

# SWALA

## Judicial review: Pre-action procedure and issuing a claim

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(No5 Bristol and online)

# Topics

- Time limits
- Pre-action process
- Starting proceedings

# Case Study

- Council-owned urban “green space”, requiring management; contentious process over 2yrs+ to determine its future
- TP, with a public interest mission, obtains speculative planning permission (from the Council) for partial development. Council resolves to grant a long lease to TP
- Local Government Act 1972, s.123(2A): the Council “*may not dispose [...] of any land consisting or forming part of an open space unless before disposing of the land they cause notice of their intention to do so, specifying the land in question, to be advertised in two consecutive weeks in a newspaper circulating in the area in which the land is situated, and consider any objections to the proposed disposal which may be made to them*”.
- Clients seek advice at 3 months minus 11 days. Issues: procedural promises broken; objections not taken into account

# Time limits

- CPR 54.5(1): Generally, “[t]he claim form must be filed (a) promptly, and (b) in any event not later than 3 months after the grounds to make the claim first arose.” (Exceptions for planning cases, procurement cases and other shorter statutory time limits – 54.5(3) to (6))
- CPR 54.5(2): time limits “may not be extended by agreement between the parties”. The court can grant an extension (CPR 3.1(2)(a)), but the approach is strict (cf. CPR 3.9; *Denton* [2014] EWCA Civ 906)
- Complying with the pre-action process doesn’t excuse delay (*Finn-Kelcey v Milton Keynes BC* [2008] EWCA Civ 1067 at [27])

# Pre-action

- JR Pre-Action Protocol: [https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot\\_jrv](https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_jrv)
- [7]: (where appropriate) comply in good time before proceedings are issued. Court will take compliance into account when making directions and costs orders
- **Aims** (broadly): narrow issues, share information, attempt to settle. **Steps**: consider ADR, share (relevant and necessary) information, letter before claim. **Duties**: inquiry, candour.
- **Letter before claim** (see pro-forma in Annex to Protocol):
  - To Defendant (copy to any interested parties)
  - Describe decision, relevant facts, legal basis for claim. (Also address ADR, requests for information?)
  - Allow sufficient time for response and for considering response
- **Response** (pro-forma as above): within 14 days, unless good reasons for proposing an extension. **Candour**

# Starting proceedings

- *Admin Court Guide*, section 7 (<https://www.judiciary.uk/courts-and-tribunals/high-court/administrative-court/administrative-court-judicial-review-guide-2022/>)
- File a **claim form** (N461) with ACO and pay the **fee**. Name IPs (54.6(1)(a)). Provide an indexed and paginated **claim bundle** (PD54A, 4.5; *Guide*, 7.2.5). For e-version, see detailed formatting rules in *Guide*, Annex 7. For hard copies, suggest prior check with ACO.
- **Documents for the bundle** (54.6(1); PD54A, 4.2, 4.4; *Guide*, 7.3.1):
  - Statement(s) of Facts and Grounds, plus remedies sought (together max 40pp.)
  - Written evidence in support, together with relevant documents; copy of decision under challenge
  - Relevant statutory materials
  - List of essential pre-reading for the court
- Serve on D and any IPs within 7 days of issue (CPR54.7), then file certificate of service within 21 days of service (*Guide*, 7.9.4)

# Case Study - outcome

- A few days after filing, the Council wrote to concede the claim: the notice of intended disposal of the land had not been *advertised* in the local newspaper *in two consecutive weeks*, so the Council had failed to comply with s.123(2A) LGA 1972.
- Disposal of the proceedings was agreed, but costs were not. After considering written submissions, the court awarded the claimants approximately 10% of their costs, largely due to failure to comply with the pre-action protocol.

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