



Practical tips for central and local government in defending claims

Matthew Feldman, Clare Parry and Tara O’Leary

Thursday, 4th July 2024

In this session

01

Pre-action stage

Tara O'Leary

02

Post proceedings

Clare Parry

03

Procedural update

Matthew Feldman



Pre-action stage

Tara O'Leary



Treating judicial review in ordinary circumstances as a remedy of last resort fulfils a number of objectives. It ensures the courts give **priority to statutory procedures as laid down by Parliament**, respecting Parliament's judgment about what procedures are appropriate for particular contexts. It avoids **expensive duplication** of the effort which may be required if two sets of procedures are followed in relation to the same underlying subject matter. It minimises the potential for judicial review to be used to **disrupt the smooth operation of statutory procedures** which may be adequate to meet the justice of the case. It promotes **proportionate allocation of judicial resources** for dispute resolution and saves the High Court from undue pressure of work so that it remains **available to provide speedy relief in other judicial review cases** in fulfilment of its role as protector of the rule of law, where its intervention really is required.

R (Glencore Energy UK Ltd) v HMRC
[2017] EWHC 1476 (Admin) [56] – Sales LJ



Avoiding issue of claim

- **Cooperate – review – correct**
- Killer points? Limitation, standing, alternative remedies ... or simply misunderstood the law
- Constructive proposals - offers to reconsider
- Academic? *R (L, M & P) v Devon CC* [2021] EWCA Civ 358 [38, 65-73]
- Identify & narrow “meaty” points



Responding to the pre-action letter

- Speed and turnaround
- Prioritise disclosure – for internal use
- Prompt conference with clients
- Counsel’s involvement?
- Post rooms and internal admin
- Holiday cover and out of office
- Consistency of representation
- Non-urgent cases: 14 days to reply
- Urgent cases: negotiate time to reply – even if informal / email
- No obligation to reply but can be relevant in costs (either way): see Admin Court Guide paras. 6.2.3 and 25.1.4
- Claimant’s disclosure?

Equality Act 2010



- Frequent flashpoints:
 - Section 19 – indirect discrimination
 - Sections 20 & 29 – **anticipatory** duty to make reasonable adjustments
 - Section 149 – PSED – **continuing** duty: *R (Gullu) v Hillingdon LBC*; *R (Ward) v Hillingdon LBC* [2019] EWCA Civ 692 [72-73]
- Section 114(1) – County Court claims in damages for injured feelings
- Section 118 – 6 month limitation period – **plus** continuing acts and discretion to extend time if just and equitable
- Section 119(2)(b) – County Court has power to grant any remedy available to the High Court in claims in JR



After proceedings issued

Clare Parry



Initial checks

Claim on time?

**Claim properly
served?**

First steps

**Assemble
team**

**Assemble
documents**

Early meeting?

Acknowledgment of service

- Early concession?
- 21 days
- Any knockout points?
- Highly likely to be the same again?
- Witness statement?
- Summary grounds no longer than 30 pages
- Liaise with interested parties



Permission stage

Papers

OPH

**Court of
Appeal**

After grant of permission

**Early
meeting**

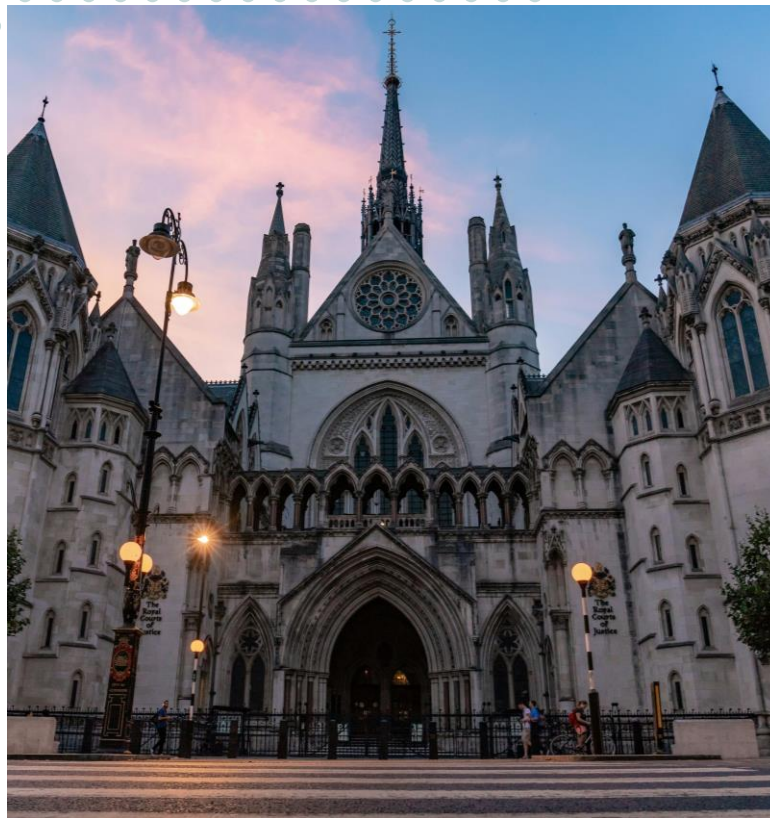
Concede?

**Detailed
grounds**

Candour

Substantive hearing

- Bundles
- Skeleton argument
- Who needs to attend?





Procedural update

Matthew Feldman



Practical Tips for Defending claims - Procedural update

**The
Administrative
Court Guide**

**Procedural
Rigour – the need
to observe the
rules**

**The Judicial
Review Pre-
action Protocol**

**The
Acknowledgment
of Service**

**Permission stage
reply**

**The Hearing
Bundle, and
provisions for
Electronic
Bundles**

Costs
R (Mount Cook Land Ltd)
v Westminster CC
[2004] P. & C. R. 405
M v Croydon LBC [2012] 1
WLR 2607

**The Hamid
Jurisdiction**
R(Hamid) v SSHD [2012]
EWHC 3070 (Admin)
R (Tota) v SSHD [2024]
EWHC 665 (Admin)



Thanks!

Ask us questions:

MFeldman@cornerstonebarristers.com

CParry@cornerstonebarristers.com

TOLeary@cornerstonebarristers.com

For instructions and inquiries:

Clerks@cornerstonebarristers.com