

# SWALA Breakfast Seminar Series

*Judicial Review:*

*An Introduction to the Procedure and Jurisdiction*

David Gardner

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# Judicial Review Principles

“David, can we JR this?”

# Principles

- The challenge must be on a point of law, not because you disagree with the merits.
- Broadly, a decision (or lack of decision) can be challenged in 4 scenarios:
  - Unlawful
  - Wednesbury Unreasonable
  - Procedurally Unfair
  - Breach of Human Rights

# Unlawfulness

- GCHQ Case [1985] AC 374 at 410:
- “*The decision maker must understand correctly the law... and give effect to it*”
- Must comply with a duty:
  - Statutory Duties (e.g – Equality Act 2010, Care Act 2014)
  - Due Regard Duties (PSED)
- Must act within powers (*Anisminic* [1969] 2 AC 147)
- Must consider relevant matters and not irrelevant matters (*Fewings* [1995] 1 WLR 1037 at 1049)
- Must adhere to published policy unless good reason otherwise (*Munjaz* [2006] 2 AC 148)

# Wednesbury Unreasonable

- Traditional: *Wednesbury* [1948] 1 KB 223:
- “*so unreasonable that no reasonable authority could ever have come to it.*”
- Modern: *R (Law Society) v Lord Chancellor* [2018] EWHC 2094 (Admin) at § 99:
- “*whether the decision is outside the range of reasonable decisions open to the decision-maker.*” or
- “*there is a demonstrable flaw in the reasoning which led to it.*”

# Procedurally Unfair

- The common law imposes minimum standards of fairness (*Citizens UK* [2018] EWCA Civ 1812)
- Duty of Enquiry (*Tameside* [1976] UKHL 6)
- Breach of legitimate expectation (*Alansi* [2014] PTSR 948 at 962-963)
- Fettering Discretion (*British Oxygen* [1971] AC 610 at 625)
- Inadequate Reasoning (*Hasan* [2009] 3 All ER 539 at [19] and *South Buckinghamshire* [2004] 1 WLR 1953)
- Disproportionate outcome (*Khatun* [2005] QB 37)
- Delay (FH [2007] EWHC 1571 (Admin))
- Consultation (*Moseley* [2014] UKSC 56 at [23] and *Eveleigh* [2023] EWCA Civ 810 at [83-84])

# Breach of Human Rights

- Section 6 Human Rights Act 1998 – Duty to comply with the ECHR.
- “*High-intensity review*” (*A v Chief Constable of Kent* [2013] EWCA Civ 1706 at [36])
- Commonly pleaded:
  - Article 3 (freedom from inhuman and degrading treatment)
  - Article 5 (right to liberty)
  - Article 6 (right to fair trial)
  - Article 8 (right to private and family life)



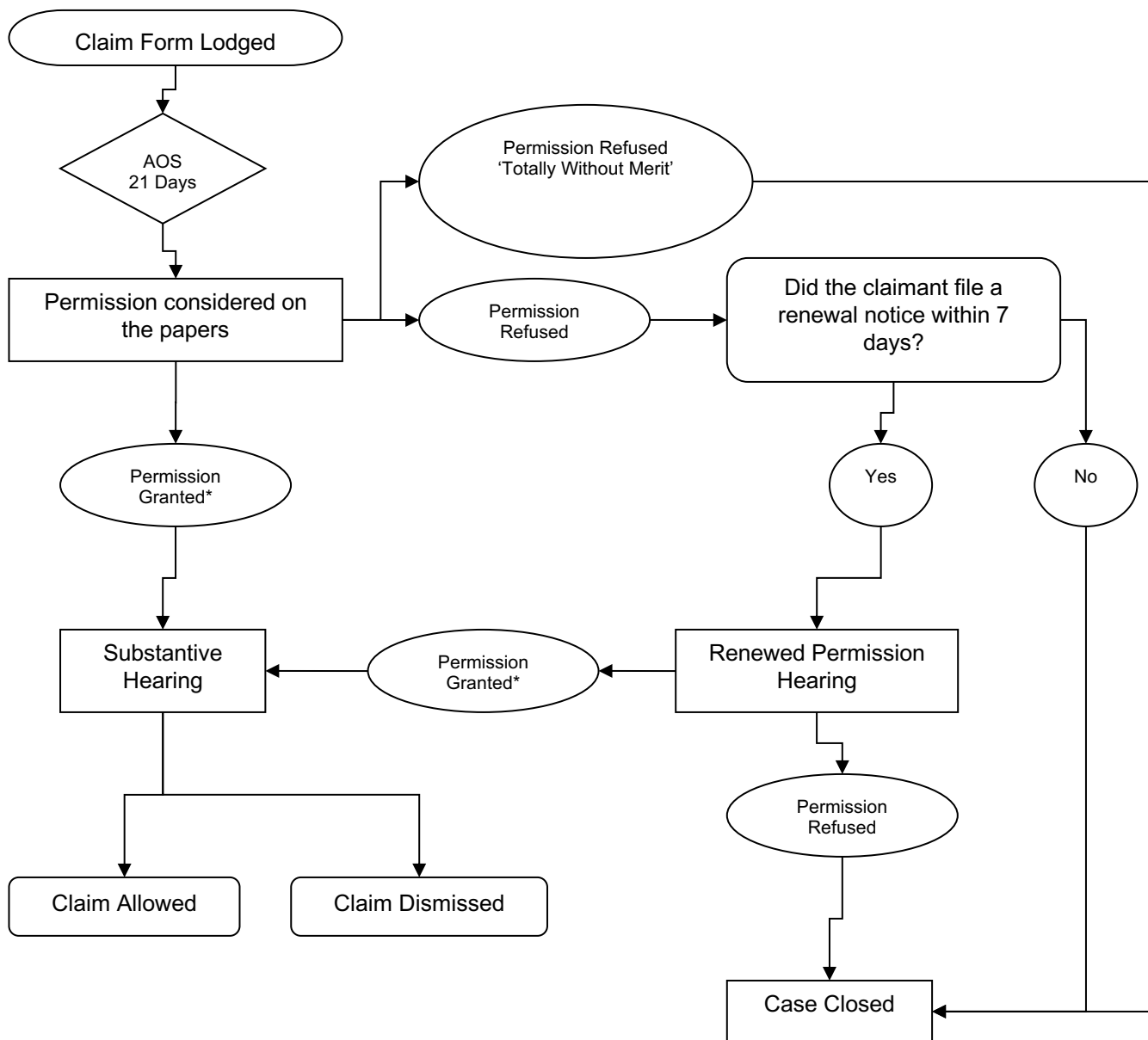
# Practical Issues and Procedure

# Pre-action Considerations

- Duty of Inquiry - CPR 54A PD para 4.1(1) & Admin Court Guide para 7.4
- Letter of Initial Observation – duty of candour, Admin Court Guide para 7.5
- Part 18 Request – Exceptional; JZ [2022] EWHC 1708 (Admin), [26]-[28].
- Judicial Review Pre-Action Protocol
  - Must send a letter before claim (template annexed to protocol)
  - Def will generally have 14 days to respond (but can be sooner)
  - Does not stop the clock, but a prior agreement not to take a time point can be relevant to the exercise of Court's discretion (Admin Court Guide para 6.4.2.1 & JR PAP)
- LAA Funding (legal help, investigative, full rep)
  - Pre-action – Legal Help
  - Issuing Claim – Full Representation

# Timing

- The claim must be filed (a) promptly, and (b) in any event not later than 3 months after the grounds to make the claim first arose (CPR 54.5(1)) – subject to exceptions...
- Clock starts when the decision is made, not when you know about it (*Presvac Engineering* [1992] 4 Admin LR 121), unless it is a policy, in which case it is when first affected by policy (*Badmus* [2020] EWCA Civ 657).
- Permission can be refused for delay – s.31(6) SCA 1981
- Can extend time, per CPR 3.1(2), but see QR (Pakistan) [2018] EWCA Civ 1413 at § 45 and Denton
- TIP: You can't get started quickly enough
- TIP: If you want interim relief or expedition, get started now!



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# Jurisdiction

*A Local Court for Local People*

# Venue

- Closest connection to Claimant (CPR PD 54C)
- Remember for Western Circuit cases, the case must be filed in Cardiff ACO and will be heard on Western Circuit, probably Bristol (Admin Court Guide 2023, para 7.7)
- It will be transferred if wrong - Fordham J, *Ellis* [2022] EWHC 1263 (Admin) & *Forrt* [2022] EWHC 152 (Admin)

Where Can I Get Help?

# Useful Sources

- **Administrative Court Judicial Review Guide 2023**
- Judicial Review Pre-Action Protocol
- CPR Part 54 and PDs
- Fordham J, *Judicial Review Handbook*
- And... your friendly SWALA Practitioner



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