



Delays in the Administrative Court: Justice Denied?

By Catherine Callaghan

The judicial review procedure set out in Part 54 of the CPR is intended to offer claimants a quick and efficient way of challenging the exercise of public power. At the same time, the speedy resolution of such claims is intended to ensure that public bodies are not prejudiced in their ability to carry out their statutory duties. However, over the past 18 months or so, delays in the consideration of claims by the Administrative Court have meant that parties to judicial review proceedings are being denied those benefits and are at risk of being denied justice.

A recent response from the Courts Service to a Freedom of Information Act request submitted by the Public Law Project indicated that the average period for an application for judicial review to be considered on the papers is 15 weeks. On average, it takes a further 19 weeks for a renewal hearing; and parties typically wait 21 weeks to get a substantive decision after permission has been granted. But the figures provided by the Courts Service include expedited cases, so in fact the picture is even bleaker. For non-expedited cases, it is commonly taking 18 months for a one-day judicial review claim to get from initial claim to substantive hearing, assuming there is an oral permission hearing. The waiting time is ironic, to say the least, given the requirement for claimants to file claims promptly and in any event within 3 months of a challenged decision.

There appear to be two fairly simple reasons for the current delays. First, there has been a significant increase in the volume of work carried out by Administrative Court judges resulting from asylum-based judicial review claims, statutory reviews under the Nationality, Immigration and Asylum Act 2002, control orders and proceeds of crime claims. Second, despite the large and growing increase in workload, the judicial resources allocated to the Administrative Court have

remained static; in fact, judicial sitting days have decreased since 2005. The “Justice Outside London” report has estimated that 14 full time judges would be needed for at least a year to eliminate the backlog, and 10 or more judges would be needed simply to maintain current work levels. This level of allocation is rarely, if ever, achieved. The result is that the amount of work outstanding in the Administrative Court has steadily increased.

These delays are intolerable for the parties and judges alike. Many challenges risk becoming completely academic by the time the court considers them. Defendants are being forced to put their action on hold or to expend large sums of public money to ‘hold the ring’ until the court decides whether their actions were lawful. Judges themselves are becoming increasingly frustrated, as evidenced most recently by Munby J’s comments in *R (Casey) v Restormel Borough Council* [2007] EWHC 2514 (Admin), [28] that the delays in that case breached the principles of the Magna Carta.

In response, the Government has started a recruitment competition for deputy judges, and is considering establishing regional Administrative Courts, each with a circuit judge nominated to sit as a deputy high court judge. But is this enough? The Public Law Project doesn’t think so. The public law action group has written a pre-action letter to the Lord Chancellor and Secretary of State for Justice, alleging that the delays are unlawful because they breach the Article 6 right to determination of a claim within a reasonable time, and the Lord Chancellor’s statutory duty to ensure there is an efficient and effective court system pursuant to section 1 of the Courts Act 2003. (<http://www.publiclawproject.org.uk/documents/AdminCrtDelayLetter.pdf>.)

This is a novel approach to a serious problem. But there is historical precedent for it. In two previous cases the European Court of Human Rights has held that Article 6 requires States to organise their legal systems so as to allow the courts to comply with the requirements of Article 6. A backlog of court cases will not involve liability on the part of a State provided it takes reasonably prompt remedial action to deal with it. In the case of *Buchholz v Germany*, the Court found no Article 6 violation because the German Government had taken prompt action to increase the number of judicial posts in response to an increase in the case load. However, in the case of

Zimmerman v Switzerland, the Court found that Switzerland had breached Article 6 by failing to take adequate steps to deal with a backlog of cases.

It will be interesting to see whether a claim is brought, how long it takes to deal with it, and whether it will be possible to find an Administrative Court judge who is not conflicted out of hearing the case.

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