Landmark Chambers

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Practice and Procedure Update

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A bit of context…

In recent years, the Administrative Court has become one of the busiest specialist Courts within the High Court. It is imperative that Court resources (including the time of the judges who sit in the Administrative Court) are used efficiently. That has not uniformly been the case in the past where the Court has experienced problems in relation to applications claiming unnecessary urgency, over-long written arguments, and bundles of documents, authorities and skeleton arguments being filed very late (to name just a few problems). These and other bad practices will not be tolerated.

The Administrative Court: Judicial Review Guide 2019

Administrative Court: Judicial Review Guide 2019

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- 4th Edition available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/825753/HMCTS_Admin_Court_JRG_2019_WEB.PDF
- Summary of Electronic Working Pilot Scheme at 6.7.8-6.7.15:
  - Anticipated to commence in Admin Court in 2020
  - Claims to be managed through CE-File electronic court file system
  - "Users are advised to familiarise themselves with the system before the start date"
  - Further guidance at https://www.gov.uk/guidance/ce-file-system-information-and-support-advice
  - More detailed Practice Note expected soon (Michaelmas Term 2019)

Time Limits for bringing claims

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Croke v SSHCLG [2019] EWCA Civ 54

- Strict 6 wk time limit for bringing a JR under s.288 TCPA 1990
- BUT, what happens if:
  - The time limit ends the Wednesday before the Easter Bank Holiday…
  - You miss your train to London to file the Claim Form…
  - You email the documents to a friend to lodge for you but spell their name wrong…**AND**
  - When your friend eventually receives the documents and arrives at the RCJ at 16:25 he is refused entry by the security guard?
- Court of Appeal (Lindblom, Irwin and Baker LJJ) said: **No extension of time**

Time limits for bringing a claim

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R (Oyston Estates Ltd) v Fylde BC [2019] EWCA Ci 1152

- 6 wk time limit under s.61N TCPA 1990 for challenging neighbourhood plans
- Facts
  - NP made on 26th May 2017
  - JR claim issued on 6th July 2017 (1 day within the deadline)
  - Claim framed as challenge to NP
  - In fact challenge to decision made much earlier (March 2017) by R following its review of the examiner's report
- Court of Appeal said:
  - s.61N made it possible to raise and resolve legal issues before NP final
  - Claim was therefore out of time and there was no discretion to extend

Time limits for bringing a claim

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R (Thornton Hall Hotel Ltd) v Thornton Holdings Ltd [2019] EWCA Civ 737

- So what about a claim brought **more than 5 years** from the date of the challenged decision?
- Facts:
  - LPA resolved to grant permission in December 2011 subject to conditions, including that the permission should be for a limited period of 5 years
  - When permission was granted it omitted the specified conditions
  - This was only discovered when the 5-year period elapsed in 2016
  - The Respondent brought the claim in August 2017
  - The Appellant (applicant) had known about the error and remained silent
- Court of Appeal said: **Exceptional reasons for excusing the delay**

Aarhus Costs

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- Changes to the scope of Aarhus costs protection
- From 1 October 2019 also covers statutory reviews within the meaning of article 9(3) of the Convention:

  > "In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment."

- See commentary at 45.41.1 to the White Book

Aarhus Costs Protection

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<u>Campaign to Protect Rural England v SSHCLG</u> [2019] EWCA 1230

- Where permission to apply for JR is refused:
  1. Adverse costs order in favour of more than one D or IP?
  2. Proper application of Aarhus cap
- A brought a claim against SSHCLG (D1), the Council (D2) with developer named as IP – all three served with claim form, all three filed AoSs
- A sought £10,000 cap on cost liability under CPR Part 45
- Lang J refused permission and awarded costs to D1, D2 and IP assessed in amounts totalling £10,000; this was upheld on papers by HHJ Evans-Gordon
- Court of Appeal (Richards, Hamblen and Coulson LJJ) upheld the High Court's decision on both points: [37] and [57]-[58]

Justiciability

<u>Tewkesbury BC v SSHCLG</u> [2019] EWHC 1775

- An LPA sought a JR under s.288 of the SoS's approach to calculating 5YHLS
- The problem? The LPA had been **<u>successful</u>** at appeal!
- The High Court refused to exercise its jurisdiction to adjudicate on an academic dispute
  - Academic disputes can only be determined by courts in exceptional circumstances – this was not such a case
  - Statutory regime provides bespoke remedy which can only be exercised by a "person aggrieved" – Parliament had no intention to provide any remedy legal errors allegedly suffered on route to winning
  - Planning appeal decisions are not binding precedents → interpretations of planning policies can be reviewed in subsequent appeals

Appealing HC decision on enforcement notice appeal

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Binning Property Corporatio Ltd v SSHCLG [2019] EWCA Civ 250

- Does the Court of Appeal have jurisdiction to hear an appeal against a decision of the High Court under s.289(6) TCPA 1990?
- Court of Appeal confirmed **no**: see [4], [26]
  - Previous authority (Wendy Fair Markets Ltd v SSE [1996] JPL649; Prashar v SSETR [2001] EWCA Civ 1231; Washall MBC v SSCLG [2013] EWCA Civ 370) remains good law – bound to refuse PTA
  - Refusal of leave to appeal under s.289 is not a "judgment or order of the High Court" within s.16 of the Senior Courts Act 1981

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Thank you for listening

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