

Breakfast briefing: Changes to Part 54 CPR

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Introduction

- Changes take effect from 31 May 2021
- Available on the ALBA website:
<https://adminlaw.org.uk/wp-content/uploads/131st-Practice-Direction-Amendments-new-Part-54-PDs-.pdf>
- Current Part 54 PDs being replaced with:
 - PD 54A: General
 - PD 54B: Urgent apps and other apps for IR
 - PD 54C: Venue
 - PD 54D: Planning Court Claims (no substantive changes)
- Key points from PD 54A and C – Rosie; PD 54B - Katherine

PD54A – Judicial Review

- CF/SFG: C “must ensure” that the CF/app notice sets out “**all material facts**, that is all those facts which are relevant” to the claim/app; C “must make proper & necessary enquiries before seeking permission... to **ensure so far as reasonably possible that all rel. facts are known**” (4.1(1))
- C “should refer” to stat. provs. i) excluding Ct’s jurisdiction ii) preventing grant of relief sought; and to iii) alt. appeal mechanisms that exist/could have been used (4.1(2))

PD54A – Judicial Review

- SFG must be “clear and concise”, “concise as possible”, “not exceed 40 pages”, usually “significantly shorter than 40 pages” (4.2)
- More detailed specification of Grounds’ content: for each ground identify rel. prov. of law breached, sufficient detail of the breach to identify essential issues (4.2)
- Hard copy + e-bundle (Guidance on Admin Ct website)
- Clarity on identifying IPs: if JR relates to proceedings in Ct/Tribunal, any other party to those proceedings = IP (4.6(2))

PD54A – Judicial Review

- AoS: SGD must “succinctly” identify rel. facts, “brief summary” of reasoning underlying the measure, “succinctly explain” legal basis of response, “concise as possible”, 30 pages & usually “significantly shorter” (6.2)
- Renewed app for permission: request to reconsider is to “identify the scope of renewed app.”, “succinct” and should “**address reasons given**” by J refusing permission. (7.6)
- Standard hearing estimate 30 mins inc. judgment! (7.7)
- Request longer listing in the app and provide agreed estimate 7 days before hearing (7.7)

PD54A – Judicial Review

- Detailed Grounds: can rely on SGD instead of filing DG... (9.1)
- DGs must be “concise” & “shall not exceed” 40 pages (9.1(2))
- Duty of candour: DGs should identify rel. facts and reasoning “in acc. w duty of candour” (10.1)
(unlikely that intended to suggest that d.o. candour only applies to Ds post-permission: see Admin Ct Guide 14.1.6: “continuing duty on all parties”)
- Hard copy + e-bundle (Guidance on Admin Ct website)

PD54A – Judicial Review

- r.54.15: Ct's permission req'd for additional grounds: C “**must make** an app” for permission to amend (Pt 23: notice, service 3 days before, apply to set aside etc.)
- “promptly” and explain “need” and “any delay” (11.2)
- When considering app, Ct will apply
 - CPR r.17.1: once served, only amend SOC w. parties' written agreement / Ct's permission and
 - CPR r.17.2: Ct may disallow amendment even where permission not req'd (if permission had been req'd for that amendment, would not have been granted, e.g. vexatious)
- Ct can give directions for D to amend DGs etc. (11.4)

PD54A – Judicial Review

- Skeletons: intended to “ASSIST THE COURT” by setting out “AS CONCISELY AS POSSIBLE” a party’s arguments (14.1)
- 25-page limit
- Skeletons should “define and confine” the issues, be cross-referenced & “self-contained”, not quote extensively, clearly identify authorities (no long lists: say why if more than 1 per proposition) (14.2)
- May be returned if non-compliant and costs disallowed

PD54A – Judicial Review

- Parties shall agree & lodge final bundle **21 days before hearing** (same day as C's skeleton & before D's skeleton), emphasising need to front-load prep and facts on the table (15.1 & 15.3)
- Core bundle if main bundle over 400 pages (15.1)
- Sols must certify that bundle meets requirements (15.1)
- 7 days before hearing, parties must agree and lodge:
 - Authorities bundle
 - **An agreed list of issues, chronology, essential reading and time estimate** (used to be in skeletons) (14.7)
- Hard copy + e-bundle

PD 54C - Venue

- Continuing emphasis on the fact that courts exist outside of London which can deal with Admin Court matters
- Explains that administration of Admin Ct is “organised by geographical area”
- General expectation is that proceedings will be administered in region “with which the **CLAIM** is most closely connected”, not the Claimant (that is still one of the factors: 2.5)

PD 54B – Urgent apps and interim relief

- Requirements in PD 54B (to be read alongside p.71-80 Admin Court Guide)
- Headline points:
 - strict enforcement of procedural requirements re urgent apps
 - take real care over N463
 - failure to comply could lead to referral under *Hamid* jurisdiction and/or to professional regulator
- A cautionary tale: *R (DVP) v SSHD* [2021] EWHC 606 (Admin)

How to make an urgent app

File bundle (hard copy and electronic) containing:

1. Form N463
2. Witness statement verified by a statement of truth (PD54B para 2.2) (apps for IR)
3. Relevant documentation (including: pre-action correspondence concerning claim for JR; all communication with D re urgent app – PD54B para 1.3)
3. Draft order (must set out “clearly and concisely” the relief sought – PD54B para 2.4)

Form N463 etc.

- Timescale sought for consideration of the application
 - N463 will only be appropriate for very urgent matters (ie an app which must be determined within 7 days at the latest)
 - If the app is quite urgent but does not require determination within a few days, must make app in claim form or N244, with covering letter explaining timeframe (then be prepared to chase!)
- Reasons for urgency
 - Need a justification beyond the justification for the claim itself (why does the app *urgent* resolution?)
 - Normally urgency only justified if some irreversible action (prejudicial to C) unless IR granted/claim expedited ASAP
 - Must explain any delay in making app (difficult to justify urgency if *any* material delay)

Form N463 etc.

- Reasons why IR/expedition justified
 - Normally IR/expedition only justified if some irreversible action (prejudicial to C) unless IR granted/claim expedited
- When D/IP put on notice or why app made without notice (and efforts made to contact D/IP)
 - Court v. reluctant to grant IR without hearing from D
 - Unless matter extremely urgent, think about using N463 procedure to get directions for quick filing of response from D re interim relief followed by decision on the papers or interim relief hearing
 - In an app for expedition, must include statement of position of D/IP on the expedition sought (or steps to contact them) (PD 54B para 3.1)

Form N463 etc.

- Cannot cross-refer to other docs (eg SFG) for the required information. DVP at [16]:

“The completion of form N463 is an important discipline for those who wish to make urgent applications in the Administrative Court, and practitioners must follow the correct procedures. It is not acceptable for litigants or practitioners to leave any of these sections blank or to side-step what the form requires them to do by cross-referring to other documents. If an application is genuinely urgent, it will be neither difficult nor onerous to identify the information required.”

Form N463 etc.

- Duty of candour applies. *DVP* at [9]:

“The duty of candour in this context, means that the claimant must disclose any relevant information or material fact which either supports or undermines his case. Material facts are those facts which it is material for a judge to know when dealing with the urgent application. The duty requires the claimant to make the court aware of the issues that are likely to arise and the possible difficulties in the application or underlying claim. The information the claimant puts before the Administrative Court in support of an urgent application must be presented in a fair and even-handed manner, and in a way which is not designed simply to promote his own case. The court must be able to rely on the claimant’s compliance with the duty of candour, as urgent applications in the Administrative Court are usually made on very limited notice to a defendant, and an exceptionally urgent application may be made without any notice to the defendant at all.”

Form N463 etc.

- Duty of candour reflected at PD54B paras 2.2 and 2.3 re urgent apps for interim relief:
 - Investigate matters material to the app
 - Set out all material matters in WS (including those which undermine the app)

“The applicant will be expected to have taken reasonable steps to investigate matters material to the application. The application must be supported by evidence contained in a witness statement verified by a statement of truth. The information should be no more than is necessary for the purposes of the application but must cover all matters that it is reasonable to assume a court would consider material to the application. ...the applicant must identify all matters relevant to whether or not the interim relief sought should be granted (both those supporting and those undermining the application).”

The End



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