Blackstone
CHAMBERS

HOW TO MAKE THE ADMINISTRATIVE COURT A BETTER PLACE: SOME PROCEDURAL SUGGESTIONS

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1. Double-Sided Bundles. All bundles lodged and served in judicial review cases should be copied double-sided. Modern copies have such a facility. House of Lords bundles have long-since been required to be in this form. It halves the volume of papers, the number of files, the number of times you have to put down one bundle and pick up another. Best of all, it is environmentally responsible.

2. Full-Size Files. All bundles lodged and served in judicial review should be full-size lever-arch files. Use of full-size files means that, even where papers currently lodged do not fill the file, the parties can use the spare space for subsequent materials. That minimises the need for unnecessary additional files or replacement files, when more materials are needed. So, a bundle of authorities can have spare space and tabs at the back for inevitable additional authorities to be added in.

3. Permission 'Bundle A'. In lodging any heavy case involving more than one lever-arch file, the claimant should ensure – so far as possible – that materials essential to consideration by the permission judge should be in a first bundle ('Bundle A'). This can serve as the judge's "take-home" bundle.

4. N462 Permission-Resistance Boxes. Form N462 (Acknowledgment of Service) should include tick-boxes of this kind:

> ***I contest the grant of permission in respect of all of the claim*** □
> ***I contest the grant of permission in respect of part of the claim*** □
> ***I do not contest the grant of permission*** □

At present, the defendant or interested party has to state that "the claim" (or part of it) is contested, summarising on what grounds (CPR 54.8(4)(a)). That serves to "prompt defendants – public authorities – to give early consideration to and, where appropriate, to fulfil their public duties" (*Mount Cook* [2003] EWCA Civ 1346 at [71]). But the permission judge is not interested in a preview of what would be more fully set out in detailed grounds (CPR 54.14), and the claimant will get that when the time comes. Rather, the judge needs any crisp knock-out

reasons why permission should be refused, and is entitled to a clear indication whether it is even resisted.

5. N462 Section C Explanatory Note. Section C of Form N462 should include an explanatory note along these lines:

> ***CPR 54.8(4)(a) requires that "The acknowledgment of service – (a) must (i) where the person filing it intends to contest the claim, set out a summary of his grounds for doing so". This section is available for that purpose. Parties are, however, reminded that the function of N462 is to make such points as may assist the Court in considering whether, and on what grounds, to grant permission. A defendant or interested party is not required to predict or set out all points that it may subsequently wish to advance in a detailed response (CPR 54.14), were permission granted.***

This would help keep the summary grounds concise, avoiding undue cost, duplication and the need to reserve the position as to further points which may be taken in a detailed response. It reflects the true function of the summary grounds: "to assist claimants with a speedy and relatively inexpensive determination by the court of the arguability of their claims" (*Mount Cook* at [71]).

6. N462 Candour Certification. Form N462 should need an authorised certification along these lines (required wherever permission is contested – see §4 above):

> ***I certify that I have satisfied myself that – save for any documents lodged with this Acknowledgment of Service – there is no further document <u>which is favourable to the claimant</u> and whose disclosure at a substantive hearing would be necessary for a full and accurate explanation of the relevant facts and a true and comprehensive account of the way relevant decisions were arrived at.***

This would ensure that the defendant's duty of candour (the test comes from *Quark Fishing* [2002] EWCA Civ 1409 at [50]) plays a proper role at the permission stage, and not just where permission is granted (cf. *Huddleston* [1986] 2 All ER 941; *Auburn, Respondents' Post-Permission Duty of Candour* [1999] JR 156). It would mean that a defendant cannot both (a) resist permission and (b) be tempted to withhold some document which could affect the viability of the claim.

7. Detailed Grounds Candour Certification. The detailed grounds (CPR 54.14) should also (cf. §6 above) need an authorised certification along these lines:

> ***I certify that I have satisfied myself that there are no further documents – beyond those served on the claimant – whose disclosure is necessary for a full and accurate explanation of the relevant facts and a true and comprehensive account of the way relevant decisions were arrived at.***

This would best ensure that the duty of candour is properly and proactively discharged. After all, it is a self-policing duty, calling for high standards of due diligence, which this would promote.

8. Permission reply letter. The claimant should be entitled, within 7 days of receipt of an Acknowledgment of Service (N462) to write a brief letter of reply, to be placed with the papers for the permission judge. The ACO is expected to pass on relevant letters: *Aaron v Law Society* [2003] EWHC 2271 (Admin) at [75]. The claimant should alert the ACO lawyer, where such a letter is intended. This practice assists the permission judge, in knowing whether the claimant has a crisp answer in the light of what the defendant/ interested party has said (or not said).

9. Sequential Pagination. All court papers lodged and served in judicial review (not authorities bundles) should be paginated sequentially to continue on from the documents previously lodged. Thus, if the claimant's permission bundle runs from pages 1-500, the defendant's N462 should begin as page 501. If the summary grounds (or any reply letter) end at page 600, the defendant's detailed grounds and evidence should begin as page 601. If that evidence ends at page 700, any reply evidence should begin as page 701. Interested parties should liaise with the defendant to ensure correct pagination. In this way, papers can have a master pagination from the start which can be retained, and to which witness statements, grounds and skeletons can refer. Papers can thus be paginated and marked once only, and need not wastefully be recopied and replaced. And everything copied double-sided, of course.

10. Supplying Email Addresses. All grounds for review, summary grounds of resistance, detailed grounds and skeleton arguments should bear at the end of the document the email addresses of advocates and instructing lawyers (including those of the other parties, where known). This can greatly assist the parties, the Administrative Court Office and the judge's clerk, should any matter arise which requires a message to be communicated and dealt with.

11. "In The Administrative Court". Grounds for review, or of resistance, witness statements, skeleton arguments and so on should no longer bear the title:

> **IN THE HIGH COURT OF JUSTICE**
> **QUEEN'S BENCH DIVISION**
> **ADMINISTRATIVE COURT**

Rather, they should simply say:

> **IN THE ADMINISTRATIVE COURT**

This convention will reflect and promote the reality, in substance, of an autonomous Administrative Court.

12. Paper-Permission Deputies. All paper permission decisions should be taken by deputy Administrative Court judges. This allows a valuable participation by experienced senior practitioners, operating from their place of work.

13. Permission Time-Markings. Wherever possible, the permission judge should provide a time-marking for oral permission applications, especially those towards the bottom of the list. Email addresses (on the grounds) can be used to this end, by the judge's clerk, whether at 5pm the day before the permission hearing or 9am on the day itself.

14. Shorthand writer. Oral permission hearings – which should be unrobed – ought not involve the shorthand writer having to record all the advocates' arguments and interchanges with the judge, but only the rulings and reasons of the Court. Shorthand writers might even find themselves released to have a cup of tea.

15. Scrapping Divisional Courts. There should be no more multiple-judge Administrative Courts, hearing in civil judicial review cases. If a case is felt sufficiently serious, it should be heard by a single Lord Justice, sitting in the Administrative Court.

16. Judge Shifts. Judges should sit in the Administrative Court for more sustained periods. However, they should have one day a week allocated to them each, as a reading and writing day.

17. Deleting "Working" Days. The time limits for substantive hearing skeletons should, at last, be amended so that CPR 54PD paras 15.1 and 15.2 read:

> ***15.1*** ***The claimant must file and serve a skeleton argument not less than 21 days before the date of the hearing of the judicial review (or the warned date).***
>
> ***15.2*** ***The defendant and any other party wishing to make representations at the hearing of the judicial review must file and serve a skeleton argument not less than 14 days before the date of the hearing of the judicial review (or the warned date).***

That means getting rid of the old, bizarre and erroneous, "21 working days" (4 weeks and a day) and "14 working days" (3 weeks less a day).

18. Costs Overhaul. The Law Commission should conduct a thorough examination of the operation in public law of (a) the costs rules and (b) CLS funding. Serious consideration should be given to a 'new beginning', where the general principle is that public authority defendants bear their own costs of judicial review. As well as means-tested CLS funding for individual claimants, costs should be available from central funds for individuals and NGOs who succeed on judicial review claims. The role of costs in public law, together with the need for clarity and predictability at the permission stage, are in urgent need of radical consideration.

19. Accreditation of Instructing Lawyer. Grounds for review, or of resistance, should end by naming not only any advocate(s), but also the lawyer instructing them. Those persons should be introduced by name to the Court at the start of a hearing, and should be named on the front page of any judgment. No longer should instructing lawyers, who have prepared and steered the case from the start, have to endure advocates getting all the named credit.

20. Silk's Row. At any hearing where no QCs appear, the Court and Court staff should allow the (junior) advocates to occupy silk's row. In this way, instructing lawyers will be guaranteed proper desk space.

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