

Housing and public law:

S.204 / Judicial Review

Public law defences to possession proceedings

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Areas of potential challenge by way of JR



- Housing allocations and certain homelessness decisions
- Land disposal, acquisition & management
- Housing related finance
- Interrelationship between housing & other services e.g. education, adult social care & children's services
- Housing related policy making, e.g. rent setting; ASB policies; additional/selective licensing schemes
- Contracting out

Procedural tool kit

Senior Courts Act 1981, section 31

CPR 54; PD54A/D

The Guide: The Administrative Court Judicial Review Guide 2025

ACO Costs Guidance April 2016

- Discussed and linked in the Guide: 24.4.4 / 25.5 – M / Tesfay

“Guidance” cases: On e.g. Westlaw

Key texts: De Smith, Fordham, Auburn, HL Encyclopedia

The three critical stages

Pre-action protocol stage

Permission / interim relief stage

- Knockout points?
- Evidence?

Response stage

- Full case
- Evidence

The need for procedural rigour

*"In my view, it cannot be emphasised enough that public law litigation must be conducted with an appropriate degree of procedural rigour. I recognise that public law litigation cannot necessarily be regarded in the same way as ordinary civil litigation between private parties. This is because it is not only the private interests of the parties which are involved. There is clearly an important public interest which must not be overlooked or undermined. In particular procedure must not become the master of substance where, for example, an abuse of power needs to be corrected by the court. However, both fairness and the orderly management of litigation require that **there must be an appropriate degree of formality and predictability in the conduct of public law litigation as in other forms of civil litigation** ...*

*The Courts frequently observe ... that grounds of challenge have a habit of 'evolving' during the course of proceedings, for example when a final skeleton argument comes to be drafted. This will in practice be many months after the formal close of pleadings and after evidence has been filed. These unfortunate trends must be resisted and should be discouraged by the courts, using whatever powers they have to impose procedural rigour in public law proceedings. **Courts should be prepared to take robust decisions and not permit grounds to be advanced if they have not been properly pleaded or where permission has not been granted to raise them.** Otherwise there is a risk that there will be unfairness, not only to the other party to the case, but potentially to the wider public interest, which is an important facet of public law litigation."*

R(Talpada) v SSHD [2018] EWCA Civ 841, per Singh LJ eliding [67-69]

Time limits

CPR 54.5 (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. (2) The time limits in this rule may not be extended by agreement between the parties.

“First arose”

“... a judicial review applicant must move against the substantive act or decision which is the real basis of his complaint. If, after that act has been done, he takes no steps but merely waits until something consequential and dependent upon it takes place and then challenges that, he runs the risk of being put out of court for being too late.”

R v Secretary of State for Trade & Industry [1998] Env. L.R. 415, per Laws J

Alternative remedies

“Judicial review is often said to be a remedy of last resort. If there is another method of challenge available to the claimant, which provides an adequate remedy, the alternative remedy should generally be exhausted before applying for judicial review.”

(Admin Court JR Guide, para 6.3.3.1)

R(Archer) v RCC [2019] 1 WLR 6355 at [87]-[95]

Alternative remedies in housing cases may include statutory review/appeal; voluntary reconsideration; statutory / non statutory complaints procedure & complaint to the Ombudsman

Pre action protocol compliance

https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_jrv

“So far as reasonably possible, an intending claimant should try to resolve the claim without litigation. Litigation should be a last resort.” (Guide, para 6.2.1)

Pre-action protocol (judicial review)

- No impact on time limits
- Implications for costs/case management issues
- Time for response/interim response

Judicial guidance: **Ewing v ODPM [2006] 1 W.L.R. 1260** at [43]

Commencement of the claim – claimant's duty of candour

“The duty of candour is directed in the most part to ensuring that matters unfavourable to the applicant are drawn to the attention of the judge. There are many late applications for injunctive relief which are based on little more than an assertion that something may turn up if the new advisers are given time to investigate. Such applications should get nowhere. Yet there is a strong imperative for those instructed late in the day to make no representations or factual assertions which do not have a proper foundation in the materials available to them. Gaps in knowledge should not be filled by wishful thinking. In almost all such cases there will have been extensive engagement between the putative applicant and the immigration authorities and often the independent appellate authorities. So too in many cases there will have been dialogue between the authorities and previous lawyers. There will be a large reservoir of information available. Without access to that information it behoves those who come on to the scene at the last minute to take especial care in the factual assertions they make.”

R (SB Afghanistan) v SSHD [2018] EWCA Civ 215, per Ld Burnett CJ

Duty of candour (cont.)

R(Citizens UK) v SSHD [2018] EWCA Civ 1812

- Duty to assist the court with full and accurate explanations of all the facts relevant to the issues
- Witness statements must not deliberately or unintentionally obscure areas of central relevance
- No spin
- Breach of duty can occur by omission, e.g. non-disclosure of a material document/fact

Duty is particularly important where without notice relief is sought: R(Gopinah Sathival) v SSHD [2018] EWHC 913 (Admin) at [20]

Duty of candour / redactions (cont.)

R (Police Superintendents' Association) v PRRB [2024] 1 WLR 166

Checklist of facets of duty at [15]

R (IAB) v. SSHD [2024] 1 WLR 1876.

Approach to redactions

Irrelevance

Confidentiality

ACG 2025 – section 15.3.5 – reasons need not be elaborate - *“the simpler and shorter [the reasons] can be the better”*. (IAB at [43])



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Public law defences in possession proceedings

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Potential defences

01

Equality Act 2010

- *Akerman-Livingstone v Aster Communities Limited (formerly Flourish Homes Limited)* [2015] UKSC 15
- *Thiam v Richmond Housing Partnership* [2025] EWHC 933 (KB)

02

Human Rights Act 1998

- *Manchester City Council v Pinnock* [2010] UKSC 45.
- *Hounslow LBC v Powell* [2011] UKSC 8.
- *Simawi v London Borough of Haringey* [2019] EWCA Civ 1770

03

Public Sector Equality Duty

- *Powell v Dacorum Borough Council* [2019] EWCA Civ 23.
- *Metropolitan Housing Trust Ltd v TM* [2021] EWCA Civ 1890.

04

Administrative Law

- *Wandsworth LBC v Winder (No.1)* [1985] A.C. 461.
- *Mohamoud v Kensington and Chelsea RLBC* [2015] EWCA Civ 780.
- *Davies v Hertfordshire CC* [2018] EWCA Civ 379.

Relevant cases

Succession

ASB

Transfer

NTQ

Regen

Rent Arrears



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ADR/Mediation

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Alternative Dispute Resolution

CPR 1. 1.4

(1) The court must further the overriding objective by actively managing cases. (2) Active case management includes ... (e) encouraging the parties to use an alternative dispute resolution procedure if the court considers that appropriate and facilitating the use of such procedure"

R(Cowl) v Plymouth CC [2001] EWCA Civ 1935, per Ld Woolf CJ

"... even in disputes between public authorities and the members of the public for whom they are responsible, insufficient attention is paid to the paramount importance of avoiding litigation whenever this is possible. Particularly in the case of these disputes both sides must by now be acutely conscious of the contribution alternative dispute resolution can make to resolving disputes in a manner which both meets the needs of the parties and the public and saves time, expense and stress."



Admin Court Guide 2025



13.2 Duties of the parties

13.2.1 The parties must make efforts to settle the claim without requiring the intervention of the Court. It is preferable to settle the claim before it is started. However, even after the claim has started, the parties must continue to evaluate their positions, especially after any indication from the Court (such as the refusal or grant of permission to apply for judicial review). The parties should consider using alternative dispute resolution (for example, mediation) to explore settlement of the case, or at least to narrow the issues in the case.



Thanks!

