

**Time limits and service
in
judicial review and statutory challenges**

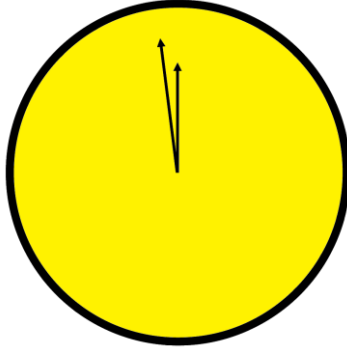
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Sources of Law and Guidance



- Statutes governing statutory challenges
 - The Civil Procedure Rules (statutory instruments), parts 54, 7, 8
 - Practice Directions
 - Administrative Court Guide (July 2017)
 - Pre-action protocol for judicial review
 - Case Law
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Last Minute Instructions to Issue a Claim



What to Do?

First...



Time Limits: Judicial Review Promptly/Three Months



- CPR 54.5(1)(a): The primary test is “promptly”
- CPR 54.5(1)(b): In any event- within 3 months
- **R. (on the application of Crompton) v South Yorkshire Police and Crime Commissioner** [2018] 1 W.L.R. 131 confirms principle in *R v Department of Transport ex p. Presvac Engineering (1991) 4 Admin LR 121, 131* that where a claim is brought promptly upon a Claimant becoming aware of grounds for challenge, but outside three months, it is out of time. But lack of knowledge of decision can be relevant to whether an extension of time for bringing the claim should be granted (*Presvac 133, 134*)
- Both conditions are extendable-
- CPR Part 3.1(2)(a) provides that except where the CPR provides otherwise, the court may “extend or shorten the time for compliance with any rule, practice direction or court order” (even where time has expired) **Gordon Peters v London Borough of Haringey v Lendlease Europe Holdings Ltd** [2018] EWHC 192 (Admin)- Ouseley J refused to extend time. See also eg. Lindblom J in **Connors v SSCLG** [2018] J.P.L. 516 at [74]-[88]
- **R. (on the application of Thornton Hall Hotel Ltd) v Wirral MBC** [2018] PTSR 954 extension of time of six years to allow quashing of a planning permission granted erroneously without intended conditions creating a temporary planning permission.

Judicial Review Promptness and 3 months



R (Sustainable Development Capital LLP) v SSBEIS [2017] EWHC 771 (Admin)

- Claim brought within three months of decision and five weeks after actual knowledge of the decision. Claim dismissed for lack of promptness.
- [31] Well-established that bringing claim within three months is not necessarily prompt: citing *Finn-Kelcey v Milton Keynes BC [2009] Env. L.R. 17 at paragraph 21*
- [32] Time begins to run on the date when the grounds of challenge first arose, usually the date on which the decision under challenge was taken. The time does not begin to run from the date when the Claimant knew of the grounds of challenge.
- [34] The use of the pre-action protocol procedure does not affect the time limits for bringing the claim under CPR 54.5, as the protocol itself makes clear.

Promptness/3 months



- Promptness requirement now largely eliminated from cases involving EU law (because too uncertain), but continues to apply to non-EU cases: **R (Berky) v Newport City Council** [2012] EWCA Civ 378
- Lawyer's delay not a good reason for extending time- see **Ex p. Furneaux** [1994] 2 All E.R. 652
- Not knowing about the decision- can theoretically be a good reason if expeditious thereafter- **World Development Movement** [1995] 1 W.L.R 386
- **Gerber v Wiltshire Council** [2016] W.L.R. 2593 inappropriate to extend time for bringing a legal challenge simply because an objector did not notice what was happening, or because of reliance on incorrect legal advice
- Delay obtaining legal aid – probably not a good reason- see **R (Kigen) v SSHD** [2016] 1 W.L.R.723.

Judicial Review: From when does time run?



- Basic Rule- CPR 54.5 when the grounds “first arose”, i.e. from the date of order or judgment etc.
- **R v Hammersmith and Fulham LBC ex p. Burkett** [2002] 1 WLR 1593: time runs from the actual grant of planning permission not the resolution to grant
- Contrast **Louden v Bury School Organisation Committee** [2002] EWHC 2749 (Admin) where challenge to a two-part school closure decision had to move against the first decision.

Some Other High Court Time Limits



- Public Contracts Regulations 2015 S.I. 2015/102- outsourcing public services (sometimes referred to as 'procurement'), 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).
- Judicial Review of the Upper Tribunal: 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: 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.

When to Challenge: Statutory Challenges



- The Challenge "window" in statutory challenges:
- **Enterprise Inns Plc v Secretary of State for the Environment, Transport and the Regions and Liverpool CC** (2001) 81 P.& C.R. 236 Kay J. held that an application to the High Court (under section 23 of the Acquisition of Land Act 1981) which was made after confirmation of the relevant compulsory purchase order but before the date on which notice of confirmation of the making of the order was first published was made too soon and hence he had no jurisdiction to hear the substantive issue..
- See also **R (On the Application of Hillingdon LBC) v Secretary of State for Transport** [2017] 1 WLR 2166: A claim under section 13 of the Planning Act 2008 to a prospective National Policy Statement on Heathrow before the six week period was precluded. NB It was significant that s.13(1) contained both a start date and an end date.
- **Hoare v Vale of White Horse** [2018] P.T.S.R. 210; John Howell QC at [183]:

"This claim was not brought under section 61N(1) in respect of the decision to adopt the FNP under section 38(A)(4) of the 2004 Act, as it was not brought within the "window" for doing so provided by that subsection, and that a court cannot now entertain proceedings for questioning the district council's decision to adopt the FNP in accordance with the time limits prescribed in that subsection. In my judgment it follows that the court may not entertain any questioning of that decision in these proceedings for judicial review."

When to Challenge: Statutory Challenges



- JR can be brought outside a statutory challenge window to certain collateral matters which would not otherwise be easily challengeable on the statutory review at the end of the process. Eg:

Manydown Co. Ltf v Basingstoke and Deane BC [2012] JPL 1188

- Council entered obligation to share development value with the freeholder if development took place before a particular date.
- Council then failed to promote the site for development.
- In allowing this decision to be judicially reviewed the court held that the preclusive provisions on challenge in section 113 of the PCPA 2004 did not apply to the decision not to promote the site in its core strategy since the document was not yet a “relevant document” within s.113(2).

When to Challenge: Statutory Challenges



- Planning, compulsory purchase challenges: time now usually runs from the day after the decision following amendments to planning legislation by the Criminal Justice and Courts Act 2015.
- Consequently in most cases if a decision is made on a Tuesday, Claimant has until six weeks later on a Tuesday to issue (till 3pm- see below).
- Still some exceptions where claim needs to be brought on the Monday (i.e. 41 days after).

When to Challenge: Statutory Challenges



- Section 118 Planning and Compulsory Purchase Act 2004 used to provide:
- “A court may entertain proceedings for questioning an order granting development consent only if (a) the proceedings are brought by a claim for judicial review and (b) the claim form is filed during the period of six weeks beginning with: (i) the day on which the order is published ...”
- **R (Blue Green London Plan v SSEFR)** [2015] EWHC 495, Ouseley J held time ran from the day of the decision (i.e. challenge within 41 days after the decision). There was no discretion to extend time and the claim was late. *Sales J refused permission to appeal* [2015] EWCA Civ 876.
- Applied **Barker v Hambleton DC** [2013] P.T.S.R. 41 (same principle applied to challenges to plans under section 113 PCPA 2004.

When to Challenge: Statutory Challenges



- Section 92 of the Criminal Justice and Courts Act 2015 amended section 118:

118 Legal challenges relating to applications for orders granting development consent

(1) A court may entertain proceedings for questioning an order granting development consent only if—

(a) the proceedings are brought by a claim for judicial review, and

(b) the claim form is filed [before the end of] ¹ the period of 6 weeks beginning with **the day after** —

(i) the day on which the order is published, or

(ii) if later, the day on which the statement of reasons for making the order is published

- So *Blue Green London Plan* is superseded

When to Challenge: Statutory Challenges



Criminal Justice and Courts Act also amended:

- Section 61N- Challenge to Neighbourhood Plans
- Section 92 of the Town and Country Planning Act 1990 (Neighbourhood development orders)
- Section 106C of the Town and Country Planning Act 1990 (variation of planning obligations).
- Section 287 Town and Country planning Act 1990 (Simplified planning zones and other planning documents)
- Section 288 Town and Country Planning Act 1990 (decisions on planning appeals)
- Section 22 of the Planning (Hazardous Substances) Act 1990
- Section 13 of the Planning Act 2008 (national policy statements)
- The Explanatory Notes to the 2015 Act state that all the unamended provisions stipulated that a challenge must be made during a period of six weeks beginning with the day on which a particular event occurred in relation to the decision or action being challenged.

When to Challenge: Statutory Challenges



- Section 23 of Acquisition of Land Act not amended. Quite a confusing case establishes that the same period applies however.

six weeks... (a) in the case of a compulsory purchase order to which the Statutory Orders (Special Procedure) Act 1945 applies (and which is not excluded by s.27 below), from the date on which the order becomes operative under that Act,

(b) in the case of a compulsory purchase order to which the said Act of 1945 does not apply, from the date on which notice of the confirmation or making of the order is first published in accordance with this Act,

(c) in the case of a certificate, the date on which notice of the giving of the certificate is first published in accordance with this Act.

- In **Okolo v SSE** [1997] 4 All E.R. 242 the impugned order was published on Monday 17 June. The claim was issued on Tuesday July 30 1996. Under the rules a challenge had to be brought within 6 weeks of the day of publication, The High Court held that the day of publication was excluded and time ran from the following day, the Tuesday, and that the “corresponding date” rule applied, so the application was in time. The Court of Appeal reversed, holding that time expired at midnight on Monday 17 June.
- Case seems to be incorrectly summarised and incorrectly applied in some subsequent cases, but seems to achieve the same end as the amended statutory provisions.

When to Challenge: Statutory Challenges



- **Nottingham City Council v Calverton Parish Council** [2015] P.T.S.R. 1130: If the six-week time limit under s.113(4) of the PCPA 2004 for applying to quash a development plan document expired on a day when the court office was closed, the period would be treated as ending on the next working day. Applying **Kaur v S Russell and Sons** [1973] Q.B. 336
- By contrast see **Croke v SSCLG** [2017] P.T.S.R. 116

Croke v SSCLG



Croke v SSCLG [2017] P.T.S.R. 116 (subject to appeal imminently)

Section 288(4B) of the Town and Country Planning Act 1990 provides claim

“ must be made before the end of the period of six weeks beginning with the day after”

- 10 February 2016 (Wednesday)
- Time starts to run on the day after the date of the decision letter, not the date of service, [Griffiths v Secretary of State for the Environment \[1983\] 2 AC 51](#) ;
- Held: time expired 23 March 2016 (Wednesday) despite possible issues accessing court.
- The claim form had been filed on 29 March 2016. The claimant knew that 23 March was the last day for filing the application, but missed his train and arranged by email for the papers to be hand-delivered before the court closed at 16.30. The court security staff refused entry to the Claimant’s agent at 16.25 on the ground that the counters were closed. Following day, used wrong form., day after that was Good Friday. Ouseley J struck out the claim. Came before Alice Robinson on oral renewal.
- The principle in [Kaur v S Russell & Sons Ltd \[1973\] Q.B. 336](#) (applied in [Calverton Parish Council v Nottingham City Council \[2015\] PTSR 1130](#)) that a claim could be brought on the next working day if the time limit for making it expired on a non-working day did not apply where a litigant had been physically prevented from accessing the court office on the last day before expiry of the time limit. Litigants had to anticipate that a court might be busy, or that there might be security procedures preventing them from accessing the court office before it closed for the day.

Croke (2)



Summary of Principles relating to Section 288 at paragraph [8]

- Time expires at midnight on the forty-second day, the time limit is absolute and cannot be extended even if the claimant had no knowledge of the action complained about; time continues to run over any weekend or bank holiday, [Stainer v Secretary of State for the Environment \(1992\) 65 P & CR 310](#); (v) if the last day falls on a weekend or bank holiday, time is extended to the next day the court office is open, [Calverton Parish Council v Nottingham City Council \[2015\] PTSR 1130](#).

- At [23]:

“Proceedings are started when the court issues a claim form at the request of the claimant ([CPR r 7.2\(1\)](#)) and a claim form is issued on the date entered on the form by the court ([CPR r 7.2\(2\)](#)), both of which are applied to [Part 8](#) claims by paragraph 4.1(1) of PD8A. The claim form in an application to quash a decision of a minister must be filed at the Administrative Court: paragraphs 9.2 and 22.3 of PD8A. “Filing” means delivering a document by post or otherwise to the court office: [CPR r 2.3\(1\)](#) . The opening days and hours of the court offices are specified in paragraph 2.1 of Practice Direction 2A”

Current Practice of The Administrative Court Office (Reputedly)



Ordinary JRs (no urgency):

- If you get to Court (or rather the front of the queue) before 3 pm you hand your papers over the counter and are given a receipt; the papers will then be date stamped (stopping time on limitation)
- They will be sealed and issued and sent out by post to the C lawyers, typically 1-2 weeks after filing.
- You can arrange to collect rather than have it sent out by post (they put a note on the file and give you an indication of when the forms are likely to be ready but you have to call them to make arrangements and often this does not seem to work and they end up posting them).
- If you don't make the 3 pm deadline you have the option of coming back the next day or placing in a drop-box. You don't get a receipt and have to trust that it will be date stamped correctly.

Planning cases:

- If you get to the counter before 3 pm they will issue and return the forms
- If you reach the counter after 3 pm you will be sent away unless it is the last day for limitation

Urgent cases:

- If you are requesting 'immediate' consideration (within 72 hours) they will seal and return the papers to you provided you reach the counter before 4.30 pm, if not, and you arrive after 3pm, they will send you away to come back tomorrow
- If you are requesting urgent but non-immediate consideration they will take the papers from you and you collected sealed papers the following day.

The Bundle

Recent change in CPR Rule 54A.: Only one set of bundles is required at the time of lodging a claim for civil cases and two for criminal.

Practice Direction 54A

- **Claim form**
- **5.6** The claim form must include or be accompanied by –
 - (1) a detailed statement of the claimant’s grounds for bringing the claim for judicial review;
 - (2) a statement of the facts relied on;
 - (3) any application to extend the time limit for filing the claim form;
 - (4) any application for directions.
- **5.7** In addition, the claim form must be accompanied by
 - (1) any written evidence in support of the claim or application to extend time;
 - (2) a copy of any order that the claimant seeks to have quashed;
 - (3) 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;
 - (4) copies of any documents on which the claimant proposes to rely;
 - (5) copies of any relevant statutory material; and
 - (6) a list of essential documents for advance reading by the court (with page references to the passages relied on).
- **5.8** Where it is not possible to file all the above documents, the claimant must indicate which documents have not been filed and the reasons why they are not currently available.
- **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 unless the case is to be heard before a Divisional Court. For Divisional Court cases the number of bundles required will be one set for each judge hearing the case.

Issuing a less than complete claim

Administrative Court Guide to Judicial Review (2017)

It must not be assumed that merely issuing the claim is sufficient to comply with a time limit: See for example *R. v Cotswold District Council ex parte Barrington Parish Council* [1998] 75 P. & C.R. 515

- 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).
- 6.3.8 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).

Amendments



- If you issue at the last minute, or in any event you may later wish to amend grounds.

CPR Part 17 states:

- Amendments to statements of case
- **17.1**
- (1) A party may amend his statement of case at any time before it has been served on any other party.
- (2) If his statement of case has been served, a party may amend it only –
- (a) with the written consent of all the other parties; or
- (b) with the permission of the court.



Amendments



- After service amendment is permissible in the discretion of the Court.
- Similarly, under section 288, 289 etc. amendment is at discretion of the court subject to various considerations:
San Vicente v SSCLG [\[2014\] 1 W.L.R. 966](#)
- The six-week period for challenging the validity of a planning decision in the [Town and Country Planning Act 1990 s.288\(3\)](#) was not a relevant limitation period for the purposes of the provisions of [CPR r.17.4](#) governing the amendment of statements of case after the expiry of the limitation period (such that there is no like bar on amendment)

Amendment Post-Permission

- CPR 54.15: The court's permission is required if a claimant seeks to rely on grounds other than those for which he has been given permission to proceed.
- PD54A para 11: Where the claimant intends to apply to rely on additional grounds at the hearing of the claim for judicial review, he must give notice to the court and to any other person served with the claim form no later than 7 clear days before the hearing (or the warned date where appropriate)

Amendments



Admin Court Guide 2017:

- 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.
- **NB** limits to amendment: Paragraph 22 of *R (Hussain) v Secretary of State for Justice* [2016] EWCA Civ 1111 CA observed: “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.

Also Note CPR 54.16:

54.16

- (1) Rule 8.6 (1) does not apply.
- (2) No written evidence may be relied on unless –
- (a) it has been served in accordance with any –
- (i) rule under this Section; or
- (ii) direction of the court; or
- (b) the court gives permission

Amendments: Keeping Pace with Changes in Case



Amendments should be permitted to allow the JR claim to adapt to challenge new decisions made after the claim is issued:

- **R v SSHD ex parte Turgut** [2001] 1 All E.R. 719
 - **R (Hussain) v Secretary of State for Justice** [\[2017\] 1 W.L.R. 761](#)
 - Good summary of authority in **R (Gazelle Properties Limited) v Bath and North East Somerset Council** [2011] JPL 702 at [101]
- See **R (on the application of W) v Essex CC** [2004] EWHC 2027- amendment to keep pace with developments in the case need to be prompt. The guiding principle is that the court “will normally permit such amendments as may be required to ensure that the real dispute between the parties can be adjudicated upon” [35].

Service



CPR Rule 54.7

The claim form must be served on –

(a) the defendant; and

(b) unless the court otherwise directs, any person the claimant considers to be an interested party,

- within 7 days after the date of issue.
- Contrast Section 289 of the Town and Country Planning Act 1990 for which the procedure is **PD 52D paragraph 26.1**: appeals against enforcement notice appeals): “The applicant must, before filing the application, serve a copy of it on the persons referred to in sub-paragraph (12) with the draft appellant’s notice and a copy of the witness statement or affidavit to be filed with the application.
- Note power of court to adjourn to allow subsequent service: See **Westminster v SSCLG** [2014] EWHC 1248

Service: Section 288 Challenges



- Problem may arise if issuing on the last day:
- The claim form in a claim under section 288 of the Town and Country Planning Act 1990 (challenges to planning appeal decisions) has to be served within the time period for challenge- see para 4.4 of PD 8C. So, you have to serve the same day as making the claim.
- But the court has power under part 3 to extend time for service (albeit not for issue)- [Mendip DC v Secretary of State for the Environment and Castle Housing Society \[1993\] J.P.L. 434](#)
- **T & L Sugars –v- Tate & Lyle and Paxton Jones v Chichester Harbour Conservancy** [2017] EWHC 2270 (QB); : service for the purposes of CPR 7.5 is effected by posting the form (rather than by receipt) in circumstances in which the Claimant posted the claim form and emailed it the same day (but there was no agreement for electronic service). Provisions as to deemed service dates under CPR 6.14 did not effect consideration of date of actual service.
- Para 8.2 in Part 8 cross refers to 7.5 in relation to service of the claim form.
- Service under section 288 is probably therefore given effect by putting the claim form in the post on the same day as issue.