

Administrative Court Office on the Western Circuit - local practices and procedures

Before I address local practice and procedure, the title of today's presentation, I thought it would be helpful, by way of background, to briefly explain how the Admin Court is set up and also explain a little about how the judiciary are deployed on the Western Circuit to deal with Admin Court work.

In recent years, the Admin Court has become one of the busiest specialist Courts within the High Court dealing with in the region of 6000 cases per year.

Its work will be well known to many of you. It has a both a civil and a criminal jurisdiction and since 2014, it also includes a specialist list - The Planning Court.

The administration of cases is dealt with by the Administrative Court Office – the ACO as it's known. The main office is based at the RCJ in London and there are 4 regional offices - Birmingham, Leeds, Manchester and Cardiff.

Since 2012, the Cardiff ACO has also operated as the ACO for the Western Circuit. What that means in practical terms is that south west claims are administered in Cardiff but any hearing takes place on the western circuit typically in Bristol or at Exeter Combined Court.

On a side note, since November 2013, the regional offices have also operated as the Upper Tribunal (Immigration and Asylum Chamber) regional offices dealing with immigration based judicial review challenges.

Under the current judicial arrangements, Admin Court cases are heard by High Court Judges and deputy High Court Judges. Overall judicial responsibility for the Admin Court in Wales, the Western Circuit and the Midlands is assumed by a Queen's Bench Liaison Judge, currently Mr Justice Garnham.

The Liaison Judge is on Circuit once every legal term for a period of typically three weeks and spends 1 week sitting at Bristol CJC and 2 weeks sitting in Cardiff. A visiting High Court Judge also sits once a term for a period of 3 weeks, again dividing their time sitting between Bristol and Cardiff.

There are also a number of local Circuit Judges on the Western Circuit who are ticketed to hear Admin Court cases. These include HHJ Blair QC, Recorder of Bristol, HHJ Cotter QC, Designated Civil Judge at Bristol CJC and HHJ Gore QC, Designated Civil Judge at Exeter. Under s9 of the Seniors Courts Act 1981, these Judges sit as a Judge of the High Court rather than as a Deputy. Judge Cotter and Judge Gore are also ticketed to hear non-significant Planning Court cases. These Judges are not allocated dedicated administrative court weeks like the High Court Judges. Cases are listed before them on an ad hoc basis to fit around their civil and criminal lists. Paper permission applications are also dealt with in the same way.

Some Admin Court cases cannot be dealt with by ticketed Circuit Judges and must be dealt with by a full time High Court Judge for example crime or crime related cases and Town and Country Planning 'Significant' cases. South West cases falling into this category are generally listed before a High Court Judge whilst on circuit in Bristol.

Most Admin Court cases are generally heard by a Single Judge but some are heard by a Divisional Court. Divisional Court cases are generally only convened for cases that raise issues of general public importance, for criminal cases (as there is no right of appeal to the COA) or where the case has some public interest, is not straightforward or is likely to set a precedent.

There is no specific time set aside for Divisional Court sittings on the Western Circuit but they are arranged as and when required.

Moving on to address the title of today's presentation, I want to talk about three areas of practice and procedure:-

1. Issuing Admin Court claims
2. Urgent applications
3. Listing & Applications to vacate or adjourn hearings

1. Issuing claims

It is important that public law practitioners are familiar with Practice Direction 54D Civil Procedure Rules. This concerns the place in which a claim before the Admin Court should be started and administered and allows for claims to be transferred to a different venue. It also sets out a list of exempted cases that can only be dealt with in London.

The general expectation in the PD is that proceedings will be administered and determined in the region with which the claimant has the closest connection. As such the claim should be filed in the ACO with which the claimant has the closest connection.

Claims where the claimant has the closest connection to the South West of England should be filed in the Cardiff ACO. The Cardiff ACO has a counter which is open 10am until 4pm Monday to Friday where claimants or their representatives can attend in person and have their claim issued. Alternatively, they can send the claim in by post. Claims cannot be filed electronically unless the claim is urgent and requires consideration by a Judge that day. (more on this later)

Whilst it is not encouraged, claimants may issue a claim in a different region to the one with which they have the closest connection. The claimant should outline why the claim has been issued in a different region in section 4 of the claim form and it should be justified in accordance with the considerations set out in PD, of which there are 10.

If the claim is issued in an ACO thought not to be the most appropriate, it may be transferred by judicial order. These orders known as '*Minded to Transfer Orders*' are generally made by the ACO lawyer within a few days of the case being issued. The order will contain provision, in the form of an '*unless order*' whereby the claim will be automatically transferred without further order if the parties do not make representations. If any of the parties do make representations, then the case will be referred to the liaison judge to consider ultimately whether the case should be transferred.

It is important to note that whilst there are 10 considerations in the PD, priority is given to the location of the claimant. So for example, when a claimant in Devon, files their claim in London because their Counsel are based there, it is unlikely, without more, to remain in London. In these circumstances, a minded to transfer order will be made and it is very likely that the claim will be transferred to the Cardiff ACO for administration and for hearing at a local court on the western circuit.

So far in 2018, 37 cases have been transferred into the Cardiff ACO for hearing on the Western Circuit as a result of a Minded to Transfer Order.

For those cases where a minded to transfer order is not made for whatever reason but are deemed suitable for transfer, the Judge dealing with permission on the papers will consider the issue of venue and may direct proceedings are transferred for any renewal or substantive hearing. It is also open for any party to make an application to transfer proceedings to another venue.

The transfer of Planning cases is dealt with in a slightly different way predominantly because of the small pool of planning judges that are available. A MTTO is still sent in appropriate cases however, the issue of venue will be determined at the same time the issue of permission on the papers is considered.

There are 3 benefits, as I see it, to issuing South West cases in the Cardiff ACO

1. Unlike other ACO's whereby there is often a couple of weeks delay between the filing of the claim and the issuing of it for service, the Cardiff office is able to issue all claims on the day that they are filed;
2. Performance figures consistently show that on average, cases administered by the Cardiff office are referred to a Judge on the papers quicker than in any other ACO and also the numbers of days between issue of the claim and closure of the claim, is less than any other office. So on average, cases are dealt with far quicker.
3. Hearings are wherever possible listed at local courts ensuring litigants, public authorities and the wider community are able to see issues of local interest being decided within their local area.

2. Urgent applications

In May this year, a new procedure was introduced in each of the regional ACO's for issuing urgent applications. This procedure differs slightly from the urgent procedure used in London due to the large geographical areas covered by the regional offices and the availability or otherwise of Judges.

The regional procedure allows court users to lodge an urgent application by email without payment of the fee in exceptional circumstances as a result of an unavoidable emergency. The case must also require consideration by a Judge that day. The obvious example is in an immigration case where the claimant is to be imminently removed from the jurisdiction.

This facility is only to be used by Solicitors and Barristers with rights to participate in litigation. The cut off time for any application is 4pm. Any urgent applications after this time, should be directed to the out of hours Judge in accordance with CPR PD 54D.

There are certain additional documents that must be filed with the claim including a covering letter explaining in full the emergency and why the use of this service is unavoidable, a draft order and a signed undertaking form.

Once the documents are have been emailed through, the legal representative must contact the relevant ACO to confirm receipt of the email.

Providing everything is in order, the Court will issue the application and one copy of the sealed claim form will be posted to the claimant to effect service.

In order to remain compliant with CPR PD 54A and PD 5A the claimant must file one copy of a paginated and indexed bundle containing all the documents. The claimant must also pay the required fee within 5 days in line with the undertaking.

Once the claim has been issued, the urgent application will be referred to a lawyer in the first instance and then to a Judge. In the absence of a lawyer, it will be referred directly to a Judge. Any resulting order will either be emailed or posted to the parties.

It goes without saying, that this procedure is strict and should not be abused with late and unmeritorious claims.

3. Listing and applications to vacate or adjourn hearings

In June 2018, the Admin Court published a consolidated listing policy covering all ACO's.

The policy replaces all previous policies and is designed to be used as guidance for officers when listing any hearing in the Admin Court.

It is intended that the policy will be applied flexibly. The ACO, may where it considers it appropriate to do so, list cases otherwise than in accordance with the policy. A particular case may also be listed in a particular way by reason of judicial order.

For permission hearings, upon receipt of a renewal notice or Judge's order adjourning permission into Court, the officer will proceed to list. Several weeks' notice of the hearing will normally be given. The time estimate for renewal hearings is assumed to be 30 minutes unless a different time estimate is requested by the parties and approved by the Court.

Wherever possible, permission hearings on the Western Circuit will be listed at the most geographically appropriate hearing centre normally the nearest venue to where the claimant resides or has the closest connection subject to court room and judicial availability.

Permission hearings will be fixed at the Court's convenience without taking counsel's availability into consideration.

For substantive hearings, rolled up hearings, statutory appeals and applications, once the case enters the warned list, [The warned list being the 1st day on which the ACO could list the case taking into account the time allowed by the CPR for parties to file documents] the officer will proceed to list the case. In Judicial review cases, the claimant must have also paid the relevant fee for continuation within the statutory time limit and where a rolled-up hearing has been ordered, the claimant must have given an undertaking to pay the continuation fee if permission is ultimately granted.

If the fee or undertaking is not received, the case will be closed and will not be listed.

The ACO aims to list substantive hearings within the following time scales:

- JR Substantives – within 9 months of issue
- Planning s288 challenges and other Statutory Reviews – within 6 months of issue
- Planning JR Substantives – within 10 weeks of the date of expiry of the period for the submission of detailed grounds by the Defendant or Interested party.

The ACO will consult with counsel's clerks to attempt to agree a suitable date for substantive hearings. Where availability dates do not correspond, the case will be listed at the courts convenience.

Word of warning - if Counsel or a solicitor with higher rights of audience are not on the court record for a party, the Court will not consult that party when listing and the case will be listed in line with other parties availability or at the courts convenience.

Litigant in persons' availability is not normally taken into account.

Due to the limited availability of planning judges authorized to hear 'significant' cases, the listing policy is stricter. These cases are listed primarily by reference to the availability of a judge authorized to hear such a case. The same policy applies when listing a hearing before a Divisional Court.

Hearings can only be adjourned or vacated by judicial order.

If the application to vacate is more than 14 days before the fixed hearing and all the parties consent, then a fee is not required. If the application is received less than 14 days before the hearing a fee is payable. The application notice (Form N244) should be accompanied by a draft consent order which should include reasons for the hearing being adjourned.

Even when all the parties consent to the adjournment, parties must always assume that the hearing remains listed until they are advised otherwise by the court. When the sole reason for seeking the adjournment is that counsel is not available for the hearing, the adjournment will rarely be granted.

A decision to grant or refuse an application to adjourn is likely to be dealt with the ACO lawyer acting under delegated powers.

A copy of both the listing policy and urgent application procedure can be found in the ACO JR Guide. The 2018 version is now available on .gov.uk website under the publications tab.

<https://www.gov.uk/government/publications/administrative-court-judicial-review-guide>

It's free to download and I really can't recommend it highly enough. It is used by Judges, ACO lawyers and court officers. It has been prepared with all court users in mind whether they are litigants in person or persons with legal representation. The guide also includes guidance on forms and fees and includes contact details for Central Government Departments.

Finally, in conclusion, the Cardiff ACO holds two court user meetings each year – both to coincide with the liaison judge being on circuit. The Western Circuit meeting is held at Bristol CJC during Hilary Term, normally in March and the Wales meeting is held at Cardiff CJC during Michaelmas term normally in November.

All court users are welcome to attend and raise any issues they may have.

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