

EVIDENCE IN JUDICIAL REVIEW

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The rules

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CPR 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) rules under this Section; or
 - (ii) direction of the court; or
 - (b) the court gives permission.
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Claimant's evidence with claim form



CPR 54.6(2) The claim form must be accompanied by the documents required by Practice Direction 54A.

PD 54A para 5.6 The claim form must include or be accompanied by-
...(2) a statement of the facts relied on;

para 5.7 In addition, the claim form must be accompanied by-
(1) any written evidence in support of the claim...

Defendant's evidence: not required until DGs



CPR 54.14

- (1) A defendant and any other person served with the claim form who wishes to contest the claim or support it on additional grounds must file and serve-
- (a) detailed grounds for contesting the claim or supporting it on additional grounds; and
 - (b) any written evidence,
- within 35 days after service of the order giving permission.
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Purpose of Claimant's evidence



“...too many cases in which applicants for leave or their advisers – particularly in cases depending on article 8 outside the Rules – devote their energies to setting out extracts from the case-law rather than to demonstrating a compelling case based on the details of the applicant’s particular circumstances...”

Parveen v SSHD [2018] EWCA Civ 932 per Underhill LJ §30

Purpose of Defendant's evidence



- Explain the decision
- Exhibit relevant documents
- Give reasons
- Justify interference with human rights/departure from legitimate expectation

Preparation of evidence



“...widespread tendency ... to overburden the court with documents and with argumentative affidavits.”

R v Ministry of Agriculture Fisheries and Food, ex p National Farmers Union
[1995] 3 CMLR 116, per Macpherson J.

Disputed facts



“I acknowledge that cross examination is exceptional in judicial review proceedings. This is largely because the primary facts are often not in dispute, or at least those asserted by the defendant public authority are undisputed. In addition, the defendant public authority may normally (but not invariably) be relied upon to disclose its relevant documents, thus fulfilling its duty of candour in relation to its documents. However, the Court retains a discretion to order or to permit cross examination, and it should do so if cross examination is necessary if the claim is to be determined, and is seen to be determined, fairly and justly.”

R (Bancourt) v Secretary of State for Foreign and Commonwealth Affairs [2012] EWHC 2115 (Admin) per Stanley Burnton LJ §12