

Defending judicial review proceedings: Post issue and permission

*Charlotte Hadfield and Matthew Wyard,
3PB Barristers*

Defending judicial review proceedings series

Today's seminar: What happens between issuing and a permission decision

Upcoming seminars - 12/07/23: Post permission: Preparing for trial.

Previous seminar: Pre issue.

Today's agenda

- Analysing the claim and preparing the AoS/SGR
- Directions
- Urgent Consideration
- Types of permission decisions/analysis of adverse decisions

Preparing AoS/SGR and seeking directions

The claim gets served

Check what you have received:

- Claim Form and Statement of Facts and Grounds
- Evidence
- Application for Urgent Consideration/Interim relief
- NOTICE ONE – if Claimant legally aided

The Acknowledgement of Service (“AoS”)

- Anyone served with an application for judicial review who wishes to take part must file an AoS (Form N462).
- If they want to contest the claim they must include Summary Grounds of Resistance.
- Must be filed no later than 21 days after service of the claim form (unless shortened by the court).

Failure to file an AoS

- CPR54.9
- May not take part in a permission hearing
- Provided DGOR are filed you can still take part in the trial
- Beware: Court can take a failure to file AoS into account when making costs awards

Should we file an AoS/SGOR

- Yes – your opportunity to try and prevent the Claimant getting permission and disposing of the claim at the first juncture.
- If permission refused it saves costs and time moving forward.
- Will be able to recover your costs if you successfully oppose permission.

Analysing the claim – knock out blows

- Delay/Limitation
- Standing
- Is the decision justiciable
- Is the defendant amenable to judicial review
- Does the Claimant have a suitable alternative remedy
- Academic issues
- No substantial difference

Analysing the claim – Merits

- Test for permission: arguable ground for judicial review with a realistic prospect of success.
- Analyse the merits of each challenge with the test in mind.
- Bear in mind the duty of candour.

Analysing the claim – Merits

- Consider the ‘principles of good decision making’ from talk 1
- Has your client exceeded their powers
- Have they taken into account all relevant considerations
- Reasonableness
- Reasons

Contents of the AoS/SGOR

- Set out the relevant facts
- Summary of the reasoning behind the decision under scrutiny
- Legal basis of defending the claim
- Must be as concise as possible and not exceed 30 pages unless the court has given permission (following an application)

Totally without merit

- If the application is truly hopeless and “bound to fail” then consider asking the court to certify the application as totally without merit.
- Precludes the Claimant from an oral renewal hearing.

Directions

Can seek directions in the AoS. Consider:

- Does your case need a judge with a particular knowledge basis
- Anonymity
- Timeframes

Claimant's Reply

- No provision in the CPR for a Reply but most Claimant's will but one in.
- Can consider putting in a Response to a Reply but rarely and only if it will really assist the court.

Urgent Consideration

Urgent Consideration

- Shouldn't be coming across these routinely.
- You should have been given advanced notice and, usually, served with the urgent application in advance of it being filed.
- Have the right to make representations.
- Can try to convince the court not to hear it urgently.

Permission decisions

The test for permission

Papers go before a judge to make a decision as to whether to grant the Claimant permission to proceed.

· Must be an arguable ground for judicial review with a realistic prospect of success and no discretionary bars to permission.

7 potential decisions

Court will serve the order.

- Permission gets granted – we will discuss what happens following a grant of permission during the next webinar.
- Permission gets refused. Claimant usually required to pay the Defendant's costs of AoS/SGR. Claimant can seek oral renewal hearing within 7 days.

7 potential decisions

- Permission gets refused and claim gets certified as Totally Without Merit. Cannot seek oral renewal hearing, must appeal to the Court of Appeal.
- Part grant of permission.
- Permission adjourned to an oral hearing on notice.

7 potential decisions

- Permission adjourned to a “rolled-up” hearing.
- Application for permission to be re-submitted.

Oral renewal hearing

- No requirement for Defendant to attend (unless ordered) but often a good idea to try and ‘finish off’ the claim.
- Very short – usually listed for 30 minutes which includes time for the court to give judgment.



Matthew Wyard

matthew.wyard@3pb.co.uk

0207 583 8055



Matthew Wyard



2023



Charlotte Hadfield

charlotte.hadfield@3pb.co.uk

0207 583 8055



Charlotte Hadfield



2023

London
020 7583 8055

Birmingham
0121 289 4333

Bristol
0117 928 1520

Oxford
01865 793 736

Winchester
01962 868 884

Bournemouth
01202 292 102

This document is not intended to constitute and should not be used as a substitute for legal advice on any specific matter. No liability for the accuracy of the content of this document, or the consequences of relying on it, is assumed by the author. If you seek further information, please contact publicreg.clerks@3pb.co.uk