3.2. Attempting to re-litigate a decided issue.

12.10.3.3. Raising in subsequent proceedings matters which could and should have been litigated in earlier proceedings.

12.10.3.4. Starting proceedings or applying for an order after improper delay.

12.10.3.5. Persistent failure to comply with rules or orders of the Court.

12.10.3.6. Knowingly starting proceedings in the Administrative Court which ought to be issued in another Court or Tribunal.

12.10.3.7. Proceedings which are frivolous, vexatious, harassing or manifestly groundless.

## 12.11. Communications which are Abusive or without Proper Purpose

12.11.1. The ACO is generally in a position to communicate with the parties in person at the public counter, by telephone, email, or post (see Annex 1 for details) and will respond to communications if the communication so requires. The exception to this principle will apply if a person has been made subject to a notification of restricted communication.

12.11.2. Such a notification will be sent by the manager of the ACO if it is considered that the person has been communicating with the ACO in a manner which is:

12.11.2.1. Aggressive, intimidating, or harassing; or

12.11.2.2. Persistent, time consuming, and without proper purpose.

12.11.3. Such a notification will inform the persons that the form in which they may communicate with the ACO is restricted to the manner outlined in the notice, all other forms of communication will be ignored, and that a response to the permitted form of communication will only be made if the communication raises a new issue that requires the response of the ACO.

12.11.4. Notifications of restricted communication will be sent in writing to the last known address for the person subject to the notification.

12.11.5. The person subject to the notification may request in writing at any time that the ACO manager rescinds the notification at his/her discretion. Such a request should include reasons for the request and will be responded to in writing.

12.11.6. A notification of restricted communication is made by the manager of the ACO as an employee of HMCTS. Any complaint against such a notification must be made in accordance with the HMCTS complaints policy.

12.11.7. The Court, under its inherent jurisdiction to control its own proceedings, may also make, rescind, or vary a notification of restricted communication.

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[155] Examples taken from Halsbury's Laws of England, Vol.11 Civil Procedure (2015), Part 19, paragraph 1044, and from *R (Ashraf) v SSHD* [2013] EWHC 4028 (Admin)

## 13. Listing

### 13.1. Listing Policy

13.1.1. The Administrative Court has a listing policy that will be followed by the ACO when it lists any hearing. The listing policy can be found at Annex 4 to this guide.

13.1.2. This section of the Guide will summarise the procedure in the policy, but the policy itself should be referred to for full details.

13.1.3. The policy is intended to be applied flexibly. The ACO may, where it considers it appropriate to do so, list cases otherwise than in accordance with the policy.

13.1.4. A particular case may be listed in a particular way by reason of a judicial order.

### 13.2. Listing Procedure

13.2.1. For permission hearings, hearings will usually be fixed for a date without seeking the views of representatives. Several weeks' notice of the hearing will normally be given.

13.2.2. For substantive hearings, the ACO will usually consult with counsel's clerks to attempt to agree a suitable date for the hearing. This will generally occur in one of two ways:

13.2.2.1. In the ACO in London, the ACO will telephone or email either counsel's clerks and/or solicitors to arrange an appointment to fix the hearing. Five working days' notice will be given of the appointment. At the appointment if parties are unable to agree a date that is also acceptable to the Court, the ACO will list the matter for first available date convenient to the Court.

13.2.2.2. In the other ACOs, the ACO will either email or telephone counsel's clerks or solicitors for all sides to request the dates of availability for counsel on the Court record (that is to say the Court has been informed counsel is/are acting). Unless availability is provided over the telephone at the time of the initial contact the clerk will be informed that they must provide availability within 48 hours otherwise the ACO will list the matter for first available date convenient to the Court. If the availability of all counsel corresponds, the ACO will check for judicial availability and list accordingly; alternatively, if parties are unable to agree a date that is also acceptable to the Court, the ACO will list the matter for first available date convenient to the Court.

13.2.3. Interim relief hearings are usually listed in the same way as renewal hearings, but where interim relief is required urgently the hearing may be listed at short notice with little or no consultation as to the availability of the parties. The application will usually be fixed on the basis that it will take no longer than 30 minutes to hear, unless a different time estimate is required by a judge, master, or ACO lawyer. If a party considers that the application will require a longer hearing, the suggested time estimate must be confirmed as soon as possible, in writing with reasons, and is subject to the Court's approval.

13.2.4. Due to limited judicial time the ACO is unable to routinely take into account the availability of litigants representing themselves (litigants in person) or instructing solicitors. However, if there are dates when a litigant in person is unable to attend and there are good reasons for not being able to attend then the litigant in person may inform the ACO in writing in advance and the ACO may be able to take this into account when listing.

13.2.5. A substantive hearing will be allocated a hearing time estimate by either the judge granting permission or the ACO. If a party considers that the application will require a longer hearing, the suggested time estimate must be confirmed as soon as possible, in writing with reasons, and is subject to the Court's approval.

13.2.6. Once the hearing has been listed, all parties will be sent a listing notice by the ACO which confirms the date, location, and time estimate for the hearing. The start time of the hearing will not be in the listing notice. Generally, Administrative Court hearings start at 10.30am, but this may be changed up until 2.00pm the day before the hearing. The parties should check the hearing time on the day before the hearing by telephoning the ACO or checking the hearing time online at www.gov.uk/courts-tribunals/administrative-court.

## 13.3. Divisional Courts

13.3.1. Divisional Courts may be convened for any case in the High Court.[156]

13.3.2. A Divisional Court means that two or more judges sit together. Generally, if a Divisional Court is to sit rather than a single judge, a direction will be made at the permission stage,[157] although the direction can be made at any time. Divisional Courts are generally only convened for cases that raise issues of general public importance or for criminal cases[158] where the case has some public interest, is not straightforward, or is likely to set a precedent.

13.3.3. If a judicial review is allocated to the Divisional Court, the listing arrangements will be different, particularly if the case is considered to be urgent. The ACO will not be able to offer as many suitable available dates for a hearing and will not generally take account of the availability of each party's counsel when listing the hearing.

## 13.4. Applying to Adjourn a Listed Hearing

13.4.1. If a party wishes to apply to adjourn a listed hearing then the application must be made in one of the following ways:

13.4.1.1. By agreeing with all other parties that the hearing should be adjourned and filing a draft consent order for the approval of the Court,[159] one of terms of which is that the hearing is adjourned. Such an order must be signed by all parties and must be accompanied by the relevant fee (although see paragraph 13.4.1.2 below). The parties may also include further directions sought in such a draft order. The parties should not assume that a hearing has been adjourned unless they have been informed by the ACO that the consent order has been approved. Reasons for the hearing being adjourned should be provided.

13.4.1.2. If the parties agree a consent order to adjourn the hearing, which does not seek other directions, and they file the draft consent order with the ACO more than 14 days before the hearing, then no fee is payable. The request should be made on form AC001. The other provisions noted at paragraphs 13.4.1.1 and 22.4 of this Guide will still apply.

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156 s.66 of the Senior Courts Act 1981

157 CPR 54.10(2)(b)

158 As there is no right of appeal to the Court of Appeal, see paragraph 25.5 of this Guide.

159 See paragraph 22.4 of this Guide for the procedure for filing a consent order in the context of ending a claim – the procedure is identical.

13.4.1.3. If the parties cannot agree a consent order, then a party may make an application to adjourn the hearing in line with the interim applications procedure (see paragraph 12.7 of this Guide). Such an application must be made on form N244 or PF244 and be accompanied by the relevant fee. The application notice should include the reasons for the request, any attempts made to agree the request with the other parties, and any responses from the other parties to that request. A draft of the order sought should also be attached to the application.

13.4.2. The decision to adjourn a listed hearing is a judicial decision and cannot be taken by the ACO. The hearing will generally not be adjourned unless there are good reasons to do so, even where all parties agree that the hearing should be adjourned. Where the sole reason for seeking the adjournment is that counsel is/are not available for the hearing the application to adjourn will rarely be granted. Where the matter has been listed to be heard by a Divisional Court the Court will be very reluctant to grant an adjournment.

# PART C: SPECIFIC PRACTICE POINTS

## 14. Duty of Candour

**14.1. There is a special duty which applies to parties to judicial review known as the 'duty of candour' which requires the parties to ensure that all relevant information and facts are put before the Court.[160] This means that parties must disclose any information or material facts which either support or undermine their case.**

14.1.1. This rule is needed in judicial review claims, where the Court's role is to review the lawfulness of decisions made by public bodies, often on an urgent request being made, where the ordinary rules of disclosure of documents do not apply (see paragraph 6.5 and chapter 20 of this Guide on evidence) and where the witness statements are usually read (rather than being subject to cross examination by witnesses who are called to give their evidence orally).

14.1.2. The rule is particularly important where the other party has not had the opportunity to submit its own evidence or make representations (usually an urgent application – see chapter 16 of this Guide).

14.1.3. The Court will take seriously any failure or suspected failure to comply with the duty of candour. The parties or their representatives may be required to explain why information or evidence was not disclosed to the Court, and any failure may result in sanctions.

14.1.4. Specifically, claimants in judicial review proceedings must ensure that the Court has the full picture. In some circumstances, to ensure this, it is not sufficient simply to provide the relevant documents. Instead, a specific explanation of a document or an inconsistency must be given, usually by witness statement attested by the claimant.[161]

14.1.5. The duty of candour is a continuing duty. The claimant must reassess the viability and propriety of a challenge in light of the defendant's acknowledgement of service and summary grounds.[162]

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[160] See the discussion of this principle in *R. (Al-Sweady)* v *Secretary of State for Defence* [2009] EWHC 2387 (Admin) at paragraph 18

[161] *R (Mohammed Shahzad Khan) v Secretary of State for the Home Department* [2016] EWCA Civ 416 at 45

[162] Ibid, 48

## 15. Interim Relief

### 15.1. When is Interim Relief Appropriate?

15.1.1. A party (usually the Claimant) may request an interim remedy whilst the case is pending. Common examples are:

15.1.1.1. An interim order stopping the action the defendant plans to take (e.g to prevent removal from the UK, assuming that UTIAC has no jurisdiction in the matter, see paragraph 5.5 of this Guide);

15.1.1.2. An interim order requiring the defendant to act in a certain way (e.g – to provide the claimant with accommodation).

15.1.2. Interim relief is usually requested in the claim form. But it can be applied for at any stage of proceedings and in exceptional cases can be applied for before proceedings are commenced. The procedure is outlined in CPR Part 23, supplemented in places by CPR Part 25 and CPR Part 54.

15.1.3. The Court may require the claimant to give undertakings as a condition of any interim relief:

15.1.3.1. The claimant may be required to give an undertaking in damages, so that if the defendant succeeds at the end of the day, and has suffered financial loss as a result of the relief ordered in the claimant's favour in the meanwhile, the claimant will have to compensate that loss; and

15.1.3.2. An undertaking operates as if it was a Court order, and breach of an undertaking is equivalent to breaching a Court order, which the Court can sanction by imposing an adverse costs order on the party in default, refusing to hear the application, striking out the claim and proceeding to consider committal for contempt of Court.

### 15.2. Interim Relief When Lodging the Claim

15.2.1. Interim relief is usually applied for at the same time as lodging the claim papers (see chapter 6 of this Guide on starting proceedings).

15.2.2. Such an application can be made by making the application in section 8 of the claim form (form N461). As with the statement of facts and grounds, the substance of the application can be contained in a separate document to which section 8 of the claim form refers.

15.2.3. The application for interim relief will be considered by the judge on the papers, usually at the same time as the application for permission to apply for judicial review. The advantage for all parties is that this process reduces paperwork, reduces Court time, and does not require an additional fee.

15.2.4. The judge considering the application for interim relief alongside permission may either make an order based on the papers alone or order that the application for interim relief be dealt with at a hearing in Court (see paragraph 13.2.3 of this Guide for listing of such hearings).

15.2.5. Where the circumstances of the case require urgent consideration of the application for permission to apply for judicial review and/or any interim relief, a different procedure applies. This is dealt with separately in this Guide (see chapter 16).

## 15.3. Interim Relief before Commencement of Proceedings

15.3.1. In exceptionally urgent circumstances a person may apply for interim relief before starting proceedings. See paragraph 16.4 of this Guide for the procedure where an urgent application is made before proceedings have been commenced.

## 15.4. Interim Relief in Ongoing Proceedings

15.4.1. Where a claim has already been lodged but it subsequently becomes clear that an interim order is required, the party seeking interim relief should issue an application on form N244 or PF244. If the application is urgent, the party should make that clear in the application form, and indicate the timescale within which the judge is requested to consider the application in that application and, preferably, in a covering letter as well. Such an application, whether it is made urgently or not, should always, unless it is impracticable, be served on all the other parties. The Court is unlikely to consider the application unless the opposing party has been given an opportunity to respond to the application in writing.

## 15.5. Reconsideration if Interim Relief is Refused

15.5.1. Where an application for an interim order has been refused without a hearing (that is to say that the judge made the order considering the papers alone), a party may request the decision be reconsidered.[163]

15.5.2. Reconsideration is requested by lodging an application notice (N244 or PF244) with the relevant fee within 7 days of service of the order made on the papers, unless the order allows for a different time limit.[164] The application must be served on all other parties.

15.5.3. If an application is made for reconsideration after refusal on the papers then reconsideration must take place at an oral hearing in Court (see paragraph 13.2.3 of this Guide on listing).

15.5.4. If reconsideration is required within a set time frame the application must make the relevant timescale clear in the application and, preferably, in a covering letter as well.

15.5.5. Where reconsideration of an order made on the papers is extremely urgent and cannot wait until the Court's sitting hours, then the application for reconsideration can be made to out of hours judge in accordance with paragraph 16.3 of this Guide. In such circumstances the practitioner will be asked to undertake to pay the relevant fee on the next working day.

15.5.6. A party who wishes to challenge a decision made on the papers must apply for reconsideration in the Administrative Court before they can appeal (see chapter 25 of this Guide for appeals).[165]

## 15.6. Criteria for the Grant of Interim Relief

15.6.1. When considering whether to grant interim relief while a judicial review claim is pending, the judge will consider:[166]

15.6.1.1. Whether there is a real issue to be tried. In practice, in judicial review claims, that involves considering whether there is a real prospect of succeeding at the substantive hearing, that is to say a more than a fanciful prospect of success;

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[163] *R. (MD (Afghanistan))* v *Secretary of State for the Home Department* [2012] EWCA Civ 194

[164] CPR 3.3(6)

[165] *R. (MD (Afghanistan))* v *Secretary of State for the Home Department* [2012] EWCA Civ 194 at paragraph 21

[166] *R. (Medical Justice)* v *Secretary of State for the Home Department* [2010] EWHC 1425 (Admin) and *American Cyanamid Company v Ethicon Limited [1975] AC 396*

15.6.1.2. Whether the balance of convenience lies in granting the interim order;

15.6.1.3. Any other factors the Court considers to be relevant.

15.6.2. Generally, there is a strong public interest in permitting a public authority's decision to continue, so the applicant for interim relief must make out a strong case for relief in advance of the substantive hearing.[167]

15.6.3. The Court will be reluctant to grant any form of interim relief without establishing the defendant's response to the application. The Court is likely, if time permits, to permit the defendant an opportunity to respond to the application. In an urgent case, this may be by abridging time for service of the acknowledgement of service or calling the matter in for a hearing on short notice.

15.6.4. If time does not permit the defendant to be heard, then the Court will consider granting relief for a very short period until the defendant has been able to make its submissions (in writing or at a hearing).

15.6.5. Sometimes, if the merits of the underlying claim are unclear and there is no particular urgency in granting relief, the Court will give directions for an 'expedited' (speedy) determination of permission, or trial of the claim (possibly on the basis that permission should be 'rolled up' with the substantive hearing – see paragraph 8.2.6 of this Guide). In this way, the Court can be sure that both parties have had a chance to put their arguments before the Court before any form of order granting (or refusing) relief is made.

## 15.7. Removals Cases

15.7.1. There are particular rules relating to cases where a claimant challenges a decision to remove him or her from the jurisdiction, see CPR PD 54A, paragraph 18. Such challenges would now generally fall within the jurisdiction of UTIAC. A person who makes an application for permission to apply for judicial review of a removal decision must file a claim form which must:

15.7.1.1. Indicate on the face of the claim form that the practice direction applies (which can be done by ticking the relevant box in section 4 of the claim form);

15.7.1.2. Attach to the claim form a copy of the removal directions and the decision to which the application relates;

15.7.1.3. Attach any document served with the removal directions including any document which contains the UK Border Agency's factual summary of the case; and

15.7.1.4. Contain or be accompanied by the detailed statement of the claimant's grounds for bringing the judicial review (or give the reasons why compliance with the last two conditions is not possible).

15.7.2. That person must send copies of the claim form to the UK Border Agency.

15.7.3. The Court has set out certain principles to be applied when such applications are made in *R (Madan) v Secretary of State for the Home Department* [2007] EWCA Civ 770 which were endorsed by the Court in *R (SB (Afghanistan)) v Secretary of State for the Home Department* [2018] EWCA Civ 215:[168]

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[167] The position is different for cases involving removals from the UK involving claims of a breach of Articles 2 and 3 of the ECHR – see below at 15.7, and see *R (SB (Afghanistan)) v SSHD* [2018] EWCA Civ 215 at [78].

[168] See [55]-[56]. At [75], the Court suggested that a valid claim was one which was made at a time which afforded the Secretary of State a viable opportunity to appreciate that such a claim had been made and to take steps to address it.

15.7.3.1. Such applications must be made promptly on the intimation of a deportation decision and not await the actual fixing of removal arrangements;

15.7.3.2. The detailed statement of grounds must include a statement of all previous applications made in respect of that applicant's immigration status and indicate how the present state of the case differs from previous applications.

15.7.4. Counsel and solicitors appearing on the application, in the absence of the defendant, are under professional obligations to draw the judge's attention to any matter adverse to their client's case, including in particular any previous adverse decisions, and to take a full note of the judge's judgment or reasons, which should then be submitted to the judge for approval.

## 16. Urgent Cases

### 16.1. General

16.1.1. The Administrative Court often deals with urgent cases. This is a very important part of the Court's work, and the availability of the Court to deal with urgent cases is in the public interest. However, the Court's experience in recent years is that some litigants and practitioners are misusing, and even abusing, the procedures for seeking urgent adjudication. The consequence of this is or may be that those claimants with genuinely urgent cases have had to wait longer than they needed to, because wholly unmeritorious and/or non-urgent cases are ahead of them in the queue.

16.1.2. All litigants and their advisers are reminded of the rules relating to urgent applications which are summarised below. In particular,

16.1.2.1. It is very important that litigants and their advisors state clearly on the Court forms what are the reasons for urgency (see paragraph 16.2 below).

16.1.2.2. It is very important that litigants and their advisors comply with their duty of candour which requires them to disclose all relevant material to the Court (see paragraph 14.1 of this Guide).

16.1.3. The CPR, Practice Directions and other obligations owed to the Court must be complied with. If they are not complied with, the party in default is likely to be made subject to an adverse costs order (for example, being made to pay some or all of the other party's legal costs, or being unable to recover their own legal costs, even if successful), and risks having their claim dismissed for non-compliance. Professional representatives may face applications for wasted costs, or be referred to their Regulator for consideration of disciplinary action, for failure to comply with their professional obligations.

16.1.4. Professional representatives are reminded of the following passage from *R (Hamid) v Secretary of State for the Home Department* [2012] EWHC 3070 (Admin):

"[7] … If any firm fails to provide the information required on the form and in particular explain the reasons for urgency, the time at which the need for immediate consideration was first appreciated, and the efforts made to notify the defendant, the Court will require the attendance in open court of the solicitor from the firm who was responsible, together with his senior partner. It will list not only the name of the case but the firm concerned. …"

### 16.2. Urgent Consideration – Form N463

16.2.1. Where the circumstances of the case require urgent consideration of the application for permission to apply for judicial review and/or any interim relief (which is not so urgent that it has been sought pre-action, but still sufficiently urgent that the Court is being asked to deal with it within a shortened timeframe), the Claimant may apply for urgent consideration at the same time as issuing the claim form.[169] These situations will generally be those where some irreversible action will take place if the Court does not act to prevent it, or where an expedited judicial review is required.

16.2.2. The claimant must complete form N463 (a new version is available as of 26 March 2018), providing the following information (which is required to be inserted in the relevant boxes on that form):

[169] Practice Statement (Administrative Court: Listing and Urgent Cases) [2002] 1 W.L.R. 810

16.2.2.1. The circumstances giving rise to the urgency. If the representative was instructed late, an explanation must be provided as to why their client instructed them at the last moment. If the form is filed only shortly before the end of the working day, an explanation should also be provided as to why the application was not made earlier in the day;

16.2.2.2. The timescale sought for the consideration of the application;

16.2.2.3. The date by which any substantive hearing should take place;

16.2.2.4. Efforts taken to put the defendant on notice of the application for urgent consideration;

16.2.2.5. The grounds on which any interim order is sought.

16.2.3. A draft of the order sought should be attached which sets out the relief sought and any directions for an expedited hearing.

16.2.4. The full claim papers (see chapter 6 of this Guide on starting proceedings, i.e. claim form and required supporting documents) must be filed alongside the urgent application. Where the application for urgent consideration is filed at the same time as the claim papers there is no additional fee for the urgent application, it is covered by the fee to start proceedings.

16.2.5. The claimant should serve the claim papers and the Form N463 with supporting documentation on the defendant and interested parties, advising them of the application and that they may make representations.

16.2.6. The Administrative Court Office will have a judge available to consider any urgent application received between 10am and 4pm (4.30pm in London), Monday to Friday, excluding public holidays (See CPR PD 2A, paragraph 2.1). The judge may either make an order based on the papers alone or order that the application (or part of it) be dealt with at a hearing in Court (see paragraph 13.2.3 for listing of such hearings). In appropriate situations the Master or an ACO lawyer may consider the application and request further information or make an order.

16.2.7. It is not appropriate for any urgent application arising during court hours (see paragraph 16.2.6 above) in relation to a judicial review to be put before the judge in charge of the interim applications court in London ("Court 37"). The Administrative Court has a judge available to deal with immediate applications in the context of a judicial review. Court 37 deals with other Queen's Bench Division matters. If a matter is brought before Court 37 (or any inappropriate court) which should have been brought before the Administrative Court as a matter arising in judicial review proceedings (pre-claim or otherwise) then the judge is likely to refuse to deal with the application and direct the applicant to file proceedings in the Administrative Court Office unless doing so would cause any irreversible prejudice or harm.

16.2.8. Wherever possible the Court will want representations from the defendant before determining the application. In cases where interim relief is sought, the Court will generally make an order allowing the defendant a short time to file written submissions before deciding the application, unless irreversible prejudice would be caused to the claimant in the meanwhile; alternatively, the judge may list the matter for a hearing on notice to the defendant (see paragraph 13.2.3 of this Guide for listing). In cases where an expedited substantive hearing is sought, the Court may abridge time for service of the defendant's acknowledgement of service and request the defendant's views on the order sought, to enable the Court to take an early view on permission and any consequential case management directions.

16.2.9. If the matter is put before a judge who concludes that the application was not urgent, and is suitable for disposal according to the ordinary procedures of the Court, the judge may refuse to deal with the matter on an urgent basis, and may make an adverse costs order against the applicant or his legal representatives (see paragraph 23.1 of this Guide on costs).

16.2.10. If an urgent application is refused on the papers the applying party may request the decision be reconsidered at an oral hearing (see paragraph 15.5 of this Guide for the procedure). The application must be made by filing the application notice with the Administrative Court Office, not by applying in the interim applications court (or any other court).

## 16.3. Out of Hours Applications

16.3.1. In the event that an urgent application needs to be made outside the sitting hours of the Administrative Court (see paragraph 16.2.6 of this Guide) and the application cannot wait until the sitting hours recommence, then the claimant may make the application to the out of hours High Court Judge. A High Court Judge is on call at all times to deal with very urgent applications which cannot wait until the next working day.

16.3.2. If a party needs to make an out of hours application to the Court, the acting barrister or solicitors should telephone 0207 947 6000[170] and speak to the Queen's Bench Division out of hours duty clerk.

16.3.3. The out of hours duty clerk will require the practitioner to complete the out of hours form, which can be downloaded from the Government website (http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court_forms_id=3007) and emailed to QBDutyClerk@hmcts.gsi.gov.uk. (Emails must not be sent to this address unless the out of hours duty clerk has invited you to do so.)

16.3.4. The out of hours judge may deal with the application on paper. Alternatively, the out of hours judge may telephone the representatives acting for the claimant to enable them to make their submissions orally before deciding the application. The representatives will be required to provide a telephone number on which they can be reached. The out of hours judge may also telephone any other party to the application if he or she considers that to be appropriate (this is often done in immigration cases where the application seeks a stay on removal).

16.3.5. The fact that a judge is being asked to make an order out of hours, usually without a hearing, and often without any representations from the defendant's representatives and in a short time frame, means that the duty of candour (to disclose all material facts to the judge, even if they are not of assistance to the claimant's case) is particularly important, see paragraph 14.1 of this Guide.

16.3.6. Legal representatives must consider very carefully whether an out of hours application really is required and should only make such an application if the matter really cannot wait until the next working day.

16.3.7. The out of hours service is not available to litigants in person.

## 16.4. Pre-Action Applications

16.4.1. In exceptionally urgent circumstances, a person may apply, typically for interim relief, before starting judicial review proceedings. The Court may only grant a pre-action order where:

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[170] As required by CPR PD 54D paragraph 4.2 and CPR PD 25A paragraph 4.5

16.4.1.1. The matter is urgent; or

16.4.1.2. It is otherwise necessary to do so in the interests of justice.[171]

16.4.2. The claimant should carefully consider whether the matter is really so urgent that an application should be made before the claim is started. It is much better to apply at the same time as lodging the claim papers if that is possible: this will make it easier for the Court to understand the issues and is likely to conserve legal costs.

16.4.3. The claimant should always try to reach an agreement with the public authority, even for a short period, before applying for pre-action interim relief. The Court will expect to be told about such efforts and why they have not succeeded, if the matter is brought before the Court instead.

16.4.4. If the matter really is urgent and no short-term compromise can be reached, then the claimant can make an application for a pre-action relief by filing an application notice (N244 or PF244) with the ACO.[172] The application must be accompanied by the relevant fee, must be supported by evidence establishing why the order is required,[173] and should enclose a copy of the draft order. Where possible a copy of the application, evidence, and draft order should be sent to the proposed defendants and interested parties to give them notice that the application is being made.[174] Where the application has been made without giving notice to the other parties then the evidence supporting the application should explain why the application has been made without giving notice.[175]

16.4.5. In the application notice the applicant may request the application be considered at a hearing or by a judge considering the papers. In either event, the ACO will send the papers to a judge, master, or ACO lawyer to consider in the first instance. A judicial order may be made on the papers alone if it is thought that a hearing would not be appropriate.[176] Otherwise, a hearing will be listed to consider the application. Such a hearing is usually listed at short notice.

16.4.6. Wherever possible the Court will want representations from the defendant before determining any application made in advance of issuing the claim form. Unless, by not granting that order, irreversible prejudice would be caused to the claimant, the Court will generally make an order allowing the defendant a short time period to file written representations or the Court will direct that the application should be dealt with at a hearing listed with notice being provided to the defendant.

16.4.7. The claimant will usually be required to undertake to file a claim form and grounds of claim, usually within a short period, or, if no satisfactory undertaking is offered, will be directed by the Court to do so.[177]

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171 CPR 25.2(2)(b).

172 CPR 23.3(1)

173 CPR 25.3(2)

174 CPR 23.4(1)

175 CPR 25.3(3)

176 CPR 23.8(c)

177 CPR 25.2(3)

## 16.5. Abuse of the Procedures for Urgent Consideration

16.5.1. Where an application for urgent consideration or an out of hours application is made which does not comply with this Guide and/or it is manifestly inappropriate, the Court may make a wasted costs order or some other adverse costs order (see paragraphs 23.1 and 23.13 of this Guide respectively).[178]

16.5.2. In *R. (Hamid) v Secretary of State for the Home Department* [2012] EWHC 3070 (Admin) (see paragraph 16.1.4 above) the Court held that where urgent applications are made improperly the Court may summon the legal representative to Court to explain his or her actions and would consider referring that person, or their supervising partner (if different) to the relevant regulator. Examples (but not an exhaustive list) of applications which have been held to be inappropriate under the *Hamid* rule are:

16.5.2.1. The claimant's solicitor had delayed making the urgent application until the last minute and had not disclosed the full facts of the case in an attempt to use the urgent process to prevent his client's removal from the UK.[179]

16.5.2.2. The claimant's solicitor requested urgent interim relief against a decision that had been made three years earlier.[180]

16.5.2.3. A practitioner advanced arguments that his client was suicidal and psychotic when they knew or ought to have known were false and/or inconsistent with their own medical evidence.[181]

16.5.2.4. A practitioner lodged an application with grounds that were opaque and brief and failed to set out any of the claimant's history of criminality.[182]

16.5.3. Practitioners should be aware that the Court can identify those who are responsible for abusing the Court's processes by making adverse costs orders (see paragraph 23.1 of this Guide) or by activating the *Hamid* procedure outlined above which may lead to those practitioners being disciplined by their Regulator. If the *Hamid* procedure is activated any orders made in relation to the referral may be published and placed in the public domain and any such publication will include the explanation provided by the legal representative. Also see paragraph 12.10 of this Guide on abuse of the Court's process.[183]

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178 Practice Statement (Administrative Court: Listing and Urgent Cases) [2002] 1 W.L.R. 810 at 811

179 *R. (Hamid)* v *Secretary of State for the Home Department* [2012] EWHC 3070 (Admin)

180 *R. (Butt) v Secretary of State for the Home Department* [2014] EWHC 264 (Admin)

181 *R. (Okondu) v Secretary of State for the Home Department (wasted costs; SRA referrals; Hamid) IJR* [2014] UKUT 377 (IAC)

182 *R. (Okondu) v Secretary of State for the Home Department (wasted costs; SRA referrals; Hamid) IJR* [2014] UKUT 377 (IAC)

183 See also *R. (SB (Afghanistan) v SSHD* [2018] EWCA Civ 215 at [54]-[56]; and *Vai Sui Ip v Solicitors Regulation Authority* [2018] EWHC 957 (Admin) where a Divisional Court upheld the sanction of striking off a solicitor for making abusive applications for judicial review of immigration decisions.

## 17. Skeleton Arguments

### 17.1. General

17.1.1. A skeleton argument is a written document setting out a summary of the party's arguments in the case.

17.1.2. CPR PD 54A paragraph 15 requires each party to prepare a skeleton argument before any substantive hearing.

17.1.3. Parties should also prepare skeleton arguments before any interim hearing in the course of a judicial review (including any renewed permission or hearing for interim relief or directions), even where the issue is straightforward. A skeleton argument in such circumstances is not mandatory by virtue of any rule, but may be very helpful to the Court.

### 17.2. Content of Skeleton Argument

17.2.1. The skeleton argument must include the following:[184]

17.2.1.1. On the first page, a time estimate for the complete hearing, including delivery of judgment, and a time estimate for the judge's pre-reading.

17.2.1.2. A list of issues.

17.2.1.3. A list of the legal points to be taken (together with any relevant authorities with page references to the passages relied on)

17.2.1.4. A chronology of events with page references to the bundle of documents.

17.2.1.5. A list of essential documents for the advance reading of the Court (with page references to the passages relied on); and

17.2.1.6. A list of persons referred to in the claim.

17.2.2. It is helpful if the skeleton argument sets out the points to be made as clearly and as concisely as possible. Ideally, the skeleton argument should be in the following form:

17.2.2.1. The decision under challenge should be clearly identified, or the relevant failure to make a decision, if that is what is under challenge.

17.2.2.2. The relevant facts should be summarised including any relevant change of facts or circumstances since the claim form and supporting documentation were lodged.

17.2.2.3. The grounds for seeking judicial review (or interim relief, or any other order) should be set out under numbered headings. The grounds must be stated shortly and numbered in sequence. Each ground should raise a distinct issue in relation to the decision under challenge.[185]

17.2.2.4. Arguments and submissions in support of the grounds should be set out separately in relation to each ground.

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[184] CPR PD 54A paragraph 15.3

[185] *R (Talpada) v SSHD* [2018] EWCA Civ 841 emphasised the need for a clear and succinct statement of the grounds, in the context of appeals, see [68]. See also *Hickey v Secretary of State for Work and Pensions* [2018] EWCA Civ 851 at [74].

17.2.2.5. Relevant legal principles should be set out. Lengthy extracts from EU Directives, international Conventions, statutes, case law and other sources should be avoided if possible. It is much more helpful to the Court if the skeleton states the proposition of law which the party contends for, and then refers to the source of or authority for that proposition, with short extracts quoted if that is appropriate. It is not usually necessary or helpful to cite more than one case in support of each proposition of law.

17.2.2.6. The remedy sought should be identified.

17.2.2.7. Any urgency, other matter relevant to the timing of the case, and any other relevant point, such as alternative remedy, should be identified.

## 17.3. Format of Skeleton Argument

17.3.1. A skeleton argument should be clearly typed and properly spaced. A font style of not less than 11-point should be used, and lines should be reasonably spaced (1.5 or double spacing is ideal).

17.3.2. Paragraphs should be numbered sequentially.

17.3.3. Pages should be numbered. It is rarely necessary for skeleton arguments to be any longer than 20 pages in length.

## 17.4. Method of Service

17.4.1. Skeleton arguments may be filed with the Court by email at the relevant email address set out in Annex 1 as long as they do not exceed the maximum which the appropriate court office has indicated it can accept by email (see paragraph 6.7 of this Guide).[186] Otherwise, they should be lodged at the Court in hard copy. Service by email is encouraged, wherever possible, and is likely to be of greatest assistance to the Court. Skeletons served by email should be served in the form of an attached word document (as opposed to pdf, any other format, or in the body of the email). There is no need to file a hard copy of the skeleton if filing by email.

17.4.2. Skeleton arguments should always be served on the other party or parties to the case, whether or not that party is in a position to provide a skeleton by way of exchange.

## 17.5. Timing of Service of Skeleton Arguments

17.5.1. Skeleton arguments must be served in good time before any hearing.

17.5.2. That means that the skeleton argument must be served on or before the date set by the Court, if directions are in place. The standard direction usually ordered by the Court for substantive hearings is that the claimant's skeleton argument is to be filed with the Court and served on the other parties not less than 21 days before the date of the hearing of the claim, and the defendant's skeleton argument is to be filed with the Court and served on the other parties not less than 14 days before the hearing date. (But see paragraph 9.1.4 of this Guide for computation of time for service of skeleton arguments.)

17.5.3. These standard directions may be varied by the Court, in which case the parties must comply with those specific directions.

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[186] CPR PD 5B, paragraph 2.2(b)

17.5.4. For all other hearings where there are no standard directions (for example, hearings for renewal of permission), and in the absence of specific directions, skeleton arguments should be served at least 2 working days before the hearing is listed. If there is or may be a problem with compliance with that deadline, the ACO should be alerted as soon as possible.

17.5.5. Skeleton arguments should not be handed to the Court on the day of the hearing.

## 17.6. Sanction for Non-Compliance

If the skeleton argument does not comply with this guidance, or is served late, the Court may refuse to permit the party in default to rely on the skeleton; alternatively, the Court make an adverse costs order against the party in default (see paragraph 23.1 of this Guide on costs).[187]

[187] See as an example *R (National Council of Civil Liberties, Liberty) v SSHD and SSFCA* (Procedural Matters) [2018] EWHC 976 (Admin) at [17]

## 18. Documents

### 18.1. Bundles for Substantive Hearings

18.1.1. CPR 54A PD paragraph 16 requires the claimant to file a bundle of documents at the same time as the claimant files his or her skeleton argument for the substantive hearing. The bundle of documents should contain all relevant documents, including any documents required to be included by the defendant and any other party who is to make representations at the hearing.

18.1.2. The Court expects, therefore, to have a joint bundle of documents for the judicial review which includes all the documents to which any party present at the hearing will refer. The Court does not expect to have documents handed up to it during the course of the hearing, save in exceptional circumstances (and always subject to the Court's permission to adduce documents or evidence in that way).

### 18.2. Other Hearings

18.2.1. In some instances, there will be no directions about the production of bundles (for example, where an urgent application is made by one party) but that party should still make sure that all relevant documents are before the Court. Any bundle containing documents which are to be put before the Court should be served on the Court and the other party or parties in good time before the hearing.

18.2.2. Good time means at least three clear days before most ordinary hearings.

18.2.3. If the matter is urgent, the bundle should be served on the Court and the other party or parties no later than 1pm on the day before the hearing.

### 18.3. Format of Court Bundles

18.3.1. Any collection of documents to go before the Court is a 'bundle'. Bundles should ideally be secured in files which are sufficiently large to accommodate the documents contained in them. The pages should be numbered sequentially and indexed.

18.3.2. The bundle spines should be clearly marked with the reference number of the case and name of the parties.

18.3.3. Photocopying should be 2-sided in portrait format (not landscape).

18.3.4. Photocopies must be legible.

18.3.5. Documents should be presented in chronological order.

18.3.6. In cases where the documents are extensive (as a guideline, more than 500 pages), the parties should endeavour to agree a "core bundle" of key documents. In those cases, consideration should be given to including only the important and relevant parts of a long document in the Court bundle and not copying the whole of that document.

18.3.7. The judge may refuse to read a bundle which does not comply with these requirements, or direct that a revised bundle is submitted which does comply, in which event the judge may disallow the costs or make a different adverse costs order.

## 18.4. Timing of Lodging of Trial Bundles

18.4.1. Trial bundles must be lodged in good time before any hearing.

18.4.2. That means that the trial bundle must be lodged on or before the date set by the Court if directions are in place. The direction usually ordered by the Court for substantive hearings is that the trial bundle must be filed and served not less than 4 weeks before the date of the hearing.

18.4.3. For substantive hearings, where there are no directions, trial bundles must be lodged when the claimant is due to lodge a skeleton argument (see paragraph 9.1.4.5 of this Guide for more detail) For all other hearings, or where there are no specific directions in place, any documents must be filed at Court as soon as possible and in good time before the hearing.

18.4.4. Any unavoidable submission of late bundles should clearly state the date of the hearing on the bundles. The bundles should be accompanied by a letter to the ACO setting out the reasons for late submission. Failure to make it clear that the bundles relate to an imminent hearing may result in the bundles not being placed before the judge in advance of the hearing.

## 18.5. Sanction for Non-Compliance

18.5.1. If the trial bundle or bundle of documents does not comply with this guidance, or is served late, the Court may refuse to allow the party in default to rely on the bundle of documents; alternatively, it may make an adverse costs order against the party in default (see paragraph 23.1 of this Guide on costs).

## 19. Authorities

### 19.1. General

19.1.1. Parties are encouraged to limit the number of authorities (ie cases) cited, to those which are really necessary for the fair disposal of the claim, and which establish the particular principle of law contended. In most cases, it is unnecessary to adduce more than 10 authorities, and some cases will require fewer, if any, authorities.

19.1.2. Where extensive authorities are cited, it is preferable to agree a core bundle of authorities, itself not exceeding 10 authorities.

### 19.2. Format of Authorities Bundles

19.2.1. Bundles of authorities should be paginated or tabbed and indexed.

19.2.2. Photocopying should be 2-sided in portrait format (not landscape).

19.2.3. Copies should be legible.

19.2.4. Authorities which have been reported should be produced in their reported form. Transcripts are only acceptable where the case has not been reported.

### 19.3. Agreement of Contents and Service of Authorities Bundles

19.3.1. A party should always notify the other party or parties of any authorities on which he or she intends to rely at the hearing, in good time before the hearing, and ensure that copies of those authorities are available for that party at the hearing.

19.3.2. The Court will usually give directions for a joint bundle of authorities to be filed in advance of any substantive hearing. If there are no such directions in place, the parties are required to work together to arrive at a joint list of authorities, and to ensure that a bundle of those authorities is filed at Court in good time before any hearing. If agreement cannot be reached, separate bundles will have to be filed by each party in which event there should be no duplication in the two sets of bundles.

19.3.3. All authorities on which the parties intend to rely at the substantive hearing should be included in the bundles of authorities, even if those authorities were filed at Court with the claim form, acknowledgement of service or detailed grounds. The Court will not necessarily have the permission or earlier bundles available at the substantive hearing.

### 19.4. Sanction for Non-Compliance

19.4.1. If the bundle of authorities does not comply with this guidance, or is served late, the Court may refuse to allow the party in default to rely on those authorities, may require the bundle to be adjusted to meet the Court's requirements, and/or may make an adverse costs order against the party in default (see paragraph 23.1 of this Guide on costs).

## 20. Evidence

### 20.1. Witness Evidence

20.1.1. Witness statements must comply with the CPR.[188] Specifically, they must

20.1.1.1. Be in the witness' own words;

20.1.1.2. State that person's full name and address;

20.1.1.3. State which of the statements in it are made from the witness' own knowledge, and which are matters of information or belief (also stating what is the source of matters of information or belief);

20.1.1.4. Be produced on A4 paper, and legible, with numbered pages and paragraphs.

20.1.2. Witness statements must include a statement of truth in the following terms: "*I believe that the facts stated in this witness statement are true*". The witness must not sign that statement of truth unless he or she holds an honest belief in the truth of the statements made in the witness statement.

20.1.3. Proceedings for contempt of Court may be brought against a person if he or she makes or causes to be made a false statement in a document verified by a statement of truth, without an honest belief in its truth.[189]

20.1.4. In judicial review proceedings, it is rare for a witness to be called to give oral evidence: see paragraph 10.2 of this Guide.

### 20.2. Expert evidence

20.2.1. Sometimes a party will wish to rely on expert evidence to advance its case although this is unusual in judicial review.

20.2.2. Expert evidence must be restricted to that which is reasonably required to resolve the proceedings.[190]

20.2.3. Experts owe an overriding duty to the Court. It is the duty of an expert to help the Court on matters which are within their expertise. That duty overrides any obligation owed to the person from whom the expert received instructions or by whom the expert was paid.[191]

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[188] CPR PD 32.17-25

[189] CPR 32.14

[190] CPR 35.1 See also CPR 54.16.8 for guidance on the circumstances when expert evidence may be admissible in a claim for judicial review.

[191] CPR 35.3

## 21. Sanctions

**21.1. The Court has at its disposal various means to enforce compliance with the CPR, Practice Directions and Court orders. The following is a summary. Details of the various means, and when they may be used, are set out elsewhere in this Guide.**

### 21.2. Costs Sanctions

21.2.1. So far as costs sanctions are concerned, the Court has a discretion on whether to award costs to or against a party. The Court can sanction non-compliance by ordering the party in default to pay the other side's costs, or by disallowing the costs by the party in default even if that party is successful in the claim (see paragraph 23.1 of this Guide).

21.2.2. The Court can make a wasted costs order in appropriate circumstances, if the non-compliance has been the fault of the party's legal representatives. A wasted costs order falls to be paid by those legal representatives (see paragraph 23.13 of this Guide).

21.2.3. If the Court does make a costs order in favour of one of the parties, the Court can order that costs should be paid on the "indemnity" basis, which means that in quantifying those costs, the party in whose favour the order has been made gets the benefit of the doubt on any question going to the reasonableness or proportionality of those costs (see paragraph 23.2.4 of this Guide).

### 21.3. Procedural Sanctions

21.3.1. If Court documents are filed out of time according to the CPR, Practice Directions, or the Court's directions, that party must file an application for an extension of time. The Court will only grant that extension if it is satisfied that it is appropriate to do so, according to the rules (see paragraphs 12.7 and 12.9 of this Guide)

21.3.2. If no extension of time is granted, the party in default will not be able to rely on the late-filed documents, and that may be to that party's disadvantage. If the Court does grant an extension of time, it may be on the basis that the party in default should pay some or all of the other party's costs (see paragraph 23.1 of this Guide).

21.3.3. If there are no directions in place relating to the serving and filing of documents, but nonetheless documents are filed late (for example a skeleton argument on an application for directions), then the Court may refuse to consider those documents, which may disadvantage the party which seeks to rely on them (see, for example, paragraphs 17.5 and 18.4 of this Guide).

### 21.4. Other Sanctions

21.4.1. The Court can summon before it professional representatives who appear to have abused the procedure for urgent consideration pursuant to *Hamid*, and if not satisfied of the explanation given, may refer those professional representatives to their disciplinary body with a view to further action being taken (see paragraph 16.5 of this Guide).

# PART D: ENDING THE CLAIM

## 22. Ending a Claim

### 22.1. Introduction

Once a claim has been started then there are a set number of ways to end the claim. They broadly fit into three categories: where the case is determined by the Court, where the case is discontinued and where the case is settled by consent. A claim cannot be ended by simply writing to the Court asking to withdraw the claim.

### 22.2. Determined by the Court

Where the Court makes a final determination, and produces a Court order, the case will have concluded in the Administrative Court (subject only to an appeal to the Court of Appeal, see CPR Part 52 and chapter 25 of this Guide). Such a determination will generally be one of the following:

22.2.1. Permission to apply for judicial review is refused (either at an oral hearing or on the papers where the claim is held to be totally without merit or reconsideration is not requested).

22.2.2. The substantive claim is dismissed.

22.2.3. The substantive claim is allowed.

### 22.3. Discontinuance

22.3.1. A case may be ended by discontinuing the claim, which may be done at any point in the proceedings.[192]

22.3.2. Discontinuance requires the claimant to file a notice of discontinuance (form N279) and serve it on all parties.[193] There is no Court fee payable when discontinuing.

22.3.3. The claimant may discontinue the claim in relation to all or some of the parties.[194]

22.3.4. The Court's permission is required to discontinue where the claimant has obtained an interim injunction[195] or any party has given an undertaking to the Court.[196] This can be done by filing the notice of discontinuance, referring to the fact that permission is required, and the ACO will forward the notice to a judge to give permission without a hearing (unless the judge orders a hearing and representations). In other cases, permission is not required.

22.3.5. The discontinuance will take effect from the date on which the notice of discontinuance is served on the defendant(s).[197]

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[192] CPR 38.2(1)

[193] CPR 38.3(1)

[194] CPR 38.2(3)

[195] CPR 38.2(2)(i)

[196] CPR 38.2(2)(ii)

[197] CPR 38.5(1)

22.3.6. By filing a notice of discontinuance the claimant accepts that he/she is liable for the defendant's costs up until that date[198] (unless the parties have agreed a different costs order) and a costs order will be deemed to have been made on the standard basis[199] (see paragraph 23.2.3 of this Guide). The claimant may apply to reverse the general rule that they are liable for costs and /or may claim their costs. Any such application must demonstrate a good reason for departing from the general rule. A good reason will normally exist if the defendant has behaved unreasonably. Any such application must be made in accordance with the interim applications procedure (see paragraph 12.7 of this Guide).

## 22.4. Consent Orders and Uncontested Proceedings

22.4.1. Subject to the approval of the Court, the parties may agree to end the claim by filing two copies of a draft, agreed order with the ACO, accompanied by the relevant fee.[200] The Court will only approve the order if it is satisfied that the order should be made; if not so satisfied, the Court may make any further or different order which it considers to be appropriate.

22.4.2. The terms of the order can include anything that the parties wish the Court to approve, but will generally include the following:

22.4.2.1. The draft order must note (often in the header to the order as well as in the recitals) that the order is made 'By Consent'.[201]

22.4.2.2. The draft order must be signed by the legal representative for every party to the claim (including interested parties), or by the party themselves where they are acting in person.[202]

22.4.2.3. Where the claim has been finally determined the consent order must detail the manner of determination, which includes:

22.4.2.3.1. The claim is 'withdrawn'. The effect of this is to leave the challenged decision in place (unless the defendant has voluntarily withdrawn the decision, thus removing the claimant's need to obtain the relief of the Court).

22.4.2.3.2. The parties agree that the decision challenged should be quashed (see paragraph 11.3 of this Guide). Where the parties agree that a quashing order should be made they must also supply a schedule to the consent order detailing the reasons, including legal provisions, outlining why the decision should be quashed.[203]

22.4.3. The consent order should make provision for determining costs, otherwise a deemed costs order will apply (see paragraph 23.8 of this Guide for deemed costs orders). This is generally done in one of three ways:

22.4.3.1. By providing for an agreed, set sum to be paid between the parties.

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198 CPR 38.6(1)

199 CPR 44.9(1)(c)

200 CPR PD 54A paragraph 17. See Annex 2 of this Guide for the fee.

201 CPR 40.6(7)(b)

202 CPR 40.6(7)(c)

203 Paragraph 1 of the Practice Direction (Administrative Court: Uncontested Proceedings) [2008] 1 W.L.R. 1377

22.4.3.2. By allowing the parties to agree the quantum of costs after the consent order has been finalised, with a fall-back option of applying for detailed assessment of costs, for example – the Claimant is to pay the Defendant's reasonable costs, to be subject to detailed assessment if not agreed (see paragraph 23.3.4 of this Guide for detailed assessment).

22.4.3.3. By making provision for summary assessment of costs on the papers. Such a provision should follow the ACO Costs Guidance, which is outlined at paragraph 23.5 of this Guide.

## 22.5. Settlements on behalf of Children and Protected Parties

22.5.1. Where a claim is made by or on behalf of, or against, a child or a protected party[204] no settlement, compromise or payment and no acceptance of money paid into Court shall be valid without the approval of the Court.[205]

22.5.2. To obtain the Court's approval, an application must be made in accordance with the procedure described at paragraph 12.7 of this Guide.

## 22.6. Other Points of Practice

22.6.1. The parties have an obligation to inform the Court if they believe that a case is likely to settle as soon as they become aware of the possibility of settlement.[206] Such information allows judges and staff to allocate preparation time and hearing time accordingly. Failure to do so may result in the Court making an adverse costs order against the parties (see paragraph 23.1 of this Guide for costs).

22.6.2. When a case is closed by the ACO the file may be immediately reduced in size for storage (or "broken up"). Particulars of claim and witness statements are retained on the closed file but all exhibits, written evidence, and authorities are confidentially destroyed. The reduced file is retained for three years after the case is closed before it too is confidentially destroyed.

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[204] CPR 21.1

[205] CPR 21.10

[206] *Yell Ltd v Garton* [2004] C.P. Rep. 29

## 23. Costs

### 23.1. Liability for Costs

23.1.1. The Court has a discretion as to whether costs are payable by one party to another.[207] There are provisions which guide this discretion.

23.1.2. Where the Court decides to make an order for costs, the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party, subject to the abovementioned discretion of the Court.[208]

23.1.3. In deciding whether to make an order contrary to the general rule, the Court must have regard to all the circumstances of the case, including the conduct of the parties and whether a party has succeeded on part of his or her case even if he/she has not been wholly successful.

23.1.4. The conduct of the parties includes (but is not limited to):[209]

23.1.4.1. Conduct before as well as during the proceedings, and in particular the extent to which the parties followed the pre-action Protocol (see paragraph 5.2 of this Guide).

23.1.4.2. Whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue.

23.1.4.3. The manner in which a party has pursued or defended his/her case and whether he/she has wholly or partly exaggerated his claim.

23.1.5. As a result of the provisions above, where a party has failed to comply with orders of the Court or other procedural rules (such as those outlined in this Guide) the Court may reduce the amount of costs to which a successful party would normally be entitled. Further, in such a scenario, a liable party may be required to pay more than would normally be considered to be reasonable had the breach of the provision not occurred.

23.1.6. Liability to pay costs is not necessarily an all or nothing decision and a judge may require one party to pay a percentage of the other party's costs, thus deciding that the losing party is, for example, liable to pay 80% of the other party's costs.

### 23.2. Reasonable Costs and the Basis of the Assessment

23.2.1. The Court will not allow costs which have been unreasonably incurred or are unreasonable in amount.[210] In determining if costs are reasonable the Court will have regard to all the circumstances of the case.[211]

23.2.2. The basis of the assessment is important when determining whether the costs claimed are reasonable. In determining the basis of the assessment the Court has two options; the standard basis or on an indemnity basis.

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[207] s.51(1) of the Senior Courts Act 1981 and CPR 44.2(1)

[208] CPR 44.2(2)(a) and *R. (M) v Croydon London Borough Council* [2012] EWCA Civ 595, at paragraphs 58 – 65. The fact that one party is publicly funded is "not necessarily irrelevant" to the exercise of discretion on costs, see *ZN (Afghanistan) v SSHD* [2018] EWCA Civ 1059 at [91]-[92] and [106].

[209] *R (KR) v Secretary of State for the Home Department* [2012] EWCA Civ 1555

[210] CPR 44.3(1)

[211] CPR 44.4(1)

23.2.3. The Standard Basis

23.2.3.1. Most costs orders are made on the standard basis. Where a Court is silent as to the basis on which it is assessing costs, the presumption is that assessment is on the standard basis.[212]

23.2.3.2. Where the amount of costs is to be assessed on the standard basis, the Court will only allow costs which are proportionate to the matters in issue. Where there is doubt as to whether costs were reasonable and proportionate in amount the Court will determine the question in favour of the paying party.[213] Costs incurred are proportionate[214] if they bear a reasonable relationship to:

23.2.3.2.1. The sums in issue in the proceedings;

23.2.3.2.2. The value of any non-monetary relief in issue in the proceedings;

23.2.3.2.3. The complexity of the litigation;

23.2.3.2.4. Any additional work generated by the conduct of the paying party; and

23.2.3.2.5. Any wider factors involved in the proceedings, such as reputation or public importance.

23.2.4. The Indemnity Basis

23.2.4.1. This basis is reserved as a sanction. The Court will apply indemnity costs in those cases where the losing party has acted unreasonably in bringing or maintaining the claim or in any other way.

23.2.4.2. Where the amount of costs is to be assessed on an indemnity basis, the Court will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party.[215] There is no requirement that the costs be proportionate, as appears in the standard basis assessment.

## 23.3. Manner of Assessment and Potential Costs Orders

23.3.1. Where the Court orders a party to pay costs to another party, it may either make a summary assessment of the costs or order detailed assessment of the costs.[216]

23.3.2. Where the Court does not proceed to summary assessment and does not mention the manner of assessment in a costs order then the costs order is presumed to order detailed assessment.[217]

23.3.3. Summary Assessment

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[212] CPR 44.3(4)(a)

[213] CPR 44.3(2)

[214] According to CPR 44.3(5)

[215] CPR 44.3(3)

[216] CPR 44.6(1)

[217] CPR PD 44 paragraph 8.2

23.3.3.1. Summary assessment involves a judge determining the amount of costs payable by the liable party. The judge will then make an order for the amount of costs to be paid, for example: The Claimant is to pay the Defendant's costs in the sum of £5,000.

23.3.3.2. The parties must lodge a statement of costs not less than 24 hours before the hearing at which costs will be assessed or with the papers where an application is to be determined without a hearing (unless a judge has ordered a different timescale).[218]

23.3.3.3. The Court is not entitled to summarily assess the costs of a receiving party who is a child or protected party unless the legal representative acting for the child or protected party has waived the right to further costs.[219]

23.3.3.4. Unless a judge orders otherwise, any costs order must be complied with within 14 days of the costs order,[220] although the parties may vary this time limit and agree their own payment terms without seeking the agreement of the Court.

23.3.4. Detailed Assessment

23.3.4.1. Detailed assessment involves a costs judge considering the claim for costs in accordance with the procedure in CPR Part 47. Guidance on the procedure can be found in the Senior Courts Costs Office Guide, which can be found online at the following website; https://www.gov.uk/government/publications/senior-courts-costs-office-guide.

23.3.4.2. Where detailed assessment has been ordered by the Administrative Court in London, the application for detailed assessment of costs must be started at the Senior Courts Costs Office in London.

23.3.4.3. Where detailed assessment has been ordered by any of the Administrative Courts outside of London, the application for detailed assessment of costs must be started in the District Registry associated with the relevant ACO. For example, a judicial review determined by the Administrative Court in Cardiff would result in any detailed costs assessment being started in the District Registry in Cardiff Civil Justice Centre.[221] Western Circuit cases administered by the ACO in Cardiff but heard on the Western Circuit must also be lodged in the District Registry in Cardiff.

23.3.4.4. It should be noted that detailed assessment proceedings cease to be Administrative Court proceedings and a new case number will be assigned to the proceedings. The ACO will not have any further involvement with the case.

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[218] CPR PD 44 paragraph 9.5(4)(b)

[219] CPR PD 44 paragraph 9.9

[220] CPR 44.7(1)(a)

[221] *Public Services Ombudsman for Wales* v *Heesom* [2015] EWHC 3306 (QB)

## 23.4. Costs at the Permission Stage

23.4.1. There is a discrete procedure on applying for and considering costs when a judge is considering permission to apply for judicial review, although this procedure may be varied by judicial order:[222]

23.4.1.1. If permission has been granted, either on the papers or at an oral hearing, then the claimant's costs are deemed to be costs in the case, and the question of whether the claimant will be able to recover those costs will depend on the outcome of the case.

23.4.1.2. Where a proposed defendant or interested party wishes to seek costs at the permission stage, the acknowledgement of service should include an application for costs and should be accompanied by a schedule setting out the amount claimed;

23.4.1.3. The judge, if refusing permission on the papers, should include in the refusal a decision whether to award costs in principle or not, and an indication of the amount which he/she proposes to assess summarily. This will be a final order on costs unless representations in writing are filed as per the procedure below.[223]

23.4.1.4. The claimant or defendant should be given 14 days to respond in writing to the in principle costs order and should serve a copy on the other parties.

23.4.1.5. The other parties will normally have 14 days to reply in writing to any such response, and to the order proposed by the judge;

23.4.1.6. Any submissions on costs that are filed in accordance with the above will be put before a judge to consider and make an award on the papers. If the Claimant also seeks reconsideration of the refusal of permission at an oral hearing then any objections to costs that have been previously ordered may be considered at the renewal hearing. The Court may confirm or vary the earlier order as to costs.

23.4.1.7. If the parties file costs representations outside of the above time limits they must apply for an extension of time to file the costs submissions in accordance with the procedure at paragraph 12.7 of this Guide.

23.4.2. If permission to apply for judicial review is refused there are additional principles which the Court will generally apply:[224]

23.4.2.1. A successful defendant or other party at the permission stage who has filed an acknowledgment of service should generally recover the costs of doing so from the claimant, whether or not they attend any permission hearing.

23.4.2.2. A defendant or other party who attends and successfully resists the grant of permission at a renewal hearing should not generally recover from the claimant the costs of attending, but will still be entitled to the costs of preparing the acknowledgment of service.[225]

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[222] *R. (Ewing) v Office of the Deputy Prime Minister* [2006] 1 W.L.R. 1260

[223] See *R (Jones) v Nottingham City Council* [2009] EWHC 271 (Admin)

[224] *R. (Mount Cook Land Ltd)* v *Westminster City Council* [2004] C.P. Rep. 12

[225] See *R (Davey) v Aylesbury Vale DC (Practice Note)* [2008] 1 WLR 878

23.4.2.3. A Court, in considering an award of costs against an unsuccessful claimant at a permission hearing, should only depart from the general principles above if it is considered that there are exceptional circumstances for doing so.

23.4.2.4. Exceptional circumstances may consist in the presence of one or more of the features in the following non-exhaustive list:

23.4.2.4.1. The hopelessness of the claim.

23.4.2.4.2. The persistence in it by the claimant after having been alerted to facts and/or of the law demonstrating its hopelessness.

23.4.2.4.3. The extent to which the Court considers that the claimant, in the pursuit of his application, has sought to abuse the process of judicial review (see paragraph 12.10.3 of this Guide for examples of abuse of process).

23.4.2.4.4. Whether, as a result of the deployment of full argument and documentary evidence by both sides at the hearing, the unsuccessful claimant has had, in effect, the advantage of an early substantive hearing of the claim.

23.4.2.4.5. Whether the unsuccessful claimant has substantial resources which it has used to pursue the unfounded claim and which are available to meet an order for costs.

23.4.2.4.6. Whether the permission was refused at a rolled up hearing, in which event the defendant, who has prepared for a substantive hearing, may be awarded costs.

## 23.5. Costs After Settling

23.5.1. The onus lies on the parties to reach agreement on costs wherever possible and in advance of asking the Court to resolve costs (in order to support the overriding objective and ensure that efficient use is made of Court time). The parties should not, therefore, make submissions to the Court on costs following a compromise of proceedings without first seeking to agree costs through reasoned negotiation, mindful of the overriding objective to the CPR, the amount of costs actually at stake, and the principles set out in *M v Croydon* [2012] EWCA Civ 595, paragraphs 59-63.

23.5.2. In considering costs as part of a settlement, the parties should bear in mind that the Court may already have decided the issue of costs of the application for permission. Where this decision amounts to a final order (see procedure outlined above at paragraph 23.4.1) the Court should not be asked to revisit those costs in any submissions on costs following settlement.

23.5.3. Where a clam has settled (see paragraph 22.4 of this Guide) but the parties have been unable to agree costs, the parties should follow the ACO Costs Guidance dated April 2016 which is reproduced at annex 5 to this Guide.

23.5.4. In accordance with that Costs Guidance (see paragraph 23.5.3 and annex 5 to this Guide), the costs section of the consent order should state:

23.5.4.1. Within 28 days of the order, the defendant may file with the Court and serve on all other parties, submissions as to what the appropriate costs order should be. If the defendant does not file submissions, the order will be that the defendant will pay the claimant's costs of the claim on the standard basis, to be the subject of detailed assessment if not agreed.

23.5.4.2. Where the defendant does file submissions within 28 days, the claimant or any other party may file and serve submissions within 14 days of service of those submissions. If neither the claimant nor any other party files such submissions in response, the costs order will be in the terms sought by the defendant.

23.5.4.3. Where submissions are filed by the claimant or any other party, the defendant shall have 7 days in which to file and serve a reply. The matter shall then be put before the judge for a decision on costs or further order.

23.5.5. In accordance with that Costs Guidance (see paragraph 23.5.3 and annex 5 to this Guide), the submissions must:

23.5.5.1. Confirm that the parties have used reasonable endeavours to negotiate a costs settlement.

23.5.5.2. Identify what issues or reasons prevented the parties agreeing costs liability.

23.5.5.3. State the approximate amount of costs likely to be involved in the case.

23.5.5.4. Identify the extent to which the parties complied with the pre-action Protocol.

23.5.5.5. State the relief the claimant sought (i) in the claim form and (ii) obtained.

23.5.5.6. Address specifically how the claim and the basis of its settlement fit the principles in *M v Croydon London Borough Council* and *Tesfay* [2016] EWCA Civ 415 (see paragraph 23.5.6 below), including the relationship of any step taken by the defendant to the claim.

23.5.6. In accordance with that Costs Guidance, the submissions must be made in documentation as outlined below:

23.5.6.1. Submissions should be of a normal print size and should not normally exceed two A4 pages in length unless there is good reason to exceed this, which is properly explained in the submissions.

23.5.6.2. Submissions should be accompanied by the pre-action Protocol correspondence (where this has not previously been included as part of the documents supporting the claim), the correspondence in which the costs claim is made and defended, along with any other correspondence necessary to demonstrate why the claim was brought in the light of the pre-action Protocol correspondence or why the step which led to settlement was not taken until after the claim was issued.

23.5.6.3. Unless advised otherwise, the parties should assume that the Court has the claim papers originally lodged by the parties. Further copies of these should not be provided unless requested by the Court.

23.5.7. The following is a short summary of how the Court will consider what order on costs to make, based on *M v Croydon London Borough Council* and *Tesfay*:

23.5.7.1. Where a claimant has been wholly successful in terms of the relief sought the claimant will generally recover all his/her costs, unless there is some good reason to the contrary.

23.5.7.2. Where a claimant has only succeeded in part the judge will normally determine how reasonable the claimant was in pursuing the unsuccessful relief (the defendant has refused to adhere to the demands of the claimant but the claim has settled anyway), how important the unsuccessful relief was compared with the successful relief, and how much the costs were increased as a result of the claimant pursuing the unsuccessful relief.

23.5.7.3. Where there has been some compromise which does not actually reflect the claimant's claims the default position will generally be no order for costs. However, in some cases, the judge may look at the underlying claim and inquire whether it was tolerably clear who would have won if the matter had not settled. If it is, then that may well strongly support the contention that the party who would have won did better out of the settlement, and therefore did win.

## 23.6. Interested Parties and Costs

23.6.1. The Court does not generally order an unsuccessful claimant to pay two sets of costs of the substantive claim (typically the costs incurred by the defendant and an interested party), although the Court may order two sets of costs to be paid, in particular where the defendant and the interested party have different interests which require separate representation.[226] If the claimant is acting in the public interest rather than out of personal gain then it is less likely that the court will order the second set of costs.[227]

23.6.2. The Court may, however, and often does, order an unsuccessful claimant to pay two sets of costs of preparing acknowledgements of service at the permission stage.[228]

## 23.7. Interveners and Costs

23.7.1. A person may apply to file evidence or make representations at a hearing[229] (see paragraph 2.2.4 of this Guide). Such a person is commonly referred to as an intervener and there are specific rules governing whether an intervener can recover its costs or be ordered to pay costs, summarised below.[230]

23.7.2. A relevant party, that is to say a claimant or defendant in substantive or permission judicial review proceedings,[231] cannot be ordered to pay an intervener's costs[232] unless there are exceptional circumstances that make such a costs order appropriate.[233]

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226 *Bolton MDC v Secretary of State for the Environment* [1995] 1 WLR 1176

227 *R (John Smeaton on behalf of Society for the Protection of Unborn Children) v The Secretary of State for Health* [2002] EWHC 886 (Admin), paragraphs 31 – 41.

228 *R (Luton Borough Council) v Central Bedfordshire Council* [2014] EWHC 4325 (Admin).

229 CPR 54.17

230 s.87 of the Criminal Justice and Courts Act 2015

231 See above, s.87(9) and (10)

232 See above, s.87(3)

233 See above, s.87(4)

23.7.3. If the Court is satisfied that any one of four conditions is met, the Court must order the intervener to pay any costs specified in an application by a claimant or defendant that the Court considers have been incurred by them as a result of the intervener's involvement in that stage of the proceedings.[234] The four conditions are:

23.7.3.1. The intervener has acted, in substance, as the sole or principal applicant, defendant, appellant or respondent.

23.7.3.2. The intervener's evidence and representations, taken as a whole, have not been of significant assistance to the Court.

23.7.3.3. A significant part of the intervener's evidence and representations relates to matters that it is not necessary for the Court to consider in order to resolve the issues that are the subject of the stage in the proceedings.

23.7.3.4. The intervener has behaved unreasonably.

23.7.4. If the intervener becomes a party, the costs provisions above no longer apply and are deemed never to have applied.[235]

## 23.8. Orders Which Do Not Mention Costs

23.8.1. Where an order does not mention costs then a deemed costs order is presumed to have been made. There are two scenarios in the Administrative Court where deemed costs orders apply. Those two scenarios are:

23.8.1.1. Subject to paragraph 23.8.1.2 below, where an order is silent as to costs and makes no provision for how costs are to be assessed, then the Court is deemed to have ordered that there be no order for costs.[236]

23.8.1.2. Where the Court makes an order granting permission to appeal, an order granting permission to apply for judicial review, or any other order or direction sought by a party on an application without notice, and the order does not mention costs, it will be deemed to include an order that the costs are in the case, and will be determined according to the outcome of the claim.[237]

23.8.2. Any party may apply to vary the deemed costs order made in accordance with paragraph 23.8.1.2 above (but not 23.8.1.1).[238] Such an application must be made in accordance with the interim orders procedure (see paragraph 12.7 of this Guide).

## 23.9. Setting Aside Costs Orders

Save for deemed costs orders (see paragraph 23.8.2 above) any costs order where the parties have had the opportunity to make representations before the order was made, be that a costs order on the papers or after an oral hearing, is a final costs order.[239] The Administrative Court may not set it aside or reconsider the order at a hearing. If challenged, the order must be appealed (see chapter 25 of this Guide for appeals).

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[234] See above, s.87(5)

[235] See above, s.87(11)

[236] CPR 44.10(1)(a)(i)

[237] CPR 44.10(2)

[238] CPR 44.10(3)

[239] *R. (Jones)* v *Nottingham City Council* [2009] A.C.D. 42 and *R. (Bahta)* v *Secretary of State for the Home Department* [2011] C.P. Rep. 43

## 23.10. Costs when the Claimant has the Benefit of Legal Aid

23.10.1. Costs orders can be made against persons who have the benefit of legal aid (subject to the principles discussed earlier in this section of the Guide). Where the Court does make such an order it will order that the person with the benefit of legal aid must pay the costs of the requesting party and the Court may set the amount to be paid, but the Court will note that the person with the benefit of legal aid is subject to costs protection in accordance with s.26 of the Legal Aid, Sentencing, and Punishment of Offenders Act 2012.

23.10.2. As a result of the costs protection, the person with the benefit of legal aid is not automatically liable for the costs. If the person awarded costs wishes to require the person with the benefit of legal aid to pay those costs they must apply for an order from the Senior Courts Costs Office or, where the costs order was made by an Administrative Court not in London, he/she must apply to the relevant associated District Registry.

## 23.11. Costs from Central Funds (Criminal Cases)

23.11.1. In judicial reviews relating to a criminal cause or matter, where a claimant is successful, a Divisional Court may make a costs order, which shall be for payment out of central funds (that is to say, it will be paid by the Ministry of Justice).[240]

23.11.2. The costs order is made in such amount as the Court considers reasonably sufficient to compensate for any expenses properly incurred in the proceedings, unless the Court considers that there are circumstances that make it inappropriate to recover the full amount when the Court may order a lesser amount in a sum the Court considers just and reasonable.

23.11.3. The costs order may not require the payment out of central funds of an amount that includes legal costs unless those costs were incurred in proceedings in the Court below (Magistrates' Court or Crown Court on appeal against conviction or sentence).

23.11.4. There is no power for a single judge to order costs be paid out of central funds. Where a claimant seeks an order for costs from central funds when appearing before a single judge, the judge will adjourn the matter to be considered on the papers by a Divisional Court, constituted of the single judge who heard the case and another judge.

23.11.5. When making the costs order, the Court will fix the amount to be paid out of central funds in the order if it considers it appropriate to do so.[241] Where the Court does not fix the amount to be paid out of central funds in the order it must describe in the order any reduction required and the amount must be fixed by means of a determination made by or on behalf of the Court by the Senior Courts Costs Office.[242]

23.11.6. If the claimant has the benefit of a representation order or a legal aid certificate (see paragraph 3.5.4 of this Guide) then he/she cannot claim costs out of central funds.[243]

23.11.7. Where an order for costs from central funds has been made the claimant must forward the order to the Senior Courts Costs Office, which will arrange for payment of the amount specified.

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[240] s16(6) and 17 of the Prosecution of Offences Act 1985

[241] See above, s.16(6C)

[242] See above, s.16(6D)

[243] See above, s.21(4A)

## 23.12. Costs against Courts or Tribunals

Where the defendant in judicial review proceedings is a Court or Tribunal the Administrative Court will generally not impose costs orders against the Court or Tribunal where the Court has not acted obstructively or improperly and only makes representations neutrally on the procedure or law applied by the lower Court. Where the Court or Tribunal contests the claim the Court or Tribunal may become liable for costs, subject to the principles discussed in this section of the Guide.[244]

## 23.13. Wasted Costs Orders

23.13.1. In appropriate cases the Court has power to order that a legal representative should pay the costs of an opposing party or that a specified sum for costs is disallowed.[245] These orders are referred to as wasted costs orders.

23.13.2. A wasted costs order may be made against the receiving party's own legal representatives or against the representatives of the paying party.[246]

23.13.3. An application for a wasted costs order may be made by the party who suffered the wasted costs or may be ordered of the Court's own volition.

23.13.4. When considering whether to make a wasted costs order, the Court will consider three points:[247]

23.13.4.1. Did the legal representative (or any employee of the representative) act improperly, unreasonably or negligently?

23.13.4.2. If so, did the conduct cause the party who incurred the costs to incur unnecessary costs or has the conduct caused costs incurred by a party prior to the conduct to be wasted?

23.13.4.3. If so, is it just in all the circumstances to order the legal representative to compensate the subject of the wasted costs for the whole or part of the relevant costs?

23.13.5. The Court will give the legal representative a reasonable opportunity to make written submissions or, if the legal representative prefers, to attend a hearing before it makes such an order.[248]

23.13.6. Unless there is good reason otherwise, wasted costs applications should generally be considered by the Court at the end of proceedings.[249]

## 23.14. Costs where a Party is Represented Pro Bono

Section 194 of the Legal Services Act 2007 makes provision for the recovery of costs where the representation has been provided pro bono (free of charge to the represented party), see paragraph 3.5.6 of this Guide.[250] Where such an order is made, the costs awarded in favour of that party will not be payable to the party's legal representatives but to a charity, the Access to Justice Foundation.

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244 *R (Davies) v Birmingham Deputy Coroner* [2004] EWCA Civ 207

245 s.51(6) of the Senior Courts Act 1981 and CPR 46.8

246 *Brown v Bennett [2002] 2 All ER 273*

247 CPR PD 46 paragraph 5.5 and *Re a Barrister Wasted Costs Order) (No 1 of 1991) [1993] QB 293*

248 CPR 46.8(2)

249 *Filmlab Systems International Ltd v Pennington [1994] 4 All ER 673*

250 CPR 46.7

## 24. Judicial Review Costs Capping Orders

### 24.1. Introduction

A judicial review cost capping order ("JRCCO")[251] may take a number of forms. Usually, the order will specify a limit on the amount that a claimant can be ordered to pay in respect of the other side's costs if the claimant loses (e.g the claimant's liability for costs will be capped at £5,000). Where a JRCCO is granted the order must be coupled with an order placing a limit on the amount that a claimant who is successful can recover from a defendant even if the claimant ultimately wins the case (sometimes called a reciprocal costs capping order).[252]

### 24.2. JRCCOs: General Principles

24.2.1. A JRCCO may only be granted after permission to apply for judicial review has been granted (see paragraph 8.2.2 of this Guide);[253]

24.2.2. A JRCCO may only be applied for by a claimant, not a defendant, interested party, or intervener;[254]

24.2.3. The court may only make a JRCCO if it is satisfied that:[255]

24.2.3.1. The proceedings are public interest proceedings. Public interest proceedings are defined[256] to mean that the issue which is the subject of the proceedings is of general public importance. Further, the public interest requires the issue to be resolved and the proceedings are likely to provide an appropriate means of resolving it. When considering this issue, the court must have regard[257] to the number of people likely to be directly affected if relief is granted, how significant the effect on those people is likely to be, and whether the proceedings involve consideration of a point of law of general public importance.

24.2.3.2. In the absence of the order, the claimant would withdraw the application for judicial review or cease to participate in the proceedings and it would be reasonable to do so.

24.2.4. The court must have regard,[258] when considering whether to make a JRCCO, to the following:

24.2.4.1. Whether, in the absence of the order, the claimant would withdraw the application for judicial review or cease to participate in the proceedings and it would be reasonable to do so.

24.2.4.2. The financial resources of the parties to the proceedings, including the financial resources of any person who provides, or may provide, financial support to the parties;

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[251] Defined in s.88(2) of the Criminal Justice and Courts Act 2015 as "an order limiting or removing the liability of a party to judicial review proceedings to pay another party's costs in connection with any stage of the proceedings".

[252] s.89(2) of the Criminal Justice and Courts Act 2015

[253] s.88(3) of the Criminal Justice and Courts Act 2015

[254] s.88(4) of the Criminal Justice and Courts Act 2015

[255] Further to s.88(6) of the Criminal Justice and Courts Act 2015

[256] s.88(7) of the Criminal Justice and Courts Act 2015

[257] Under s. 88(8) of the Criminal Justice and Courts Act 2015

[258] Further to s.89(1) of the Criminal Justice and Courts Act 2015

24.2.4.3. The extent to which the claimant is likely to benefit if relief is granted (see chapter 11 of this guide for final remedies);

24.2.4.4. The extent to which any person who has provided, or may provide, the applicant with financial support is likely to benefit if relief is granted;

24.2.4.5. Whether legal representatives for the applicant for the order are acting free of charge; and

24.2.4.6. Whether the claimant is an appropriate person to represent the interests of other persons or the public interest generally.

## 24.3. JRCCOs: Procedure[259]

24.3.1. An application for a JRCCO must normally be contained in the claim form at section 8 or it must accompany the claim form in a separate document.[260]

24.3.2. The application must be supported by evidence setting out:[261]

24.3.2.1. Why a JRCCO should be made, having regard, in particular, to the matters at paragraph 24.2.3 and 24.2.4 above.

24.3.2.2. A summary of the claimant's financial resources, unless the court has dispensed with this requirement.[262] The summary must provide details of the following:[263]

24.3.2.2.1. The claimant's significant assets, liabilities, income and expenditure; and

24.3.2.2.2. Any financial support which any person has provided or is likely to provide to the claimant, the aggregate amount which has been provided and which is likely to be provided.

24.3.2.3. The costs (and disbursements) which the claimant considers the parties are likely to incur in the future conduct of the proceedings.

24.3.2.4. If the claimant is a body corporate, whether it is able to demonstrate that it is likely to have financial resources available to meet liabilities arising in connection with the proceedings. Where it cannot the court must consider giving directions for the provision of information about the body's members and their ability to provide financial support for the purpose of the proceedings.[264]

24.3.3. If the defendant wishes to resist the making of the JRCCO it should set out its reasons in the acknowledgment of service. Similarly, any representations on a reciprocal costs capping order (capping both parties' costs) should be made in the acknowledgment of service.

24.3.4. The claimant will usually be liable for defendant's costs incurred in a successful resistance to an application for a JRCCO.

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259 The relevant procedure is outlined in the Criminal Justice and Courts Act 2015 and supplemented where appropriate by the guidance on protective costs order procedure in *R. (Corner House Research) v Trade and Industry Secretary* [2005] 1 W.L.R. 2600 and *R. (Buglife) v Thurrock Thames Gateway Development Corp* [2009] C.P. Rep. 8 at paragraphs 29 – 31.

260 CPR PD 46 paragraph 10.2 and *R. (Corner House Research) v Trade and Industry Secretary* [2005] 1 W.L.R. 2600

261 CPR 46.17(1)(b)

262 CPR 46.17(3)

263 CPR PD 46 paragraph 10.1

264 CPR 46.18

24.3.5. If the judge grants permission to apply for judicial review on the papers the judge will then consider whether to make the JRCCO on the papers and if so, in what terms. If the judge does not grant permission to apply for judicial review the judge cannot make a JRCCO (see paragraph 24.2.1 above).

24.3.6. If the judge grants permission to apply for judicial review, but refuses to grant the JRCCO, and the claimant requests that the decision is reconsidered at a hearing (see paragraph 15.5 of this Guide for the procedure), that hearing should be limited to an hour and the claimant will face liability for costs if the JRCCO is again refused. The paper decision should only be revisited in exceptional circumstances.

24.3.7. The court should not set aside a JRCCO unless there is an exceptional reason for doing so.

24.3.8. An application for a JRCCO can be made at any time, not just when lodging the claim, although it is discouraged. When the preferred procedure, outlined above, cannot be utilised, a party may still apply for a JRCCO. In such circumstances the application should be made in accordance with the application procedure outlined at paragraph 12.7 of this Guide.

## 24.4. Environmental Law Claims[265]

24.4.1. There are limits on the amount of costs that a party maybe ordered to pay in what are known as Aarhus Convention claims (that is, certain claims involving environmental issues).

24.4.2. These provisions only apply where the claimant is a member of the public.[266] Members of the public include natural persons, corporations and unincorporated associations[267] (see paragraphs 2.2.1.2 and 2.2.1.3 of this Guide), but does not include public bodies (see paragraph 2.2.1.4 of this Guide).

24.4.3. An Aarhus Convention claim, as far as judicial review proceedings are concerned, is a judicial review claim which deals with subject matter within the scope of articles 9(1), 9(2), or 9(3) the Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters ('the Aarhus Convention').[268] The convention can be found online: http://ec.europa.eu/environment/aarhus/

24.4.4. Where the claimant believes that his or her claim is an Aarhus Convention claim and they wish to apply for a costs cap under these provisions they must:

24.4.4.1. Note that fact in part 6 of the claim form;[269]

24.4.4.2. File and serve with the claim form a schedule of the claimant's financial resources which takes into account any financial support which any person has provided or is likely to provide to the claimant and which is verified by a statement of truth.[270]

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[265] It should be noted that the provisions on costs caps in environmental law cases changed on the 28th February 2017. The provisions below reflect these changes, but for judicial claims lodged before that date the parties should refer to the old rules as outlined in the 2016 Guide.

[266] CPR 45.41(2)(a)

[267] CPR 45.41(2)(a)&(b) and article 2.4 of the Aarhus Convention

[268] CPR 45.41(2)(a)(i)&(ii)

[269] CPR 45.42(1)(a)

[270] CPR 45.42(1)(b)

24.4.5. If the claimant does not comply with 24.4.4 above then they are taken to have either indicated that the Aarhus Convention does not apply or that they have opted out of these costs capping provisions (they may also do the latter even if they indicate the convention does apply). In either case the costs cap will not apply.[271]

24.4.6. Where the claimant complies with 24.4.4 above, the costs limit is automatically in place, subject to the provisions below.[272]

24.4.7. The current costs limit is £5,000 where the claimant is claiming only as an individual and not as or on behalf of, a business or other legal person. In all other cases the limit is £10,000. Where a defendant is ordered to pay costs, the limit is £35,000.[273]

24.4.8. The court may vary or remove the limits outlined at paragraph 24.4.7 above.[274] The court may vary such an amount or remove such a limit only if satisfied that to do so would not make the costs of the proceedings prohibitively expensive for the claimant and, in the case of a variation which would reduce a claimant's maximum costs liability or increase that of a defendant, without the variation the costs of the proceedings would be prohibitively expensive for the claimant.[275]

24.4.9. Proceedings are to be considered prohibitively expensive if the likely costs (including any court fees which are payable by the claimant) either[276] exceed the financial resources of the claimant or are objectively unreasonable having regard to:

24.4.9.1. The situation of the parties;

24.4.9.2. Whether the claimant has a reasonable prospect of success;

24.4.9.3. The importance of what is at stake for the claimant;

24.4.9.4. The importance of what is at stake for the environment;

24.4.9.5. The complexity of the relevant law and procedure; and

24.4.9.6. Whether the claim is frivolous.

24.4.10. When the court considers the financial resources of the claimant for the purposes, it must have regard to any financial support which any person has provided or is likely to provide to the claimant.[277]

24.4.11. Where the defendant intends to challenge the assertion that the Aarhus Convention applies and, therefore, that the costs limit does not apply, the procedure to challenge the assertion can be found at CPR 45.45:

24.4.11.1. The defendant must indicate if he refutes the assertion in the acknowledgment of service at section E.

24.4.11.2. The defendant must set out the defendant's grounds for such denial.

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271 CPR 45.42(1)&(2)

272 CPR 45.42(1)

273 CPR 45.43(2)&(3)

274 CPR 45.44(1)

275 CPR 45.44(2)

276 See CPR 45.44(3)

277 CPR 45.44(4)

24.4.11.3. Where the defendant argues that the claim is not an Aarhus Convention claim, the Court will determine that issue at the earliest opportunity, usually at the same time as considering permission to apply for judicial review on the papers.

24.4.12. In any proceedings to determine whether the claim is an Aarhus Convention claim, as per paragraph 24.4.11 above:[278]

24.4.12.1. If the court holds that the claim is not an Aarhus Convention claim, it will normally make no order for costs in relation to those proceedings.

24.4.12.2. If the court holds that the claim is an Aarhus Convention claim, it will normally order the defendant to pay the claimant's costs of those proceedings to be assessed on the standard basis, and that order may be enforced even if this would increase the costs payable by the defendant beyond the amount stated at paragraph 24.4.7 above or any variation of that amount.

[278] See CPR 45.45(3)

## 25. Appeals

### 25.1. Appeals in Civil Cases

Parties may seek to appeal to the Court of Appeal. Permission to appeal is required. Appeals in civil cases are discussed below from paragraphs 25.2 – 25.4.

### 25.2. Challenging the Grant of Permission

25.2.1. Where permission to bring a judicial review has been granted:

25.2.1.1. Neither the defendant nor any other person served with the claim form may apply to the Administrative Court to set aside an order giving permission to bring a judicial review.[279]

25.2.1.2. If the defendant or another interested party has not been served with the claim form, they may apply to the Administrative Court to set aside permission, but the power to set aside permission is exercised sparingly and only in a very plain case.[280]

### 25.3. Appeals against the Refusal of Permission

25.3.1. Where permission to apply for judicial review has been refused after a hearing in the Administrative Court, the claimant may appeal to the Court of Appeal, but permission to appeal must be obtained from the Court of Appeal.[281]

25.3.2. Where permission has been refused by the Administrative Court on the papers, and there is no right to request reconsideration of that refusal at an oral hearing before the Administrative Court, the applicant can apply to the Court of Appeal for permission to appeal.[282]

25.3.3. An appeal (including the application for permission to appeal) against the refusal of permission to apply for judicial review must be lodged with the Court of Appeal within 7 days of the date of the decision, or within the time limit ordered by the Administrative Court.[283] This is also the case where permission has been refused and the right to renewal has been removed (cases where the Upper Tribunal is the defendant (see paragraph 8.7 of this Guide) and totally without merit cases (see paragraph 8.3 of this Guide)),[284] although in these cases the 7 days begins from the date of service of the order, not the date of the decision.[285]

25.3.4. The Court of Appeal may, instead of giving permission to appeal, give permission to apply for judicial review, in which event the case will proceed in the Administrative Court unless the Court of Appeal orders otherwise.[286]

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279 CPR 54.13

280 See *R v Secretary of State ex p Chinoy* (1992) 4 Admin L Rep 457

281 CPR 52.8(1) , and see *Glencore Energy UK Ltd v Commissioners of HM Revenue and Customs* [2017] EWHC 1587 (Admin)

282 CPR 52.8(2)

283 CPR 52.8(3)

284 CPR 52.8(2)

285 CPR 52.8(4)

286 CPR 52.8(5)

## 25.4. Appeals Against Substantive Decisions

25.4.1. Permission to appeal against the Court's decision following the substantive hearing is required and it can be granted by the Administrative Court. The application will need to be made at the hearing at which the decision to be appealed is made unless the court directs the application to be made later.[287] The Court may adjourn the question of permission to another date or to be considered on written representations, but it must make an order doing so at the time of the hearing.

25.4.2. In the event that permission to appeal is refused by the Administrative Court, a second application can be made to the Court of Appeal itself in the appellant's notice (form N161).[288] The application for permission can be made to the Court of Appeal even if permission to appeal was not sought from the Administrative Court.

25.4.3. An appeal (including any application for permission to appeal) against a substantive decision of the Administrative Court must be lodged with the Court of Appeal within 21 days of the date of the decision or within the time limit ordered by the Administrative Court.[289]

25.4.4. Permission to appeal will only be granted if the Court finds that the appeal would have a real prospect of success or there is some other compelling reason why the appeal should be heard.[290]

25.4.5. Further information on appeals to the Court of Appeal can be provided by the Civil Appeals Office (see Annex 1 for contact details).

## 25.5. Appeals in Criminal Cases

25.5.1. There is no right of appeal from the Administrative Court to the Court of Appeal in cases relating to any criminal cause or matter.[291]

25.5.2. The only route of appeal from the Administrative Court is to the Supreme Court. An appeal to the Supreme Court is only possible where two conditions are satisfied. First, the Administrative Court must certify that the case raises a point of law of general public importance.[292] The second is that permission to appeal must be granted. An application for permission to appeal to the Supreme Court and for a certificate of a point of law must be made to the Administrative Court within 28 days of the decision challenged or the date when reasons for the decision are given.[293]

25.5.3. The application for a certificate of a point of law and for permission to appeal may be made in the same application. The procedure is the same as the interim applications procedure (see paragraph 12.7 of this Guide).

25.5.4. The right of appeal to the Supreme Court applies only to substantive decisions. There is no appeal from the decision of the Court if permission to apply for judicial review is refused.[294]

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[287] CPR 52.3(2)(a)

[288] CPR 52.3(3) and CPR 52.12(1)

[289] CPR 52.12(2)

[290] CPR 52.6(1)

[291] s.18(1)(a) of the Senior Courts Act 1981

[292] s.1(2) of the Administration of Justice Act 1960

[293] s.2(1) of the Administration of Justice Act 1960

[294] *Re Poh* [1983] 1 All ER 287

25.5.5. Further information on appeals to the Supreme Court can be obtained from the Supreme Court (see Annex 1 for contact details).

## 25.6. Appealing Case Management Orders

25.6.1. The principles applied above at paragraphs 25.1 – 25.4 (for civil cases) and 25.5 (for criminal cases) apply for appeals against case management orders, although paragraph 15.5 of this Guide on reconsideration of interim orders made without a hearing should be considered before appealing.

25.6.2. The time limit for appealing remains 21 days in civil cases, but the proceedings in the Administrative Court will not necessarily await the decision of the Court of Appeal. If the parties wish the Administrative Court proceedings to be stayed pending the decision of the Court of Appeal they must apply for a stay (see paragraph 12.8 of this Guide).

25.6.3. Permission to appeal is generally granted more sparingly in appeals against case management orders as not only will the Court consider whether the appeal would have a real prospect of success or there is some other compelling reason why the appeal should be heard, but it will generally also consider the significance of the decision, the costs involved in appealing, the delay or disruption likely to be caused to the Administrative Court proceedings, and whether the point would be better dealt with at or after the substantive hearing.

## 25.7. Appeals Against an Interim Order Made by the Master

25.7.1. An appeal against the order of the Master made at an oral hearing may be appealed to a High Court Judge. If the Master's decision is made on the papers the provisions on reconsideration at paragraph 15.5 of this Guide should be considered.

25.7.2. The application for permission to appeal must be filed on form N161 and lodged with the Administrative Court Office. The parties should also consider the guidance in paragraphs 25.1 – 25.4 above, which, save for any references to the Court of Appeal, would equally apply to appeals against the Master's decisions.

## Annex 1 – Contact Details

### THE ADMINISTRATIVE COURT OFFICES

#### Website

www.gov.uk/courts-tribunals/administrative-court

#### Birmingham

The Administrative Court Office
Birmingham Civil and Family Justice Hearing Centre
Priory Courts
33 Bull Street
Birmingham
West Midlands B4 6DS

DX 701987 Birmingham 7

Telephone Number: 0121 681 4441

General Email: administrativecourtoffice.birmingham@hmcts.x.gsi.gov.uk

Skeleton Arguments Email: administrativecourtofficebirmingham.skeletonarguments@hmcts.x.gsi.gov.uk

#### Leeds

The Administrative Court Office
Leeds Combined Court Centre
The Courthouse
1 Oxford Row
Leeds
West Yorkshire LS1 3BG

DX: 703016 Leeds 6

Telephone Number: 0113 306 2578

General Email: administrativecourtoffice.leeds@hmcts.x.gsi.gov.uk

Skeleton Arguments Email: administrativecourtofficeleeds.skeletonarguments@hmcts.x.gsi.gov.uk

#### London

The Administrative Court Office
Royal Courts of Justice
Strand
London WC2A 2LL

DX 44450 Strand

Telephone Number: 020 7947 6655

General Email: administrativecourtoffice.london@hmcts.x.gsi.gov.uk

Skeleton Arguments Email: administrativecourtofficelondon.skeletonarguments@hmcts.x.gsi.gov.uk

### Manchester

The Administrative Court Office
Manchester Civil and Family Justice Centre
1 Bridge Street West
Manchester M60 9DJ

DX 724783 Manchester 44

Telephone Number: 0161 240 5313

General Email: administrativecourtoffice.manchester@hmcts.x.gsi.gov.uk

Skeleton Arguments Email: administrativecourtofficemanchester.skeletonarguments@hmcts.x.gsi.gov.uk

### Wales and the Western Circuit

The Administrative Court Office
Cardiff Civil Justice Centre,
2 Park Street,
Cardiff, CF10 1ET

DX 99500 Cardiff 6

Telephone Number: 02920 376460

General Email: administrativecourtoffice.cardiff@hmcts.x.gsi.gov.uk

Skeleton Arguments Email: administrativecourtofficecardiff.skeletonarguments@hmcts.x.gsi.gov.uk

## UPPER TRIBUNAL (ADMINISTRATIVE APPEALS CHAMBER)

Upper Tribunal (Administrative Appeals Chamber)
5th Floor Rolls Building
7 Rolls Buildings,
Fetter Lane
London EC4A 1NL

DX 160042 STRAND 4

Telephone Number: 020 7071 5662

Email: adminappeals@hmcts.gsi.gov.uk

## UPPER TRIBUNAL (IMMIGRATION AND ASYLUM CHAMBER)

**For the UT(IAC) – Judicial Reviews Only:**

For London:
Upper Tribunal (Immigration and Asylum Chamber),
IA Field House
15 Breams Buildings
London EC4A 1DZ

For UT(IAC) judicial reviews in Birmingham, Cardiff, Leeds, or Manchester, see the contact details for the Administrative Court Office in that area above.

**For UT(IAC) – All non-judicial review cases:**

Lodging Appeals:

Upper Tribunal (Immigration and Asylum Chamber),
IA Field House
15 Breams Buildings
London EC4A 1DZ

Unless advised otherwise, all other correspondence to:

Upper Tribunal (Immigration and Asylum Chamber)
Arnhem Support Centre
PO Box 6987
Leicester LE1 6ZX

Facsimile: 0116 249 4130

Customer Service Centre (Enquiry Unit) telephone: 0300 123 1711

## SENIOR COURTS COSTS OFFICE

Senior Courts Costs Office
Royal Courts of Justice
Strand
London WC2A 2LL
DX 44454 Strand

Telephone Number: 020 7947 6469/ 6404 / 7818

Email: SCCO@hmcts.gsi.gov.uk

Website: https://www.gov.uk/courts-tribunals/senior-courts-costs-office

## COURT OF APPEAL (CIVIL DIVISION)

Civil Appeals Office
Room E307
Royal Courts of Justice
Strand
London WC2A 2LL

DX: 44450 Strand

Telephone Number: 020 7947 7677

## SUPREME COURT

The Supreme Court
Parliament Square
London SW1P 3BD

DX 157230 Parliament Sq 4

Telephone Number: 020 7960 1500 or 1900
Facsimile: 020 7960 190

## Annex 2 – Forms and Fees

| Act / Application | Form* | Fee** | Ref** |
|---|---|---|---|
| Application for permission to apply for judicial review | N461 (Judicial Review Claim Form) | £154.00 | 1.9(a) |
| Reconsideration of permission at an oral hearing | 86b | £385.00 | 1.9(aa) |
| Continuing judicial review after permission has been granted<br><br>Any fee paid under 1.9(aa) is deducted | - | £770.00 | 1.9(b) |
| Appeal | N161 (Appellant's Notice) | £240.00 | 2.4 |
| Acknowledgment of Service | N462 (JR) | £0.00 | - |
| Interim Application | N244 (Application Notice) | £255.00 | 2.6 |
| Consent Order | N244 & Consent Order | £100.00 | 2.7 |
| Discontinuance | N279 (Notice of Discontinuance) | £0.00 | - |
| Urgent Consideration<br><br>(within 48 hours of lodging claim) | N463 (Application for Urgent Consideration) | £255.00<br><br>(unless made when lodging when the fee is £0.00) | 2.6 |

* = current forms can be found at www.gov.uk/courts-tribunals/administrative-court

** = schedule 1, Civil Proceedings Fee Order 2008 (as amended). The fees above were correct on 19th June 2018.

## Annex 3 – Addresses for Service of Central Government Departments[295]

| Government Department | Solicitor for Service |
|---|---|
| Advisory, Conciliation and Arbitration Service, Cabinet Office, Commissioners for the Reduction of National Debt, Crown Prosecution Service(Civil), Department for Business, Energy and Industrial Strategy, Department for Communities and Local Government, Department for Digital, Culture, Media and Sport, Department for Education, Department for Environment, Food and Rural Affairs, Department for Exiting the European Union, Department for International Development, Department for International Trade, Department for Transport, Forestry Commission, The Treasury Solicitor, Department of Health, Foreign and Commonwealth Office, Health and Safety Executive, Home Office, Department of Communities and Local Government, Ministry of Defence, Ministry of Justice, National Savings and Investments (NS&I), Northern Ireland Office, Office for Budget Responsibility, Privy Council Office, Public Works Loan Board, Serious Fraud Office, Statistics Board (UK Statistics Authority), The National Archives, Wales Office (Office of the Secretary of State for Wales) | Government Legal Department, One Kemble Street, London WC2B 4TS |
| Crown Prosecution Service (Acting as a public prosecutor) | Rose Court, 2 Southwark Bridge, London SE1 9HS |
| Competition and Markets Authority | Director of Litigation, Competition and Markets Authority, Victoria House, Southampton Row, London WC1B 4AD |
| Department for Work and Pensions | Legal Director's Office,Department for Work and Pensions, Caxton House, Tothill Street, London SW1H 9NA |
| Food Standards Agency | Director of Legal Services, Food Standards Agency, Aviation House, 125 Kingsway, London WC2B 6NH |
| Her Majesty's Revenue and Customs | General Counsel and Solicitor to Her Majesty's Revenue and Customs, HM Revenue and Customs, South West Wing, Bush House, Strand, London WC2B 4RD |
| National Crime Agency | The Legal Adviser, National Crime Agency, Units 1-6 Citadel Place, Tinworth Street, London SE11 5EF |
| Office for Standards in Education, Children's Services and Skills (Ofsted) | Deputy Director, Legal Services, Ofsted, Clive House, 70 Petty France, Westminster, London SW1H 9EX |

[295] Taken from published list by David Lidington, Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office on the 4th April 2018. Also found at annex 2 to CPR PD 66


# LISTING POLICY

# FOR THE ADMINISTRATIVE COURT

## Note on the Policy

This policy replaces the general listing policy for all Administrative Court Offices as outlined in Annex C of Practice Statement [2002] 1 All ER 633 and the listing policy for the Administrative Court Office for Wales and the Western Circuit version 3.1.

This is a consolidated listing policy for the Administrative Court Offices ("ACOs") in the Royal Courts of Justice in London, Birmingham Civil Justice Centre, Cardiff Civil Justice Centre, Leeds Combined Court Centre and Manchester Civil Justice Centre. The terms "Regions", "regional courts" and "regional ACOs" as used in this listing policy mean the Administrative Court Centres and Offices in Cardiff, Birmingham, Leeds and Manchester.

The policy is designed to be used as guidance for officers when listing cases in the Administrative Court. It has the approval of The Honourable Mr. Justice Supperstone, Judge in Charge of the Administrative Court.

It should further be noted that this policy may be amended in any individual case by judicial order.

**June 2018**

## 1) Urgent and/or Interim Applications and Hearings

1) The interim/urgent application process will begin when a claim form and urgent consideration notice (N461 and N463[296]) or a general application notice (N244 or PF244 and in extradition cases, EX244) is received by the ACO and any relevant fee is paid. If consideration is sought within a set time period this should be made apparent by the applying party in the application and in any covering letter which accompanies it.

2) Urgent non-extradition applications are issued within working hours in the following way:

   a. **London**: Under CPR PD 54A paragraph 5.9 and CPR PD 5A paragraph 2.2, the ACO requires the parties to file any urgent or interim application in a hard copy bundle. The only exception to this principle is under CPR PD 5A paragraph 5.3 which allows urgent applications to be filed by fax. However, it is appreciated that, for urgent claims with a large quantity of documents, it may be impractical to file the claim by fax. In such circumstances, the party making the application should contact the ACO to discuss whether sending the application by email may be acceptable. If the ACO agrees to receive the application by email then a hard copy must still be provided to remain compliant with CPR PD 54A paragraph 5.9 and CPR PD 5A paragraph 2.2, but the ACO will not wait for the hard copy before processing the urgent application. Court users who wish to lodge an urgent application without payment of the court fee are required to follow the procedure in the document entitled "Urgent Applications requiring an Undertaking" attached as Annex 1 to this policy.

   b. **Regions**: The practice at a. above for London should be followed except that Court users who wish to lodge an urgent application without payment of the court fee are required to follow the procedure in the document entitled "Urgent Applications requiring an Undertaking in the Regions" attached as Annex 2 to this policy.

3) In urgent extradition cases, the Criminal Practice Directions 2015[297] apply. Crim PD 50B.16 provides that the Court will deal with requests for an expedited appeal without a hearing. Requests for expedition must be made in writing either within the appeal notice or by application notice EX244 and clearly marked with the Administrative Court reference number. The request for expedition must be lodged with the Administrative Court Office or emailed to the appropriate email address: administrativecourtoffice.crimex@hmcts.x.gsi.gov.uk. Notice must be given to the other parties. Once the ACO agrees to receive the application by email, the applicant will email a copy of the application and/or claim form to the appropriate court. On receipt, the officer will issue the application and process.

4) Out of Hours Urgent Applications: applications issued out of hours are not covered by this policy. CPR PD 54D, paragraph 4.2 makes provision for urgent applications out of hours.

5) Once issued, the officer will provide the case number, by email if the application has been issued by email (see above). That case number is to be quoted by the applicant on the hard copies of documents that will follow by post.

6) Any application for urgent consideration will be dealt with in the following way:

   - If the application is to be considered on papers immediately, without an oral hearing, the application is likely to be sent directly to the "immediates judge"; alternatively, it may be sent to the ACO lawyer in the first instance.
   - If the application is not immediate but urgent, the officer may send the application to an ACO lawyer to consider initial directions (CPR 54.1A) and the ACO lawyer may refer the application to a Judge without making an order; alternatively, the officer may refer the application to a Judge directly.

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[296] Please note that the form has recently been updated and the new version must be used: https://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do

[297] [2015] EWCA Crim 1567 (as amended) and see https://www.justice.gov.uk/courts/procedure-rules/criminal/rulesmenu-2015; https://www.judiciary.gov.uk/wp-content/uploads/2015/09/crim-pd-2015.pdf

7) If the case requires urgent listing for oral hearing, the Judge will usually give directions including a timetable for listing. Alternatively, the officer will consult with the ACO lawyer who may consult with a Judge before approving a timetable for listing the application. The officer will list the case within that timetable and without checking the availability of the parties. The time estimate for hearing the application is assumed to be 30 minutes unless a different time estimate is requested by the parties and is approved by the court.

8) A listing notice will be sent by the officer by post, but it may also be sent by fax or email if the parties require early notice of the hearing due to its proximity.

9) If the case does not require urgent listing, then the officer will list the case, adopting the process in the permission hearing policy below. At least 3 days' notice of the hearing must be given unless a judicial order provides otherwise.

## 2) Permission Hearings
## Judicial Review and Statutory Appeals & Applications

10) Upon receipt of a renewal notice (Form 86B), appeal notice (with the relevant fee) or a Judge's order adjourning permission into Court, the officer will proceed to list. In London, the hearing will generally be listed within three weeks of the Form 86B being lodged. Outside London, the time scale may be longer. The time estimate for renewal hearings is assumed to be 30 minutes unless a different time estimate is requested by the parties and is approved by the court.

11) Hearings will usually be fixed at the Court's convenience without taking counsel's availability into consideration.

## 3) Substantive Hearings (including Rolled Up Hearings)
## Judicial Review and Statutory Appeals & Applications

12) Once permission is granted, the claimant must pay the relevant fee for continuation within the statutory time limit (if the fee is not paid within that time, the case will be closed and will not be listed). Once the case enters the warned list (on the warned list[298] date), the officer will proceed to list the case. Where a rolled-up hearing has been ordered, the claimant must give an undertaking to pay the continuation fee if permission is ultimately granted; once the undertaking is given, the officer will proceed to list the case (if the undertaking is not given, the case will be closed and will not be listed).

13) Substantive hearings should ideally be listed to be heard within the following time scales:

- Judicial Review Substantives – within 9 months of issue
- Extradition Substantives – within 2 months of issue
- Planning s.288 and other Statutory Reviews – within 6 months of issue (see section 6. below)
- Planning Judicial Review Substantives – within 10 weeks of the date of expiry of the period for the submission of detailed grounds by the Defendant or Interested Party (see section 6. below).

14) The listing period for planning cases will only be extended in exceptional circumstances and with the agreement of the ACO manager or ACO lawyer.

15) The court will list substantive hearings in the following way:

a. **London**: the officer will either email or telephone counsel's clerks or solicitors for all sides to arrange an appointment to fix. The officer will allow 5 working days' notice for the appointment. At the appointment, if the availability of all counsel corresponds, then every effort will be made to list on that/those date(s) but only if that date is also suitable for the Court and is within the listing

[298] The warned list begins on the first day on which the ACO could list the case taking into account the time allowed by the CPR or judicial order for the parties to file documents.

period. The relevant time limit will not be extended due to the unavailability of counsel alone. If the available dates do not correspond, and/or the date(s) is/are unsuitable for the Court the case will be listed at the ACO's convenience.

b. **Regions**: the officer will either email or telephone counsel's clerks or solicitors for all sides to request the dates of availability for counsel for the three month period after the warned list date. Unless availability is provided at the time of the initial contact the clerk will be informed that they must provide availability within 48 hours or the case will be listed, with or without those dates at the Court's convenience. The officer is not required to follow up on the enquiry. The sooner the clerks/solicitors respond the better as judicial availability may change. If the availability of all counsel corresponds, the officer will check for judicial availability on that/those date(s). If a Judge is available on the said date(s) then the case will be listed accordingly.

   i. If counsels' dates do correspond every effort will be made to list on that/those date(s).

   ii. The officer will attempt to list the case in the most geographically appropriate hearing centre, considering judicial availability for that Court centre.

   iii. Only in exceptional circumstances will cases that relate to a particular geographical region not be heard at that region.

   iv. If the available dates do not correspond, and/or the date(s) is/are unsuitable for the Court the case will be listed at the ACO's convenience.

16) The relevant time limit will not be extended due to the unavailability of counsel alone.

17) The court will endeavour to take a litigant in person's availability into account when listing if dates are provided in writing and in advance and a satisfactory explanation is given as to why a date is unsuitable. Due to operational reasons, this may not be possible in all cases.

18) Only the availability of counsel or solicitor with higher rights of audience on the Court record will be checked. If a party did not provide the Court with the details of their advocate, then the case will be listed at the Court's convenience.

## 4) Divisional Courts

19) Where a party considers that a claim or application should be dealt with by a Divisional Court, then that party should notify the ACO in writing as soon as possible, i.e. usually in or with the claim form or application, or the acknowledgment of service or response to an application.

20) Although parties may make representations as to the suitability of a case to be heard before the Divisional Court, the decision whether a case should be listed before the Divisional Court and if so, the constitution of that Court, are matters for the Court.

21) The ACO will not be able to offer as many suitable available dates for a hearing and will not generally take account of the availability of each party's counsel when listing the hearing.

## 5) Vacating fixtures

22) A case can only be adjourned or vacated by judicial order.

23) If the application to vacate is made more than 14 days before the fixed hearing and all the parties consent to the adjournment then a fee is not payable. If the application is made with the consent of all parties (except in extradition matters where Criminal Practice Direction 50D.4 applies) and received by the court less than 14 days before the date of hearing, a fee is payable. Form N244 or PF244 (EX244 in extradition) accompanied by a draft consent order should be filed. A consent order should also include reasons for the hearing being adjourned. A consent order to adjourn without reasons attached is unlikely to be approved.

24) Even when all the parties consent to the adjournment, parties must always assume that the hearing remains listed until they are advised otherwise by the court. The hearing will generally not be adjourned unless there are good reasons to do so, even where all parties agree that the hearing should be adjourned. Where the sole reason for seeking the adjournment is that counsel is/are not available for the hearing, the adjournment will rarely be granted. Where the matter has been listed to be heard by a Divisional Court the Court will be very reluctant to grant an adjournment

25) In all other cases, an application notice should be filed with the court at least 3 days prior to the hearing (unless good reasons are provided for the late filing of the application)

26) A decision whether to grant or refuse an application to adjourn can be taken by a lawyer under delegated powers. If a party is not content with an order of the ACO lawyer then CPR 54.1A(5) provides that the party may request that the order is reviewed by a judge. Such a review may take place on the papers or by way of an oral hearing in Court. The request for a review must be made by filing the request in writing (a letter or application notice may be used) within 7 days of the date on which the party was served with the ACO lawyer's order. As long as the request is filed within 7 days (or such time as allowed by the order) there is no fee. If it is filed out of time then an application must be made to file the request out of time and it must be made on an application notice (N244 or PF244) with the relevant fee.

## 6) Planning Court

27) The Planning Court is a "specialist list" of which the Planning Liaison Judge is in charge (CPR 54.22). The work covered by the Planning Court is defined in CPR 54.21.

28) The policy set out in paragraphs 1 to 26 above generally applies to cases in the Planning Court subject to the points set out below and any other alterations which may from time to time be laid down by the Planning Liaison Judge.

29) Cases in the Planning Court generally fall into three broad categories:

(i) *Statutory review claims* (a) under PD8C[299] (where permission to apply is required and an Acknowledgment of Service must be accompanied by summary grounds of defence) and (b) under PD8A para 22[300] (where neither permission nor summary grounds are required);

(ii) *Appeals under s.289 of TCPA 1990* against decisions on enforcement notice appeals and tree replacement orders (under section s.208)[301] where permission is required (see PD 52D para 26);

(iii) *Planning judicial reviews* (including challenges to neighbourhood plans under s.61N of TCPA 1990).

30) The Planning Liaison Judge designates those cases which are "significant" according to para 3.2 of PD 54E.

31) For "significant" claims, para 3.4 of PD 54E sets the following target timescales which the parties should prepare to meet, subject to the overriding objective of the interests of justice:

(a) applications for permission to apply for judicial review or planning statutory review are to be determined within three weeks of the expiry of the time limit for filing of the acknowledgement of service;

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299 Claims under section 287 or 288 of TCPA 1990, s63 of the Planning (Listed Buildings and Conservation Areas) Act 1990, s.22 of the Planning (Hazardous Substances) Act 1990 and s.113 of the Planning and Compulsory Purchases Act 2004.

300 A statutory application to quash an "order, scheme, certificate or plan" eg. to quash a CPO or an order for a road scheme under the Highways Act 1980

301 And s.65 of the Planning (Listed Building and Conservation Areas) Act 1990.

(b) oral renewals of applications for permission to apply for judicial review or planning statutory review are to be heard within one month of receipt of request for renewal;

(c) applications for permission under section 289 of the Town and Country Planning Act 1990 are to be determined within one month of issue;

(d) planning statutory reviews are to be heard within six months of issue; and

(e) judicial reviews are to be heard within ten weeks of the expiry period for the submission of detailed grounds by the defendant or any other party as provided in CPR 54.14.

32) The objective is to deal with other cases not designated as "significant", within the general timescales set out above for the Administrative Court.

33) Claims in the Planning Court are only dealt with by judges who have been nominated by the President of the Queen's Bench Division. Certain judges are nominated to hear "significant" cases whilst other judges may only hear "other cases" (CPR 52.22).

*Listing of substantive hearings for the Planning Court in London*

34) The list office does not wait until a case enters the Warned list. Instead, once the Court fee to continue the proceedings has been paid, the list office emails a window of suitable dates to the parties and encourages them to agree a mutually convenient date. The appointment to fix procedure is used only when necessary.

*Listing of substantive hearings for "significant" cases in London*

35) Having regard to the limited availability of judges authorised to hear "significant" cases, the listing policy is necessarily stricter. "Significant" cases are listed primarily by reference to the availability of a judge authorised to hear such cases. They are listed for hearings between Tuesdays to Thursdays only of any sitting week. The Court will offer the parties 3 dates within the timescales set by PD 54E. If parties are unable to agree one of those 3 dates, the case is listed without further consultation.

*Regional Offices*

36) The regional offices generally apply the same policy.

*Hearings for oral renewal of applications for permission*

37) Hearings are usually fixed at the Court's convenience without taking counsel's availability into consideration.

38) Unless the parties otherwise notify the Administrative Court Office and the Court agrees hearings of renewed applications for permission are listed for 30 minutes (including the time needed for any judgment). Sometimes hearings of renewal applications have had to be adjourned when a significantly increased time estimate is provided too late and cannot be accommodated because of other work already listed. The fixing letter therefore states:

> "This application has been fixed in accordance with our listing policy and on the basis that it will take no longer than 30 minutes to hear. If you have already indicated that this application will require a hearing of longer than 30 minutes, I would be grateful if you could confirm this with the List Office, in writing. Otherwise on receipt of this letter you must confirm your current time estimate.
>
> This is a mandatory requirement. If it becomes necessary to adjourn because of a late increased time estimate, quite apart from any costs sanction, the solicitors and counsel involved may be required to appear before the Court to explain the failure to comply with the instruction above. Furthermore, the case will be re-listed for the earliest possible opportunity in accordance with the

availability of a Judge and not the availability of counsel."

## [Annex 1 to Administrative Court Listing Policy]

## Administrative Court in London

## Urgent Applications requiring an Undertaking

**Court Users who wish to lodge an urgent application without payment of the court fee are required to follow the procedure set out in this notice. This facility is to be used in exceptional circumstances as a result of unavoidable emergency by solicitors/barristers with rights to participate in litigation only.**

**The cut off time for using this procedure is 4.30pm.**

**Court Users are encouraged to use the HMCTS fee account facility to avoid unnecessary process and delay in issuing court proceedings.**

To create an account please contact:

MiddleOffice.DDServices@liberata.gse.gov.uk

**Procedure to be followed for undertaking:**

**Step 1**: Email the required documents (set out below) to:

administrativecourtoffice.generaloffice@hmcts.x.gsi.gov.uk

**Step 2**: Wait for the Court to process your application and email you a sealed claim form for service. Please note if you do not provide all of the documents set out below your application will not be processed.

**Step 3**: Post the required fee to the Court ensuring the Court will receive the fee within 5 days in line with the undertaking agreement and please clearly state the Court reference so we can allocate it once received.

**Documents required:**

- Undertaking form (EX160B). This form can be obtained from the gov.uk website at the following link: http://formfinder.hmctsformfinder.justice.gov.uk/ex160b-eng.pdf
- A covering letter explaining in full the emergency and why to use this service is unavoidable.
- Urgent Consideration form (N463). You must ensure all sections of the form are completed. Failure to do so will result in your application not being issued; you must also state the reasons for urgency on this form.
- Judicial Review claim form (N461). You must ensure all necessary sections of the form are completed and the statement of truth is signed.
- Grounds in support of your application.
- Decision document. If you are unable to provide this you must clearly state in Section 10 on the N461 the reasons why and what date you expect to be able to lodge it with the Court.
- A draft of the order sought that sets out the relief sought and any directions for an expedited hearing

should be attached.

You are no longer be required to send hard copies of the required documents to the Court, see the recent change in CPR 54A9D 5.9.

The claimant must file one copy of a paginated and indexed bundle containing all the documents referred to in paragraphs 5.6 and 5.7 (claim forms and any additional documents).

***Failure to prepare your documentation in accordance with the requirements could delay your urgent application from being considered.***

**Points to note:**

1. Practitioners and parties are reminded to comply with the Civil Procedure Rules and Practice Directions. In particular see CPR PD 5A and 5B.

2. Practitioners should note the warning issued by the Divisional Court about late and unmeritorious claims in *R (Hamid) v Secretary of State for the Home Department [2012] EWHC 3070*. Failure to comply with the warning may require the attendance in open court of the solicitor from the firm who was responsible, together with his/her partner. The Court will list not only the name of the case but the firm concerned.

3. The Administrative Court deals with a high volume of urgent applications each day. Please do not contact the Court unless at least 30 minutes has elapsed from lodging your undertaking, and you have not received a response from the Court. If no response has been received from the Court after 30 minutes, you are at liberty to telephone or email the court in the first instance or to contact the Delivery Manager by email, Rahima.Rahman@hmcts.x.gsi.gov.uk. The delivery manager will aim to respond as soon as possible, although this may not always be possible. Any emails that are received seeking to escalate the matter outside of the above will not be actioned.

***Failure to treat court staff with respect and to adhere to the above guidance will result in the Director/Partner of the practices' firm being called before the Master of the Administrative Court to explain the firm's actions.***

## [Annex 2 to Administrative Court Listing Policy]

## Regional Administrative Court Offices and Regional Upper Tribunal (Immigration and Asylum Chamber) Offices

## Urgent Applications requiring an Undertaking in the Regions

**Court Users who wish to lodge an urgent application without payment of the court fee are required to follow the procedure set out in this notice. This facility is to be used by Solicitors/Barristers with rights to participate in litigation only in exceptional circumstances as a result of unavoidable emergency.**

**The cut off time for using this procedure is 4pm.**

**In Administrative Court claims court users are encouraged to use the HMCTS fee account facility to avoid unnecessary process and delay in issuing court proceedings.**

To create an account please contact:

MiddleOffice.DDServices@liberata.gse.gov.uk

Regrettably, the fee account facility does not apply to cases brought in the Upper Tribunal. Applicants for UT cases should contact the Office to make payment by credit/debit card, fee undertaking or fee remission as appropriate.

**Procedure to be followed for undertaking:**

**Step 1**: Email the required documents (set out below) and contact the relevant office to confirm receipt of the email:

administrativecourtoffice.cardiff@hmcts.x.gsi.gov.uk

Tel: 02920 376 460

administrativecourtoffice.birmingham@hmcts.x.gsi.gov.uk

Tel: 0121 681 4441

administrativecourtoffice.leeds@hmcts.x.gsi.gov.uk

Tel: 0113 306 2578

administrativecourtoffice.manchester@hmcts.x.gsi.gov.uk

Tel: 0161 240 5313

**Step 2**: Wait for the Court to notify you that your application has been issued. Please note if you do not provide all of the documents set out below your application will not be processed. The Court will post one copy of the sealed claim form to the claimant to effect service.

**Step 3**: Post the required fee to the Court ensuring the Court will receive the fee within 5 days in line with the undertaking agreement and please clearly state the Court reference so we can allocate it once received.

The claimant must file one copy of a paginated and indexed bundle containing all the documents.

***Failure to prepare your documentation in accordance with the requirements could delay your urgent application from being considered.***

**Documents required:**

- Undertaking form (EX160B). This form can be obtained from the gov.uk website at the following link: http://formfinder.hmctsformfinder.justice.gov.uk/ex160b-eng.pdf
- A covering letter explaining in full the emergency and why the use of this service is unavoidable.
- Urgent Consideration form (N463 (Admin Court) or T483 (UTIAC)). You must ensure all sections of the form are completed. Failure to do so will result in your application not being issued; you must also state the reasons for urgency on this form.
- Judicial Review form (N461 (Admin Court) or T480 (UTIAC)). You must ensure all necessary sections of the form are completed and the statement of truth is signed.
- Grounds in support of your application.
- Decision document. If you are unable to provide this you must clearly state in Section 10 (on the N461 or T480) the reasons why and what date you expect to lodge it with the Court.
- A draft of the order sought that sets out the relief sought and any directions for an expedited hearing should be attached.

**Points to note:**

1. Practitioners and parties are reminded to comply with the Civil Procedure Rules and Practice Directions. In particular see CPR PD 5A and 5B.

2. Practitioners should note the warning issued by the Divisional Court about late and unmeritorious claims in *R (Hamid) v Secretary of State for the Home Department [2012] EWHC 3070*. Failure to comply with the warning may require the attendance in open court of the solicitor from the firm who was responsible, together with his/her partner. The Court will list not only the name of the case but the firm concerned.

***Failure to treat court staff with respect and to adhere to the above guidance will result in the Director/Partner of the practices' firm being called before the Master of the Administrative Court to explain the firm's actions.***

## Annex 5 – ACO Costs Guidance April 2016

HM Courts & Tribunals Service

**Guidance as to how the parties should assist the Court when applications for costs are made following settlement of claims for judicial review – April 2016**

**When this guidance applies**

1. This guidance is applicable where the parties to judicial review have agreed to settle the claim but are unable to agree liability for costs and have submitted that issue for determination by the Court.

2. It applies to all consent orders submitted for approval by the court after 18 April 2016.

3. Previous guidance is withdrawn.

**The problem**

4. The Court faces a significant number of cases, poorly considered and prepared by the parties, which can consume judicial time far beyond what is proportionate to deciding a costs issue after the parties have settled the case. The judicial and other Court resources applied to these cases must be proportionate to what is at stake. That requires efficiency and co-operation from the parties. At the same time, parties want to have the costs orders resolved fairly and quickly.

**How the parties should assist the court before sending in submissions on costs**

5. The onus lies on the parties to reach agreement on costs wherever possible, and in advance of asking the Court to resolve the issues, in order to support the overriding objective and ensure that efficient use is made of judicial time. See *M v Croydon* [2012] EWCA Civ 595, paragraphs 75-77.

6. The parties should not make submissions to the Court on costs following a compromise of the proceedings without first seeking to agree the allocation of costs through reasoned negotiation, mindful of the overriding objective to the CPR, the amount of costs actually at stake and the principles set out in *M v Croydon*, paragraphs 59-63. This should give them a clear understanding of the basis upon which they have failed to reach agreement, so as to focus their submissions to the court on the points in dispute.

7. Liability for costs between the parties will depend on the specific facts in each case but the principles are set out in *M v Croydon*, paragraphs 59-63 (annexed at the end of this guidance) and Tesfay (2016) EWCA Civ 415.

   The fair and efficient operation of this Guidance and the Timetable detailed below assume that in the 28 day period between the date of the Court's order and the Defendant's submissions, the parties will have ascertained by communication between themselves who is seeking what costs order and why as well as the basis of any disagreement between them, so that all submissions are then as focused and succinct as possible to assist the Court in speedier decision-making.

8. The procedure timetabled below starts with the Defendant because it is so often said that the Claimant does not know why a costs order in its favour is resisted. However it is to be hoped that only one set of submissions per side will be necessary. The cost correspondence between the parties can be annexed to the submissions. Submissions are expected not to exceed 2 sides of A4 at reasonable font size, in the absence of very good reason.

**The terms of consent orders**

9. Following a settlement the terms of consent orders require the approval of the court. Unless there are specific contrary reasons given with the proposed consent order, the court is very unlikely to approve the draft without varying its terms so as to expressly incorporate the provisions of this Guidance.

**Timetable**

10. Within 28 days of the service of the order upon the parties, the Defendant may file with the Court, and serve on all other parties, submissions as to what the appropriate order for costs should be.

11. Where the Defendant does not file submissions in accordance with 11 above the Defendant will be ordered to pay the Claimant's costs of the claim on the standard basis and for these to be the subject of detailed assessment if not agreed. However, if the Court considers that such an order would be wrong or unfair in all the circumstances, it shall make such other costs order as it sees fit, or it may require submissions from any party in the case within a specified time, or extend time for the service of the Defendant's submissions.

12. Where submissions are filed and served by the Defendant, the Claimant or any other party may file and serve submissions in reply within 14 days of the service of those submissions.

13. Where no submissions are filed by the Claimant or by any other party in accordance with the above, the Court will make the Order sought by the Defendant. However, if the Court considers that such an order would be wrong or unfair in all the circumstances, it shall make such other costs orders as it sees fit, or it may require submissions from any party in the case within a specified time, or extend time for the service of the Claimant's or other party's submissions.

14. Where submissions are filed by the Claimant or by any other party, the Defendant shall have 7 days in which to file and serve a reply. If the Court thinks it necessary in the interests of justice, it may seek any further submissions from any party. A party may also apply for permission within 14 days of the service of previous submissions to lodge further submissions provided it explains what new point has arisen in those previous submissions to which it needs to reply. A short timetable can be expected for any such submissions.

**Content of submissions**

15. Submissions should:
    - confirm that the parties have used reasonable endeavours to negotiate a costs settlement;
    - identify what issues or reasons prevented the parties agreeing costs liability;
    - state the approximate amount of costs likely to be involved in the case;
    - clearly identify the extent to which the parties complied with the pre-action protocol;
    - state the relief the claimant (i) sought in the claim form and (ii) obtained;
    - address specifically how the claim and the basis of its settlement fit the principles in *M v Croydon*, and *Tesfay* including the relationship of any step taken by the defendant to the claim.

**Documents**

16. Submissions should be of a normal print size and should not normally exceed two A4 pages in length unless there is compelling reason to exceed this which is properly explained in the submissions.

17. Submissions should be accompanied by the pre-action protocol correspondence (where this has not previously been included as part of the documents supporting the claim), the correspondence in which the costs claim is made and defended, along with any other correspondence necessary to demonstrate why the claim was brought in the light of the pre-action protocol correspondence or why the step which led to settlement was not taken until after the claim was issued.

18. Unless advised otherwise, the parties should assume that the Court has the claim form and grounds, the acknowledgment of service and evidence lodged by the parties. Further copies of these should not be provided unless requested by the Court.

Case No: C1/2011/1716

**Neutral Citation Number: [2012] EWCA Civ 595**
**IN THE COURT OF APPEAL (CIVIL DIVISION)**
**ON APPEAL FROM THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION, ADMINISTRATIVE COURT**
**THE HON MR JUSTICE LINDBLOM**
**Case CO/1468/2009**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8th May 2012

**Before:**
**THE MASTER OF THE ROLLS**
**LADY JUSTICE HALLETT DBE**
**(VICE-PRESIDENT OF THE QUEEN'S BENCH DIVISION)**
and
**LORD JUSTICE STANLEY BURNTON**

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**Between:**

| | |
|---|---|
| **M** | **Appellant** |
| **- and -** | |
| **MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CROYDON** | **Respondents** |

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(Transcript of the Handed Down Judgment of
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**Robert Latham** (instructed by **Hansen Palomares**) for the **Appellant, M**
**Catherine Rowlands** (instructed by **Policy & Corporate Services Department of Croydon LBC**) for the **Respondent, Croydon LBC**

Hearing date: 14 March 2012

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Judgment

**The Master of the Rolls:**

59. In my view, however, on closer analysis, there is no inconsistency in either case, essentially for reasons already discussed. Where, as happened in *Bahta*, a claimant obtains all the relief which he seeks, whether by consent or after a contested hearing, he is undoubtedly the successful party, who is entitled to all his costs, unless there is a good reason to the contrary. However, where the claimant obtains only some of the relief which he is seeking (either by consent or after a contested trial), as

in *Boxall* and *Scott*, the position on costs is obviously more nuanced. Thus, as in those two cases, there may be an argument as to which party was more 'successful' (in the light of the relief which was sought and not obtained), or, even if the claimant is accepted to be the successful party, there may be an argument as to whether the importance of the issue, or costs relating to the issue, on which he failed.

60. Thus, in Administrative Court cases, just as in other civil litigation, particularly where a claim has been settled, there is, in my view, a sharp difference between (i) a case where a claimant has been wholly successful whether following a contested hearing or pursuant to a settlement, and (ii) a case where he has only succeeded in part following a contested hearing, or pursuant to a settlement, and (iii) a case where there has been some compromise which does not actually reflect the claimant's claims. While in every case, the allocation of costs will depend on the specific facts, there are some points which can be made about these different types of case.

61. In case (i), it is hard to see why the claimant should not recover all his costs, unless there is some good reason to the contrary. Whether pursuant to judgment following a contested hearing, or by virtue of a settlement, the claimant can, at least absent special circumstances, say that he has been vindicated, and, as the successful party, that he should recover his costs. In the latter case, the defendants can no doubt say that they were realistic in settling, and should not be penalised in costs, but the answer to that point is that the defendants should, on that basis, have settled before the proceedings were issued: that is one of the main points of the pre-action protocols. Ultimately, it seems to me that *Bahta* was decided on this basis.

62. In case (ii), when deciding how to allocate liability for costs after a trial, the court will normally determine questions such as how reasonable the claimant was in pursuing the unsuccessful claim, how important it was compared with the successful claim, and how much the costs were increased as a result of the claimant pursuing the unsuccessful claim. Given that there will have been a hearing, the court will be in a reasonably good position to make findings on such questions. However, where there has been a settlement, the court will, at least normally, be in a significantly worse position to make findings on such issues than where the case has been fought out. In many such cases, the court will be able to form a view as to the appropriate costs order based on such issues; in other cases, it will be much more difficult. I would accept the argument that, where the parties have settled the claimant's substantive claims on the basis that he succeeds in part, but only in part, there is often much to be said for concluding that there is no order for costs. That I think was the approach adopted in *Scott*. However, where there is not a clear winner, so much would depend on the particular facts. In some such cases, it may help to consider who would have won if the matter had proceeded to trial, as, if it is tolerably clear, it may, for instance support or undermine the contention that one of the two claims was stronger than the other. *Boxall* appears to have been such case.

63. In case (iii), the court is often unable to gauge whether there is a successful party in any respect, and, if so, who it is. In such cases, therefore, there is an even more powerful argument that the default position should be no order for costs. However, in some such cases, it may well be sensible to look at the underlying claims and inquire whether it was tolerably clear who would have won if the matter had not settled. If it is, then that may well strongly support the contention that the party who would have won did better out of the settlement, and therefore did win.