

Judicial Review Update: Practice & Procedure

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Today's Agenda

1. Practice Directions 54A – 54C: *in force as of 31 May 2021*
2. Electronic bundle guidance
3. Judicial review reform
4. Q&As

Practice Direction 54A – JUDICIAL REVIEW

PRACTICE DIRECTION 54A – overarching themes

- ❖ Some fundamental changes of procedure and practice
- ❖ Codification of best practice
- ❖ Clearer signposting to other relevant provisions of the CPR
- ❖ Succinct and focussed pleadings and submissions
- ❖ Need for expedition and further front-loading of preparation
- ❖ Electronic filing as a matter of course

Claim Form and Statement(s) of Facts and Grounds ('SFG') – Rule 54.6

General

- Before seeking permission to apply for JR (or interim relief), C must “*make proper and necessary inquiries*” to ensure, so far as reasonably possible, that all relevant facts are known [4.1(1)]
- Claim Form (or application for urgent consideration or interim relief) must:
 - set out all material facts (defined as “*those relevant to the claim*”)
 - any statutory provision which excludes the jurisdiction of the court to entertain the application or to grant the relief sought
 - reference any alternative appeal mechanism that exists, or could have been used prior to seeking judicial review

[4.1(1) and 4.1(2)]

CF and SFG cont.

Contents of the Claim Form

- CF must include or be accompanied by a 'Statement of Facts' and a 'Statement of Grounds' – numbered paras, setting out a clear and concise statement of the facts relied on and the grounds for bringing the claim respectively [4.2(1)]
- These Statements:
 - can be contained in a single document
 - should be as concise as possible
 - must not (without permission) exceed 40 pages (in total). Court's expectation in many cases is that SFG will be "*significantly shorter*".

[4.2(2) and 4.2(3)]

CF and SFG cont.

- The Statement of Grounds should:
 - identify in separate, numbered paragraphs each ground of challenge
 - identify the relevant provision or principle of law said to have been breached
 - provide sufficient detail of the alleged breach to enable the parties and the court to identify the essential issues alleged to arise
 - state precisely what relief is sought

“The Statement of Grounds should succinctly explain the claimant’s case by reference to the Statement of Facts”

[4.2(1)(b)]

CF and SFG cont.

Documents accompanying the CF

PD 54A para 4.3 provides:

“Any application (a) to extend the time limit for filing the Claim Form; and/or (b) for directions in the claim, should be included in or contained in a document that accompanies the Claim Form.” (emphasis added).

See also PD 54A para 4.5: no reference to para 4.3 provisions.

- Upshot: application to extend time or for directions does not count towards 40-page SFG limit.

CF and SFG cont.

Claim Bundle

- Para 4.4 sets out the list of documents which must accompany the CF (over and above the SFG).
- List replicates old PD 54A para 5.7 – only addition is express provision in para 4.4(1)(e): where the claim is directed to the decision of a public authority other than a court of tribunal, a copy of any record of the decision under challenge must be provided.
- C must prepare and lodge a hard copy and electronic paginated and indexed bundle containing all the documents referred to in paras 4.2 and 4.4 **[4.5]**.
- If file exceeds 20MB, core bundle should be prepared, with other documents sent as a separate bundle (Electronic Bundles Guidance, para 3).

Acknowledgement of Service ('AoS') and Summary Grounds of Resistance ('SGR') – *Rule 54.8*

- AoS must contain information specified in CPR rr.8.3(2), 10.5 and PD10 [6.1].
- The SGR must:
 - identify succinctly any relevant facts, in particular material matters of factual dispute (if any) should be highlighted
 - provide a brief summary of the reasoning underlying the measure in respect of which permission to apply for judicial review is sought – unless D gives reasons why the permission application can be determined without that information
 - succinctly explain the legal basis of D's response to C's case by reference to relevant facts

[6.2(1)-(3)]

AoS and SGR cont.

- Page limit: the SGR must not (without permission) exceed 30 pages. Again, Court's expectation is that in many cases SGR will be significantly shorter.

“The Summary Grounds should be as concise as possible.”

[6.2(4)]


Renewed applications for Permission

(novel PD provision)

- Request to reconsider a permission refusal must be succinct and identify the scope of the renewed application.
- In particular, it must identify grounds relied on in support of the renewed application and address reasons given by the Judge who refused permission on the papers.
- Standard time estimate for renewal hearing is 30 minutes (to include time for judgment!).
- Longer listing can be requested in renewal application.
- Court must be informed of agreed time estimate within 7 days of application being filed (cf PD54A paras 7.4 and 7.5 – D not required to attend renewal hearing).

[7.6 and 7.7]

Response – Rule 54.14

- Clarification of Rule 54.14 - if all relevant matters have already been addressed in the SGR, D can rely on their SGR, rather than file separate Detailed Grounds of Resistance ('DGR'). Court and all other parties must be informed of D's intentions [9.1(1)]
 - DGR must be.... 
 - “*As concise as possible*” and must not (without permission) exceed 40 pages
 - No expectation that this pleading will often be shorter (cf SFG and SGR)
- [9.1(2)]
- If D wishes to rely on written evidence or documents not already filed, D must file and serve an electronic and hard copy version of a paginated and indexed bundle containing this material for filing and service with the DGR [9.1(3)]

Evidence – *Rule 54.16*

- Per the ‘duty of candour’, D should in its DGR or evidence *“identify any relevant facts, and the reasoning, underlying the measure”* which is the subject of the JR [10.1].
- Oral evidence will *“rarely be necessary”*
- Any application under CPR 8.6(2) for permission to adduce oral evidence or to cross-examine any witness must:
 - i. be made promptly
 - ii. in accordance with the requirements of Part 23
 - iii. be supported by an explanation of why the evidence is necessary for the fair determination of the claim.

[10.3]

Additional Grounds of Claim – *Rule 54.15*

- Part 23 application must be made where permission is sought to amend grounds [11.1]
- Application must be:
 - i. be made promptly (cf previous PD – notice no later than 7 days before hearing)
 - ii. should include, or be accompanied by, a draft of the amended grounds
 - iii. be supported by evidence explaining the need for the proposed amendment and any delay in making the application for permission to amend.
- PD 54A para 11.4: CPR 17.1 and 17.2 applies when determining application to rely on additional grounds. In practice, not readily apparent how sections will interact.
- Where permission to rely on additional grounds granted, directions may be given re. amendments to SGR or DGR, or other case management directions as may be appropriate: [11.4].

Interveners – *Rule 54.17*

- New application process – Part 23 application required, not simply a letter to the ACO [12.1]. Application must be served on all parties to the proceedings [12.3]. The duty of candour applies to such applications [12.4(1)].
- Stronger presumption that will not grant if hearing date would be jeopardised. PD 54A 12.2 provides:

“The Court is unlikely to accede to an application to intervene if it would have the consequence of delaying the hearing of the relevant proceedings.”

Interveners cont.

- Potentially significant change to way interventions are conducted:
 - i. Where the potential intervener wishes to make representations at the hearing, the application must include a summary of the representations proposed to be made **[12.4(2)]**.
 - ii. Where the potential intervener requests permission to file and serve evidence, a copy of that evidence should be provided with the application, explaining the relevance of any such evidence to the issues **[12.4(3)]**.

➤ Access to justice concerns?

Skeleton Arguments

- Purpose is *“to assist the court by setting out as concisely as practicable the arguments upon which a party intends to rely”* [14.1].
- As well as being concise – no more than 25 pages (unless permission granted for fuller skeleton), a skeleton:
 - should both define and confine the areas of controversy
 - be cross-referenced to any relevant document in the bundle
 - be self-contained and not incorporate by reference material from previous skeleton arguments or pleadings
 - should not include extensive quotations from documents or authorities
 - where it is necessary to refer to an authority, state the proposition of law it demonstrates; and identify the parts that support the proposition
 - if more than 1 case is cited in support of a given proposition, briefly state why.

[14.2 and 14.3]

Skeleton Arguments cont.

- Implications for how case conducted at earlier stages of the proceedings?
- Non-compliant skeleton argument may be returned by the ACO and may not be re-filed unless and until it complies with PD requirements. Costs of preparing non-compliant skeleton argument may be disallowed **[14.4]**



Documents to be filed prior to the substantive (or rolled-up) hearing

- *Not less than 7 days* before the date of the hearing (or the warned date), the parties shall file:
 - a) an **agreed** list of issues
 - b) an **agreed** chronology of events (with page references to the hearing bundle); and
 - c) an **agreed** a list of essential documents for the advance reading of the court (with page references in the hearing bundle to the passages relied on) and a time estimate for that reading.

[14.7]

Documents cont.

- Novel core bundle requirement where hearing bundle exceeds 400 pages. This agreed core bundle must include:
 - the pleadings
 - a copy of the challenged decision and/or measure
 - such further documents (or extracts from them) as the parties consider essential for the purposes of the hearing

[15.1]

- Solicitors for each party must certify compliance with requirements of para 15.1.

Documents cont.

- Electronic and hard copy hearing bundle (and, if applicable, core bundle) to be lodged with ACO not less than 21 days before the date of the hearing (or the warned date) **[15.2 and 15.3]**.
- An agreed authorities bundle must be lodged with the ACO – in hard copy and electronically - not less than 7 days before the date of the hearing (or the warned date) **[15.3 and 15.4]**.

Listing policy – timescales

- New Administrative Court Listing Policy issued on 31 May 2021.
- In London, general expectation is notification of a renewal hearing within 2 weeks, with the hearing to take place between 3 - 8 weeks of the date the Renewal Notice being filed.
- The practice for listing renewal hearings by the circuit ACOs may differ.
- Hearings will usually be fixed at the Court's convenience; Counsel's availability will not ordinarily be a relevant consideration.

[Listing Policy, para 10]

Listing policy – timescales cont.

- Other than planning cases, final hearings in judicial review claims and statutory appeals will be listed within 9 months of the date of issue **[Listing Policy, para 14]**
- A case will enter the Warned List on the first day following time allowed by the CPR (or judicial order) for filing and service of documents (e.g. in an application for judicial review, the date for filing and service of DGRs and evidence).
- Once in the Warned List, the case will usually, and subject to any order to the contrary, be heard within 3 months ('the listing period') **[Listing Policy, para 16]**
- Where counsel or a solicitor advocate is instructed, the listing period will not be ordinarily be extended solely to accommodate their availability **[Listing Policy, para 21]**

Applications to adjourn or vacate hearings

See Listing Policy Section C.

- A hearing will generally not be adjourned or vacated unless there are good reasons to do so, even where all parties are in agreement. If sole reason is Counsel's unavailability, the adjournment will rarely be granted [**Listing Policy, para 26**].
- The application notice should be filed with the court at least 3 days prior to the hearing (unless good reason is provided for the late filing of the application). Note, a fee is payable unless the application is both made by consent and made more than 14 days before the date fixed for the hearing [**Listing Policy, para 27**]
- Notwithstanding that an application to adjourn or vacate a hearing has been filed, parties should assume that the hearing remains listed until they are advised otherwise by the court [**Listing Policy, para 29**].

Agreed final order

- Where the parties agree the terms of a final order to be made disposing of the claim (prior to judgment), the claimant shall file:
 - 3 copies of the proposed agreed order
 - a short, agreed statement of the matters relied on as justifying the proposed agreed order
 - copies of any authorities or statutory provisions relied on.

Both the draft order and the agreed statement shall be signed by all parties to the claim [**PD 54A, para 16.1**].

Immigration and asylum cases

- PD54A para 5.2 provides a new postal address and an email address for service where D is the Immigration and Asylum Chamber of the FTT.
- Claim forms challenging removals must state C's Home Office reference number: PD54A para 17.2(1)(d).

Practice Direction 54B – urgent applications and other applications for interim relief

PD54B – cultural shift

- Cultural change towards a culture of compliance including with urgent claims.
- Seen recently in R (DVP) v SSHD [2021] EWHC 606 (Admin) – “*identified significant concerns about the conduct of the claims*”. In particular that the claim was not urgent, failed to provide the required information, breached duty of candour.

PD54B – cultural shift cont.

Following on from DVP:

- Be realistic about urgency in the context of the work of the Admin Court – normally urgency only justified if there will be an irreversible prejudice to the claimant unless interim relief or expedition is granted
- Follow the procedure thoroughly
- Be rigorous when applying the duty of candour

PD54B – Form N463

- File Form N463 – *“all information required by the Form must be provided. In particular [why the application needs to be considered urgently, why the request wasn’t made sooner and the timescales for consideration]” [1.2]*
- Do not cross refer to other documents - *“please see attached Grounds”* is not acceptable when dealing with why the application is urgent (see DVP at [16]).

PD54B – Bundle / Order

- File a hard copy and electronic bundle containing at least: (i) Form N463, (ii) pre action correspondence, (iii) all communication with the defendant concerning the urgent application **[1.3]**.
- All applications must be accompanied by a draft order setting out the interim relief requested and/or the expedited timetable sought **[2.4 and 3.2]**.

PD54B – Urgent applications for interim relief

- Where urgent application is for interim relief, the grounds must be *“set out clearly and concisely”* [2.1]
- Applicant will be expected to have taken reasonable steps to investigate matters material to the application. The application must be supported by evidence in a W/S which must cover *“all matters that it is reasonable to assume a court would consider material to the application”* including matters *“supporting and those undermining the application”* [2.2 and 2.3].

PD54B – Applications for expedition

- Must include *“a clear and concise explanation of the reasons why expedition is necessary”* [3.1]
- *“The application must include a statement of the position of the D and any IP on the expedition sought or, in default of that must explain the steps taken to contact the D and IP to ascertain that position”* [3.1]

PD54B – Top tips

- Only use the process for extremely urgent claims. If any way around using it then do so. In cases where the issue is urgent but does not justify the process, make the application on claim form and chase it.
- Keep an open dialogue with the D – don't put unnecessary short deadlines on responding to give position on expedition.
- Present your case in a fair, even-handed and trustworthy way.

PD54B – Top tips

- Be realistic in your request for expedition – court will want to hear from D and IP if at all possible so try to build that into the timetable. See PD 54B 1.7 and 1.8.
- Make sure the interim relief you are seeking is workable and realistically achievable for D to do in the timescale sought.

Electronic Bundles - guidance

Electronic Court Bundle Guidance

Published by the Administrative Court Office on 27.05.21

- Must be suitable for use with Adobe Acrobat Reader, PDF Expert and PDF Xchange Editor.
- Bundle must be in one single pdf file.
- Where seeking urgent consideration it must not exceed 20mb and should be filed by email.

Electronic Court Bundle Guidance

cont.

- Where the file for any non urgent application exceeds 20mb the party should file a Core Bundle no bigger than 20mb including as a minimum the Claim Form (Application Notice/Notice of Appeal etc.), Grounds, any other document considered essential to the claim, any witness statements, a draft order AND a Supplementary Bundle containing everything else.

Electronic Court Bundle Guidance

cont.

- Bundles must be filed using the Document Upload Centre.
- Must be paginated electronically (or otherwise typed) starting with page 1 of the pdf file (as opposed to the first page after the index).
- Hyperlinked index.
- Electronic and hard copy bundles pagination must be exactly same.
- Each document should be identified in the sidebar.

Electronic Court Bundle Guidance

cont.

- All bundles must be text based, not a scan of a hard copy. If you have to scan from a hard copy then you must undertake Optical Character Recognition of the file.
- Any document in landscape format must be rotated so it can be read from left to right.
- Default display view size must be 100%.
- Resolution should be between 200-300dpi to avoid delays when scrolling.

Electronic Court Bundle Guidance

cont.

- Additional documents should not just be added to the bundle. Inquiries should be made with the Judge about how they would like them. Absent any particular direction parties should add new documents into a separate file, with appropriate sub numbering.
- Failure to comply means your bundle may not be considered by a Judge.

Practice Direction 54C - Venue

PD54C

Para 1.2 – reminder that claims must be issued on circuit where they should be determined by the Admin Court sitting outside London.

Para 2.1 – Claims must be commenced at the Admin Court Office to which the claim is most closely connected

PD54C cont.

Para 2.5 explains what must be taken into account when considering which region the claim is most closely connected to.

Para 1.3 when read in conjunction with CPR7.1A makes specific provision that judicial review challenges against Welsh public bodies are to be issued and heard in the Administrative Court for Wales.

PD54C cont.

Factors (as before save for rearranging the order and one change)

- (a) any reason expressed by any party for preferring a particular venue
- (b) the ease and cost of travel to a hearing
- (c) the availability and suitability of alternative means of attending a hearing (for example, by video-link);
- (d) the extent and nature of any public interest that the proceedings be heard in any particular locality; (this previously said media interest)
- (e) the time within which it is appropriate for the proceedings to be determined;
- (f) 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;
- (g) 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;
- (h) whether the claim raises devolution issues and for that reason whether it should more appropriately be determined in London or Cardiff; and
- (i) the region in which the legal representative of the parties are based

Judicial Review reforms

Judicial review reforms

- Government pressing ahead with legislation to reform judicial review in face of some public criticism.
- Government has made further proposals, following the publication of The Independent Review of Administrative Law, chaired by Lord Faulks QC
- Consultation ran from 18 March 2021 to 29 April 2021.
- “Gunning” requirements for a lawful consultation?
- A Judicial Review Bill was announced during the Queen’s Speech in May.
- [See: ALBA response: ALBA-JR-Consultation-Response-1.pdf \(adminlaw.org.uk\)](#)

Judicial review reforms?

- **Remedies:**

Suspended quashing orders (SQOs) - a new, discretionary remedy available to the court. The public body would be given the opportunity to remedy any defects identified by the court, with the SQO automatically taking effect after a certain period of time if the specified conditions were not met.

- **Prospective-only remedies**
- **Removing *Cart* Judicial Reviews**
- **Ouster clauses**
- **Promptitude requirement**
- **Track allocation**
- **Guidance on intervenors**
- **Reply**
- **Satellite litigation? Expedited litigation?**

It's time for Questions & Answers

Questions Welcome