Home Office

Judicial Review Guidance (Part 1)

Version 3.0

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1.2. Overview

1.2.1. What is a judicial review?

A judicial review is a type of legal challenge where an individual asks the High Court or Upper Tribunal to review the lawfulness of a decision, action or failure to act of a public body or government department. It can also be used to challenge secondary legislation, the immigration rules or policy, or the compatibility of an act of Parliament with the Convention rights under the ECHR.

It can only be used where there is no avenue of appeal or where all avenues of appeal have been exhausted. It is different from a statutory appeal because the court should not normally substitute what it thinks is the 'correct' decision, it will only decide if the decision made was lawful.

A full explanation of what a judicial review is and how the High Court and Upper Tribunal (courts) approach them can be found in The Government Legal Department's (GLD) guidance, titled 'The Judge Over Your Shoulder.'.

The High Court's procedure for judicial review is set out in part 54 of the Civil Procedure Rules Part 54 - Judicial Review & Statutory Review - Civil Procedure Rules

The Upper Tribunal procedure for judicial review is set out in the Tribunal Procedure (First Tier Tribunal) (Immigration and Asylum Chamber) Rules October 2014 Immigration and Asylum Chamber tribunal procedure rules - Publications - Gov.uk). While the Upper Tribunal's and High Court's approach to judicial review is similar there are key differences. A summary of these differences is detailed at section 1.3.2 and are highlighted through out this guidance.

1.2.2. The Judicial Review Process

Pre-action protocol (section 2 **-** Pre-Action Protocol Letters (PAPs))

Normally a person who wishes to challenge a decision of the Home Office should write first to the department asking for the decision to be reviewed. This is called the pre-action protocol (PAP). Page 29 of the GLD document 'The Judge Over Your Shoulder' provides useful information on the PAP stage.

PAP letters and the responses to them should be carefully considered. This is a good opportunity to prevent judicial review proceedings being brought at all, either by re-making the decision in the applicant's favour (where appropriate) or by setting out clearly the reasons for maintaining the existing decision.

If the PAP letter does not prevent a judicial review, the litigation caseworkers should ensure that GLD are aware of any PAP responses which will need to be

referred to in our response to the judicial review, known as the Acknowledgment of Service (AoS). Reasons for this are set out in the Ockleton judgment in the case of Kumar [2014] UKUT 00104 (IAC) Tribunal decisions.

Paper permission stage (section 5 - Permission Stage)

If a person wants a judicial review of a decision they must first apply to the Upper Tribunal or High Court for permission. This should be done as soon as possible, but normally no longer than 3 months from the date of the decision, although the courts can decide to accept applications after that time limit.

The person who brings a claim for judicial review is known as the claimant (applicant in the Upper Tribunal) and the person against whom the judicial review is brought is the defendant (the respondent in the Upper Tribunal), normally the Secretary of State for the Home Department ('SSHD') but it can be an Immigration Officer or Entry Clearance Officer when their decision is being challenged. References in the remainder of this document are to claimants and defendants but apply equally to applicants and respondents.

The claimant sets out the grounds of their claim, and includes any evidence they wish to rely on and asks for permission to be granted. Once received by the Upper Tribunal or High Court the application is 'sealed' by the court. This means the court stamps the application to show it has been received. The papers must then be served on GLD who will in turn notify the Home Office in cases progressing through High Court or directly on the Home Office in Upper Tribunal cases. The Upper Tribunal Rules do not formally require service of the sealed claim form although letters issued by the Upper Tribunal do inform applicants that they must do this.

Once the grounds have been served on GLD or the Home Office, there are 21 days to file a paper response to the claim, this is known as an Acknowledgement of Service (AoS). The AoS allows the Home Office to confirm whether it accepts the claim detailed in the judicial review or whether we wish to contest the claim. If we are contesting the claim the AoS, will include our summary grounds of defence (SG) and any evidence the Home Office wishes to rely on as to why the claim should not be granted permission to proceed.

Once the court receives these documents a single judge will look at the papers and decide whether or not to grant permission. The test for granting permission is whether the judge thinks the claim is arguable. This is a low threshold. However, a significant majority of claims which are not settled pre-permission are refused permission to proceed. If the judge does not think the claim is arguable, the judicial review will be refused permission to proceed. Both parties are then notified of this decision by means of a court order.

If permission is refused, the judge may also certify the claim as being 'totally without merit'. This is added when the judge considers the claim is completely hopeless. A 'totally without merit' finding stops the claimant from renewing their

judicial review to an oral permission hearing, but they may appeal this decision to the Court of Appeal.

If the judge does consider the claim to be arguable, he or she will grant permission. In this circumstance, the case will proceed to a full substantive hearing. In either case, both parties are notified of the judge's decision by means of a court order.

A page 32-33 of the document – 'The Judge Over Your Shoulder' provides information on the paper permission stage.

Oral permission stage (section 5 **-** Permission Stage)

In some cases, the judge will not be able to reach a decision on whether permission should be granted on the basis of the paper documents before him. In these circumstances, an oral permission hearing (OPH) will be ordered.

Also, if permission is refused on the papers a claimant has 7 days plus 2 working days for postage (High Court) and 9 days (Upper Tribunal) in which they can 'renew' the application to an OPH. This time period can be abridged to a shorter period if the application is deemed urgent. If so, this will be stated on the Order refusing permission on the papers.

At an OPH the claimant (normally via their legal representatives) before a single judge will explain why they should be granted permission and the Home Office will be given an opportunity to explain why permission should not be granted. The Home Office will instruct a barrister (counsel) to argue why permission should be refused. The Upper Tribunal or High Court will then decide whether permission should be granted. A claim that is certified as being 'totally without merit' cannot renew to an OPH.

Sometimes an OPH is heard at the same time as the substantive hearing and this is called a rolled up hearing. This is more likely to happen where one party has made an application for the case to be expedited (ie heard sooner). A rolled up hearing has the advantage of getting the matter dealt with quickly and in practice is cheaper than the two stage process. However, it does not allow for much time to prepare the substantive defense.

At a rolled up hearing the judge will decide whether to grant permission as well as deciding the outcome of the judicial review if permission is granted.

Page 33 of the GLD document – 'The Judge Over Your Shoulder' provides useful information on the OPH.

Substantive hearing (section 6 **-** Substantive Hearing)

Once a case is granted permission to proceed it will go on to a substantive hearing, unless settled or withdrawn, although occasionally there may be a pre-hearing known as a case management conference, or an interim relief hearing to take a view on an urgent element of the judicial review. Once permission is granted the defendant must submit detailed grounds of defense within a

specified time frame (35 days from the date of permission grant). Nearer the hearing date counsel for both sides will submit written arguments as to why the claim should either be allowed (on behalf of the claimant) or dismissed (on behalf of the Home Office). These are called skeleton arguments.

The case will then have a substantive court hearing at which oral arguments are made by both the claimant and defendant. The court will then deliver a final judgment, which will either allow the claim and provide a form of relief in a court order, or dismiss the claim upholding the Home Office's position.

Page 35 of the GLD document 'The Judge Over Your Shoulder' also provides useful information on the substantive hearing stage.

Onward appealing (section 7- Post Hearing/Onward appeals)

It is possible to appeal a judicial review decision with permission. This includes a refusal of permission, a finding that a case is 'totally without merit' or the final judgment. Additional information on appealing can be found in section 7.

Settling cases

A judicial review claim can be settled at any point before a substantive hearing, if the Home Office and the claimant are able to come to an agreement on resolving the matter under dispute.

Discussions between the parties about settlement may be conducted on a 'without prejudice basis' which means that the court will not see the relevant correspondence. Agreements to settle are then set out in consent order, which is provided to the court (although in some circumstances elements of the agreement are kept private between the parties – this applies particularly to awards of damages). The court will normally approve (seal) a consent order signed by both sides at which point it becomes a binding court order. The court could potentially disagree that the judicial review should be settled as proposed but this is extremely rare. A claimant can also withdraw their judicial review at any point should they wish to do so.

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1.3. Where an immigration judicial review is heard and types of relief

1.3.1. Which courts hear applications for judicial review?

The majority of immigration judicial reviews are heard by the Immigration and Asylum Chamber of the Upper Tribunal. The types of judicial reviews they hear are set out in a Practice Directions - Civil Procedure Rules from the Lord Chief Justice. Further information is available Appeal a decision by the immigration and asylum tribunal - Gov.uk

The Upper Tribunal Rules are set out in the link below:

The Tribunal Procedure (Upper Tribunal) Rules 2008

The exceptions, which will be heard in the High Court, are:

- the validity of legislation or the Immigration Rules
- the lawfulness of detention
- licensed sponsor status
- citizenship
- accommodation centres and asylum support
- previous Upper Tribunal decisions
- special Immigration Appeals Commission decisions
- statements of incompatibility under s4 of the Human Rights Act 1998

1.3.2. The Judicial Review process: the Upper Tribunal (UT) and High Court (HC)

While the Upper Tribunal's and High Court's judicial review procedures are broadly similar, there are several notable differences which you need to take into account. For ease, the table below highlights the key similarities and difference between the Upper Tribunal's judicial review procedures and High Court's. The first row shows where the Upper Tribunal's and High Court's procedures are the same. The next two rows show that the 'step' applies only to one or the other. The other rows denote that the time limit is different between the Upper Tribunal and High Court. It is worth noting the deadlines for lodging an appeal also differ between the Upper Tribunal and High Court, further details of which can be found in section 7 - Post Hearing/Onward appeals.

Step or procedure	Upper Tribunal	High Court
Initial Steps		
Applying for permission to bring JR (Upper Tribunal and High Court steps are the same)	Promptly and in any event not later than 3 months from the date of the decision, action or omission to which the application relates. (UTPR 28(2)).	Promptly, and in any event not longer than 3 months from the date of the decision, action or omission to which the application relates. (CPR 54.5(1)).
Two rows below - the steps applies to one or the other		
Applicant to provide all parties with any accompanying documents and a statement to the UT of when this was complied with (**UT Specific**)	Within 9 days of making the paid application to the UT. (UTPR 28A).	N/A
Service of claim form by applicant on the defendant (**HC Specific**)	The Upper Tribunal Rules do not formally require service of the sealed claim form although letters issued by the Upper Tribunal do inform applicants that they must do this.	Within 7 days of date of issue (CPR 54.7). The service date is considered to be the 2nd working day after posting of claim form by post or on same day if served by fax or by hand. Service by email is not accepted.
Acknowledgement of Service	21 days after the date the application was provided by the applicant. (UTPR 29(1)).	Within 21 days of service of the claim form. (CPR 54.8(2)). The service date is considered to be the 2nd working day after the date of the order if posted. Does not apply if the order is made at hearing then the date is the date of the order.
If Permission is Granted on the Papers		
Detailed grounds of defence	Within 35 days from the UT sending the notice of the grant	Within 35 days of service of the order granting

	of permission. (UTPR 31(2)).	permission. (CPR 54.14(1)).
If Permission is Refused on the Papers		
If permission was refused as “totally without merit”	No right to renew. (UTPR 30(4A)).	No right to renew. (CPR 54.12(7)).
Time limits below are different between Upper Tribunal and High Court		
Application to renew to oral hearing	Received by the UT within 9 days of the date on which the UT sent written notice of its refusal. (UTPR 30(5)).	Within 7 days after service of the reasons for refusal. (CPR 54.12(4)). The service date is considered to be the 2nd working day after the date of the order if posted. Exception is if the order is made at hearing then the date is the date of the order.

1.3.3. Types of relief that can be granted as a result of a judicial review

If a claim for judicial review is refused permission or dismissed, then the Home Office’s decision or position remains unaffected. If the claim is allowed then the court will consider what type of relief to grant the claimant and sets this out in a court order. The types of relief that a court can grant are:

- **a quashing order** – ‘quashes’ a decision, which means that the decision is revoked and no longer has any legal effect and must be taken again, sometimes within a particular period
- **a prohibiting order** – prevents the Home Office from taking the action specified in the order, for example removal
- **a mandatory order** – compels the Home Office to take the action specified in the order, for example to accommodate the claimant
- **a declaration** – stating the legality of a decision, policy or legislative provision - this can, in the context of legislation, include a declaration of incompatibility with the Human Rights Act; should a judicial review seek a declaration of incompatibility with the Human Rights Act or challenge primary legislation you should bring it to the attention of a senior manager
- **damages -** the award of money to compensate for any loss caused or as punitive damages in order to punish the defendant for his unlawful action - if

a separate hearing is required to decide the level of damages or compensation, the matter may be transferred to the Queen's Bench Division of the High Court (QBD)

Even if a claim for judicial review is allowed, the court does not have to grant any form of relief at all. It will only grant the form of relief it deems appropriate.

1.3.4. Secretary of State for the Home Department (SSHD): interested party

Sometimes the Secretary of State for the Home Department is not the defendant but is named as an interested party in litigation. These cases will be allocated to a GLD and litigation caseworker as normal but will be triaged (for more information see litigation triage) to decide whether the Secretary of State for the Home Department should liaise with the government department or other party named as the defendant to ensure the Secretary of State for the Home Department's interests are represented. The triage team will provide advice to the litigation caseworker on how to proceed. This does not apply to Cart cases.

1.4. Working with lawyers

1.4.1. The Government Legal Department

The Government Legal Department (GLD),formerly known as Treasury Solicitors, act as the Secretary of State for the Home Department's (SSHD) solicitors. GLD is a non-ministerial government department providing legal services to the majority of central government departments, including the Home Office.

The GLD's Immigration litigation teams operate as the Home Office's legal representatives in all judicial reviews, providing legal advice on the handling of that litigation and liaising with the courts as well as the claimants and their legal representatives.

The GLD take instructions from litigation caseworkers on the handling of judicial review claims. They also engage and instruct counsel on behalf of the Home Office to provide advice on individual cases, and to represent the SSHD in court.

Litigation caseworkers should be aware of the service level agreement between Home Office and the GLD's Legal services on borders and immigration | Horizon. This guidance outlines what each party is expected to do during the life of a claim for judicial review and the timescales, although it does not yet reflect the service of judicial reviews direct on the HO.

The GLD charge the Home Office for the work they carry out. Where time permits HOLA should be consulted before the GLD seek counsel's advice on a point of interpretation of legislation as they will have been involved in the

drafting of the law and their advice can avoid building up legal costs on a case which we may decide to concede (see below).

1.4.2. Home Office Legal Advisers

The Home Office Legal Advisers (HOLA) is also a part of GLD, although it is embedded within the Home Office. It provides legal advice to ministers and officials in the Home Office. This primarily concerns legal advice on the functions of the department, including legislation, policy and operations. Policy leads and HOLA are not involved in all judicial reviews, but should be consulted where there is a challenge which if successful will require a change to law or policy or where the case is sensitive or high profile. HOLA and policy will normally decide at triage whether they need to be involved in a case.

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2. Pre-Action Protocol letters (PAPs)

2.1. Introduction

2.1.1. This guidance

This guidance instructs Home Office staff on how to process pre-action protocol letters that relate to the department's immigration functions (excluding national security cases). It covers how they are received, assigned to a litigation caseworker or team and how they should be responded to.

All Home Office staff should normally follow this guidance. The exception is if they are authorised to depart from it by another piece of official guidance. Judicial review guidance can be found on Horizon.

Page 29 of the GLD document 'The Judge over Your Shoulder' provides useful information on the pre-action protocol stage.

2.1.2. What is a Pre-Action protocol letter?

A pre-action protocol letter (PAP) is a letter written to the Home Office in order to try and resolve a dispute before court proceedings are started. The purpose is to avoid the time and cost of raising a claim for judicial review. These will normally be from people who wish to challenge a decision the department has made, but they can also be about a failure to make a decision, or concerns with immigration law and policy.

A pre-action protocol letter may also be called a 'letter before claim' or a 'letter before action'. All of these terms refer to the same thing.

Pre-action protocol letters are not normal correspondence – they are not formal litigation. The purpose of the process of sending and responding to them is set out in the court's Civil Procedure Rules.

Failure to follow this protocol has legal consequences. One of the most important of these is about costs. If either party to a judicial review fails to follow the protocol they can be made to pay theirs and the other sides' legal costs, even if they win the case.

The pre-action protocol does not always apply in urgent cases, for example where departure arrangements have been set, or a person seeks to be released from immigration detention.

For more information on the pre-action protocol you should refer to the GLD guidance 'The Judge over your Shoulder' and the Civil Procedure Rules.

2.2. Receiving a Pre-Action Protocol (PAP) letter

2.2.1. Valid service and actions to be undertaken on a new PAP letter

PAP letters served on Litigation Operations (Allocation Hub)

All PAP letters must be served by post or email to the Litigation Operations (allocation hub). This requirement is set out in the Civil Procedure Rules.

Claimants are should complete the PAP for Judicial Review form, although it is not mandatory. The pro forma is not appropriate in urgent cases, for example when a person is about to be removed from the UK. The form is also not appropriate for use as a letter before claim in Private Law Claims. See the Pre-Action Protocol for Judicial Review form.

The correct service addresses for postal and electronic service are:

- for postal service:

Litigation Operations Allocation Hub
Status Park 2
4 Nobel Drive
Harlington
Hayes Middlesex
UB3 5EY

- For electronic service: UKVIPAP@homeoffice.gsi.gov.uk

Entry clearance decisions can be challenged in court by a sponsor or an applicant. You must follow this note for entry clearance officers.

If a pre–action protocol letter is served on the Home Office incorrectly, but it is then forwarded to the correct service address it should be treated as if it was correctly served (save in regards to costs). In that situation the date of service should be treated as the date the pre-action protocol letter was received at the correct service address, not the date it was first received by the Home Office. The date of service is important because the Home Office normally needs to reply to a pre-action protocol letter within 14 days of receipt and not doing so may have cost implications.

Accepting the pre-action protocol letter from this stage reduces the need to engage in correspondence on technicalities and means that we can move to consider the substance of the letter. It does not mean we accept that the service was in accordance with the pre-action protocol.

If you need to retrieve the file, this can be done by completing the template on Doc Gen – ICD.4823 PAP Retrieving File, which can be accessed on the Doc Gen tree by accessing –Stock letters, Appeals and JRs and Litigation.

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3. Allocation of new judicial review

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4. Initial litigation caseworker consideration

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5. Permission Stage

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6. Substantive Hearing

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7. Post Hearing/Onward appeals

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8. Costs and damages for the standard judicial review process

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9. Costs and damages in criminality and detention cases

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10. Case Conclusion

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11. Glossary

11.1. Introduction

11.1.1. This guidance

This guidance provides Home Office staff with a glossary of common terms used in the judicial review process in England and Wales.

11.2. Glossary Terms

11.2.1. Terms used in the Judicial Review Process

Acknowledgement of Service (AOS)

This is the abbreviation for Acknowledgment of Service. The Government Legal Department (GLD) have 21 days from the date the judicial review is served to file an Acknowledgement of Service with the High Court/Upper Tribunal. The Acknowledgement of Service sets out whether the Home Office intends to defend or settle the judicial review.

Adjournment

The Government Legal Department (GLD) or the claimant's solicitors may seek an adjournment to allow more time to prepare for a hearing.

Adverse costs

Payment of costs for the 'other side' – e.g. if we settle a case because we have accepted we have made an error or handled it badly, we have to pay the claimant's solicitors their costs of bringing the judicial review.

Asylum Seekers Support System (ASYS)

Asylum Seekers Support System (ASYS). This system is updated in cases where the claimant receives asylum support.

CID

The Case Information Database (CID) is used to update progress of the case at each stage on the notes section.

Claimant/Applicant

The person who is challenging the Secretary of State's UK Visas & Immigration enforcement/Home Office decision.

Chronology

A chronology sets out a claimant's immigration history and time spent in the United Kingdom.

Court Order

A document from the High Court/Upper Tribunal which informs the claimant and defendant that either permission has been refused at the claimant's hearing or it may state certain directions from the court that either the defendant or claimant must follow.

Consent order

If a case is not defensible (or there are other reasons why we wish to settle a case) we invite the claimant to withdraw. The Government Legal Department (GLD) will draft a consent order, which basically explains what we have agreed to do, e.g. reconsider the claimant's submission. This is a legally binding document that once signed by the claimant and GLD will be sent to the High Court/Upper Tribunal for them to place their seal on.

Breaching a consent order

If the Department has agreed to take an action (e.g. reconsider further submissions in a timeframe) but has not done so, the Secretary of State for the Home Department (SSHD) can be found in contempt of court.

Costs (running costs)

This refers to how much GLD and counsel charge for their services. GLD charge for the amount of time and work they spend on each case, i.e. for things like telephone calls and emails to the caseworker, gathering information, preparing their prognosis letter and summary grounds. Where possible we should attempt to keep the costs of each case to a minimum.

Court in recess

The courts will go into recess during summer and Christmas and have limited expedited 'slots'. Now that fresh claims have been transferred to the Upper Tribunal this should have less of an impact.

Csol

Claimant solicitors. The solicitors acting for the claimants/"other side".

Defendant/respondent

The Secretary of State /UK Visas & Immigration / Immigration Enforcement.

Duty of Candour

This is the duty of parties to disclose documents necessary for the just and fair disposal of the case.

Disclosure

The duty of disclosure is to provide each party and the court with all relevant material before the hearing so that it may assess the strengths and weaknesses of its case.

Embargoed judgment

The main purpose of the court providing the judgment to GLD and instructing clients prior to hand down is so that they may consider any typographical amendments to the judgment and allow the parties to discuss the judgment with their lawyers in order to consider issues such as costs and whether to apply for permission to appeal.

You must follow the terms of the requirements of the embargo and failure to do so is taken very seriously by the court. Once the embargo has been lifted, you can then take forward the actions on the case. This includes notifying the relevant senior caseworker/manager, relevant colleagues across the business about the outcome of the hearing and updating CID notes and judicial review screen.

Expedited cases

This is a process that allows a judicial review to be looked at by the court much faster. Cases to be expedited should be considered using the expedition criteria, which is subject to sufficient capacity of the court.

Extension of time (EOT)

If for any reason the 21 day deadline cannot be met, GLD can ask the High Court/ Upper Tribunal and the claimant's solicitors to agree to an extension of time – usually a further 21 days. Either the court or the claimant's solicitors can object and might not agree to a further extension. This also has cost implications – around £80 each time for the Upper Tribunal and £155 for the High Court. A litigation caseworker must seek approval from their line manager and explain why we need an extension. Once an extension of time has been sought on a case it can no longer be expedited.

Home Office Legal Advisers Branch (HOLA)

Secretary of State for the Home Department legal advisers.

Judgment

This is the decision given down by the court or tribunal, following an oral hearing. It is usually handed down as a written judgment but can be given orally.

Judicial Review

A judicial review is a type of legal challenge where an individual asks the High Court or Upper Tribunal to review the lawfulness of a decision, action or failure to act of a public body or government department. It can also be used to challenge secondary legislation, the immigration rules or policy, or the compatibility of an act of Parliament with the Convention rights under the ECHR.

It can only be used where there is no avenue of appeal or where all avenues of appeal have been exhausted. It is different from a statutory appeal because the court should not normally substitute what it thinks is the 'correct' decision, it will only decide if the decision made was lawful.

Litigant in Person

The claimant has no solicitors and will be representing themselves. If they are detained then arrangements will need to be made for them to attend any oral permission hearing.

No order for costs

Preferred terms for settling costs issue, usually in terms of a consent order. Means that each party must bear their own costs.

Notice of Discontinuance

If the claimant decides they no longer wish to continue with their judicial review, they must complete a notice of discontinuance form and file this with the court. If a claimant discontinues, strictly they are liable for the defendant’s costs. For that reason, often a claimant will seek to discontinue by way of a consent order providing for no order as to costs.

Oral renewal hearing

If the claimant has been refused permission to proceed with their judicial review claim, they can renew their claim and must submit grounds for why they have renewed. There is usually one judge present at an oral permission hearing (OPH) and is supported by counsel for both sides to assist the judge in making a decision. Hearings last approximately 30 minutes to an hour.

Paper determination/decision

A single judge will looks at the written evidence supplied by the claimant’s solicitors and the Government Legal Department (GLD) and makes a decision on whether the judicial review should be granted permission to proceed.

Policy Team

They will provide advice on how to defend challenges and ensure that our arguments are in line with our policy intention.

Pre-Action Protocol Letter (PAP)

A pre-action protocol is a letter that is written to the Home Office in order to try and resolve a dispute before court proceedings are started. The purpose is to avoid the time and cost of raising a claim for judicial review. These will normally be from people who disagree or have further evidence to support their case, but they can also be about a failure to make a decision, or concerns with immigration law and policy.

Prognosis letter

The Government Legal Department (GLD) will provide the litigation caseworker with written advice setting out their legal opinion as to whether the Home Office would be likely to win or lose the case should it proceed to judicial consideration.

Reasonable costs

Where it is considered that the Secretary of State for the Home Department is liable to pay the adverse costs of the claimant where they have received their effective remedy by going through the judicial review process, the Secretary of State for the Home Department will agree to an order agreeing to 'pay reasonable costs'. This may be due to Home Office error/delay/mishandling or by being a pragmatic/cost effective way of concluding the litigation

Rolled up hearing

This is where a judge may order that both the permission stage and substantive stage be heard at the same time i.e. if permission is granted, the substantive hearing will follow immediately afterwards.

Sealed/unsealed claim form

In order for the judicial review claim form to have been served correctly it must firstly have been sealed with a stamp by the court. If the claim form is not sealed then the 21 days to file the AoS has not yet started.

Silver cases

These are defensible cases which are usually straight forward, therefore GLD will not provide a prognosis letter, to help in reducing costs. The caseworker will usually only need to provide a detailed chronology for GLD.

Stay -'Stay of Proceedings'

A stay imposes a halt on proceedings, apart from taking any steps allowed by the Rules or the terms of the stay. Proceedings can be continued if a stay is lifted (Civil Procedure Rules).

Substantive hearing

If the judge on the papers or at an OPH grants permission – s/he considers that the case is ‘arguable’. Hearings last approximately 2 – 6 hours, but sometimes can be listed to take more than one day.

Summary Grounds of Defence (SG)

These usually accompany the Acknowledgement of Service (AoS) and provide an outline of why we consider the Secretary of State for the Home Department is correct in our decision making process. These are usually drafted by the Government Legal Department (GLD) but can be drafted by senior case workers where the local practice indicates that is the standard procedure (e.g. third country cases).

Supplementary letter

A supplementary letter provides further reasons or details for making a decision/refusing a case. It can also be issued in response to further submissions raised during the litigation where it is pragmatic to do so

Triage

Litigation triage is a process to ensure that all cases are reviewed by policy, Home Office Legal Advisers Branch (HOLA) and litigation senior caseworkers (SCWs) for legal risks to Home Office policies and procedures before they get to court.

GLD

It is the abbreviation for the Government Legal Department which was formerly the Treasury Solicitor’s Department (TSols).

Withdrawn by Consent

Relates to the scenario whereby we have agreed the action to be taken with the other side in the form of a consent order, usually to provide an alternative remedy or otherwise conclude the litigation.

12. ANNEX: CID GUIDANCE

Official sensitive - do not disclose - start of section

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13. Annex – Costs submission template

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14. Annex - Pro-Forma-Compensation and Claimant's Legal Costs

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15. Annex - Chronology

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16. Version History

<table>
<tr><td rowspan="3">0.1</td><td>Summary of Changes:</td><td colspan="3">Judicial review guidance</td></tr>
<tr><td>Drafted by:</td><td>The Legal Strategy Team</td><td>Date Issued:</td><td>August 2015</td></tr>
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