# Practicalities of the new JR Practice Directions

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# The new PDs:

- PD 54A: General
- PD 54B: Urgent apps and other apps for interim relief
- PD 54C: Venue
- PD 54D: Planning Court Claims (no substantive changes)

# Principles underlying the reforms

Swift J, ALBA seminar 28 May 2021:

- Fairness
- Clarity
- Modernity

# Page limits

- **SFG:** “clear and concise”, “concise as possible”, “not exceed 40 pages”, in many cases “significantly shorter than 40 pages” (4.2)
- **SGD:** “concise as possible”, “30 pages”, usually “significantly shorter” (6.2.4)
- **Skeletons**: 25 pages (same as Court of Appeal) (14.3)

# Claim bundle

**Largely similar to what has been in place since March 2020**

'The claimant must prepare a paginated and indexed bundle containing all the documents referred to in paragraphs 4.2 and 4.4. An electronic version of the bundle must also be prepared in **accordance with the Guidance on the Administrative Court website.** (2) The claimant shall (unless otherwise requested) lodge the bundle with the Court in **both electronic and hard copy form**. For Divisional Court cases the number of hard copy bundles required will be one set for each judge hearing the case.' (4.5)

The Guidance: https://www.judiciary.uk/publications/practice-direction-administrative-court-bundle-guidance/

# Evidence

**"10.1 In accordance with the duty of candour, the defendant should, in its Detailed Grounds or evidence, identify any relevant facts, and the reasoning, underlying the measure in respect of which permission to apply for judicial review has been granted.**

**10.2 Disclosure is not required unless the court orders otherwise. (THIS IS NOT NEW- PREVIOUSLY AT 12.1- DO NOT PANIC)**

10.3 It will rarely be necessary in judicial review proceedings for the court to hear oral evidence. Any application under rule 8.6(2) for permission to adduce oral evidence or to cross-examine any witness must be made promptly, in accordance with the requirements of Part 23, and be supported by an explanation of why the evidence is necessary for the fair determination of the claim."

**Compliance with duty of candour and cooperation is a matter of law and not constrained by the PD**.

**NB: PD does not apply to pre-action stage**

# Where Claimant seeks to rely on additional grounds

**11.1** Where the claimant intends to apply for judicial review on grounds additional to those set out in the Claim Form, the claimant must make an application to the court for permission to amend the Claim Form. The application should be made in accordance with the requirements of Part 23.

**11.2** The application must be made **promptly** and should include, or be accompanied by, a draft of the amended grounds and **be supported by evidence** explaining the need for the proposed amendment and any delay in making the application for permission to amend.

**11.3** The application, the proposed additional grounds and any written evidence, must be served on the defendant and any interested party named in the Claim Form or Acknowledgement of Service.

**11.4** For the purposes of determining an application to rely on additional grounds, rules 17.1 and 17.2 shall apply. Where permission to rely on additional grounds is given, the court may give directions as to amendments to be made to the defendant's Grounds or Detailed Grounds and/or such other case management directions as appropriate.

# Interveners: the old PD- rule 54.17

- 13.1 Where all the parties consent, the court may deal with an application under rule 54.17 without a hearing.
- 13.2 Where the court gives permission for a person to file evidence or make representations at the hearing of the claim for judicial review, it may do so on conditions and may give case management directions.
- 13.3 An application for permission should be made by letter to the Administrative Court office, identifying the claim, explaining who the applicant is and indicating why and in what form the applicant wants to participate in the hearing.
- 13.4 If the applicant is seeking a prospective order as to costs, the letter should say what kind of order and on what grounds.
- 13.5 Applications to intervene must be made at the earliest reasonable opportunity, since it will usually be essential not to delay the hearing.

# Interveners: the new PD- rule 54.17

**12.1** An application for permission to intervene under rule 54.17 should be made by application in the relevant proceedings, in accordance with the provisions of Part 23.

**12.2** Any such application must be made promptly. **The Court is unlikely to accede to an application to intervene if it would have the consequence of delaying the hearing of the relevant proceedings.**

**12.3** The Application Notice must be served on all parties to the proceedings.

**12.4** (1) The duty of candour applies. The Application Notice should explain who the applicant is and indicate why and in what form the applicant wants to participate in the hearing.

**(2) If the applicant requests permission to make representations at the hearing, the application should include a summary of the representations the applicant proposes to make.**

**(3) If the applicant requests permission to file and serve evidence in the proceedings a copy of that evidence should be provided with the Application Notice. The application should explain the relevance of any such evidence to the issues in the proceedings.**

**12.5** If the applicant is seeking a prospective order as to costs which departs from the provision made by section 87 of the Criminal Justice and Courts Act 2015, the application must include a copy of the order sought and must set out the grounds on which that order is sought.

**12.6** Where the court gives permission for a person to file evidence or make representations at the hearing of the claim for judicial review (whether orally or in writing), it may do so on conditions and may give case management directions.

**12.7** Where all the parties consent, the court may deal with an application under rule 54.17 without a hearing.

# Intervening after the new PD?

**As before, need to think carefully about how an intervention could add value without expanding scope**

1. **Forum:** 'Court' in the PD is reference to the Administrative Court
2. **Type of intervention:** evidential or legal?
3. **Timing:** the sooner that a prospective intervener is ready, the better.
    1. Evidence: keep your evidence in a form that can be easily adapted
    2. Monitoring: are there cases in the pipeline that an intervener could add value to? (Crowdjustice, Google groups, social media)
    3. Cooperation: approach parties early and be REASONABLE
    4. Streamlined decision-making: have a procedure in place so that approval to intervene can be signed off quickly
4. **Remember costs rules**
    1. Section 87 Criminal Justice and Courts Act – High Court and Court of Appeal

# Skeleton arguments

(1) A skeleton argument must be concise. It should both define and confine the areas of controversy; be set out in numbered paragraphs; be cross-referenced to any relevant document in the bundle**; be self-contained and not incorporate by reference material from previous skeleton arguments or pleadings**; and **should not include extensive quotations from documents or authorities.** Documents to be relied on must be identified.

(2) Where it is necessary to refer to an authority, a skeleton argument must: state the proposition of law the authority demonstrates; and identify the parts of the authority that support the proposition. **If more than one authority is cited in support of a given proposition, the skeleton argument must briefly state why.** (14.2)

# Chronologies and agreed issues

**14.7** Not less than 7 days before the date of the hearing (or the warned date), the parties shall file: (a) an agreed list of issues; (b) an agreed chronology of events (with page references to the hearing bundle); and (c) an agreed a list of essential documents for the advance reading of the court (with page references in the hearing bundle to the passages relied on) and a time estimate for that reading

# Consequences of not complying with the PD

"Any skeleton argument that does not comply with the requirements above **may be returned** to its author by the Administrative Court Office and may not be re-filed unless and until it complies with those requirements. The court **may disallow the cost** of preparing a skeleton argument which does not comply with these requirement." (14.4)

# Impact of the reforms?

- Clarity, fairness and modernity?
- More difficult for nuances to be conveyed?
- Longer hearings?
- Fewer interventions?

# PD 54B: urgent applications (within court hours)

- Use Form N463, stating:
  - The reasons for urgency (whether for expedition, substantive or interim relief)
  - Timescale for (i) reviewing N463 and (ii) for relief
  - Why the application was not made sooner
    - **Frank, full and fair**

*Keep these questions in mind whenever preparing urgent cases*

# PD 54B: urgent applications (within court hours)

- Also file paginated and indexed bundle
  - Prepared in accordance with bundling Guidance
  - Containing pre-action correspondence, correspondence regarding urgent application, grounds, key evidence (both helpful and unhelpful), draft order

  If filing in London, use: immediates@administrativecourtoffice.justice.gov.uk. If outside, see relevant office in PD 54C

  Bundle should be served on the Defendant (and any IP) before being filed with Court – if not possible, when the application is filed.

# PD 54B: urgent applications (within court hours)

- Put the other side on notice
  - As early as possible, including of the fact that you will be seeking urgent relief
  - Update the other side about applications, hearings etc
    - A clear paper-trail is your friend
  - The Court will want to know what they have to say: see PD 54B §§1.8 and 2.3.

# Applications for urgent interim relief

- PD 54B §2.3 recognises that these may be extremely urgent and therefore *ex parte*
  - *"since the court may need to determine the application without reference to the defendant […] the applicant must identify all matters relevant to whether or not the interim relief sought should be granted"*
  - **NB**: You should still give the other side every opportunity to respond to your application and to keep them updated
- PD 54B §2.2: *"The applicant will be expected to have taken reasonable steps to investigate matters material to the application"* and **must be supported by evidence contained in a WS covering all material issues**

# PD 54B: urgent applications (within court hours)

**Duty of candour is at its highest here**

- See e.g. *SB (Afghanistan) v SSHD* [2018] EWCA Civ 215
  - Duty to put all relevant information before the Court
  - Flag up unhelpful / contradictory material clearly
- Also importance of not 'abusing' urgent procedure: *R (DVP & Ors) v SSHD* [2021] EWHC 606 (Admin)

# Urgent applications out of hours

- Court hours: Monday – Friday 10 a.m. – 4.30pm
- Amendments to rules do not address out of hours applications beyond noting that they *"should be directed to the QBD out of hours judge"*
- Out of hours form (+ concise electronic bundle if possible)
- See §15.3 of the Administrative Court Judicial Review Guide (2020) for procedure
  - §15.3.6: Representatives *"should only make such an application if the matter really cannot wait until the next working day"*

# Thank you

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