

**JR:**  
**The Post-Permission Stage**

**Heather Sargent**  
**21 January 2016**

## Progression of the claim post-permission

### **Claimant:**

- Will already have filed detailed grounds and supporting evidence
- CPR r.54.15: court's permission is required if claimant seeks to rely on grounds other than those for which she/he has been given permission

### **Defendant / Interested Parties**

- Will have filed only summary grounds of resistance
- CPR r.54.14: 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 (1) detailed grounds for contesting the claim or supporting it on additional grounds; and (2) any written evidence, within 35 days after service of the order granting permission

### **Scope for a "Reply"**

## Interveners

- Mechanism for applying to intervene under CPR r.54.17 provided for in Practice Direction 54A:
  - Application for permission should be made by letter to the Administrative Court office, identifying the claim, explaining who the applicant is and indicating why and in what form the applicant wants to participate in the hearing
  - If the applicant is seeking a prospective order as to costs, the letter should say what kind of order and on what grounds
  - Application must be made at the earliest reasonable opportunity to avoid compromising the hearing timetable
  - Application may be dealt with without a hearing where all the parties consent: PD 54A para. 13.1.

## Disclosure and duty of candour

- Disclosure is not required in judicial review unless the court orders otherwise: PD 54A para. 12
  - Disclosure is therefore not normally given, although it may be where the circumstances of the case require it: see CPR Part 31 for the rules
- The duty of candour will, however, apply throughout the judicial review proceedings:
  - Requires defendants to “*set out fully what they did and why, so far as is necessary, fully and fairly to meet the challenge...*” (**R v Lancashire CC, ex p Huddleston** [1986] 2 All ER 941 (CA) per Parker LJ at 946)
  - Requires telling the whole truth, not just those aspects which “[suit] *the Department’s case...*” (**R (Wandsworth LBC) v Secretary of State for Transport** [2005] EWHC 20 (Admin) at [250])

## Disclosure and duty of candour (cont.)

- Temporal scope of the duty: a continuing duty
- Treasury Solicitor: *'Guidance on Discharging the Duty of Candour and Disclosure in Judicial Review Proceedings'* (January 2010)
- Position in respect of claimants

## Skeleton arguments

- Claimant must file and serve a skeleton argument not less than 21 working days before the hearing: PD 54A para. 15.1
- Defendant and any other party wishing to make representations at the hearing must file and serve a skeleton argument not less than 14 working days before the hearing: PD 54A para. 15.2.
- Skeleton arguments must include (PD 54A para. 15.3):
  - a time estimate for the hearing (including delivery of judgment)
  - list of issues
  - list of legal points to be taken (together with any relevant authorities with page references to the passages relied upon)
  - a chronology of events with page references to the bundle
  - list of essential reading (including page references and a time estimate)
  - a list of persons referred to

## Trial bundles

- The claimant must file a paginated and indexed bundle of all the relevant documents when filing their skeleton argument: PD 54A para. 16.1
- Must include all those documents required by the claimant, the defendant and any other party wishing to make representations at the hearing: PD 54A para. 16.2
- Usually includes the order granting permission, the claim form, the claimant's written evidence and documents, the defendant's AoS and detailed grounds of resistance, written evidence and documents and any interested party's AoS, detailed grounds of resistance and written evidence and documents
- Bundle of authorities

## The hearing

- Will usually be before a single judge in open court
- A supervisory jurisdiction (ensuring that the decision-maker acted lawfully on the facts as found), not a re-hearing of the contested decision
- Presenting oral evidence at the hearing or cross-examining a witness requires the court's permission. Will only rarely be appropriate e.g. where crucial issues of fact need to be determined in order to resolve the case: ***R. (Al-Sweady) v Secretary of State for Defence*** [2009] EWHC 2387 (Admin) at [18]-[19]
- Role of Interested Parties
- Judgment – often reserved