

63rd UPDATE – PRE-ACTION PROTOCOL AMENDMENTS

The amendments to the Pre-Action Protocol for Judicial Review are approved by the Master of the Rolls as Head of Civil Justice.

The amendments to the existing Practice Directions, the Pre-Action Protocol for Judicial Review come into force as follows—	
Pre-Action Protocol for Judicial Review	1 ST July 2013

The Right Honourable Lord Dyson
Master of the Rolls and Head of Civil Justice

Pre-Action Protocol for Judicial Review

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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 [or the shorter time limits specified by Rules 54.5\(5\) and](#)

(6) which set out that a claim form for certain planning judicial reviews must be filed within six weeks and a claim form for certain procurement judicial reviews must be filed within 30 days.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.

Alternative Dispute Resolution

3.1

The parties should consider whether some form of alternative dispute resolution procedure would be more suitable than litigation, and if so, endeavour to agree which form to adopt. Both the Claimant and Defendant may be required by the Court to provide evidence that alternative means of resolving their dispute were considered. The Courts take the view that litigation should be a last resort, and that claims should not be issued prematurely when a settlement is still actively being explored. Parties are warned that if the protocol is not followed (including this paragraph) then the Court must have regard to such conduct when determining costs (subject to paragraph 6 in relation to cases with shorter time limits). However, parties should also note that a claim 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', unless one of the shorter time limits in Rules 54.5(5) or (6) applies.

3.2

It is not practicable in this protocol to address in detail how the parties might decide which method to adopt to resolve their particular dispute. However, summarised below are some of the options for resolving disputes without litigation:

- Discussion and negotiation.
- Ombudsmen – the Parliamentary and Health Service and the Local Government Ombudsmen have discretion to deal with complaints relating to maladministration. The British and Irish Ombudsman Association provide information about Ombudsman

schemes and other complaint handling bodies and this is available from their website at www.bioa.org.uk. Parties may wish to note that the Ombudsmen are not able to look into a complaint once court action has been commenced.

- Early neutral evaluation by an independent third party (for example, a lawyer experienced in the field of administrative law or an individual experienced in the subject matter of the claim).
- Mediation – a form of facilitated negotiation assisted by an independent neutral party.

3.3

The Legal Services Commission has published a booklet on 'Alternatives to Court', CLS Direct Information Leaflet 23 (www.clsdirect.org.uk), which lists a number of organisations that provide alternative dispute resolution services.

3.4

It is expressly recognised that no party can or should be forced to mediate or enter into any form of ADR.

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.

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 Asylum and Immigration Tribunal.

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.

This protocol may not be appropriate in cases where one of the shorter time limits in Rules 54.5(5) or (6) applies. In those cases, the parties should still attempt to comply with this protocol but the court will not apply normal cost sanctions where the court is satisfied that it has not been possible to comply because of the shorter time limits.

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 (except in cases where shorter time limits apply as mentioned in paragraph 6).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. If the claim is considered to be an Aarhus Convention claim, the letter should state this clearly and explain the reasons, since specific rules as to costs apply to such claims.

11

The letter should normally contain the details of any interested parties⁴ 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.

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 review⁶ 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.

If the letter before claim has stated that the claim is an Aarhus Convention claim but the defendant does not accept this, the reply should state this clearly and explain the reasons.

17

The response should be sent to all interested parties^Z identified by the claimant and contain details of any other parties who the defendant considers also have an interest.

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 could be sent to specific addresses.

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

—The claim may be sent electronically to the following UK Border Agency email address:

UKBAPAP@UKBA.gsi.gov.uk

—Alternatively the claim may be sent by post to the following UK Border Agency postal address:

Judicial Review Unit

UK Border Agency

Lunar House

40 Wellesley Rd

Croydon CR9 2BY

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

—The address on the decision letter/notification;

Legal Director

Corporate Legal Team

Legal Services Commission
102 Petty France
London SW1H 9AJ

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

—The address on the decision letter/notification; and

—Their legal department⁸

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

The Treasury Solicitor,
One Kemble Street,
London WC2B 4TS

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 Asylum and Immigration Tribunal 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.

***B 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)

C 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.gov.uk

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

www.justask.org.uk

Footnotes

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)
3. Civil Procedure Rules Costs Practice Direction.
4. See Civil Procedure Rule 54.1(2)(f).
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).
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.