

# SWALA Breakfast Seminar Series

## Judicial Review:

- Permission
- Interim Relief
- Urgent Applications



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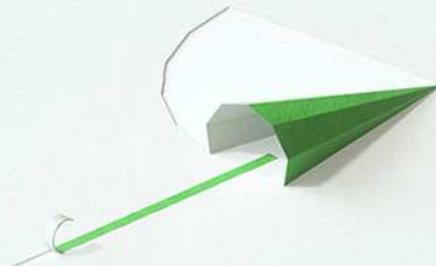
18 April 2024

# Permission

In order to bring a judicial review claim the Court must first provide permission (*CPR 54.4*).

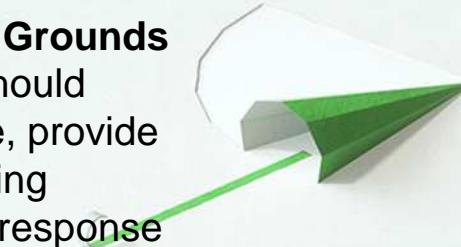
Permission is discretionary and is decided on papers in the first instance. Papers include:

- **Claim form**
- **Acknowledgement of service**
- **Reply**



# Acknowledgement of Service (‘AOS’)

- This is how the Defendant and Interested Parties participate in the permission decision.
- Filed within 21 days of deemed service of the Claim Form and served no later than 7 days after that. Time limits cannot be extended by agreement (CPR 54.8(3)).
- If the claim is contested, include a **Summary Grounds for contesting the claim** (CPR 54.8). This should concisely identify the facts and points in issue, provide reasons for the decision or conduct that is being challenged and explain the legal basis of the response to the Claimant’s case (para 6.2 PD 54A, para 8.3.1, ACG).

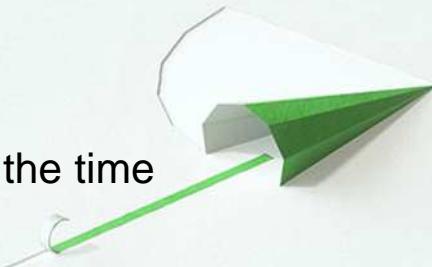


## Reply

Claimant may file a reply within 7 days after service of AOS only if it is necessary for the purposes of the permission decision (*CPR 54.8A*).

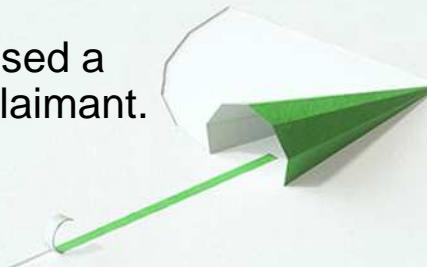
The papers are collated and sent to the judge for consideration after the AOS is filed (*paras 8.2.4 and 9.1.2, ACG*). There is, therefore, a risk that the Reply may not be considered if it is filed after the papers are collated.

However, **CPR 54.8A** makes provision for the Claimant to Reply to the AOS, so it is unlikely consideration of papers will commence before the time limit for filing the Reply has expired.



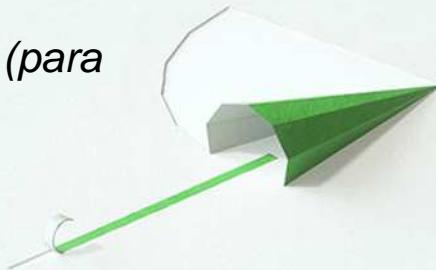
# What is considered at permission stage?

1. There must be an **arguable ground** which has a **realistic prospect of success** (*Para 9.1.3, ACG; Sharma v Antoine [2006] UKPC 57 [2007] 1 WLR 780 at §14(4)*).
2. The claimant should have **standing** (*Section 31(3) SCA 1981*).
3. The conduct complained of must have caused a **substantially different outcome** for the claimant.



## What is considered at permission stage?

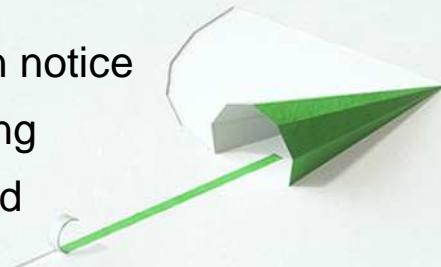
4. The claim must have been made within **time** (CPR 54.5(1)).
5. There should not be an **adequate alternative remedy** (para 6.3.3, ACG).
6. The proceedings should not be **academic** (para 6.3.4, ACG).
7. The Claim must be **amenable** to JR.



## Types of orders

Judge may make any of the following orders (*para 9.2.1, ACG*):

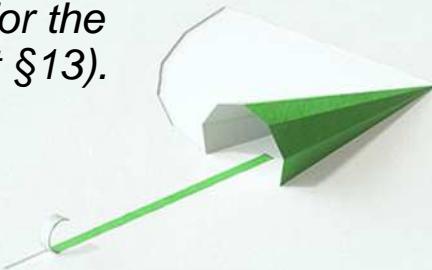
- Permission granted
- Permission refused
- Permission granted in part
- Permission adjourned to an oral hearing on notice
- Permission adjourned to a 'rolled-up' hearing
- Application for permission to be resubmitted



## Totally without merit order

If the Court refuses permission and records the claim as being **totally without merit**, then there is no right to request reconsideration. Instead, the claimant may appeal this decision within 7 days (CPR 54.12(7)).

Totally without merit means “no more and no less than bound to fail” (*R (Grace) v Secretary of State for the Home Department [2014] 1 WLR 3432 (CA)* at §13).



## Refusal of permission / permission granted in part

If permission is refused or granted with conditions, the Court will provide **reasons** for its decision (CPR 54.12(2)).

Defendant may be awarded **costs** for filing AOS (*R (Mount Cook Ltd) v Westminster City Council [2003] EWCA Civ 1346, [2004] CP Rep 12, [76]*).

The claimant may **request reconsideration** at an oral 'renewal hearing'. This request must be made within 7 days (CPR 54.12(3) and (4)). It must address the judge's reasons for refusing permission (CPR 54A PD para 8.6)



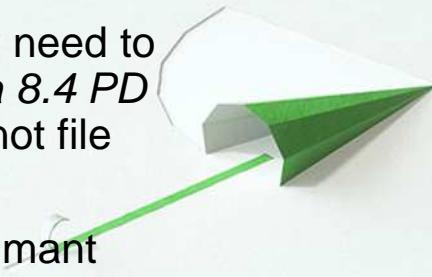
## Renewal hearings

May be ordered by the Court after considering papers (*CPR r54.11A*) or after a request for reconsideration after refusal / refusal in part of request for permission on the papers.

Court will usually give directions (*para 9.4.6, ACG*). Parties will be given at least 2 days' notice of the hearing (*CPR 54.12(5)*).

Neither the Defendant nor any interested party need to attend unless the Court orders otherwise (*para 8.4 PD 54A*). They will be unable to attend if they did not file an AOS.

If permission denied at this stage, then the claimant may appeal (*CPR 52.8(1)*).



## After permission granted

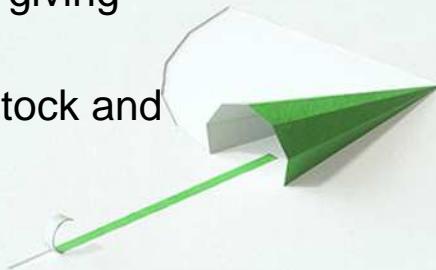
Fee is payable (typically within 7 days) to continue application for JR.

The Claimant will require permission to rely on any additional grounds to those for which permission was granted (*CPR r.54.15*).

It is not possible to apply to set aside an order giving permission (*CPR 54.13*).

Once permission is granted, it is time to take stock and consider the strength of your position.

As part of this, consider **duty of candour** and **cooperation**.

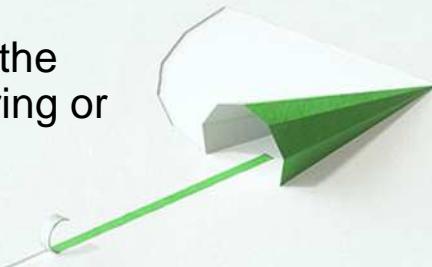


## After permission granted

Court will typically give **case management directions** to progress to a substantive hearing.

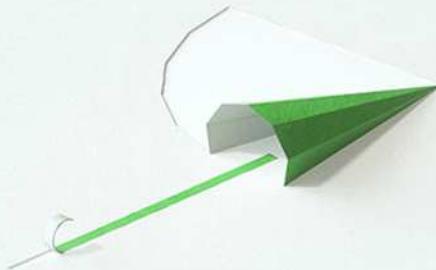
A standard direction is for any party wishing to contest or support the claim to file and serve detailed grounds and evidence (not already filed) within 35 days of permission order (CPR 54.14(1)).

Failure to file within the time limit may prevent the party from participating at the substantive hearing or result in cost sanctions .



## Interim relief

This is usually the Claimant asking the Court to make an injunction order preventing a public body from acting on the decision under challenge or to make an order requiring the defendant to act in a particular way.

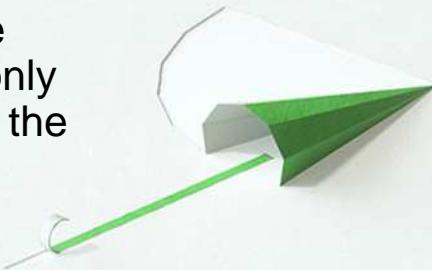


## Applying for interim relief

A party may request an interim remedy at any stage of proceedings, including before proceedings are issued (CPR 25.2).

Applications should ideally be made when Claim Form is filed (*para 16.2.1 and 16.3.1, ACG*).

If application is made before proceedings have started, the Court may grant an interim order only where the matter is **urgent** or it is otherwise in the **interests of justice** (CPR 25.2(2)(b)).

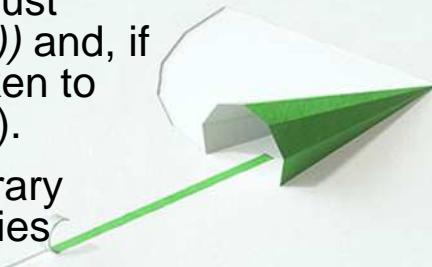


## Applying for interim relief

Application for interim relief should be supported by **evidence** (CPR 25.3(2)). Duty of inquiry applies, but information provided should not be more than necessary (CPR PD 54B, paras 2.2 and 4.1)

Application should be on **notice** (CPR 23.4(1)); however, if this is not possible, the evidence must explain why notice was not given (CPR 25.3(3)) and, if an expedited timetable is sought, the steps taken to contact the Defendant (CPR PD 54B, para 3.1).

In urgent cases, the Court may make a temporary order pending submissions from the other parties (para 16.5.2, ACG)

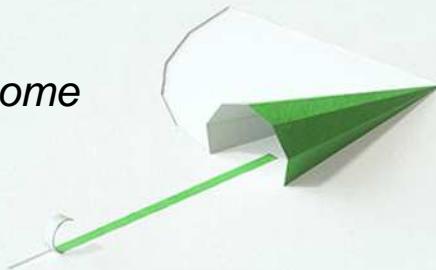


## Test applied by the Court

The test for determining whether interim relief should be granted is whether:

1. there is a **real issue** to be tried; and
2. whether the **balance of convenience** lies in favour of granting the interim order

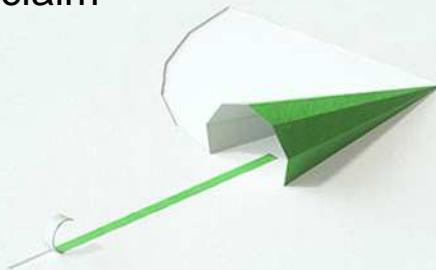
*(R (Medical Justice) v Secretary of State for Home Department 2010 EWHC 1425).*



## Court discretion

Court has flexibility in deciding what relief to grant and is not restricted to the orders that are sought by the applicant (*para 16.6.4, ACG*).

This may mean expediting the substantive JR claim rather than granting interim relief.

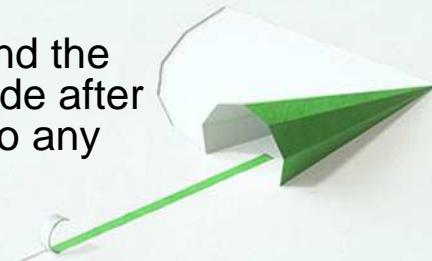


## Responding to the application

Defendants served with notice of an application for interim relief should consider whether the matter can be resolved by consent rather than contesting the application.

If the application was decided on the papers and parties did not consent to this, then they may apply to have the order set aside, varied or stayed under CPR 3.3(5) via a renewal hearing.

If the application was decided on the papers and the parties did consent to this, or an order was made after a hearing, then the order will be final (subject to any appeal).



*See paragraph 16.7 of the Administrative Court Guide.*

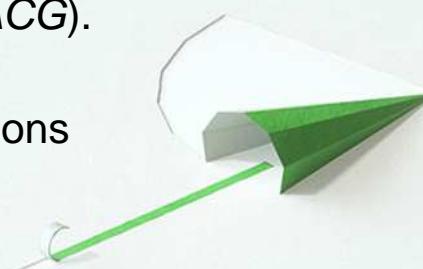
# Urgent applications

A party can request any of following to be considered urgently by the Court:

- Interim relief
- Permission
- Substantive hearing (if permission has been granted)

Urgent means **within 7 days** (*para 17.2.4-5, ACG*).

A request must be predicated on there being a **genuine need** for urgent consideration. Sanctions may be applied if the process is abused.

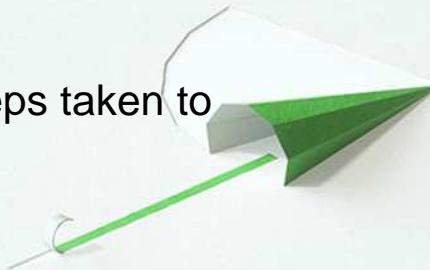


*DVP v Secretary of State for the Home Department [2021]  
EWHC 606*

## Making an application

Application should be made via Form N463 (which accompanies the Claim Form or Application Notice), outlining the following:

- Reasons for the urgency and explanation for any delay;
- Timescale required for application to be considered;
- Timescale for any procedural directions required;
- Grounds for the application;
- Whether application on notice and what steps taken to contact the defendant; and
- The draft order.

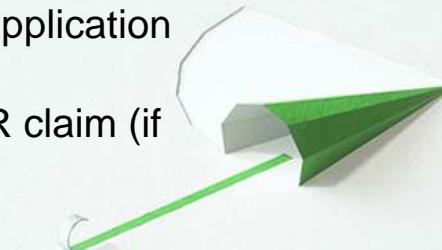


See *CPR Practice Direction 54B*

## Making an application

Under CPR PD 54B 1.3, the applicant should include a indexed and paginated bundle of documents (including an electronic copy), which comprises:

- Form 463
- Any pre-action correspondence
- Any communication with the defendant concerning the application
- Any relevant documents accompanying the application for urgent consideration
- Full substantive papers for the substantive JR claim (if filing with Claim Form)



Note that the duty of candour is intensified (*para 17.3.3, ACG*).

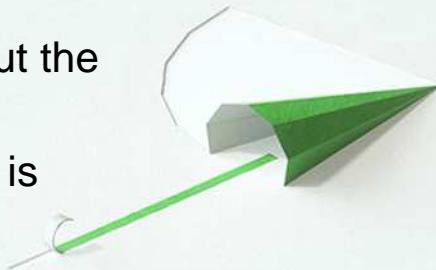
## Considering applications for urgent consideration

The Court will consider the application within the time requested where possible.

It will endeavour to give other parties the opportunity to make representations.

Applications are usually dealt with on paper, but the Court may decide a hearing is appropriate.

If application refused, applicant may request it is reconsidered at a hearing.

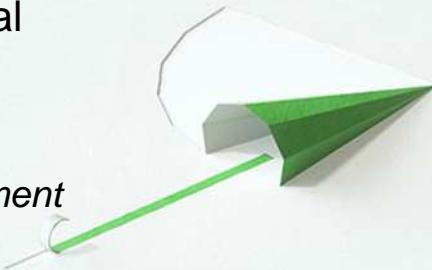


## Refusal of applications

If the judge concludes that the application was not urgent, they will refuse to deal with it on an urgent basis and may make **adverse costs order** against applicant and/or refer the papers to the **Hamid judge** (para 17.7.6, ACG).

Applicant can request an application which has been refused on papers to be reconsidered at an oral hearing.

*R (Hamid) v Secretary of State for the Home Department [2012] EWHC 3070 (Admin)*



# Thank you

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