LANDMARK CHAMBERS

Practice and Procedure Update

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Administrative Court Judicial Review Guide 2023

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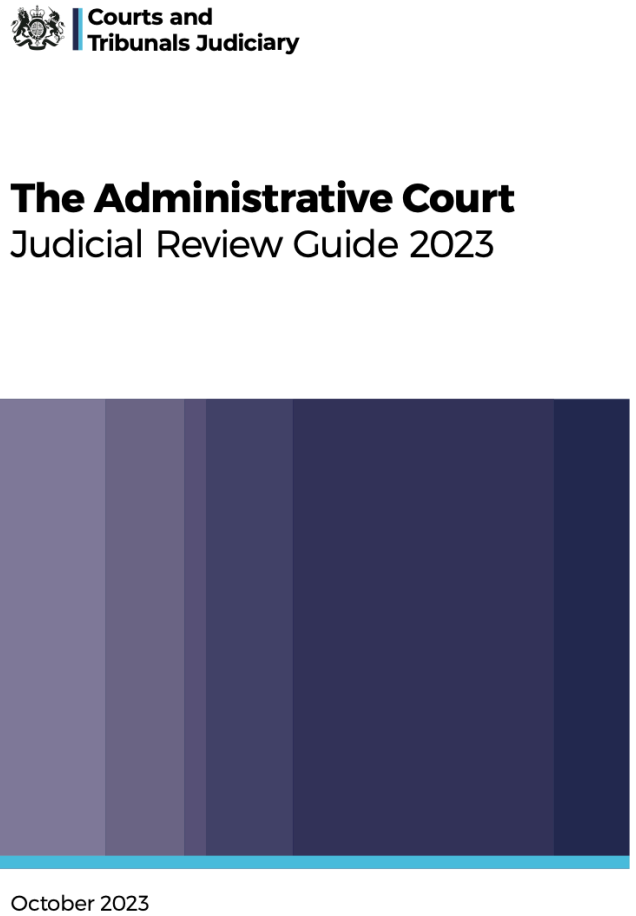

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Assertion of principle of open justice

- §7.12.1 "The guiding principle is the principle of open justice. The administration of justice takes place in public. The public have the right to attend all court hearings; the media is able to report those proceedings fully and contemporaneously. Consistent with this principle, the general rule is that the names of the parties to an action are made public when matters come before the court and included in orders and judgments of the court."
- Linked to increased judicial frustration at public authorities applying excessive redactions: see §15.5.3 and ***R (FMA) v SSHD*** [2023] EWHC 1579 (Admin).

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Duty of Candour

- §15.3.2. *The duty of candour has been recognised as applying at all stages of judicial review proceedings, **including when responding to the pre-action letter**, in Summary Grounds, Detailed Grounds, witness statements and in counsel's written and oral arguments.298 However, what is required to discharge the duty at the substantive stage will be more extensive than what is required before permission has been granted*.
- Based on *R (HM) v Secretary of State for the Home Department* [2022] EWHC 2729 (Admin) where Divisional Court prepared to proceed on basis that Tsol guidance (which states this principle) correctly states law.
- However, contrast ***R (British Gas Trading Limited) v Secretary of State for Energy Security and Net Zero*** [2023] EWHC 737 (Admin) where the Divisional Court held that *"it is usually the grant of permission which is the trigger for the duty of candour and cooperation with the Court to arise".*

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Factual disputes

- §11.2.3 repeats judgment of Chamberlain J in *R (F) v Surrey County Council* [2023] EWHC 980 (Admin):

If invited to resolve a dispute of primary fact, the court should consider carefully whether any pleaded ground of challenge really requires resolution of the dispute. In most cases, the answer will be that the resolution of the dispute was for the decision-maker, not the court: the court's supervisory function does not require it to step into the shoes of the decision-maker and therefore does not require it to resolve the issue for itself.

Where the resolution of a dispute of primary fact is necessary, the court usually proceeds on written evidence. The court will generally do so if no application to cross-examine has been made before the start of the substantive hearing.

There is no absolute rule that the court must accept in full every part of the statement of a witness who has not been cross-examined, whether the statement is adduced for the claimant or the defendant. The court can reject evidence in a witness statement if it "cannot be correct".200 That might be so if it is contradicted by "undisputed objective evidence... that cannot sensibly be explained away".201 Courts have also rejected evidence given in witness statements as, on balance, inconsistent with other written evidence.202

In some cases, the court may be unable to resolve a conflict of written evidence on a question of primary fact. In that situation, "the court will proceed on the basis that the fact has not been proved".203 This will be to the disadvantage of whichever party must prove the fact.

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Other matters

- §11.3 documents in Welsh can be put before the court and at any hearing in Wales parties have right to address court in Welsh
- §14.5 requests for remote attendance at hearings must be made by application
- Prepare indexed and paginated bundles, both with applications and AoS (best practice) - §§13.7.3, 8.3.3.

Claims under s.288 TCPA

Telford and Wreckin v SSLUHC [2023] EWHC 2439 (Admin)

- PD54D, §4.11 – s.288 claims to be filed *and served* within 6 weeks
- C files claim within 6 weeks, but not issued by court or served until afterwards.
- C argued that PD54D should be read with CPR 54.7 (service in JR claims)
- Eyre J disagreed. PD54D a complete code. Application for extension of time refused.

Claims under s.288 TCPA

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Home Farm Land Ltd v SSLUHC [2023] EWHC 2566 (Admin)

- Deadline for filing and serving s.288 3 November
- 2 November C attempts unsuccessfully to file on CE file (CE file not introduced in Admin Court at that time)
- 2 November C emails ACO for advice and told could file by email or posting in ACO drop box
- 3 November 11.58 C pays fee and instructs courier to attend the RCJ and deposit the claim form and bundle in the ACO drop box. Deposited at 15.45, but drop box only emptied twice a day and final collection 14.30
- 3 November 19.04 C emails unsealed claim form to GLD
- 4 November ACO raises issues with the claim form relating to the fee and names of parties and C sent amended claim form and tried to re-send to GLD (wrong email address). Finally resent on 25 November.

Claims under s.288 TCPA

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Home Farm Land Ltd v SSLUHC [2023] EWHC 2566 (Admin)

- SoS argued that claim form not filed in time because did not reach ACO. C argued that since closure of Admin Court counters claim forms are now deposited with ACO when they placed in drop box.
- Lang J found for the SoS. A claim is not filed when left in the drop box. It is filed when it is taken from the drop box to the ACO and approved for filing by a member of ACO staff. Lang J said that C could have notified ACO that claim had been left in drop box after 14.30 and needed to be filed and issued on that day but he did not. The claim was not filed in time
- Further the claim was not served on time because the version served on 3 November was *unsealed.*
- In terms of extending time, Lang J held (consistent with *Good Law Project*) that CPR 7.6 to be applied directly or indirectly to claims for statutory review under s.288. Relief from sanctions/Denton princples do not apply. Must show *"all reasonable steps".*

Claims under s.289 TCPA

R (Ibrar) v Dacorum BC & SSLUHC [2022] EWHC 3425 (Admin)

- C issues JR or SoS's decision to dismiss his enforcement appeal. JR issued outside of 4 week time limit for s.289 challenges but within the 6 weeks for JR
- C argued that, based on nature of his claim, s.289 was not an adequate alternative remedy. Eyre J disagreed holding that this would be so *"only in the most exceptional case"*. There will almost never be a distinction between grounds which can be brought in a JR and grounds which can be brought in s.289 claim on "point of law"
- C applied in the alternative for an extension of time if the court found that the claim should have been a s.289. Eyre J rejected the application: A had persisted in deliberate decision to proceed with JR even after the point had been taken and the claim would have failed on its merits in any event.

Claims under s.289 TCPA

Willoughby (610) v SSLUHC [2023] EWHC 2553 (Admin)

- A brings appeals under s.174 and 78 TCPA in respect of development
- A succeeds in the appeals but Inspector imposes two conditions to which A objects.
- A brings claims under s.289 and 288 asking for “unusual request for relief striking down two conditions but retaining the permissions granted".
- SoS argued that A's claim was not justiciable because he succeeded at the planning appeals and so was not a person aggrieved.
- In a permission decision, Karen Ridge (DHCJ) accepted that A's claim was justiciable: if inspector had made an error of law in imposing the conditions then A was a person aggrieved. Relief was a matter for the substantive hearing.

Claims under s.289 TCPA

Muorah v SSLUHC [2023] EWHC 285 (Admin)

- A challenged decision to dismiss an enforcement appeal under s.289.
- A obtained permission to bring the appeal. However *after* that point A declared bankrupt.
- A's trustee in bankruptcy disclaimed A's interest in the property which the subject of the appeal.
- A attempted to continue the appeal in her own name and the SoS asked for it to be struck out as an abuse of process.
- The Court (Neil Cameron KC (DHCJ)) agreed. Upon her bankruptcy A's cause of action in the appeal vested in the trustee in Bankruptcy. The trustee *could* assign it back to A to pursue and allow the investigation of her bankruptcy issues. But as of the hearing this had not happened.
- It was an abuse of process for A to maintain her appeal when she knew that she did not own the right to bring it.

Aarhus

- With effect from 1 October 2023, the first instance Aarhus costs protections have moved from CPR Part 45 VII to a new home amongst the “Costs – Special Cases" in CPR Part 46 IX.
- The changes, which were effected by r.16 of The Civil Procedure (Amendment No.2) Rules 2023 are essentially a copy and paste of the provisions previously contained in CPR Part 45 VIII, with consequential amendments to referencing in CPR r.52.19A (Aarhus costs on appeal) and CPR Part 54.

Thank you

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