

PRE-ACTION
PROTOCOL FOR
JUDICIAL REVIEW

December 2001

CONTENTS

INTRODUCTION	1
Annexes	
A LETTER BEFORE CLAIM	4
B RESPONSE TO A LETTER BEFORE CLAIM	7
C NOTES ON PUBLIC FUNDING FOR LEGAL COSTS IN JUDICIAL REVIEW	8

INTRODUCTION

This protocol applies to proceedings within England and Wales only. It does not affect the time limit specified by Rule 54.5(1) of the Civil Procedure Rules which requires that any claim form in an application for judicial review must be filed promptly and in any event not later than 3 months after the grounds to make the claim first arose.⁽¹⁾

1 Judicial review allows people with a sufficient interest in a decision or action by a public body to ask a judge to review the lawfulness of:

- an enactment; or
- a decision, action or failure to act in relation to the exercise of a public function.⁽²⁾

2 Judicial review may be used where there is no right of appeal or where all avenues of appeal have been exhausted.

3 Where alternative procedures have not been used the judge may refuse to hear the judicial review case. However, his or her decision will depend upon the circumstances of the case and the nature of the alternative remedy. Where an alternative remedy does exist a claimant should give careful consideration as to whether it is appropriate to his or her problem before making a claim for judicial review.

4 **Judicial review may not be appropriate in every instance.**

Claimants are strongly advised to seek appropriate legal advice when considering such proceedings and, in particular, before adopting this protocol or making a claim. Although the Legal Services Commission will not normally grant full representation before a letter before claim has been sent and the proposed defendant given a reasonable time to respond, initial funding may be available, for eligible claimants, to cover the work necessary to write this. (See Annex C for more information).

5 This protocol sets out a code of good practice and contains the steps which parties should generally follow before making a claim for judicial review.

6 This protocol does not impose a greater obligation on a public body to disclose documents or give reasons for its decision than that already provided for in statute or common law. However, where the court considers that a public body should have provided **relevant** documents and/or information, particularly where this failure is a breach of a statutory or common law requirement, it may impose sanctions.

1 While the court does have the discretion under Rule 3.1(2)(a) of the Civil Procedure Rules to allow a late claim, this is only used in exceptional circumstances. **Compliance with the protocol alone is unlikely to be sufficient to persuade the court to allow a late claim.**

2 Civil Procedure Rule 54.1(2).

This protocol will not be appropriate where the defendant does not have the legal power to change the decision being challenged, for example decisions issued by tribunals such as the Immigration Appeal Authorities.

This protocol will not be appropriate in urgent cases, for example, when directions have been set, or are in force, for the claimant’s removal from the UK, or where there is an urgent need for an interim order to compel a public body to act where it has unlawfully refused to do so (for example, the failure of a local housing authority to secure interim accommodation for a homeless claimant) a claim should be made immediately. A letter before claim will not stop the implementation of a disputed decision in all instances.

- 7 All claimants will need to satisfy themselves whether they should follow the protocol, depending upon the circumstances of his or her case. Where the use of the protocol is appropriate, the court will normally expect all parties to have complied with it and will take into account compliance or non-compliance when giving directions for case management of proceedings or when making orders for costs.⁽³⁾ However, even in emergency cases, it is good practice to fax to the defendant the draft Claim Form which the claimant intends to issue. A claimant is also normally required to notify a defendant when an interim mandatory order is being sought.

THE LETTER BEFORE CLAIM

- 8 Before making a claim, the claimant should send a letter to the defendant. The purpose of this letter is to identify the issues in dispute and establish whether litigation can be avoided.
- 9 Claimants should normally use the suggested **standard format** for the letter outlined at Annex A.
- 10 The letter should contain **the date and details of the decision, act or omission being challenged and a clear summary of the facts** on which the claim is based. It should also contain the **details of any relevant information** that the claimant is seeking and an explanation of why this is considered relevant.
- 11 The letter should normally contain the **details of any interested parties**⁽⁴⁾ known to the claimant. They should be sent a **copy** of the letter before claim **for information**. **Claimants are strongly advised to seek appropriate legal advice when considering such proceedings and, in particular, before sending the letter before claim to other interested parties or making a claim.**
- 12 A claim should not normally be made until the proposed reply date given in the letter before claim has passed, unless the circumstances of the case require more immediate action to be taken.

3 Civil Procedure Rules Costs Practice Direction.

4 See Civil Procedure Rule 54.1(2)(f).

THE LETTER OF RESPONSE

- 13 Defendants should normally respond within 14 days using the **standard format** at Annex B. Failure to do so will be taken into account by the court and sanctions may be imposed unless there are good reasons⁽⁵⁾
- 14 Where it is not possible to reply within the proposed time limit the defendant should send an interim reply and propose a reasonable extension. Where an extension is sought, reasons should be given and, where required, additional information requested. **This will not affect the time limit for making a claim for judicial review**⁽⁶⁾ nor will it bind the claimant where he or she considers this to be unreasonable. However, where the court considers that a subsequent claim is made prematurely it may impose sanctions.
- 15 If the **claim is being conceded in full**, the reply should say so in clear and unambiguous terms.
- 16 If the **claim is being conceded in part or not being conceded at all**, the reply should say so in clear and unambiguous terms, and:
- (a) where appropriate, contain a new decision, clearly identifying what aspects of the claim are being conceded and what are not, or, give a clear timescale within which the new decision will be issued;
 - (b) provide a fuller explanation for the decision, if considered appropriate to do so;
 - (c) address any points of dispute, or explain why they cannot be addressed;
 - (d) enclose any **relevant** documentation requested by the claimant, or explain why the documents are not being enclosed; and
 - (e) where appropriate, confirm whether or not they will oppose any application for an interim remedy.
- 17 The response should be sent to **all interested parties**⁽⁷⁾ identified by the claimant and contain details of any other parties who the defendant considers also have an interest.

5 See Civil Procedure Rules Pre-action Protocol Practice Direction paragraphs 2–3.

6 See Civil Procedure Rule 54.5(1).

7 See Civil Procedure Rule 54.1(2)(f).

A

LETTER BEFORE CLAIM

SECTION 1. INFORMATION REQUIRED IN A LETTER BEFORE CLAIM**PROPOSED CLAIM FOR JUDICIAL REVIEW**

- 1 **To**
(Insert the name and address of the proposed defendant – see details in section 2)
- 2 **The claimant**
(Insert the title, first and last name and the address of the claimant)
- 3 **Reference details**
(When dealing with large organisations it is important to understand that the information relating to any particular individual's previous dealings with it may not be immediately available, therefore it is important to set out the relevant reference numbers for the matter in dispute and/or the identity of those within the public body who have been handling the particular matter in dispute – see details in section 3)
- 4 **The details of the matter being challenged**
(Set out clearly the matter being challenged, particularly if there has been more than one decision)
- 5 **The issue**
(Set out the date and details of the decision, or act or omission being challenged, a brief summary of the facts and why it is contented to be wrong)
- 6 **The details of the action that the defendant is expected to take**
(Set out the details of the remedy sought, including whether a review or any interim remedy are being requested)
- 7 **The details of the legal advisers, if any, dealing with this claim**
(Set out the name, address and reference details of any legal advisers dealing with the claim)
- 8 **The details of any interested parties**
(Set out the details of any interested parties and confirm that they have been sent a copy of this letter)

9 **The details of any information sought**

(Set out the details of any information that is sought. This may include a request for a fuller explanation of the reasons for the decision that is being challenged)

10 **The details of any documents that are considered relevant and necessary**

(Set out the details of any documentation or policy in respect of which the disclosure is sought and explain why these are relevant. If you rely on a statutory duty to disclose, this should be specified)

11 **The address for reply and service of court documents**

(Insert the address for the reply)

12 **Proposed reply date**

(The precise time will depend upon the circumstances of the individual case. However, although a shorter or longer time may be appropriate in a particular case, 14 days is a reasonable time to allow in most circumstances)

SECTION 2. ADDRESS FOR SENDING THE LETTER BEFORE CLAIM

Public bodies have requested that, for certain types of cases, in order to ensure a prompt response, letters before claim should be sent to specific addresses.

- **Where the claim concerns a decision in an Immigration, Asylum or Nationality case:**

The Judicial Review Management Unit
Immigration and Nationality Directorate
Electric House
3 Wellesley Road
Croydon CR0 2AG

- **Where the claim concerns a decision by the Legal Services Commission:**

- The address on the decision letter/notification; and

Policy and Legal Department
Legal Services Commission
85 Gray's Inn Road
London WC1X 8TX

- **Where the claim concerns a decision by a local authority:**

- The address on the decision letter/notification; and
- Their legal department⁽⁸⁾

Where the claim concerns a decision by a department or body for whom Treasury Solicitor acts and Treasury Solicitor has already been involved in the

8 The relevant address should be available from a range of sources such as the Phone Book; Business and Services Directory, Thomson's Local Directory, CAB, etc.

case a copy should also be sent, quoting the Treasury Solicitor's reference, to:

Treasury Solicitor
Queen Anne's Chambers
28 Broadway
London SW1H 9JS

In all other circumstances, the letter should be sent to the address on the letter notifying the decision.

SECTION 3. SPECIFIC REFERENCE DETAILS REQUIRED

Public bodies have requested that the following information should be provided in order to ensure prompt response.

- **Where the claim concerns an Immigration, Asylum or Nationality case, dependent upon the nature of the case:**
- The Home Office reference number
- The Port reference number
- The Immigration Appellate Authority reference number
- The National Asylum Support Service reference number

Or, if these are unavailable:

- The full name, nationality and date of birth of the claimant.

Where the claim concerns a decision by the Legal Services Commission:

- The certificate reference number.

RESPONSE TO A LETTER BEFORE CLAIM

INFORMATION REQUIRED IN A RESPONSE TO A LETTER BEFORE CLAIM

PROPOSED CLAIM FOR JUDICIAL REVIEW

1 **The claimant**

(Insert the title, first and last names and the address to which any reply should be sent)

2 **From**

(Insert the name and address of the defendant)

3 **Reference details**

(Set out the relevant reference numbers for the matter in dispute and the identity of those within the public body who have been handling the issue)

4 **The details of the matter being challenged**

(Set out details of the matter being challenged, providing a fuller explanation of the decision, where this is considered appropriate)

5 **Response to the proposed claim**

(Set out whether the issue in question is conceded in part, or in full, or will be contested. Where it is not proposed to disclose any information that has been requested, explain the reason for this. Where an interim reply is being sent and there is a realistic prospect of settlement, details should be included)

6 **Details of any other interested parties**

(Identify any other parties who you consider have an interest who have not already been sent a letter by the claimant)

7 **Address for further correspondence and service of court documents**

(Set out the address for any future correspondence on this matter)

NOTES ON PUBLIC FUNDING FOR LEGAL COSTS IN JUDICIAL REVIEW

Public funding for legal costs in judicial review is available from legal professionals and advice agencies which have contracts with the Legal Services Commission as part of the Community Legal Service. Funding may be provided for:

- *Legal Help* to provide initial advice and assistance with any legal problem; or
- *Legal Representation* to allow you to be represented in court if you are taking or defending court proceedings. This is available in two forms:
- *Investigative Help* is limited to funding to investigate the strength of the proposed claim. It includes the issue and conduct of proceedings only so far as is necessary to obtain disclosure of relevant information or to protect the client's position in relation to any urgent hearing or time limit for the issue of proceedings. This includes the work necessary to write a **letter before claim** to the body potentially under challenge, setting out the grounds of challenge, and giving that body a reasonable opportunity, typically 14 days, in which to respond.
- *Full Representation* is provided to represent you in legal proceedings and includes litigation services, advocacy services, and all such help as is usually given by a person providing representation in proceedings, including steps preliminary or incidental to proceedings, and/or arriving at or giving effect to a compromise to avoid or bring to an end any proceedings. Except in emergency cases, a proper **letter before claim** must be sent and the other side must be given an opportunity to respond before *Full Representation* is granted.

Further information on the type(s) of help available and the criteria for receiving that help may be found in the Legal Service Manual Volume 3: "*The Funding Code*". This may be found on the Legal Services Commission website at:

www.legalservices.co.uk

A list of contracted firms and Advice Agencies may be found on the Community Legal Services website at:

www.justask.org.uk