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**CHAPTER 27**  
**SECTION 3****DEALING WITH THE CASEWORK**

*It is essential to keep in mind that the best way to deal with judicial review applications, or at least to ensure that you do not face a credible challenge, is to make sure that your decisions are correct and soundly based in the first place, thus giving less ground for complaint.*

**1. THE THREAT OF JUDICIAL REVIEW**

- i. If the applicant or his representative indicates that an application for JR is likely, consider quickly whether there are any potential difficulties with your decision. If so, what action should be considered? It is important that the JRMU is informed early to bring to advance notice JR claims which might expose sensitive caseworking/policy issues.
- ii. If you are satisfied that it would be safe to proceed, write to the representatives and require them to lodge their claim for judicial review within a specific timeframe (usually 3 working days in detained cases or those with restricted returnability of three months or less; 5 working days in other cases) and to let you know within 24 hours of lodging a claim the Administrative Office (AO) ref. number. *Where removal action is not likely in the short term, this action may not seem to serve any purpose (except perhaps to bring the JR application forward so that it can be disposed of in good time) but it may be worth writing to the representative to make it clear that action in the case will not be suspended while they decide whether to make the application.*
- iii. You should explain why you are setting this deadline and insist that the representatives notify you by fax as soon as the AO ref. has been obtained. You should make it clear that, if notification is not received within the deadline set, you will proceed urgently to the next action.
- iv. It is important that you do **not** give the solicitors your telephone number: first of all, because a fax is considered by T/Sols as concrete evidence of having received notification, so there can be less reason for uncertainty later; second, once solicitors have your number, they will inevitably telephone you and this could be dangerous in the context of litigation – a caseholder may be pressurised into saying something which the solicitors will then use against us. T/Sols' view is that it is difficult to conduct litigation sensibly if some communications (from the other side) are going to someone else. This means that if somehow the applicant's legal representative attempts to engage you in a discussion of the case, you must refer them to your solicitor, ie T/Sols.
- v. You must remind the representatives that, if they make an application, they will be expected to serve the claim form on the Treasury Solicitor (provide them with the address), together with all accompanying documentation, within 7 days of filing the claim with the court.
- vi. If the other side notifies you of the AO reference number but has not within the

required 7 days served a copy of the claim form on the T/Sols (i.e. the caseworker has not received notification via the JRMU), the caseworker should write to the representatives warning them that if service is not effected within 24 hours, removal action (or whatever action has been held up) will proceed immediately.

- vii. You will need to consider at this point whether there is anything to be gained by writing an explanatory (assertive) letter. This will depend on the circumstances of the case, the time available to you and the content of any previous correspondence which explains and sets out our decision. If in doubt, discuss with a SCW and the Legal Team and/or T/Sols.

## 2. DEALING WITH A JR APPLICATION

Paragraph 6 explained the process by which a JR application will arrive on the caseworker's desk.

- i. As soon as you receive the file, or are notified that a file you are currently working on is the subject of a judicial review claim, you should read the papers carefully and consider whether there are any grounds initially to suggest that the decision is unsafe.
- ii. On receipt of the JR bundle, consider the decision carefully in the light of the other side's grounds – is the decision correct and justifiable? Have we satisfactorily explained the reasons for the decision and set out in correspondence the grounds on which we are relying? Will the decision stand up to judicial scrutiny? At this stage, you must refer to a SCW (SEO) for a decision on whether or not to proceed. By this time, you should also be thoroughly familiar with the file in relation to the grounds for criticism of the decision so that you are ready to discuss the case with T/Sols.
- iii. If it is decided not to contest the claim, what is the next step? Should you give an undertaking to review the decision or would it be more appropriate to concede the case? This is a matter you will probably need to discuss with T/Sols.
- iv. If you are proceeding, you must consider whether the claim is sufficiently complex, sensitive or novel to suggest that you should involve LAB/Legal Team at an early stage? This should always be sanctioned by a SCW.
- v. If it is decided to contest the case, you should let T/Sols know that decision as early in the process as possible and discuss with them what contribution is expected from you so that T/Sols can prepare the summary grounds. You may need to prepare an explanatory (assertive) letter to which reference can be made in the grounds, or an outline of the facts of the case and the policies/arguments on which you rely.
- vi. While most JR claims will be heard on the papers initially, it is possible for T/Sols to append a note to the summary grounds requesting an oral hearing, **but only in genuinely urgent cases.**
- vii. Although the defendant has 21 days to serve Acknowledgement of Service, it is unlikely that you will have that much time to work with. T/Sols will need to be provided with your contribution within 14 days of receiving the bundle so that they have sufficient time to draft the summary grounds and consult Counsel where necessary. If you do not meet the deadline, T/Sols or the JRMU will make progress enquiries.
- viii. If the 21-day deadline is missed or the summary grounds are inadequate, we could lose out at the initial stage, i.e. permission may be granted. While this is not the end of the world - we can always put in grounds or beef up our defence at the next stage

and can then be represented at the substantive hearing - the court will take our initial failure into account when considering the award of costs and of course the delay incurred could be potentially damaging.

- ix. If you receive notification that permission has been refused, remember that the other side have 7 days in which to request reconsideration at an oral hearing. Although the Court will give all parties at least 2 days' notice of the hearing, the other side is not required to give the Secretary of State notice that an application for reconsideration has been made. However, this need not be a bar to further action in those cases, eg. Third Country cases or other detained cases, where we are ready to proceed urgently to removal. There is no reason to suspend action in order to await confirmation of the other side's intentions concerning renewal of their JR application, although in certain cases it may be appropriate to write to the other side to ask if it is their intention to renew, making it clear that if confirmation is not received within 24 hours there will be no bar to removal.
- x. If permission is refused at an oral hearing, the applicant may apply to the Court of Appeal for permission to appeal (see below for further details). This application must be made within 7 days of the High Court refusing permission to proceed. However, the assumption will be that applicants will not go to appeal and the caseworker can proceed with removal action once refusal of permission has been confirmed.

### **3. IF PERMISSION TO PROCEED IS GRANTED**

- i. If permission is granted on the papers, the Secretary of State may not challenge this decision or request an oral hearing. There is no longer the option to apply to have the permission set aside.
- ii. Once permission to proceed has been granted, the court will serve on T/Sols an order giving permission, with its reasons. T/Sols will notify the JRMU of the grant and fax a copy of the order to the caseworker.
- iii. Following the grant of permission, the caseworker will have about 30 days to prepare a detailed defence of the Secretary of State's decision, in consultation with T/Sols who will file it with the court. Again, it will be necessary to reduce the time available (35 days) for submitting our defence so that T/Sols will have adequate time at the end of the process to finalise their action.
- iv. This is a suitable point at which to consider again (in consultation with a SCW and T/Sols who will, in the event of an oral permission hearing, have obtained preliminary advice from counsel concerning the merits of opposing the claim), this time in the light of any reasons which the court may have given for granting permission, whether you wish to continue to contest the case.

### **4. APPEALS ON JR PERMISSION APPLICATIONS**

- i. where permission to apply for JR has been refused at a hearing in the High Court, the Claimant may apply to the Court of Appeal for permission to appeal;
- ii. the application must be made within 7 days of the decision of the High Court refusing the application for permission;
- iii. the Court of Appeal can give permission to apply for JR;
- iv. if permission to apply for JR is granted, the case will proceed in the High Court

- unless the Court of Appeal orders otherwise;
- v. a copy of the appellant's skeleton argument must be served on the respondent within 7 days after the application is filed;
  - vi. the Court of Appeal will normally consider the application on the papers. If the application is refused, the Claimant may ask for the decision to be reconsidered at a hearing but must file that request within 7 days after service of the notice refusing permission. The Claimant must copy that request to the respondent at the same time. If no request for reconsideration is made, the order refusing permission will become final after the time limit for making the request expires;
  - vii. T/Sols are not normally put on notice of the date fixed for the permission hearing in the Court of Appeal but will know that a request has been made because the Claimant is obliged to serve a copy of the request on T/Sols. T/Sols will therefore contact the Civil Appeals Office to advise them that they wish to be notified of the hearing date, that it is proposed to brief counsel to oppose the request and, for the avoidance of doubt, request a direction to this effect.

## 5. APPEALS FROM JR HEARINGS

It is open to either party to seek permission to appeal to the Court of Appeal against the decision of the High Court. The application will normally be made to the High Court at the end of the hearing. If refused, it must be filed **within 14 days**. The form must be served on the other party **within another 7 days**. The application for permission will be dealt with on papers but may be renewed orally. The application will be considered by one Appeals judge or Lord Justice and, if granted, the substantive hearing would take place before three Lord Justices.

### 5.1. House of Lords

Either party may seek to appeal to the House of Lords against the decision of the Court of Appeal. This can often be a 2-stage process. The application for leave to appeal must be lodged **within one month** and must first be made to the Court of Appeal. Usually the application is made immediately after the court gives judgment. Only rarely, however, does the Court of Appeal grant leave, preferring normally to leave the decision to the House of Lords itself. If the Court of Appeal refuses leave to appeal, the applicant is required, within the same one-month period, to lodge with the Judicial Office of the House of Lords a petition for leave to appeal.

Should leave to appeal be granted, the case will be decided by five Law Lords. Very few cases are granted leave to appeal and usually the case will involve an important point of legal principle or interpretation of law.

### 5.2. Entry Clearance Officer Decisions

It is IND's intention to minimise the numbers of cases referred by ECOs to the United Kingdom and therefore it clearly makes sense for posts abroad to take direct responsibility for their own cases which are being challenged at judicial review.

Cases in which the challenge is directly against the decision of the ECO, where there is no right of appeal and **where the case has not been referred to IND for a decision**, are therefore forwarded to the Judicial Review Unit of the Joint Entry Clearance Unit for consideration. However, cases that have been referred to IND and those challenging the IAT decision to refuse leave to appeal will be dealt with by the ICD.