Welcome to Landmark Chambers' Social Care Webinar Series – Part 2

The recording may be accessed here.

Your speakers today are…

Landmark Chambers

Topic: Changes and closure

Stephen Knafler QC (Chair)

Topic: Adults with education, health and care plans

Fiona Scolding QC

Topic: Adults with education, health and care plans

Hafsah Masood

Topic: Judicial review practice and procedure

Ben Fullbrook

Landmark Chambers

Changes and closure

Stephen Knafler QC

SERVICE CHANGES AND CLOSURES
STPEHEN KNAFLER QC

Landmark Chambers

1 **The budget.**

2 **Legal parameters.**

3 **Service change/closure issues.**

4 **Individual assessments.**

The budget

- Consultation/PSED at the budget level.
- Can a budget be irrational?
- Can discrete components of the budget be quashed?
- The all-singing/dancing budget.

Consultation/PSED at budget Level

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- High level budgetary decisions generally require (only) high level scrutiny:
  - A broadly expressed discharge of the PSED, if there's to be a more detailed one later: *JG and MB v Lancashire CC* [2011] EWHC 2295 Admin, (2011) 14 CCLR 629, at paragraphs 43 – 45; *R (B) v Oxfordshire CC* [2016] EWHC 2419.
  - Not usually a duty to consult : *R (L&P) v Warwickshire CC* [2015] EWHC 203 Admin, (2015) 18 CCLR 458; high-level consultation where undertaken suffices: *JG and MB v Lancashire CC* [2011] EWHC 2295 Admin, (2011) 14 CCLR 629; *R (LH) v Shropshire CC* [2014] EWCA Civ 404, (2014) 17 CCLR 216.

Can a budget be irrational?

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- Many an effort has been made to challenge local authority budgets on such grounds as: that the authority has failed to consider (a) increasing charges or other forms of revenue; (b) increasing Council Tax; (c) using some of its reserves; or (d) closing more discretionary services – and so forth.

- No such effort has succeeded (thus far!). Finance officers tend to have good answers and the super-W approach is usually applied: *R v Secretary of State for the Environment ex p Hammersmith & Fulham LBC* [1991] 1 AC 521, at 593F – 594A and 595A – 596H.

Can discrete parts of a budget be quashed?

- No: *R (D and S) v Manchester CC* [2011] EWHC 17 Admin, at paragraphs 20 – 25 and 82.

- Yes: *R (Hunt) v North Somerset Council* [2012] EWHC 1928 Admin; *R (DAT) v West Berkshire CC* [2016] EWHC 1876 Admin, (2016) 19 CCLR 362 (but query *R (Hunt) v North Somerset Council* [2013] EWCA Civ 132).

All-singing/dancing budget

- Even where a budget contains what appears to be a final decision to change or close a particular service, it is generally implicit that this final decision is still contingent on individual assessments in due course: *R (Bishop) v Bromley LBC* [2006] EWHC 2148, (2005) 9 CCLR 635.

- Subject to that though, a person with standing should be able to challenge the lawfulness of the budget/that part on all the grounds that are usually available in such cases e.g. inadequate consultation/discharge of the PSED.

Legal Parameters

- The relevant legislation.
- Guidance.
- Policies.

The relevant legislation

- One needs to identify *all* the relevant legislation and assess whether it constrains local authority action by requiring the authority to, for example, (a) undertake periodic assessments of local needs and publish plans; (b) have a relevant policy; or (c) maintain a certain level of provision.

- The relevant legislation needs to be accurately explained to the decision makers, in particular if it requires certain levels or types of provision to remain available: *R (DAT) v West Berkshire CC* [2016] EWHC 1876 Admin, (2016) 19 CCLR 362.

Guidance

- Local authorities must take into account and act in substantial accordance with “statutory guidance” issued under section 78 of the Care Act 2014 and must take into account departmental guidance, their own policies and anything else that it would be irrational to ignore.

- This means that decision-making material *should* expressly refer to these and decision-makers should properly understand them.

- Decision-makers must not deliberately act contrary to nationally applicable guidance but may have a good reason for diverging from the guidance:

R v North Derbyshire HA ex p Fisher (1997-8) 1 CCLR 150.

Policies

- There should be a regularly reviewed Joint Strategic Needs Assessment and Strategy, under the Health and Social Care Act 2012.There is then a whole series of policies required to be published under the Care Act 2014.

- in general, individuals have a legitimate expectation that their particular case will be decided upon in accordance with any policy that applies to it, unless there is good reason for a divergence. However, the local authority may change it's own policy to reflect a new approach, providing it undertakes that process lawfully (e.g. with consultation where necessary, discharge of the PSED, compliance with relevant legislation).

Service Change Issues

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- Advance individual assessments.
- Other bars to change.
- Consultation.
- PSED.
- The report to Cabinet.
- Mediation, Injunctions. Ombudsman.

Advance individual assessments

- In general, local authorities can decide to change or close a service on the basis of a few representative assessments, or a reasonable understanding of the levels of need of the individuals concerned and the alternative provision available to meet those needs: *R (Wilson) v Coventry CC* [2008] EWHC 2300 (Admin), (2009) 12 CCLR 7.

- A different approach may be required where guidance advises that individual assessments should be completed before a decision is taken or where the circumstances strongly indicate that a failure to do so would be irrational: *R (Bishop) v Bromley LBC* [2006] EWHC 2148 (Admin), (2006) 9 CCLR 635.

Other bars to change

- Home for Life promises:

- The existence of a ‘home for life’ promise has to be proven, where it is disputed, by clear evidence: *R (C, M, P, HM) v Brent, Kensington and Chelsea and Westminster Mental Health NHS Trust* [2002] EWHC 181, (2003) 6 CCLR 335.

- A clear assurance of a ‘home for life’ gives rise to a legitimate expectation, which local authorities have to take into account and have a sufficiently cogent and proportionate reason for overriding: *R v North and East Devon Health Authority v Coughlan* [1999] 2 WLR 622, (1999) 2 CCLR 285.

Consultation

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Key issues:

- Is there legislation, guidance or policy relevant to the consultation duty?
- Is consultation needed at all?
- If so, who should be consulted?
- What methods of consultation should be employed?
- What information should be provided to consultees?
- How long should the consultation last?
- Has anything occurred that requires re-consultation?
- How are the consultation responses to be taken into account by decision-makers?

Consultation

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Grounds of challenge most likely to succeed:

- The decision had already been taken.
- Inadequate time was given for considered responses.
- Officers failed to provide consultees and/or decision-makers with accurate information about the risks and benefits of the proposed change.
- The local authority failed to consult over realistic alternatives.

The PSED

- Decision-makers should have a report that:

- Makes it clear, in unvarnished and robust terms, what the potential risks are of the proposed service change, as well as what the benefits, justification, mitigating and monitoring measures are; and

- Advises the decision-makers clearly as to existence and content of their duty under the PSED:

R (DAT) v West Berkshire CC [2016] EWHC 1876 Admin, (2016) 19 CCLR 362

The PSED

The courts have made it clear that they will not quash decisions based on minor breaches of the PSED but will require local authorities to satisfy them that there has been a proper and conscientious focus on the substance of the PSED:

R (Michael Robson) v Salford CC [2015] EWCA Civ 6 at paras 37–48.

Also, if not done properly before; do it properly and in good conscience now.

The report to Cabinet

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As far as concerns ensuring that decision-makers discharge their personal duty conscientiously to take into account the results of consultation and discharge the PSED the normal and entirely lawful (if it is done properly) pattern is for:

- The body of the report to contain a fair, unvarnished and intellectually honest summary of the consultation responses and the officers' PSED exercise (usually some form of impact assessment).

- Decision-makers to be directed to appendices to the report, containing the full materials.

The report to Cabinet

- The body of the report to explain to the decision-makers what their personal duty is in relation to the results of consultation and the PSED e.g. what the law is and how it applies in the particular context.

A summary of the law is usually better than extensive citations from legislation, guidance etc. but – of course – (a) the summary must be accurate; and (b) care must be taken that the authority is not then left open to complaints that decision-makers have not had their attention drawn to relevant aspects of the law. Accordingly – as usually occurs, but not always – it is prudent for this part of the report to be drafted or at least checked by lawyers.

The report to Cabinet

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As to the law, decision-makers need to be properly informed about the content, effect and application of:

- Relevant parts of the statutory scheme.
- Relevant statutory, departmental and any other policy/guidance.
- Relevant local authority policies.

The legal information provided does not have to be perfect or involve verbatim citations from legislation, guidance and cases - indeed, pithy summaries of the relevant law is the ideal - but it does have to be reasonably accurate.

The report to Cabinet

- The report needs to inform decision-makers of any existing policy or practice of the council, so that they can take it into account, with an explanation of what the change is and why it is proposed.

- One particular factor that arises in service change cases, in particular when the change is a closure of a service that may adversely affect the health of those affected, is whether the decision-makers have been informed as to the process whereby the authority will manage any change that occurs, safely and so as to promote welfare as far as possible and, indeed, whether the authority does have such a process which has been kept up-to-date and remains fit for purpose.

Risks

The furthest the courts have gone, is to accept that:

- A badly managed closure may cause distress and serious harm including personal injury or death.
- Hypothetically, an irreducible, unmanageable risk of personal injury or even death might arise, in the case of an exceptionally vulnerable individual. That could well prevent the termination of a service, no matter what stage had been reached; however.
- That risk need only be identified after an in-principle decision to close has been made, and individual assessments are being undertaken.
- There is no reported case in which such an irreducible risk has been recognised as existing.

Mediation, Injunctions, Ombudsman

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Mediation could be used much more:

- *R (Cowl) v Plymouth CC* [2001] EWCA Civ 1935, (2002) 2 CCLR 42.

Injunctions are granted in strong cases, but there are many practical difficulties.

The LGSCO: why not?

Individual Cases

- No change without re-assessment: *R v Islington LBC ex p McMillan* (1997-8) 1 CCLR 7.

- Proper consultation need with service user or, if without capacity, their parents/carers: *R (W) v Croydon LBC* [2011] EWHC 696 Admin, (2011) 14 CCLR 247.

- Generally the courts scrutinise reduction-assessments more stringently: *R v Birmingham CC ex p Killigrew* (2000) 3 CCLR 109; *R (Goldsmith) v Wandsworth LBC* [2004] EWCA Civ 1170, (2004) 7 CCLR 472. Not always though: *R (Davey) v Oxfordshire CC* [2017] EWCA Civ 1308.

EHC plan for those aged 19 – 25

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Introduction

- This talk:
- When can someone have an EHC plan?
- What does that mean happens?

EHC plans

- Relevant legislation found in the Children and Families Act 2014 and the Sen Regulations 2014 and 2017 Regulations about National Trial (relevant for appeal rights)
- SEN Code of Practice (available www.gov.uk) must be had regard to – i.e. followed unless there are exceptional circumstances not to do so by all those statutory who make decisions about young people with EHC plans : not just local authorities, but also the CCG, colleges and schools (where in the public sector) etc.
- It is meant to be a comprehensive guide to the duties and policies relating to those with SEN.

When would someone have an EHC plan?

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- If they have had a statutory assessment and the authority considers that it is ”necessary” for special educational provision to be made in accordance with the plan, then it must be prepared.
- So the steps are:
- (a) The request for an assessment:
- (b) The assessment
- © The decision whether or not to issue a plan
- (d) The plan

The statutory assessment

- The young person can ask for an assessment themselves if they are over 18
- If they are over 18 and lack capacity then a representative can ask for them (usually parent)
- Educational establishment can also ask for one
- The Code recognises that others may also identify someone with SEN (eg social workers, shared lives carers etc)

Test for a statutory assessment

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- (a) They are in the local authority's area (test is wider than ordinary residence: would amount to habitual residence in this respect – so where their "locus" is – question of face and degree and intensely fact specific.
- (b) Has been identified as someone who may have SEN
- © or has been brought to the attention of the local authority as someone who may have SEN
- Decision whether or not to undertake an assessment has to take place within 6 weeks of the initial request for an EHC needs assessment.
- If the LA refuses to carry out an assessment, an appeal can be brought to the FTT

- S24 of CAFA 2014

Test for statutory assessment

- Local authority has to take account of views expressed by parent, young person, a CCG, social care , an educational institution and must write to them and ask for their views
- Having received those, must provide an assessment if ,after considering those views or evidence, that a young person MAY have SEN and it may be necessary for special educational provision to be made for the child in accordance with an EHC plan.
- The test set out in statutory guidance (para 9.14) is whether despite
- (a) Relevant and
- (b) purposeful action by the education provider ,
- The young person has not made expected progress – in this case whether he or she requires additional time, in comparison to those without SEN, to complete his or her education or training.

Test for statutory assessment

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- What does necessary mean (*Notts v SF* [2020] EWCA Civ 520): relates to a plan but similar statutory analysis.

- Necessary is a word in common use… The functions of the FTT in these cases is to find facts and exercise an evaluative judgement by using its specialist expertise about whether and EHC plan is necessary. This is a deduction from the facts and depends upon the nature and extent of the provision required for the child concerned"
- Progress is not the only factor in deciding if an assessment is needed (*NM v Lambeth [2011]* UKUT 499) but also if funding may be lost or if provision could not be made without an EHC plan (*MC v Somerset* [2015] UKUT 461)

Conducting the statutory assessment

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- Have to obtain advice from a number of organisations about needs, the provision to meet them and the outcomes including:
- Young person : who should be engaged and able to participate in decisions
- Place where they are educated
- CCG identified healthcare professional (in adult cases often LD consultant/Psychiatrist or even no-one)
- Educational Psychology
- Advice regarding social care
- YOT
- Anyone else the local authority considers is appropriate
- Advice and information requested by the young person which is reasonable
- If statutory bodies are asked to provide advice, they must respond to it (and there is a timescale of 6 weeks)

Should a plan be issued?

- Statutory test set out under s37 of CAFA 2014 (can appeal if not issued)
- ”an EHC plan should be secured where in the light of an EHC needs assessment is necessary for special educational provision to be made for a child or young person in accordance with an EHC plan”.
- See *Notts v SF* (previous slide) approves UT case law (*NC v Leicestershire [2012] UKUT 85: SC v Worcestershire [2016] UKUT 267*).
- Broadly
- (a) Whether the Special educational provision is available within the resources usually available to the institution the young person attends (or may attend) and
- (b) whether the provision can be delivered without an EHC plan.
- © Is a forward looking and not backward looking decision

What’ s in a plan

- Must set out sections A-K (see Code paragraphs 9.2 and 9.62) – no set format so varies from area to area but includes:
- A: Views, interests and aspirations of young person
- B: Their special educational needs
- C: Their healthcare needs which related to their SEN (but are not SEN)
- D: Social care needs relating to disability
- E: Outcomes sought for young person
- F: Special educational provision
- G: Any healthcare provision reasonably required by the disabilities of the young person having SEN
- H1 and H2: Social care provision
- I: name of institution to be attended, or type of it and J: direct payments

What are special educational needs?

- A significantly greater difficulty learning than the majority of others of the same age
- Prevents or hinders them using facilities used by others of the same age in mainstream post 16
- A learning difficulty is anything inherent in the child which makes learning significantly harder for him than most others and hinders him from making use of ordinary facilities (Bromley v LBC [1999] ELR 260 at 282)
- Must specify ALL of the SEN .
- This includes social or healthcare provision which is treated as special educational provision that educates and trains a child (s21(5) of CAFA2014 and *East Sussex v TW* [2016] EWHC 528) –so SEP can be made by health or social care in some circumstances
- Needs can cut across different areas

What is special educational provision?

- Anything additional to, or different from education or training provided generally for others of the same age .
- This includes health or social care provision which educated or trains.
- If in Section F, it has to be provided by the LA (i.e. there is a mandatory duty to provide it) .
- The FTT currently only has power to order amendments to provision if they are special educational provision (there is currently a national trial where recommendations can be made by the FTT of both health and social care provision)

What is special educational provision ? (2)

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- Education is instruction for life which is directly related to the pupils learning difficult or disability and related to a specific educational outcome (see *Bromley v SEN*): there is some provision which is educational, some not, and lots in the middle .
- Ideas of what the courts have found to be educational:
- Speech and language therapy
- OT
- Physiotherapy
- Other forms of behaviour management
- Psychiatric intervention
- Low arousal/low distraction environment

What is SEP (3) ?

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- Education is not just the acquisition of verbs (see DC v Herts [2016] UKUT 379)
- Any provision relating to something in the curriculum – there will be little doubt that it is educational
- Education is about instruction, schooling or training .
- Includes any provision different from that usually provided included any appropriate facilities, curriculum, staffing arrangements and curriculum.
- For example, modification to the application of the curriculum
- Need for one to one support (by whom and for how many hours)
- Need for specialist teaching
- Qualifications and experience of specialist teaching size
- Class size etc

Specificity and quantification

- Section F should be so specific and clear to leave no room for doubt as to what has been decided (*L v Clarke and Somerset [1998] ELR 129: JD v South Tyneside [2016] UKUT 9).*
- Should normally be quantified i.e.
- the type
- Hours
- Frequency
- Not every single details but overall a degree of specification if detail is possible.

Residential provision

- If someone requires education beyond the school day – or needs to generalise skills from the classroom to other contexts then they may require a residential setting
- When asking whether such was required should look at if
- ”the need for a consistent programme was such that his education could not reasonably be provided unless he was accommodate3d on the site where he was educated” (*Hampshire v JP* [2009] UKUT 239).
- The provision of carers is not the provision of education (*H v East Sussex* [2009] EWCA Civ 2439).

Section I – the institution

- Under s38 – s39, where a :
- Maintained school,
- Academy,
- Institution within the further education sector
- Special post 16 institution approved by the Secretary of state and placed on the s41 list (available at www.gov.uk) .
- Then the la must name it unless:
- (a) it is unsuitable for someone's age, ability, aptitude or SEN
- (b) it would incompatible with the education of others or
- © it would be incompatible with the efficient use of resources .

Section I – the institution (2)

- If the institution to be attended falls outside that, the LA may name it abut does not have to do so but has to have regard to s9 of the EA 1996 which provides :
- (a) pupils should be educated to the wishes of their parents (but question if s9 applies to over 18s)
- (b) so far as that is compatible with the efficient education of others and the avoidance of unreasonable public expenditure.
- Have a right to appeal against B, F and I to the FTT

Review and reassessment

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- Has to be an annual review
- EHC ends at the end of the academic year that someone becomes 25
- There is no basis to extend it beyond that date.
- The LA can amend the EHC at any annual review : if they do not do so, then can appeal
- The LA can cease to maintain an EHC plan if someone is no longer responsible for the child or young person
- Or it is no longer necessary for the plan to be maintained.
- There is a right to appeal against this decision.
- If someone is over 18, must see if the education or training outcomes specified in the plan have been achieved when deciding whether to cease to maintain

Ceasing to maintain

- Can only cease to maintain if: (a) they no longer require Sen and b) the education or training outcomes in the plan have been achieved?
- The la must not cease to maintain an EHC if someone is over 18 if they stop attending an educational institution un less it has conducted an annual review and the young person does not wish to return or that such a return would not be appropriate for the young person.
- *Bucks v SJ [2016] UKUT 254 and Glos v SH* [2017] UKUT 85 where it was found that he attainment of qualification is an essential element of education
- So education is wider for those with more complex needs.

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Judicial Review - Practice and Procedure

Ben Fullbrook

Key Sources of Information

- Part 54 CPR and Practice Direction 54A
- The Administrative Court Judicial Review Guide: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/825753/HMCTS_Admin_Court_JRG_2019_WEB.PDF

Time Limits

- CPR 54.5(1) ”The claim form must be filed promptly and in any event not later than 3 months after the grounds to make the claim first arose”
- *“Promptly”* imparts an obligation to act *“with all reasonable celerity”* (***Tinker v Elliott*** [2012] EWCA Civ 1289).
- No extension of time by agreement (CPR 54.5(2))
- Time runs from when C has adequate information to bring claim: ***R v SSfT ex p Presvac*** (1992) 4 Admin L.R. 121
- Discretion to extend time under CPR 3.1(2)(a). Must be good reason. May include:
  - The fact that the applicant was unaware of the decision, provided the claim was brought expeditiously after he became aware: ***R v SSHD ex parte Ruddock*** [1987] 1 WLR 1482;
  - The fact that the claim raises issues of general public importance: ***Re S*** [1998] 1 FLR 790;
  - Position re. legal aid now unclear – see ***R (Kigen) v SSHD*** [2015] EWCA Civ 1286
- Claim must include application to extend time
- Timing dealt with at permission stage. Once determined cannot be re-opened.

Pre-Action protocol

- Pre-action protocol should be followed
- See Pre-Action Protocol for Judicial Review https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_jrv#claim
- The letter before claim *"should contain the date and details of the decision, act or omission being challenged, a clear summary of the facts and the legal basis for the claim. It should also contain the details of any information that the claimant is seeking and an explanation of why this is considered relevant"*
- If appropriate should include request for disclosure of certain documents – although extensive disclosure at this stage is rare
- But NOTE that need to follow PAP does not excuse delay in issuing claim, so if in doubt, issue first.

Issuing a claim

- Form N641.
- Include details of any Interested Parties
- Clearly identify decision under challenge
- Include details of any interim or other apps
- Sections 5 and 9 usually attached
- See additional material in PD54A §5.6-5.7
- Include all documents C relies on
- Include any relevant statutory material
- Include list of essential reading with refs
- To be filed in paginated, indexed bundle
- Note COVID guidance on e-filing: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/897657/RCJ_Admin_Court_Guidance.pdf

Print form Reset form

Judicial Review
Claim Form

In the High Court of Justice
Administrative Court

Help with Fees - Ref no. (if applicable) H W F - - -

Notes for guidance are available which explain how to complete the judicial review claim form. Please read them carefully before you complete the form.

For Court use only

Administrative Court Reference No.

Date filed

Seal

Is your claim in respect of refusal of an application for fee remission? ☐ Yes ☐ No

SECTION 1 Details of the claimant(s) and defendant(s)

Claimant(s) name and address(es)

name

address

Telephone no. Fax no.

E-mail address

Claimant's or claimant's legal representatives' address to which documents should be sent.

Claimant's Counsel's details

1st Defendant

Defendant's or (where known) Defendant's legal representatives' address to which documents should be sent.

2nd Defendant

Serving a claim

- Generally the claim form and bundle must be served by the parties
- Service must be effected on D and any IP within 7 days of date of issue

Urgent Applications

- Health warning in ***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. ...

Urgent Applications

- Form N463 which explains (in particular) the reasons for urgency and the suggested timeframe.
- Must be accompanied by claim form and other papers and must be served
- If an application need to be made outside of sitting hours (10-4 or 4.30 in London) then the Out of Hours Process needs to be used
  - The acting barrister or solicitors should telephone 0207 947 6000172 and speak to the Queen's Bench Division out of hours duty clerk.
  - The out of hours duty clerk will require the practitioner to complete the out of hours form
  - Judge may call representatives
  - Note particular emphasis on duty of candour
- Note COVID guidance: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/897657/RCJ_Admin_Court_Guidance.pdf

Responding to a JR claim

- Any person served with claim form who wishes to participate in the JR must file an Acknowledgment of Service (CPR 54.8)
- This must include a summary of the party's grounds for doing so ("Summary Grounds of Resistance")
- May also include evidence but no requirement for this
- Defendants must comply with duty of candour – although commonly does not require them to actually disclose documents at this stage
- AoS must be filed not more than 21 days after service of the claim form

Permission

- Once AoS filed, the Court will make a permission decision on the papers.
- Permission will only be granted if claim is arguable: A claim will be arguable if it is fit for further consideration and not hopeless, frivolous or vexatious (see the White Book at 54.4.2 and ***R v Inland Revenue Commissioners Ex p. National Federation of Self-Employed and Small Businesses Ltd*** [1982] AC 617 at 642, per Lord Diplock).
- If permission is refused, C may request oral renewal hearing
- Request must be made within 7 days of receipt of reasons for refusal of permission
- If permission refused at hearing, an application for permission to appeal must be made to Court of Appeal within 7 days (CPR 52.8).
- Costs usually limited to costs of AoS and not oral hearing unless exceptional circumstancs

Post Permission

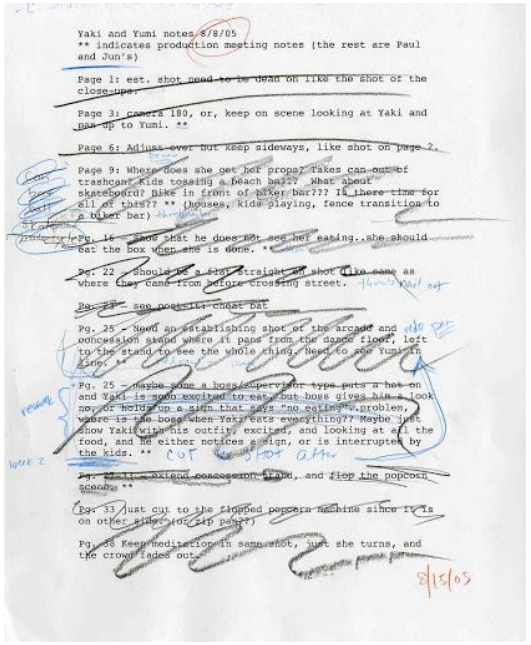
- Any D or IP who wishes to contest the claim must file and serve detailed grounds and any written evidence within 35 days of service of order granting permission.
- Court will contact parties to arrange listing after this
- Directions for trial usually contained within permission order
  - Usual order is C files skeleton argument and claim bundle 21 days before hearing, D files skeleton 14 days before.
  - Where permission order silent, see PD54A §15 (note odd reference to 21 working days).
- Substantive hearing
- Judgment usually reserved and costs/consequential matters dealt with on paper

Evidence

- CPR 54.16 – no evidence may be relied upon unless served in accordance with a rule or PD or court gives permission
- Applications to rely on further evidence are common and are usually dealt with at the substantive hearing
- Permission should be sought to rely on any expert evidence – although court practice varies
- Live evidence and cross-examination is extremely rare

Amendments

- If a party wishes to amend ground after permission has been given they will need the permission of the court (CPR 54.15)
- These applications are usually dealt with at the substantive hearing and the question of permission for new grounds is usually rolled up



Yaki and Yumi notes 8/8/05
** indicates production meeting notes (the rest are Paul and Jun's)

Page 1: est. shot need to be dead on like the shot of the close-up.

Page 3: camera 180, or, keep on scene looking at Yaki and pan up to Yumi. **

Page 6: Adjust ever but keep sideways, like shot on page 2.

Page 9: Where does she get her props? Takes can out of trashcan? Kids tossing a beach ball? What about skateboard? Bike in front of biker bar??? Is there time for all of this?? ** (houses, kids playing, fence transition to a biker bar)

Pg. 16 - show that he does not see her eating..she should eat the box when she is done. **

Pg. 22 - Should be a flat straight on shot like same as where they came from before crossing street.

Pg. 23 - see page 11: cheat bat

Pg. 25 - Need an establishing shot of the arcade and concession stand where it pans from the dance floor, left to the stand to see the whole thing. Need to see Yumi in line. **

Pg. 25 - Maybe some a boss/supervisor type puts a hat on and Yaki is good excited to eat, but boss gives his a look no, or holds up a sign that says "no eating", problem, where is the boss when Yaki eats everything?? Maybe just show Yaki with his outfit, excited, and looking at all the food, and he either notices a sign, or is interrupted by the kids. **

Pg. 32 - extend concession stand, and flop the popcorn scene **

Pg. 33 just cut to the flipped popcorn machine since it is on other side. (or flip part?)

Pg. 38 Keep meditation in same shot, just she turns, and the crowd fades out.

8/15/05

New decisions

- Not uncommon for D to defend a claim by making a new decision
- In these circumstances, courts are keen to avoid *"rolling review"* and so usually the original claim should be discontinued and a fresh claim brought
- However, it can also be possible to amend existing claim to replace the decision under challenge
- Court will take a pragmatic view, and applications to amend will normally be dealt with according to the prejudice to the parties and the most expeditious way to resolve a case: see ***SSHD v Spahiu*** [2018] EWCA Civ 2604.

Costs

- General rules apply
- Some helpful principles in ***M v LB Croydon*** [2012] EWCA Civ 595
- Where D agrees to withdraw or reconsider his decision, C ought to be deemed to have been successful and entitled to costs: ***R (Tesfay) v SSHD*** [2016] EWCA Civ 415, per Lloyd Jones LJ at §57
- Costs usually subject to summary assessment - so remember statement of costs

Thank you for listening

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