

PRE-ACTION PROTOCOL FOR JUDICIAL REVIEW

Introduction

1. This protocol applies to proceedings within England and Wales only. It does not affect the time limit specified by Rule 54.5(1) of the Civil Procedure Rules which requires that any claim form in an application for judicial review must be filed promptly and in any event not later than 3 months after the grounds to make the claim first arose or the shorter time limits specified by Rules 54.5(5) and (6) which set out that a claim form for certain planning judicial reviews must be filed within 6 weeks and the claim form for certain procurement judicial reviews must be filed within 30 days.¹

2. This protocol sets out a code of good practice and contains the steps which parties should generally follow before making a claim for judicial review.

3. The aims of the protocol are to enable parties to prospective claims to:

- (a) understand and properly identify the issues in dispute in the proposed claim and share information and relevant documents;
- (b) make informed decisions as to whether and how to proceed;
- (c) try to settle the dispute without proceedings or reduce the issues in dispute;
- (d) avoid unnecessary expense and keep down the costs of resolving the dispute; and
- (e) support the efficient management of proceedings where litigation cannot be avoided.

4 Judicial review allows people with a sufficient interest in a decision or action by a public body to ask a judge to review the lawfulness of:

- an enactment; or
- a decision, action or failure to act in relation to the exercise of a public function.²

5 Judicial review should only be used where no adequate alternative remedy, such as a right of appeal, is available. Even then, judicial review may not be appropriate in every instance. Claimants are strongly advised to seek appropriate legal advice as soon as possible when considering proceedings. Although the Legal Aid Agency will

¹ The court has a discretion to extend time. It cannot be taken that compliance with the protocol will of itself be sufficient to excuse delay or justify an extension of time, but it may be a relevant factor. Under rule 54.4(2), judicial review time limits cannot be extended by agreement between the parties. However, a court will take account of a party's agreement 'not to take a time point' so far as concerns delay while they were responding to a letter before claim.

² Civil Procedure Rules, r. 54.1(2)

not normally grant full representation before a letter before claim has been sent and the proposed defendant given a reasonable time to respond, initial funding may be available, for eligible claimants, to cover the work necessary to write this. (See Annex C for more information.)

6 This protocol will not be appropriate in very urgent cases. In this sort of case, a claim should be made immediately. Examples are where directions have been set for the claimant's removal from the UK or where there is an urgent need for an interim order to compel a public body to act where it has unlawfully refused to do so, such as where a local housing authority fails to secure interim accommodation for a homeless claimant. A letter before claim, and a claim itself, will not stop the implementation of a disputed decision, though a proposed defendant may agree to take no action until its response letter has been provided. In other cases, the claimant may need to apply to the court for an urgent interim order. Even in very urgent cases, it is good practice to alert the defendant by telephone and to send by email (or fax) to the defendant the draft Claim Form which the claimant intends to issue. A claimant is also normally required to notify a defendant when an interim order is being sought.

7 All claimants will need to satisfy themselves whether they should follow the protocol, depending upon the circumstances of the case. Where the use of the protocol is appropriate, the court will normally expect all parties to have complied with it in good time before proceedings are issued and will take into account compliance or non-compliance when giving directions for case management of proceedings or when making orders for costs.¹

Alternative Dispute Resolution

8 The courts take the view that litigation should be a last resort. The parties should consider whether some form of alternative dispute resolution ('ADR') or complaints procedure would be more suitable than litigation, and if so, endeavour to agree which to adopt. Both the claimant and defendant may be required by the court to provide evidence that alternative means of resolving their dispute were considered. Parties are warned that if the protocol is not followed (including this paragraph) then the court must have regard to such conduct when determining costs. However, parties should also note that a claim for judicial review should comply with the time limits set out in the Introduction above. Exploring ADR may not excuse failure to comply with the time limits. If it is appropriate to issue a claim to ensure compliance with a time limit, but the parties agree there should be a stay of proceedings to explore settlement or narrowing the issues in dispute, a joint application for appropriate directions can be made to the court.

9 It is not practicable in this protocol to address in detail how the parties might decide which method to adopt to resolve their particular dispute. However, summarised below are some of the options for resolving disputes without litigation which may be appropriate, depending on the circumstances:

¹ Civil Procedure Rules, Costs Practice Direction

- Discussion and negotiation.
- Using relevant public authority complaints or review procedures.
- Ombudsmen – the Parliamentary and Health Service and the Local Government Ombudsmen have discretion to deal with complaints relating to maladministration. The British and Irish Ombudsman Association provide information about Ombudsman schemes and other complaint handling bodies and this is available from their website at www.bioa.org.uk. Parties may wish to note that the Ombudsmen are not able to look into a complaint once court action has been commenced.
- Mediation – a form of facilitated negotiation assisted by an independent neutral party.

10 The predecessor to the Legal Aid Agency (Legal Services Commission) published a booklet on “Alternatives to Court”, CLS Direct Information Leaflet 23 <http://webarchive.nationalarchives.gov.uk/20060820083451/clsdirect.org.uk/documents/leaflet23e.pdf> www.clsdirect.org.uk), which lists a number of organisations that provide ADR services. The Civil Justice Council and Judicial College have endorsed *The Jackson ADR Handbook* by Susan Blake, Julie Browne and Stuart Sime (2013, Oxford University Press). The Citizens Advice Bureaux website also provides information about ADR: http://www.adviceguide.org.uk/england/law_e/law_legal_system_e/law_taking_legal_action_e/alternatives_to_court.htm

11 If proceedings are issued, the parties may be required by the court to provide evidence that ADR has been considered. A party’s silence in response to an invitation to participate in ADR or refusal to participate in ADR might be considered unreasonable by the court and could lead to the court ordering that party to pay additional court costs.

Requests for information and documents at the pre-action stage

12 Requests for information and documents made at the pre-action stage should be proportionate and should be limited to what is properly necessary for the claimant to understand why the challenged decision has been taken and/or to present the claim in a manner that will properly identify the issues. The defendant should comply with any request which meets these requirements unless there is good reason for it not to do so. Where the court considers that a public body should have provided **relevant** documents and/or information, particularly where this failure is a breach of a statutory or common law requirement, it may impose costs sanctions.

The letter before claim

13 In good time before making a claim, the claimant should send a letter to the defendant. The purpose of this letter is to identify the issues in dispute and establish whether they can be narrowed or litigation can be avoided.

14 Claimants should normally use the suggested **standard format** for the letter outlined at Annex A.

15 The letter should contain **the date and details of the decision, act or omission being challenged, a clear summary of the facts and the legal basis for the claim**. It should also contain the details of any information that the claimant is seeking and an explanation of why this is considered relevant. If the claim is considered to be an Aarhus Convention claim (see CPR Part 45.41 to 45.44 and Practice Direction 45), the letter should state this clearly and explain the reasons, since specific rules as to costs apply to such claims. If the claim is considered appropriate for allocation to the Planning Court and/or for classification as “significant” within that court, the letter should state this clearly and explain the reasons.

16 The letter should normally contain the **details of any person known to the claimant who is an Interested Party**. An Interested Party is any person directly affected by the claim.¹ They should be sent a **copy** of the letter before claim **for information**. **Claimants are strongly advised to seek appropriate legal advice when considering proceedings which involve an Interested Party and, in particular, before sending the letter before claim to an Interested Party or making a claim.**

17 A claim should not normally be made until the proposed reply date given in the letter before the claim has passed, unless the circumstances of the case require more immediate action to be taken. The claimant should send the letter before claim in good time so as to enable a response which can then be taken into account before the time limit for issuing the claim expires, unless there are good reasons why this is not possible.

18 Any claimant intending to ask for a protective costs order (an order that the claimant will not be liable for the costs of the defendant or any other party or to limit such liability) should explain the reasons for making the request, including an explanation of the limit of the financial resources available to the claimant in making the claim.

The letter of response

19 Defendants should normally respond within 14 days using the **standard format** at Annex B. Failure to do so will be taken into account by the court and sanctions may be imposed unless there are good reasons.² Where the claimant is a litigant in person, the defendant should enclose a copy of this Protocol with its letter.

¹ See Civil Procedure Rules, r.54.1(2)

² See Civil Procedure Rules, Pre-Action Protocols Practice Direction, paras 2-3

20 Where it is not possible to reply within the proposed time limit the defendant should send an interim reply and propose a reasonable extension, giving a date by which the defendant expects to respond substantively. Where an extension is sought, reasons should be given and, where required, additional information requested. **This will not affect the time limit for making a claim for judicial review**¹ nor will it bind the claimant where he or she considers this to be unreasonable. However, where the court considers that a subsequent claim is made prematurely it may impose sanctions.

21 If the **claim is being conceded in full**, the reply should say so in clear and unambiguous terms.

22 If the **claim is being conceded in part or not being conceded at all**, the reply should say so in clear and unambiguous terms, and:

- (a) where appropriate, contain a new decision, clearly identifying what aspects of the claim are being conceded and what are not, or, give a clear timescale within which the new decision will be issued;
- (b) provide a fuller explanation for the decision, if considered appropriate to do so;
- (c) address any points of dispute, or explain why they cannot be addressed;
- (d) enclose any **relevant** documentation requested by the claimant, or explain why the documents are not being enclosed;
- (e) where documents cannot be provided within the time scales required, then give a clear timescale for provision. The claimant should avoid making any formal application for the provision of documentation/information during this period;
- (f) where appropriate, confirm whether or not they will oppose any application for an interim remedy; and
- (g) if the claimant has stated an intention to ask for a protective costs order, the defendant's response to this should be explained.

If the letter before claim has stated that the claim is an Aarhus Convention claim but the defendant does not accept this, the reply should state this clearly and explain the reasons. If the letter before claim has stated that the claim is suitable for the Planning Court and/or categorisation as “significant” within that court but the defendant does not accept this, the reply should state this clearly and explain the reasons.

23 The response should be sent to **all Interested Parties**² identified by the claimant and contain details of any other persons who the defendant considers are Interested Parties.

² See Civil Procedure Rules, r.54.5(1)

² See Civil Procedure Rules, r.54.1(2)(f)

ANNEX A

Letter before claim

Section 1. Information required in a letter before claim

1 Proposed claim for judicial review

To

(Insert the name and address of the proposed defendant – see details in section 2)

2 The claimant

(Insert the title, first and last name and the address of the claimant)

3 The defendant's reference details

(When dealing with large organisations it is important to understand that the information relating to any particular individual's previous dealings with it may not be immediately available, therefore it is important to set out the relevant reference numbers for the matter in dispute and/or the identity of those within the public body who have been handling the particular matter in dispute – see details in section 3)

4 The details of the claimants' legal advisers, if any, dealing with this claim

(Set out the name, address and reference details of any legal advisers dealing with the claim)

5 The details of the matter being challenged

(Set out clearly the matter being challenged, particularly if there has been more than one decision)

6 The details of any Interested Parties

(Set out the details of any Interested Parties and confirm that they have been sent a copy of this letter)

7 The issue

(Set out a brief summary of the facts and relevant legal principles, the date and details of the decision, or act or omission being challenged, and why it is contended to be wrong).

8 The details of the action that the defendant is expected to take

(Set out the details of the remedy sought, including whether a review or any interim remedy are being requested)

9 ADR proposals

(Set out any proposals the claimant is making to resolve or narrow the dispute by

ADR)

10 The details of any information sought

(Set out the details of any information that is sought which is related to identifiable issues in dispute so as to enable the parties to resolve or reduce those issues. This may include a request for a fuller explanation of the reasons for the decision that is being challenged)

11 The details of any documents that are considered relevant and necessary

(Set out the details of any documentation or policy in respect of which the disclosure is sought and explain why these are relevant)

12 The address for reply and service of court documents

(Insert the address for the reply)

13 Proposed reply date

(The precise time will depend upon the circumstances of the individual case. However, although a shorter or longer time may be appropriate in a particular case, 14 days is a reasonable time to allow in most circumstances)

Section 2. Address for sending the letter before claim

Public bodies have requested that, for certain types of cases, in order to ensure a prompt response, letters before claim should be sent to specific addresses.

•Where the claim concerns a decision in an Immigration, Asylum or Nationality case:

The claim should be sent electronically to the following Home Office email address:

UKVIPAP@homeoffice.gsi.gov.uk

Alternatively the claim may be sent by post to the following Home Office postal address:

Litigation Operations Allocation Hub

9th Floor

Lunar House

40 Wellesley Road

Croydon CR9 2BY

[The Home Office is developing a pro forma notice of its own for use by claimants in this class of case. It is consulting separately on the pro forma. The Civil Procedure Rule Committee will consider, in the light of the outcome of that consultation, whether to incorporate the pro forma or reference to it in this Pre-action Protocol.]

•**Where the claim concerns a decision by the Legal Aid Agency:**

The address on the decision letter/notification;

Principal Legal Adviser

Central Legal Team

Legal Aid Agency

102 Petty France

London SW1H 9AJ

•**Where the claim concerns a decision by a local authority:**

The address on the decision letter/notification; and

their legal department¹

•**Where the claim concerns a decision by a department or body for whom Treasury Solicitor acts *and Treasury Solicitor has already been involved in the case* a copy should also be sent, quoting the Treasury Solicitor's reference, to:**

The Treasury Solicitor,

One Kemble Street,

London WC2B 4TS

In all other circumstances, the letter should be sent to the address on the letter notifying the decision.

Section 3. Specific reference details required

Public bodies have requested that the following information should be provided in order to ensure prompt response. **Where the claim concerns an Immigration, Asylum or Nationality case, dependent upon the nature of the case:**

- The Home Office reference number;
- The Port reference number;
- The Asylum and Immigration Tribunal reference number;
- The National Asylum Support Service reference number; or, if these are unavailable:
- The full name, nationality and date of birth of the claimant.

Where the claim concerns a decision by the Legal Aid Agency:

- The certificate reference number.

¹ The relevant address should be available from a range of sources such as the Phone Book; Business and Services Directory, Thomson's Local Directory, CAB, etc.

Annex B

Response to a letter before claim

Information required in a response to a letter before claim

1 The claimant

(Insert the title, first and last names and the address to which any reply should be sent)

2 From

(Insert the name and address of the defendant)

3

Reference details

(Set out the relevant reference numbers for the matter in dispute and the identity of those within the public body who have been handling the issue)

4 The details of the matter being challenged

(Set out details of the matter being challenged, providing a fuller explanation of the decision, where this is considered appropriate)

5 Response to the proposed claim

(Set out whether the issue in question is conceded in part, or in full, or will be contested. Where an interim reply is being sent and there is a realistic prospect of settlement, details should be included. If the claimant is a litigant in person, a copy of the Pre-Action Protocol should be enclosed with the letter)

6 Details of any other Interested Parties

(Identify any other parties who you consider have an interest who have not already been sent a letter by the claimant)

7 ADR proposals

(Set out the defendant's position on any ADR proposals made in the letter before claim and any ADR proposals by the defendant)

8 Response to requests for information and documents.

(Set out the defendant's answer to the requests made in the letter before claim including reasons why any requested information or documents are not being disclosed)

9 Address for further correspondence and service of court documents

(Set out the address for any future correspondence on this matter)

Annex C

Notes on public funding for legal costs in judicial review

Public funding for legal costs in judicial review is available from legal professionals and advice agencies which have contracts with the Legal Aid Agency. Funding may be provided for:

- **Legal Help** to provide initial advice and assistance with any legal problem; or
- **Legal Representation** to allow you to be represented in court if you are taking or defending court proceedings. This is available in two forms:
 - **Investigative Help** is limited to funding to investigate the strength of the proposed claim. It includes the issue and conduct of proceedings only so far as is necessary to obtain disclosure of relevant information or to protect the client's position in relation to any urgent hearing or time limit for the issue of proceedings. This includes the work necessary to write a letter before claim to the body potentially under challenge, setting out the grounds of challenge, and giving that body a reasonable opportunity, typically 14 days, in which to respond.
 - **Full Representation** is provided to represent you in legal proceedings and includes litigation services, advocacy services, and all such help as is usually given by a person providing representation in proceedings, including steps preliminary or incidental to proceedings, and/or arriving at or giving effect to a compromise to avoid or bring to an end any proceedings. Except in emergency cases, a proper **letter before claim** must be sent and the other side must be given an opportunity to respond before Full Representation is granted.

Further information on the type(s) of help available and the criteria for receiving that help may be found in the Legal Aid Agency's pages on the Ministry of Justice website at:

<http://www.justice.gov.uk/legal-aid>

A list of contracted firms and Advice Agencies may be found at:

<http://find-legal-advice.justice.gov.uk>