

Interim relief and urgent applications and the post permission stage

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Summary

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- JR litigation takes time
 - Interim relief ensures that a claim is not rendered academic by the passage of time.
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Types of interim relief

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- **Injunction** (CPR 25.1.1(a)): a court order prohibiting a person from doing something or requiring them to do something.
- **Stay of proceedings** (CPR 54.10(2)): a 'halt' to ongoing or even concluded proceedings. See: R (H) v. Ashworth Hospital Authority [2003] 1 WLR 127)
- **Interim Declaration** (CPR 25.1(1)(b)) A contradiction in terms?



Examples

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- Challenge to decision of SSHD to remove someone from the United Kingdom
- Challenge to decision of Mental Health Review Tribunal to release a detainee
- Challenge to decision of local planning authority to grant permission for demolition of a building
- Challenge to a local authority's decision to treat a person as an adult when he claims to be a child



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- Preventing immigration removal? Injunction
- Preventing implementation of a planning decision? Injunction (R (SAVE Britain's Heritage v SSCLG [2010] EWHC 979 (Admin))
- Preventing implementation of a tribunal ruling? Stay (R (H) v. Ashworth Hospital Authority [2003] 1 WLR 127)
- Want someone to be treated as a particular class of person for the purposes of legislation? Declaration R (H) v SSHD [2010] EWHC 2412 (Admin)



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Approach to injunctions?

- M v Home Office [1994] 1 AC 377
- American Cyanamid test, but modified for the public law context (R v MAAF, ex p. Monsanto [1999] Q.B. 1161)
- Strong presumption against interim relief in public law matters? “strong prima facie case”?
- However, many examples of where interim relief will be granted, particularly where failure to do so would render claim academic, or where human rights engaged.



Approach to injunctions?

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- Court will be reluctant to grant any form of interim relief without establishing the defendant's response to the application - may abridge time for service of the Acknowledgement of Service or call matter in for a hearing on short notice.
 - If merits of the underlying claim are unclear and there is no particular urgency in granting relief, Court will give directions for an "expedited" (speedy) determination of permission – "rolled up" substantive hearing.
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When does the application need to be considered?

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- Ordinarily make the application will be considered with the application for permission.
 - N461, section 7 ; T480, section 6
 - Highlight in introduction to statement of facts and grounds and in prayer. Attach draft interim order.
 - Particular rules for removals cases – see CPR PD 54A Para 18. Generally fall within jurisdiction of UTIAC.
 - But what about when urgent?
 - Permission is not normally considered within 6 weeks of issue
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Urgent cases



- Practice Statement (Administrative Court: Listing and Urgent Cases) [2002] 1 WLR 810
 - See also (more generally) *The Administrative Court Judicial Review Guide 2016*
 - N463 / T483
 - Should the application be for urgent consideration of permission (abridgment of time), or interim relief until permission?
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Urgent cases



- Make sure the case is urgent and has merit. Urgency does not reduce the need for careful appraisal of the strength of the claim, or the need to provide appropriate evidence in support of the claim.
 - R (Butt) v SSHD [2014] EWHC 264 (Admin). The absence of proper preparation and consideration of urgent applications will lead the court to refer sol's firms to the SRA and to award costs against sol's firms personally.
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Out of hours applications?

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- Need for caution even more acute: see R (Q) v SSHD [2003] EWHC 2507 (Admin). Morris Kay J. “truly exceptional cases”
- Application by telephone. Documents can be faxed, including a summary of the facts, the need for urgency, and a draft order.
- Duty of full and frank disclosure.
- Draft Order

Landmark
CHAMBERS

The Post-Permission Stage

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"



Disclosure and duty of candour



- Disclosure is not required in judicial review unless the court orders otherwise: PD 54A para. 12
- 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). See also Discussion Paper for consultation by Cranston J and Lewis J on duty of candour (April 2016)
- Position in respect of claimants: 'bilateral duty'
- *R (on the application of Khan) v Secretary of State for the Home Department* [2016] EWCA Civ 416



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

- 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

