

January/13

Section Contents

Judicial Review Process

Section 3

- 3.1 Judicial Review/Upper Tribunal
- 3.2 Judicial Review at the Court of Appeal
- 3.3 Judicial Review at the Supreme Court
- 3.4 Conceded Judicial Reviews/Consent Orders
- 3.5 Judicial Review and injunctions In enforcement cases
- 3.6 Judicial Review process map

Archive

Judicial Review Guidance

Section 3

Judicial Review Process

3.1 Judicial Review/Upper Tribunal

For a caseworker the Judicial Review (JR) process begins when they receive a JR bundle from Treasury Solicitor's Department. Key stages in the JR process are:

- **Permission stage:** The Court's permission is required for a claim for Judicial Review to proceed. Decisions on permission are normally considered on a review of the papers filed. Permission may be granted in full, or limited to certain grounds set out in the claim.

In cases where the Court refuses permission (either in full or in part), it will set out the reasons. The claimant may request that the decision be reconsidered at a hearing (referred as an "oral renewal"). A request for an oral renewal must be filed within seven days of service of the reasons for refusing permission.

The oral renewal is a full reconsideration of the matter, supported by oral submissions. Where permission is granted, the claim will continue as normal. Where it is refused, the claimant may appeal to the Court of Appeal.

Where permission is granted the Court may make directions for the conduct and management of the case, setting out time limits for example, for the filing and serving of the particulars of the claim, the defence to the claim and any evidence on which the parties wish to rely.

Matters may be expedited with the Court's permission: for example, the permission and the substantive hearing may be "rolled up" so that both are considered at the same hearing.

The relevant process and deadlines for UK Border Agency and the Treasury Solicitor's Department actions can be found in sections 1, 2 and 3 of the Service Level Agreement (SLA) – see link below.

<http://horizon.gws.gsi.gov.uk/portal/site/horizon-intranet/menuitem.5e9fdfa5b28a104a43757f10466b8a0c/?vgnnextoid=2a01592e702a6310VgnVCM2000003cb1a8c0RCRD>

- **Substantive hearing:** If permission to proceed is granted - and neither party seeks to withdraw - the JR will proceed to a substantive hearing. The relevant process and deadlines for UK Border Agency and Treasury Solicitor's Department actions can be found in section 4 of the SLA (see

link above).

- **Litigation Triage team:** Treasury Solicitors will send all JRs granted permission (and any cases they identify as being significant pre-permission cases) to the Triage team. The Triage team is made up of representatives from Immigration and Border Policy Directorate/Legal Advisers Branch/Operational Policy and Rules Unit and Appeals Litigation Directorate. The team will review all cases notified to them and will ensure that any cases where policy input or legal advice is required, are referred to the appropriate area. Where the Triage team thinks it appropriate they will make recommendations to case workers on whether to pursue a case. The triage team may also request further information from case workers. If case owners receive a triage e-mail they should respond to any recommendation or request made. Where case workers feel they need policy or LAB advice they do not need to wait for triage and should request advice directly. If case workers are unsure who to contact for advice they should refer queries to their senior caseworker or line manager.

Occasionally, the claimant or the UK Border Agency may seek to appeal a decision on a substantive JR to the Court of Appeal. That will involve seeking permission from the Court or Tribunal below to go to the Court of Appeal in the first instance. The relevant process and deadlines for UK Border Agency and Treasury Solicitor's Department actions can be found in sections 7 8 and 9. 8 of the SLA (see link above).

3.2 Judicial Review at the Court of Appeal

It is unusual for a JR to be granted permission for a substantive hearing at the Court of Appeal. However it does occasionally happen - the relevant process and deadlines for UK Border Agency and Treasury Solicitor's Department actions can be found in section 9 of the SLA (see link above).

3.3 Judicial Review at the Supreme Court

Either party may appeal a decision of the Court of Appeal on a substantive JR to the Supreme Court. If it is the claimant who is appealing, the process and deadlines for UK Border Agency and Treasury Solicitor's Department actions can be found in sections 14 and 15 of the SLA (see link above). Exceptionally the UK Border Agency may appeal a JR to the Supreme Court - the relevant process and deadlines for UK Border Agency and Treasury Solicitor's Department actions can be found in sections 17 and 18 of the SLA (see link above).

3.4 Conceded Judicial Reviews/Consent Orders

It is important that if an error has been made or there is some other reason for settling a case that decision is taken as quickly as possible to reduce cost. So the first thing that a case worker should do is review the case and decide whether it should be settled.

Reasons why a UK Border Agency caseworker might want to settle a case include:

- The decision under challenge contains a material error of fact, policy or law;
- The challenge is to the absence of a decision or a delay and it is quicker and cheaper to make the decision than to defend the JR;
- There is advice from TSols or LAB or the triage team that there are good reasons to concede the case;
- Pursuing the JR is not cost effective - for example if permission is granted; in a fresh claim JR it can be cheaper and quicker to make a fresh decision (taking account of whether the claimant will ask for costs if a fresh decision is made)

The Treasury Solicitor's Department should be informed immediately when a case is to be settled and the terms of the settlement need to be agreed as they will need to be reflected in the consent order to dispose of the JR. If the case is not to be settled then the case worker must provide instructions and all necessary information to Treasury Solicitors in good time for them to file the Acknowledgement of Service and summary grounds of defence within 21 days (see process map below). An application for an extension of time to file an AoS costs £80 and therefore needs a very good reason to incur that expenditure. Case workers must therefore prioritise work to avoid the need to seek an extension of time. If it is necessary to seek an extension of time Treasury Solicitors must be instructed to do this before the 21 days has expired.

3.5 Judicial Review and injunctions in enforcement cases

Guidance on dealing with JRs in removal cases can be found [here](#)

3.6 Judicial Review process map

Note: This map assumes the case is not settled or withdrawn. In practice this can happen at any stage in the process. The Court can abridge time for the filing of the Acknowledgement Service (shorten time to respond)

