

Urgent claims, expedition and interim relief

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Urgency and/or interim relief

Two main bases for making an application for urgent consideration:

- (1) An expedited process is required to resolve the issues at the earliest opportunity or by a set date;
- (2) urgent interim relief is required in order to protect the Claimant's position pending determination of the issues

Urgency and/or interim relief (cont/..)

Two main issues of timing that you need to think about:

1. Timelines for consideration - what timeframe you want for consideration of the urgent application, determination of permission, the case and any interim relief?
2. Interim relief or expedition? or both? - not necessarily mutually exclusive but often a choice of one approach or the other.

N463 Application for Urgent Consideration

- Strictly CPR Part 23 – JR claim form gives opportunity to make applications on issue (section 8) with no additional fee
- Form N463 for urgent consideration
- Last updated March 2018 (version 03.18)
- Procedural requirements set out in the Form
- Guidance in Part 16 of the Administrative Court Judicial Review Guide (2018)

The form

Two essential functions:

1. To secure scrutiny of the application with the degree of urgency sought [2.1];
2. To set out what is sought and the grounds for seeking it [1, 2.2, 4]

But also:

3. To provide the Court with information about the conduct of the claimant in making an immediate application [3].

A warning

R (Hamid) v Secretary of State for the Home Department [2012] EWHC 3070
(Admin):

“[7] ... If any firm fails to provide the information required on the form and in particular explain the reasons for urgency, the time at which the need for immediate consideration was first appreciated, and the efforts made to notify the defendant, the Court will require the attendance in open court of the solicitor from the firm who was responsible, together with his senior partner. It will list not only the name of the case but the firm concerned. ...”

The process

- Engage with the Defendant to attempt to avoid the need for urgency – where possible
- Prepare your claim – if necessary on a skeletal basis
- Consider preparing a solicitor's witness statement to support the application for urgent consideration
- Complete the N463 and prepare a draft order
- Serve the N463 and supporting documents, including N461
- Complete the Certificate of Service & file Claim at Court
- Other parties may or may not respond
- The application will then be considered within the timeframe sought and any order and short reasons sent to the parties

Substantive interim relief

- Standard American Cyanamid criteria:
 - Whether there is a real issue to be tried
 - Whether the balance of convenience lies in granting the interim order
- However: “*Generally, there is a strong public interest in permitting a public authority’s decision to continue, so the applicant for interim relief must make out a strong case for relief*” ACJRG 15.6.2
- The Court will generally want the D’s response and will only rarely countenance ex parte applications
- Undertakings in damages may be required but will generally be rare in JR

Interim relief (cont/..)

- Pre-commencement applications
- Court 37
- Hearing or on the papers?
- Duty of Candour
- Out of hours applications

Out of Hours: Duty Judge

- Out of hours – the Duty Judge:
 - Queen’s Bench Division out of hours duty clerk: 020 7947 6000166
 - Out of hours form:
http://hmctsformfinderjustice.gov.uk/HMCTS/GetForm.do?court_forms_id=3007
 - Email (by invitation only): QBDutyClerk@hmcts.gsi.gov.uk

If urgency, permission and/or interim relief are refused?

- Rejected by Court officer
 - Administrative complaint
- Refused outright
- Refused in part
- Refusal of permission and/or expedition
- Refusal of interim relief on the papers (pre or post permission)
 - Renewal on application (N244) *R (MD (Afghanistan))-v- SSHD*
[2012] EWCA Civ 194
- Refusal of interim relief following a hearing
 - Appeal

Top Tips

- Preparation & Groundwork is key
- Be realistic and strike the balance
- Pitch your interim relief
- Build in an opportunity for the Defendant to respond
- Duty of Candour!

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