CONFERENCE

Practical tips for Central and Local Govt in defending claims

session at

Public Law in 2025:

One Day Symposium

with Josef Cannon KC and Riccardo Calzavara

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Practical tips for central and local government in defending claims

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Time limits

Riccardo Calzavara

Filing JR claims

54.5— Time limit for filing claim form

…
(1) The claim form must be filed—
(a) promptly; and
(b) in any event not later than 3 months after the grounds to make the claim first arose.
…
(5) Where the application for judicial review relates to a decision made by the Secretary of State or local planning authority under the planning acts, the claim form must be filed not later than six weeks after the grounds to make the claim first arose.

Finn-Kelcey v Milton Keynes BC [2009] Env LR 17, CA

25. … But was it made “promptly”? The answer to that question depends on all the relevant circumstances. …

…

28. In all the circumstances, I conclude that Collins J. was correct in finding that this claim had not been lodged promptly and so did not comply with CPR r.54.5 .

3.1— The court's general powers of management

…
(2) Except where these Rules provide otherwise, the court may—
(a) extend or shorten the time for compliance with any rule, practice direction or court order (even if an application for extension is made after the time for compliance has expired); …

Maharaj v National Energy Corporation of Trinidad and Tobago [2019] 1 WLR 983, PC

36. More generally … as a matter of principle, considerations of prejudice to others and detriment to good administration may, depending on the circumstances, be relevant to the determination of both whether there has been a lack of promptitude and, if so, whether there is good reason to extend time.

37. … The presence or absence of prejudice or detriment is likely to be a key consideration in determining whether an application has been made promptly or with undue or unreasonable delay. … Indeed, when considering whether an application is sufficiently prompt, the presence or absence of prejudice or detriment is likely to be the predominant consideration.

02

Serving JR claims

54.7 Service of claim form

The claim form must be served on—
(a) the defendant; and
(b) unless the court otherwise directs, any person the claimant considers to be an interested party,
within 7 days after the date of issue.

R (Good Law Project) v Secretary of State for Health and Social Care [2022] 1 WLR 2339, CA

80. The question then is how the discretion in CPR r 3.1(2)(a) to extend time for service of a judicial review claim should be exercised. There is no good reason why the requirements under CPR r 7.6(2) for a retrospective extension of time to serve a Part 7 or Part 8 claim form should not apply equally to a judicial review claim, and every reason why they should.

7.6— Extension of time for serving a claim form

…
(3) If the claimant applies for an order to extend the time for compliance after the end of the period specified by rule 7.5 or by an order made under this rule, the court may make such an order only if—
…
(b) the claimant has taken all reasonable steps to comply with rule 7.5 but has been unable to do so; and
(c) in either case, the claimant has acted promptly in making the application.

11— Procedure for disputing the court's jurisdiction

(1) A defendant who wishes to—
(a) dispute the court's jurisdiction to try the claim; or
…
may apply to the court for an order declaring that it has no such jurisdiction …
(2) A defendant who wishes to make such an application must first file an acknowledgment of service in accordance with Part 10.
…
(4) An application under this rule must—
(a) be made within 14 days after filing an acknowledgment of service; and
(b) be supported by evidence.

03

Filing s.288 claims

s.288 Town and Country Planning Act 1990

(4B) An application for leave for the purposes of subsection (4A) must be made before the end of the period of six weeks beginning with the day after…

04

Serving s.288 claims

54DPD

4.11
The claim form must be served within the time limited by the relevant enactment for making a claim for planning statutory review set out in paragraph 1.2.

Rogers v Secretary of State for Levelling Up, Housing and Communities [2025] 1 WLR 2759, CA

38. In my judgment, the relevant principles discernible from Good Law , and the subsequent authorities to which I have referred, can be distilled as follows:
(a) The approach in *Good Law* sets out the principles applicable to extending time for service of judicial review claim forms. … Amongst other things, that means that neither what might be called the *Denton* principles, nor the merits of the underlying case, are relevant.
…
(d) Under CPR r 7.6(3) a claimant has to show, first, that it has taken all reasonable steps to serve the claim form within the relevant period. Where, as here, that period started to run before the claim form had been issued, the court must consider all the steps taken up to the expiry of that period. Events after the expiry of the period are strictly irrelevant to the issue of whether a claimant took all reasonable steps to serve within the period…
[e] … where the expiry of the period in which to serve the claim form is automatic and unconnected with the issue of any documents by the court, the period under consideration starts with the date that the six-week period expires, and runs to the making of the application for an extension of time.

05

Filing s.289 appeals

54DPD

6.1
An application for permission to appeal to the High Court under section 289 of the Town and Country Planning Act 1990 (“the TCP Act”) … must be made within 28 days after notice of the decision is given to the applicant.

R (Ibrar) v Dacorum BC [2023] JPL 668, KB

62. It was agreed before me that the question of an extension of time is to be considered by reference to the Denton v White test namely considering in the light of the overriding objective the seriousness of the relevant breach; the explanation that is proffered; and then looking at all the circumstances of the case to consider whether justice requires relief to be granted or refused.
63. Bringing a s.289 claim out of time will always be a serious matter even if the period in question is only a short one. …

06

Serving s.289 appeals

54DPD

6.3
The applicant must, before filing the application, serve a copy of it on the persons referred to in paragraph 6.11 with the draft appellant's notice and a copy of the witness statement or affidavit to be filed with the application.

Wenman v Secretary of State for the Environment [1994] JPL 1040, QB

… It appears to me that it is the whole of the matters referred to in that particular subparagraph which constitute the making of the application and not simply the filing of a particular form with nothing else. Furthermore, I take the view that r.12(2)(d) requires, as a pre-condition for a properly constituted application for leave, that certain steps be taken; that is to say, including the service of the application and the draft originating notice of motion and the affidavit on the proposed respondents. I do not accept the submission that the application means merely the form of application. It is, to my mind, more properly the process which has to be carried out if an application is to be made. …

54DPD

6.4
The applicant must file the application in the Administrative Court Office with—
(a)a copy of the decision being appealed;
(b)draft appellant's notice;
(c)a witness statement or affidavit verifying any facts relied on; and
(d)a witness statement or affidavit giving the name and address of, and the place and date of service on, each person who has been served with the application. If any person who ought to be served has not been served, the witness statement or affidavit must state that fact and the reason why the person was not served.

07

Deadlines, in summary

JR file	3 months	r.3.1(2)(a)
JR serve	7 days	r.7.6(3)
s.288 file	6 weeks	-
s.288 serve	“ “ “	r.7.6(3)
s.289 file	28 days	r.3.9
s.289 serve	“ “ “	r.3.9

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Ex post facto reasons

Josef Cannon KC

Reasons challenges: increasingly popular!

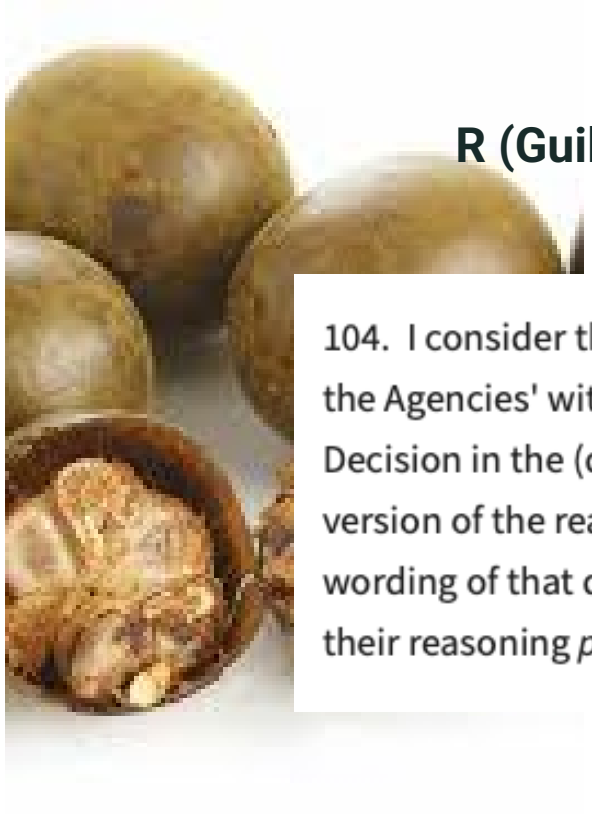
- free-standing ground of challenge – reasons insufficient
- Leading case – South Bucks DC v Porter (No.2) [2004] UKHL 1 WLR 1953:
  - Enable reader to know why decided as it was
  - Deal with ‘principal controversial issues’
  - Leave no substantial doubt as to whether error of law arose

Reasons challenges: further reasons?

Reasons challenges: further reasons

- Where reasons either absent or insufficient, you *can* provide them after the event:
  - So long as they are elucidating the original reasons rather than contradicting them – Ermakov
  - If proffered after commencement of proceedings – extra care needed: Nash

Reasons challenges: further reasons



R (Guilin GFS Monk Fruit Corp. v FSA and FSS

104. I consider that those passages of these four witness statements, where the Agencies' witnesses seek to re-write the reasoning contained in the Decision in the (different) manner which I have described, so as to give a version of the reasoning in the Decision which cannot stand with the wording of that document itself, as well as the Agencies' explanations of their reasoning *pre* and *post* Decision, are accordingly inadmissible.

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Refusing Relief

Josef Cannon KC

Senior Courts Act 1981

A: Permission

(3C) When considering whether to grant leave to make an application for judicial review, the High Court—

(a) may of its own motion consider whether the outcome for the applicant would have been substantially different if the conduct complained of had not occurred, and

(b) must consider that question if the defendant asks it to do so.

(3D) If, on considering that question, it appears to the High Court to be highly likely that the outcome for the applicant would not have been substantially different, the court must refuse to grant leave.

(3E) The court may disregard the requirement in subsection (3D) if it considers that it is appropriate to do so for reasons of exceptional public interest.

Senior Courts Act 1981, s.31

B: Relief

(2A) The High Court—

(a) must refuse to grant relief on an application for judicial review, and

(b) may not make an award under subsection (4) on such an application,

if it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred.

(2B) The court may disregard the requirements in subsection (2A)(a) and (b) if it considers that it is appropriate to do so for reasons of exceptional public interest.

What about statutory review?

C: *Simplex*

Simplex (GE) Holdings Ltd v SSCLG [1989] P&CR 306

- Whether the decision-maker *"would necessarily, or inevitably, have reached the same decision if he had not committed the legal error which has been acknowledged"*

- *Note – higher standard than s.31*

1. Cava Bien Ltd v Milton Keynes Council

14 ‘central points’ – paragraph 52

- Burden on D
- “highly likely” – high but lower than Simplex
- “Somewhere between criminal and civil”
- Court to evaluate hypothetical world where unlawful conduct didn’t happen
- Objective assessment of what would have happened
- Not easy – strip out the unlawful conduct, then compare outcome
- Cannot be shirked

- Avoids wasteful or unnecessary quashing
- Court has to look backwards to date of decision
- Can look at evidence of how might have happened, with caution
- Court must nor become decision-maker itself
- No fact-finding role
- Especially in planning
- Not limited to trivial or technical errors

1. Cava Bien Ltd v Milton Keynes Council

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2. Bradbury v Brecon Beacons NPA

2. Bradbury v Brecon Beacons NPA

- *“unhelpful, and capable of leading to error, to apply those principles as if they were some form of checklist”*

- *They do not “accurately reflect what the cases decided”*

- No requirement to consider ‘counterfactual world’ and ask what decision-maker would have done – that is entering the arena

2. Bradbury v Brecon Beacons NPA

“Rather, the focus should be on the impact of the erroir on the decision-making processthat the decision-maker undertook to ascertain whether it is highly likely that the decision the public body took would not have been substantially different

2. Bradbury v Brecon Beacons NPA

On the facts:

- Reports left out of account recommended imposition of conditions
- Permission granted subject to identical conditions anyway
- So if reports had been included, would have pointed to same outcome
- Beyond that – speculation.

3. R (Wickford Development Company Ltd) v SSEFRA

3. R (Wickford Development Company Ltd)

- *"While the reference committee and the Minister should have dealt with the objection, it could not have been upheld as a matter of law. Any failure on the part of the Minister, or the reference committee, was not therefore material and could not affect the outcome of the appeal…"*

- *"The first question is whether the error led to the decision being unlawful."*

3. R (Wickford Development Company Ltd)

- *“For the future, the approach in **Cava Bien** should not be followed.”*

4. Tiwana Construction Ltd v SSHCLG

4. Tiwana Construction Ltd v SSHCLG

95. In argument I raised the difficulty of applying the *Simplex* approach where the relevant ground of challenge relates to the adequacy of the reasons for the decision in question. Such a challenge will only succeed where there was an obligation to provide reasons; where the failure related to an important controversial issue; and, where the failure to give reasons has caused substantial prejudice. It is to be remembered that inadequacy of reasons is a distinct public law ground of challenge and so the fact that the inadequacy of the reasons did not affect the decision cannot, of itself, be a ground for refusing relief.

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Thank you

Josef Cannon KC

Riccardo Calzavara