



JUDICIAL
REVIEW
HANDBOOK

EIGHTH EDITION

The Hon Sir Michael Fordham

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Foreword by Lord Woolf
Preface

JUDICIAL REVIEW HANDBOOK: A DETAILED GUIDE TO THE LAW AND PRACTICE

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18.2.14 Wasted costs orders against legal representatives. Senior Courts Act 1981 s.51(6) (7); CPR 46.8 and CPR PD46 §5 (personal liability of legal representative for costs); *R (Ayinde) v Haringey LBC* [2025] EWHC 1040 (Admin) [2025] 4 WLR 71 (wasted costs order against lawyers citing fake authorities); *R (C) v Salford City Council* [2010] EWHC 2325 (Admin) (declining wasted costs order where erroneous reliance on statute had not been pointed out by defendant in pre-claim correspondence); *R (Hide) v Staffordshire County Council* [2007] EWHC 2441 (Admin) (declining wasted costs where impact would be solicitor's bankruptcy); *R (F) v Head Teacher of Addington High School* [2003] EWHC 228 (Admin) (wasted costs ordered against claimant's solicitors where grounds not provided to defendant and defendant's letter not drawn to attention of permission judge, and so misleading impression given as to defendant's inaction); *R (Yildirim) v Immigration Appeal Tribunal* [2002] EWHC 1939 (Admin) (wasted costs inappropriate because Court not satisfied as to causation, i.e. that CLS funding would have been refused if claimant's solicitors had acted properly); *R v London Borough of Hackney, ex p Rowe* [1996] COD 155 (conduct over-zealous; but not improper, unreasonable or negligent); *R v London Borough of Westminster, ex p Geehan & Butler* [1995] COD 204 (although no arguable ground for judicial review, not negligent to bring proceedings, given urgency of case and destitution faced by homeless claimant); *R v SSHD, ex p Shahina Begum* [1995] COD 176 (wasted costs order made for unreasonable and negligent failure to make full and frank disclosure); *Administrative Court: Judicial Review Guide* (2025 edition) at §25.13; <18.3.11> (wasted costs orders at the permission stage).

18.3 Costs and the permission stage. Where permission is granted, costs are in the case unless the Court makes a different order. Where permission is refused, the defendant public authority will generally expect to recover reasonable costs of (and claimed in) an acknowledgment of service, but not costs of attending an oral permission hearing. An interested party may very well be in a similar position.

18.3.1 Power to order costs at the permission stage. Senior Courts Act 1981 s.51; CPR 46.8; *Kent v Secretary of State for Communities and Local Government* [2021] UKSC 36 [2021] 1 WLR 4168 at §14 (s.51 applicable to the permission stage); *R (Wilson) v Prime Minister* [2019] EWCA Civ 304 [2019] 1 WLR 4174 at §67; *R v Camden LBC, ex p Martin* [1997] 1 WLR 359, 365A; *Singh v Public Service Commission* [2019] UKPC 18 at §32 (recognising "jurisdiction to make an order for costs of the withdrawn [permission] application, notwithstanding that no judicial review proceedings were thereafter commenced"); <P21> (the permission stage).

18.3.2 Costs where permission granted. *Practice Statement (Judicial Review: Costs)* [2004] 2 All ER 994 (unless otherwise stated, "grant of permission ... deemed to contain an order that costs be costs in the case"); *R (Davey) v Aylesbury Vale District Council* [2007] EWCA Civ 1166 [2008] 1 WLR 878 at §5 (at substantive hearing in awarding defendant's costs, Court can exclude costs of unsuccessfully having opposed permission); *Administrative Court: Judicial Review Guide* (2025 edition) at §25.4.1.

18.3.3 Permission refused: defendant's AOS costs. *CPRE Kent v Secretary of State for Communities and Local Government* [2021] UKSC 36 [2021] 1 WLR 4168 at §29; endorsing *R (Mount Cook Land Ltd) v Westminster City Council* [2003] EWCA Civ 1346 [2017] PTSR 1166 at §76(1) ("certainly in a case to which the Pre-Action Protocol applies and where a defendant or other interested party has complied with it ... a successful defendant or other party at the permission stage who has filed an acknowledgment of service pursuant to CPR 54.8 should generally recover the costs of doing so from the claimant, whether or not he attends any permission hearing"); *R (Richardson) v Judicial Executive Board* [2018] EWHC 1825 (Admin) (costs of the AOS/SGR sufficient, even though Court gave directions for oral hearing and for skeleton argument from defendant); *R (Roudham & Larling Parish Council) v Breckland Council* [2008] EWCA Civ 714 at §29 (need to give fair weight to the work necessary for even short-form summary grounds); *R (Davey) v Aylesbury Vale District Council* [2007] EWCA Civ 1166 [2008] 1 WLR 878 at §16 (rule of practice that "an unsuccessful applicant for permission must expect to pay the defendant's costs of putting in an [AOS]"), §33 (limited to the costs of discharging the proper, narrow function of the AOS).

R (Ewing) v Office of the Deputy Prime Minister [2005] EWCA Civ 1583 [2006] 1 WLR 1260 at §43 (summary grounds should not be detailed, especially if pre-action protocol followed first).

P18 COSTS

18.3.4 Permission refused: interested party's AOS costs. *CPRE Kent v Secretary of State for Communities and Local Government* [2021] UKSC 36 [2021] 1 WLR 4168; endorsing *R (Mount Cook Land Ltd) v Westminster City Council* [2003] EWCA Civ 1346 [2017] PTSR 1166 at §76(1) (successful defendant "or other party" at permission stage who filed an AOS "should generally recover the costs of doing so"); *R (Ewing) v Office of the Deputy Prime Minister* [2005] EWCA Civ 1583 [2006] 1 WLR 1260 at §42 ("the court must be particularly careful to ensure that the costs falling on the judicial review claimant are not disproportionately inflated by the involvement of the other parties at the permission stage"); §43 (summary grounds should not be detailed, especially if pre-action protocol followed first); cf. *R (Luton Borough Council) v Central Bedfordshire Council* [2014] EWHC 4325 (Admin) (dismissing substantive claim) at §221 ("The general principle in *Bolton* against multiple sets of costs does not apply to costs of preparing an Acknowledgment of Service"); *Administrative Court: Judicial Review Guide* (2025 edition) at §25.6.2.

18.3.5 AOS costs ordered on the papers: procedure. *R (Ewing) v Office of the Deputy Prime Minister* [2005] EWCA Civ 1583 [2006] 1 WLR 1260 at §47 ((i) AOS should include any costs application; (ii) paper refusal of permission should include indication of proposed costs order; (iii) 14 days for claimant to respond; (iv) 7 further days for defendant/third party to reply; (v) decision then made on paper); *Administrative Court: Judicial Review Guide* (2025 edition) at §25.4.2.

18.3.6 Permission refused: costs of oral permission hearing. CPR PD54A §8.5 (costs "not generally" ordered); *R (Mount Cook Land Ltd) v Westminster City Council* [2003] EWCA Civ 1346 [2017] PTSR 1166 at §76(2)-(7) (defendant "should not generally recover" costs relating to oral hearing; need for "exceptional circumstances" which "may" consist of "(a) the hopelessness of the claim; (b) the persistence in it by the claimant after [a response] demonstrating its hopelessness; (c) the extent to which ... the claimant ... has sought to abuse the process of judicial review for collateral ends ... and (d) whether, as a result of the deployment of full argument and documentary evidence by both sides at the hearing of a contested application, the unsuccessful claimant has had, in effect, the advantage of an early substantive hearing"); *R (Wild Justice) v Water Services Regulation Authority* [2023] EWCA Civ 28 [2023] Env LR 27 at §37 ("save in exceptional circumstances a [defendant] who attends such a hearing should do so at its own expense"); *R (Adams) v Legal Ombudsman* [2024] EWHC 3450 (Admin) at §14 (costs of hearing ordered where persistent pursuit of hopeless claim repeating allegations of dishonesty and bad faith); *R (Harrison) v Barnet LBC* [2021] EWHC 2789 (Admin) at §43 (maintaining "hopeless" grounds and "serious accusations of misconduct, bias and bad faith"); *R (Deripaska) v DPP* [2020] EWHC 2918 (Admin) at §§48-51 (exceptional case where defendant and interested party awarded their costs of oral hearing); *R (Wilson) v Prime Minister* [2019] EWCA Civ 304 [2019] 1 WLR 4174 at §§73-74 (judge entitled to order defendant's costs in assisting at a lengthy permission hearing in a weak and controversial case); *R (Al-Ali) v Brent LBC* [2018] EWHC 3634 (Admin) at §§18-19 (claim "always doomed to fail" and defendant had to "establish that [the claimant] has consistently told untruths"); *R (Payne) v Caerphilly County Borough Council* [2004] EWCA Civ 433 (overturning costs order, there being no exceptional circumstances); *Administrative Court: Judicial Review Guide* (2025 edition) at §25.4.5.

18.3.7 Costs and rolled-up hearing. *R (Christian Concern) v Secretary of State for Health and Social Care* [2020] EWHC 1546 (Admin) [2020] ACD 84 (costs of defending the proceedings including the oral hearing awarded against claimant where permission for judicial review refused at rolled-up hearing) (CA is [2020] EWCA Civ 1239); <21.4> (directing a rolled-up hearing).

18.3.8 Claimant's costs where claim resolved prior to permission. *Singh v Public Service Commission* [2019] UKPC 18 (appropriate to order claimant's costs of withdrawn claim for

permission, the matter having been resolved, where defendant failed to respond to pre-action letter even by asking for an extension of time); *R v Royal Borough of Kensington & Chelsea ex p Ghebreigis* (1995) 27 HLR 602 (appropriate in exceptional case to order costs against defendant where failing to concede well-founded case until after judicial review lodged); <18.5> (costs and discontinuance/settlement).

18.3.9 Pre-permission/permission costs: whether within final order. CPR 44.2(6)(d) (order to pay "costs incurred before proceedings have begun"); *R (Davey) v Aylesbury Vale District Council* [2007] EWCA Civ 1166 [2008] 1 WLR 878 at §5 (court at substantive hearing awarding defendant's costs can exclude costs of unsuccessfully having opposed permission); §§21, 31 (judge should deal expressly with whether permission-stage costs included; if order silent, includes reasonable costs prior to grant of permission, costs of the AOS but not any oral hearing); *R v Metropolitan Stipendiary Magistrate, ex p Ali* [1997] Env LR D15 (costs against magistrate limited to post-permission costs); *R (M) v Croydon LBC* [2012] EWCA Civ 595 [2012] 1 WLR 2607 at §72 (successful claimant awarded 50% of pre-permission costs and 100% of post-permission costs); <18.3.2> (costs where permission granted).

18.3.10 Costs and interim relief. *R (RRR Manufacturing Pty Ltd) v British Standards Institution* [2024] EWCA Civ 530 at §§93, 113 (usual order where interim relief obtained in judicial review is costs reserved).

18.3.11 Wasted costs orders at the permission stage. *R (Gransian Ltd) v SSHD* [2008] EWHC 3431 (Admin) (wasted costs order made against claimant's solicitors for unreasonable conduct); *R (F) v Head Teacher of Addington High School* [2003] EWHC 228 (Admin) (wasted costs ordered against claimant's solicitors); *R v SSHD, ex p Mahmood* [1999] COD 119 (wasted costs ordered in relation to additional permission hearing caused by non-attendance); *R v Immigration Appeal Tribunal, ex p Gulbamer Gulsen* [1997] COD 430 (common law jurisdiction to order wasted costs regarding permission stage); <18.2.14> (wasted costs orders against legal representatives).

18.4 Public interest costs and costs capping orders. The public interest can influence the approach to costs in judicial review. Costs capping orders can be imposed in appropriate cases, with the statutory overlay of legislative provisions and accompanying rules.

18.4.1 JR costs and the public interest: striking a balance. *Responsible Development for Abaco Ltd v Christie* [2023] UKPC 2 [2023] 4 WLR 47 at §75 (Lord Sales and Lord Hamblen: "a readiness to award costs against unsuccessful claimants in judicial review claims will have a tendency to deter people from bringing such claims, which could leave the public interest in upholding compliance by public bodies with the rule of law less than fully protected. On the other hand, if costs are not awarded against unsuccessful claimants in routine cases, the competing public interest in ensuring that the resources of public bodies are available to be spent on carrying out their primary functions will also be less than fully protected"); *R (Corner House Research) v Secretary of State for Trade and Industry* [2005] EWCA Civ 192 [2005] 1 WLR 2600 at §70 ("there is a public interest in the elucidation of public law by the higher courts in addition to the interests of the individual parties. One should not therefore necessarily expect identical principles to govern the incidence of costs in public law cases, much less the 'arterial hardening' of guidance into rule").

18.4.2 Public interest: no order as to costs. *Responsible Development for Abaco Ltd v Christie* [2023] UKPC 2 [2023] 4 WLR 47 at §56 (referring to "the wide discretion of the court to make no order as to costs"), §73 ("There may be reasons why, in the exercise of that discretion, a court might decide not to award costs in favour of a public body when it is successful in defending a judicial review claim against it"); *R (Davey) v Aylesbury Vale District Council* [2007] EWCA Civ 1166 [2008] 1 WLR 878 at §21 ("a claim brought partly or wholly in the public interest, albeit unsuccessful, may properly result in a restricted or no order for costs"); *R (Greenpeace Ltd) v Secretary of State for the Environment, Food and Rural Affairs* [2005] EWCA Civ 1656 [2006] Env LR 627 at §§38-40 (judge entitled to decide no order for costs, where important issues and public interest); *R v Secretary of State for the*

Environment, ex p Shelter [1997] COD 49 (no costs order against claimant charity where pending cases raising same issue of genuine public concern); *New Zealand Maori Council v Attorney-General of New Zealand* [1994] 1 AC 466, 485G-H (no order as to costs); cf. *R (Smeaton) v Secretary of State for Health* [2002] EWHC 886 (Admin) [2002] 2 FLR 146 at §421 ("not a matter of genuine public concern at all").

18.4.3 Origin of costs capping: protective costs orders. *Responsible Development for Abaco Ltd v Christie* [2023] UKPC 2 [2023] 4 WLR 47 at §78 (PCOs arose within the general costs discretion); *R (Corner House Research) v Secretary of State for Trade and Industry* [2005] EWCA Civ 192 [2005] 1 WLR 2600.

18.4.4 Judicial review costs capping orders. Criminal Justice and Courts Act 2015 ss.88-89; CPR 46.16 to 46.19 (judicial review costs capping orders); *R (Ullah) v National Crime Agency* [2023] EWHC 371 (Admin) [2023] 1 WLR 2154 at §§20-21, 23 (no power to make CCO in judicial review proceedings except in accordance with the statutory code); *R (CR) v Director of Legal Aid Casework* [2023] EWCA Civ 717 [2023] Costs LR 961 (variation of CCO), §41 (principles applicable to setting reciprocal cap); *R (Elan-Cane) v SSHD* [2020] EWCA Civ 363 [2020] QB 929 at §148 ("underlying public policy" is "promoting access to justice in judicial review proceedings which satisfy the test of being 'public interest proceedings'") (SC is [2021] UKSC 56); *Swift v Carpenter* [2020] EWCA Civ 165 [2020] Costs LR 415 at §18 ("The general purpose ... is to allow a claimant of limited means access to the court in order to advance their case without the fear of an order for substantial costs being made against them, a fear which would inhibit them from continuing with the case"); *Administrative Court: Judicial Review Guide* (2025 edition) at §§9.8-9.9; <2.2.6> (statutory overlay: costs capping orders).

18.4.5 Costs capping orders: illustrations. *R (Thompson) v Metropolitan Police Commissioner* [2025] EWHC 2355 (Admin) at §§39-40 (costs caps set at £70k/£100k); *R (All-Party Parliamentary Group on Fair Business Banking) v Financial Conduct Authority* [2023] EWHC 1662 (Admin) [2023] Costs LR 999 (claimant's cap set at 40% of funds raised); *R (Remite) v SSHD* [2023] EWHC 1794 (Admin) at §6 (costs caps set at £20k/£70k); *R (Good Law Project Ltd) v Secretary of State for Health and Social Care* [2021] EWHC 1083 (TCC) (costs caps set at £120k/£120k); *R (We Love Hackney Ltd) v Hackney LBC* [2019] EWHC 1007 (Admin) (CCO refused) at §48 (not "public interest proceedings", so the "necessary condition for a CCO is not met"), §52 (also, "it would not be reasonable for the claimant to withdraw" given its wealthy backers); *R (Harvey) v Leighton Linlode Town Council* [2019] EWHC 760 (Admin) (setting aside CCO for financial non-disclosure); *R (Liberty) v SSHD (Procedural Matters)* [2018] EWHC 976 (Admin) at §§17, 33 (costs orders relating to defendant's default ordered to apply outside the claimant's cost cap).

18.4.6 Aarhus costs caps in environmental cases. Criminal Justice and Courts Act 2015 s.90; CPR 46.24 to 46.28 (costs limits in Aarhus Convention claims); *R (Global Feedback Ltd) v HM Treasury* [2025] EWCA Civ 624 at §151 ("whether the purpose of the national law that has allegedly been contravened is to protect or regulate the environment"); *R (Edwards) v Environment Agency (No.2)* [2010] UKSC 57 [2011] 1 WLR 79 at §§2-3 (Aarhus requirement that access to court be "not prohibitively expensive"); *R (Day) v Shropshire Council* [2023] UKSC 8 [2023] AC 955 at 958C-H (Aarhus costs caps); *R (Campaign to Protect Rural England - Kent Branch) v Secretary of State for Communities and Local Government* [2019] EWCA Civ 1230 [2020] 1 WLR 352 at §51 (approach at failed permission stage where multiple costs applications) (SC is [2021] UKSC 36); *R (HS2 Action Alliance Ltd) v Secretary of State for Transport* [2015] EWCA Civ 203 [2015] PTSR 1025 at §16 (local authority claimant covered by Aarhus cost cap provisions); *Administrative Court: Judicial Review Guide* (2025 edition) at §25.15.

18.4.7 Costs protection: agreement between the parties. *R (Refugee Legal Centre) v SSHD* [2004] EWHC 684 (Admin) [2004] Imm AR 142 at §8 ("The claimant ... requested and ... received an assurance that the [SSHD] would not seek costs if he succeeded in resisting the claim for judicial review"); *Barnard v Gorman* [1941] AC 378, 388 (defendant agreeing to pay claimant's costs whatever the outcome).

18.4.8 Costs liability as a condition of permission to appeal. *R (Brown) v SSHD* [2015] UKSC 8 [2015] 1 WLR 1060 at 1062H (SC granting SSHD permission to appeal (PTA) "subject to her paying the costs of the appeal in any event"); *R (Medical Justice) v SSHD* [2011] EWCA Civ 269 [2011] 1 WLR 2852 at §6 (PTA to the CA on condition that claimant's costs order not disturbed and SSHD to pay claimant's costs in the CA in any event); *R (Corner House Research) v Director of the Serious Fraud Office* [2008] EWHC 714 (Admin) [2009] 1 AC 756 (PTA to HL on basis that claimant would recover costs in any event) (HL is [2008] UKHL 60); *Chief Constable of the North Wales Police v Evans* [1982] 1 WLR 1155, 1164C (HL granting PTA, directing chief constable to bear claimant's costs of the appeal in any event).

18.4.9 Intervener: prospective order as to costs. CPR PD54A §13.5.

18.5 Costs and discontinuance/settlement. Where a judicial review claim is withdrawn or settled, costs can be agreed by the parties or determined by the Court on the papers. The Court's determination will be informed by all the circumstances including why the claim is not proceeding. An abandoned claim may trigger a defendant's costs order. A vindicated claim usually triggers a claimant's costs order. Where the utility of the claim has been removed because of some changed circumstance or new development, which does not constitute vindication for the claimant, the Court may award costs by asking whether the likely would-be winner is sufficiently clear from a proportionate evaluation.

18.5.1 Costs on claimant discontinuance. CPR 38.6 (discontinuance: liability for costs); *R (Khan) v Governor of HMP The Mount* [2020] EWHC 1367 (Admin) [2020] Costs LR 1137 at §126 (no reason here to depart from default position under CPR 38.6(1) that a discontinuing claimant should pay the costs); *R (Parveen) v Redbridge LBC* [2020] EWCA Civ 194 [2020] 4 WLR 53 at §45 ("where a claim is withdrawn leaving costs to be determined by the court, there is no rule, even as a starting point or default position, that the claimant should pay the defendant's costs"); *R (Newsquest Media Group Ltd) v Police Misconduct Tribunal* [2022] EWHC 299 (Admin) at §§55, 57 (interested party ordered to pay claimant's costs on an indemnity basis, where knowingly asserted that non-existent impugned anonymity order had been made).

18.5.2 Costs where claim settled/become academic: practice. *R (MH (Eritrea)) v SSHD* [2022] EWCA Civ 1296 [2023] 1 WLR 482 at §41 ("Normally, when the parties agree that an application for judicial review or an appeal is academic, but they cannot agree about the costs consequences, they agree a consent order, with a provision that the court will decide who should be liable for costs on the basis of written submissions"); *Administrative Court: Judicial Review Guide* (2025 edition) at §25.5.

18.5.3 Costs where claim settled (*M (Croydon)*). *R (M) v Croydon LBC* [2012] EWCA Civ 595 [2012] 1 WLR 2607 at §§60-63 (Lord Neuberger MR: category (1) where the claimant "has been wholly successful" and would "normally be entitled to all of his costs" absent "some good reason to the contrary"; (2) "cases where a claimant has only succeeded in part" and there is "often be much to be said for concluding that there should be no order for costs"; (3) where a "compromise does not actually reflect the claimant's claims" resulting in "no order for costs" but "mitigated ... by the proviso that there will be some cases in which it may be sensible to consider the underlying claims and consider whether it was 'tolerably clear' who would have won"); *R (Mozumder) v SSHD* [2021] EWCA Civ 138 [2021] Costs LR 357 at §15 (*M (Croydon)* not to be read as a statute, but "useful guidance"); *Administrative Court: Judicial Review Guide* (2025 edition) at §25.5.

18.5.4 Costs where claim settled: successful claimant. *R (M) v Croydon LBC* [2012] EWCA Civ 595 [2012] 1 WLR 2607 at §§52, 59, 61 (claimant should "recover all his costs, unless there is good reason to the contrary"); *R (City Portfolio Ltd) v Lancaster City Council* [2023] EWHC 1991 (Admin) at §§19-21 (claimant's post-AOS costs where (i) secured the "outcome" sought in the claim; (ii) causal link between the claim and the decision to undertake merits

reconsideration; and (iii) a clear missed opportunity at the AOS stage); *R (M Sport Ltd) v HMRC* [2021] EWCA Civ 561 [2021] 4 WLR 62 (costs not ordered because claim should have awaited the ultimate decision); *R (Mozumder) v SSHD* [2021] EWCA Civ 138 [2021] Costs LR 357 at §24 ("the winner in substance"); *R (RS) v Brent LBC* [2020] EWCA Civ 1711 [2021] 1 WLR 2293 at §29 ("In pith and substance this was ... a solid win"); *R (Shahi) v SSHD* [2021] EWCA Civ 1676 [2021] Costs LR 1397 at §§73, 84-85 (fact that claimant got all he wanted, by securing interim relief, not sufficient for costs when claim subsequently withdrawn by consent); *R (Parveen) v Redbridge LBC* [2020] EWCA Civ 194 [2020] 4 WLR 53 at §37 ("success" can be "obtaining the relief" or "obtaining it earlier"); *R (Patel) v SSHD* [2020] EWCA Civ 74 at §21 (need "a fact-specific evaluation by reference to the litigation as a whole"); §44 ("a real-world view of the practical outcome the claimant wished to achieve"); *R (Archer) v HMRC* [2019] EWCA Civ 1021 [2019] 1 WLR 6355 (no order for costs where claimant did not await outcome of alternative statutory remedy); *R (Medway Soft Drinks Ltd) v HMRC* [2019] EWCA Civ 1041 at §18 (claimants regarded as wholly successful); *R (RL) v Croydon LBC* [2018] EWCA Civ 726 [2019] 1 WLR 224 at §49 (whether claimant "can say he has been vindicated" or "should be regarded as having succeeded"); *R (Tesfay) v SSHD* [2016] EWCA Civ 415 [2016] 1 WLR 4853 at §63 (withdrawal of impugned decisions amounted to acceptance that they were materially flawed).

18.5.5 Costs where claim settled: success and causal link. *R (MH (Eritrea)) v SSHD* [2022] EWCA Civ 1296 [2023] 1 WLR 482 at §45 ("no causal connection" between the proceedings and withdrawal of the impugned decision); *R (Parveen) v Redbridge LBC* [2020] EWCA Civ 194 [2020] 4 WLR 53 at §31 ("The fact that the claimant has obtained the relief which he or she was seeking ... does not necessarily mean that the existence of the proceedings has caused or contributed to that result ... causation is a relevant and sometimes decisive factor"); §41 ("if there is a dispute about whether or to what extent the existence of legal proceedings caused or contributed to the claimant obtaining [the outcome] when she did, the court ... would ... be ... with the distinct question of what factors had influenced the conduct of the [defendant]").

18.5.6 Costs where claim settled: partly successful claimant. *R (M) v Croydon LBC* [2012] EWCA Civ 595 [2012] 1 WLR 2607 at §60 (situation where the claimant "has only succeeded in part"), §62 (court may be "able to form a view as to the appropriate costs order" based on features such as "how reasonable the claimant was in pursuing the unsuccessful claim, how important it was compared with the successful claim, and how much the costs were increased", whether there is "a clear winner").

18.5.7 Costs where claim settled: independent act/compromise. *R (M) v Croydon LBC* [2012] EWCA Civ 595 [2012] 1 WLR 2607 at §60 (situation "where there has been some compromise which does not actually reflect the claimant's claims"), §63 ("the default position should be no order as to costs" but "in some cases, it may well be sensible to look at the underlying claims and inquire whether it was tolerably clear who would have won").

18.5.8 Costs where claim settled: proportionate consideration. *R (MH (Eritrea)) v SSHD* [2022] EWCA Civ 1296 [2023] 1 WLR 482 at §50 (whether possible on a "proportionate" consideration of the arguments to say claimant would have won); *R (A) v East Sussex County Council* [2005] EWHC 585 (Admin) (2005) 8 CCLR 228 at §39 (inappropriate to "delve into the detail"); *R v Calderdale Metropolitan Borough Council, ex p Houghton* (2000) 3 CCLR 228 (on looking at the papers briefly, Court able to say that application for judicial review was likely to have succeeded).

18.5.9 Costs where claim settled: would-be winner tolerably clear. *R (RS) v Brent LBC* [2020] EWCA Civ 1711 [2021] 1 WLR 2293 at §32 (unnecessary to consider "who would have won", where satisfied that claimant won); *Strongroom Ltd v Hackney LBC* [2023] EWHC 488 (Admin) at §131 (not "tolerably clear" that claimant would have won).

P19 The claim stage. After any pre-action correspondence, a judicial review claim is made and acknowledged in accordance with applicable rules.

- 19.1 Pre-claim steps
- 19.2 Making the claim
- 19.3 Acknowledging the claim

19.1 Pre-claim steps. Before a judicial review claim comes to be filed with the Court, the parties are generally expected to have engaged in prompt and cooperative open correspondence. There is a Pre-Action Protocol. The basic aim is to try and avoid unnecessary litigation, through the parties stating and considering their positions and options. If a claim ensues, this correspondence can assist the Court.

19.1.1 Pre-Action Protocol. *Judicial Review Pre-Action Protocol* (from justice.gov.uk), §6 (notification of defendant in urgent case), §§14-19 (letter before claim), §13 (request for information), §§20-24 (letter of response); *Administrative Court: Judicial Review Guide* (2025 edition) at §6 (before starting the claim).

19.1.2 Pre-action stages. *Re An Application for Judicial Review* [2021] EWHC 1895 (Admin) [2021] 1 WLR 6121 at §12 (Lewis LJ: "Usually, a claimant sends a pre-action protocol letter to the proposed defendant setting out the reasons why the claimant considers that the proposed defendant is or is proposing to act unlawfully. If that letter does not resolve matters, a claimant may issue a claim for judicial review").

19.1.3 Importance of pre-action correspondence. *Singh v Public Service Commission* [2019] UKPC 18 at §26 (Lord Briggs: "compliance with the pre-action protocols plays a significant part in achieving the important objective of avoiding unnecessary legal proceedings, by requiring the parties to identify in advance key aspects of their respective cases, so as to maximise the prospects of a resolution of any underlying dispute before proceedings are commenced"); *R (NS) v SSHD* [2023] EWHC 2675 (Admin) (2024) 27 CCL Rep 81 at §40 (Saini J: "The failure of the SSHD in this case to engage with the letters before claim, or often even to respond to correspondence concerning urgent accommodation needs, is sadly common in the experience of the Administrative Court"); *R (M Sport Ltd) v HMRC* [2021] EWCA Civ 561 [2021] 4 WLR 62 at §40 (importance of promptness in sending letter before claim); *Maharaj v National Energy Corporation of Trinidad and Tobago* [2019] UKPC 5 [2019] 1 WLR 983 (delay issues) at §41 ("the pre-action letter of response allows a respondent or interested party to draw attention to the possibility of any prejudice or detriment"); *R v Horsham District Council, ex p Wenman* [1995] 1 WLR 680, 709E-F (need to give intended defendant an opportunity to put the matter right); applied in *R (Tshikangu) v Newham LBC* [2001] EWHC Admin 92 at §24; <26.1.11> (delay: pre/permission-stage opportunity).

19.1.4 Pre-claim notification of interested parties. *Pre-Action Protocol* §§17,24; *R (Candlish) v Hastings Borough Council* [2005] EWHC 1539 (Admin) [2006] Env LR 278 at §§25, 27 (claimant's solicitors should copy interested party in on pre-claim correspondence); *Administrative Court: Judicial Review Guide* (2025 edition) at §3.2.3.3.

19.1.5 Procedural rigour: costs and pre-action non-compliance. <18.1.7>

19.1.6 PAP: reducing the AOS work and Mount Cook costs. *R (Ewing) v Office of the Deputy Prime Minister* [2005] EWCA Civ 1583 [2006] 1 WLR 1260 at §§43, 54 (if Pre-Action Protocol followed properly, defendant's summary grounds can be briefer, and any Mount Cook costs lower); <18.3.3> (permission refused: defendant's AOS costs).

19.1.7 PAP: defendant's chance to reconsider. *R (C) v Chief Constable of Greater Manchester* [2011] EWCA Civ 175 [2011] 2 FLR 383 at §13 (Toulson LJ: "one would expect

the pre-action letter to set out the representations which the person would have wished to make, and, unless the [defendant] considers that they do not merit any consideration at all ... at that stage to give consideration to them. All this is part of the modern process for dealing with public law complaints in a way which is just and does not involve unnecessary expense).

19.1.8 PAP: defendant can avoid *M (Croydon)* costs exposure. *R (M) v Croydon LBC* [2012] EWCA Civ 595 [2012] 1 WLR 2607 at §55 (Lord Neuberger MR, in the context of explaining why claimant who brings a claim for judicial review and secures the substantive relief sought can expect to recover their costs: "defendants sometimes concede claims in the Administrative Court simply because it is not worth the candle fighting the case, or because the claim is justified on a relatively technical ground"; but "defendants should make up their mind to concede the claim for such reasons before proceedings are issued. That is one of the main purposes of the [Pre-Action] Protocol"; "if defendants delay considering whether they should concede a claim, that should not be a reason for depriving the claimant of his costs"), §61 ("the defendants should ... have settled before the proceedings were issued: that is one of the main points of the pre-action protocols"); <18.5.4> (costs where claim settled: successful claimant).

19.1.9 Cooperation: ADR/mediation. <10.1.26>

19.1.10 PAP correspondence: relationship with promptness. *Pre-Action Protocol* §1 (Protocol does not affect specified time limits); <26.3.4> (prior agreement not to take a time point: shield letter).

19.2 Making the claim. Starting a judicial review claim involves filing it with the Administrative Court Office, for the Court staff then to issue it. A fee is payable, unless there is fee remission. The claim form (Form N461) is accompanied by a statement of facts and grounds: the judicial review grounds. These and the other necessary documents should be included within a rule-compliant bundle. The materials must comply with the claimant's duty of candour. Once issued, there must be rule-compliant in-time service on any defendant and interested party. In a genuinely urgent case, the Urgent Cases Procedure (Form N463) is used.

19.2.1 Promptness and the running of time. <26.2>

19.2.2 Filing/issuing of the claim. Form N461 (judicial review claim form); Senior Courts Act 1981 s.31(6) ("making" judicial review application); CPR 54.5(1) (claim form "filed"); CPR 2.6(1)(a) (court must seal claim form); CPR 7.2(1) ("proceedings are started when the court issues a claim form"); CPR 7.2(2) (claim issued "on the date entered on the form by the court"); CPR PD7A §6.2 (court-recorded date when claim "received"); *Rogers v Secretary of State for Levelling Up, Housing and Communities* [2024] EWCA Civ 1554 [2025] 1 WLR 2759 at §39 ("would expect a competent and properly staffed court office to seal and issue the claim form within two working days"), §50 (court staff may need to be "energetically chased"); *Administrative Court: Judicial Review Guide* (2025 edition) at §7.2 (filing the claim form), §7.8 (filing documents), Annex 2 (forms and fees); <26.2.2> (stopping the clock).

19.2.3 The claimant. *Administrative Court: Judicial Review Guide* (2025 edition) at §3.2.1; <21.5.3> (anonymity/reporting restrictions: general).

19.2.4 Venue. CPR 7.1A (claims against Welsh public bodies to be issued in Wales); CPR PD54A §2.1(3) and CPR PD54C (venue); *R (Yousaf) v Upper Tribunal* [2025] EWHC 1410 (Admin) at §13 (general expectation is that proceedings will be administered and determined in the region with which the claim has the closest connection); *R (Bale) v HMRC* [2024] EWHC 3216 (Admin) at §6 (importance of properly addressing venue on claim form); *Administrative Court: Judicial Review Guide* (2025 edition) at §7.7 (where to file the claim: appropriate venue); <34.4.3> (territorial reach/forum for judicial review).

19.2.5 Fee/remission of fee. *Administrative Court: Judicial Review Guide* (2025 edition) at §1.5.

19.2.6 **Litigants in person.** *Administrative Court: Judicial Review Guide* (2025 edition) at §4 (litigants in person); <22.4.8> (McKenzie Friend/lay advocate).

19.2.7 **Claimant's duty of candour.** <10.3>

19.2.8 **Cart claims.** <2.4>

19.2.9 **Transfer into the Administrative Court as judicial review.** CPR 30 (transfer); CPR 54.4 (post-transfer permission for judicial review); CPR PD54A §14.1 (transfer); CPR §7.4(1)(d) (direction for habeas corpus to continue as judicial review); *R (Hertfordshire County Council) v Secretary of State for Housing, Communities and Local Government (No.1)* [2021] EWHC 1093 (Admin) [2021] 1 WLR 3714 at §43 (CPR 8 claim transferred to continue as judicial review); *Jane v Westminster Magistrates' Court* [2019] EWHC 394 (Admin) [2019] 4 WLR 95 at §45 (application for habeas corpus treated as claim judicial review); *Attorney General of Trinidad and Tobago v Dumas* [2017] UKPC 12 [2017] 1 WLR 1978 at §26 (court could "exercise ... case management powers to convert this application into one for judicial review"); cf. *Fertre v Vale of White Horse District Council* [2025] EWCA Civ 1057 at §16 (homelessness appeal transferred to the High Court from the county court); <27.3.12> (public/private claims: powers of transfer).

19.2.10 **Claim bundle: prescribed contents.** CPR 54.6(2); CPR PD54A §4.5 (claim bundle), §4.4(1)(g) (relevant statutory material); CPR 8.5(1) (evidence relied on with claim form); CPR PD16 §14 (HRA claim); *Administrative Court: Judicial Review Guide* (2025 edition) at §7.2 (filing the claim form), §7.3 (required documentation), Annex 9 §A (electronic bundles).

19.2.11 **Immigration removal: added requirements.** CPR PD54A §18.2 (additional information and documents); <19.2.21> (immediate sending: immigration removal claim documents).

19.2.12 **Claim form (Form N461): prescribed contents.** CPR 8.2 (general contents of claim form); CPR 54.6(1) and CPR PD54A §4.1 (contents of claim form), §4.3 (include any application to extend time), §4.7 (identify any HRA issue); CPR PD16 §14.1 (HRA claim); *R (ETM Contractors Ltd) v Bristol City Council* [2024] EWHC 2263 (Admin) at §§46-47 (judicial review grounds are an essential part of the claim form for valid filing); *Administrative Court: Judicial Review Guide* (2025 edition) at §7.3 (required documentation).

19.2.13 **Claim form: statement of truth.** CPR 8.5(7) (claim form contents standing as evidence if verified by statement of truth); CPR 22.1(1); *R (Randall) v Clergy Discipline Commission* [2024] EWHC 2924 (Admin) at §26 (claim form "invalid" without a signature); *R (Jetly) v SSHD* [2019] EWHC 204 (Admin) at §5 (absent a statement of truth verifying the factual content, judicial review claim form can be struck out under CPR 22.2); <17.1.2> (grounds with a statement of truth).

19.2.14 **Claim form: identifying the defendant(s).** *Administrative Court: Judicial Review Guide* (2025 edition) at §3.2.2; <50.3.1> (officials act for Ministers; *Carltona* doctrine).

19.2.15 **Claim form: naming interested parties.** CPR PD54A §4.6(1); *Administrative Court: Judicial Review Guide* (2025 edition) at §3.2.3.3; <22.2.1> (interested party: person directly affected).

19.2.16 **Claim form: include costs capping application.** CPR 54.6(1)(d) (Aarhus claim grounds); *R (Campaign for Nuclear Disarmament) v Prime Minister* [2002] EWHC 2712 (Admin) at §7 (claim form should contain notice of any application for a costs capping order).

19.2.17 **Procedural rigour: prompt application for expert evidence.** *R (Law Society) v Lord Chancellor* [2018] EWHC 2094 (Admin) [2019] 1 WLR 1649 at §44 (claimant wishing to rely on expert evidence should include application and proposed directions at the earliest opportunity); <17.6.4> (procedural rigour: permission for expert evidence).

19.2.18 **Claim documents: list of essential reading.** CPR PD54A §4.4(1)(h); *R (DVP) v SSHD* [2021] EWHC 606 (Admin) [2021] 4 WLR 75 at §36 ("The reading list should have

directed the judge to the key documents and the relevant part of the documents in question. A targeted approach was required").

19.2.19 **Judicial review grounds (JRG).** CPR PD54A §4.2; *R (Spahiu) v SSHD* [2018] EWCA Civ 2604 [2019] 1 WLR 1297 at §25 ("The statement of facts and grounds ... is the document which sets out the detailed basis for the applicant's challenge"); *R v Vale of Glamorgan Borough Council, ex p James* [1996] Env LR 102, 109 ("serves to direct the parties' minds to the issues which are alleged to arise and thereby concentrate their mind on the evidence to deal with those particular issues"); *Administrative Court: Judicial Review Guide* (2025 edition) at §7.3 (required documentation).

19.2.20 **Procedural rigour: necessary virtues of the JRG.** CPR PD54A §4.2(3) (concise; 40-page page limit); *R (Al-Haq) v Secretary of State for Business and Trade* [2025] EWHC 173 (Admin) at §37 ("the court is wary of permitting claims to be brought where the grounds of challenge are overly long and complex"); *R (SSE Generation Ltd) v Competition and Markets Authority* [2022] EWHC 865 (Admin) [2022] 4 WLR 76 at §75 (Swift J: "The purpose ... is to provide clear and concise statements of the facts relied on in support of the claim and of the grounds on which the claim is brought"); *R (Dolan) v Secretary of State for Health* [2020] EWCA Civ 1605 [2021] 1 WLR 2326 at §119 (need for "a clear and succinct statement of the grounds"), §120 ("excessively long documents serve to conceal rather than illuminate the essence of the case being advanced. They make the task of the court more difficult rather than easier and they are wasteful of costs"); *Fishermen and Friends of the Sea v Environmental Management Authority* [2018] UKPC 24 [2018] PTSR 1979 at §51 ("the case need[s] to be formulated with precision in the original grounds"); *R (Good Law Project) v Prime Minister* [2022] EWCA Civ 1580 [2023] 1 WLR 785 at §71 ("the claim for relief remained unparticularised. The fact that a claimant is unable or unwilling to particularise the relief that they seek may be an indication that the claim should not be pursued"); *R (Goring-on-Thames Parish Council) v South Oxfordshire District Council* [2018] EWCA Civ 860 [2018] 1 WLR 5161 at §37 (urging a "straightforward approach to the drafting of grounds in claims for judicial review"); *R (Brookes) v Secretary of State for Work and Pensions* [2010] EWCA Civ 420 [2010] 1 WLR 2448 at §4 ("Both the decision and the alleged error must be identified with particularity"); *Somerville v Scottish Ministers* [2007] UKHL 44 [2007] 1 WLR 2734 at §65 ("The factual history should be set out succinctly and the issues of law should be clearly identified"); *R (Naing) v Immigration Appeal Tribunal* [2003] EWHC 771 (Admin) at §59 ("the overloading of a case with hopeless points simply operates potentially to devalue points which otherwise might be made to appear arguable"); *R (Hargrave) v Stroud District Council* [2002] EWCA Civ 1281 [2002] 3 PLR 115 at §40 (unreasonableness ground "needs to be taken early and in detail, and not left to be expanded in this court"); cf. *Ashmore v Corporation of Lloyds* [1992] 1 WLR 446, 453H (Lord Templeman: "It is the duty of counsel to assist the judge by simplification and concentration and not to advance a multitude of ingenious arguments in the hope that out of 10 bad points the judge will be capable of fashioning a winner"); <22.1.19> (procedural rigour: late expansion of the claim); <23.2.9> (procedural rigour: new ground/point advanced on appeal); <25.1.6> (procedural rigour: properly pleading a monetary claim); <3.2.2> (procedural flexibility: grounds of claim).

19.2.21 **Immediate sending: immigration removal claim documents.** CPR PD54A §18.2(2) (claimant's duty in immigration removal cases to send copies of claim documents to specified UKBA address "immediately upon issue of the claim").

19.2.22 **Urgent Cases Procedure (Form N463).** Form N463; *Practice Statement (Administrative Court: Listing and Urgent Cases)* [2002] 1 WLR 810; *R (DPP) v Camberwell Youth Court* [2004] EWHC 1805 (Admin) [2005] 1 WLR 810 (appropriateness of judicial review with N463 in youth court jurisdiction cases); *R (Shergill) v Harrow Crown Court* [2005] EWHC 648 (Admin) at §2 (judicial review of Crown Court refusal of bail should be dealt with at an urgent oral hearing, normally within 48 hours, on notice to the Crown Court and prosecuting authority); *Administrative Court: Judicial Review Guide* (2025 edition) at §17 (urgent cases), Annex 4 §§1-8 and annex 1 (urgent interim applications).

19.2.23 Procedural rigour: use of Urgent Cases Procedure. CPR PD54B (urgent applications and interim relief); *R (DVP) v SSHD* [2021] EWHC 606 (Admin) [2021] 4 WLR 75 at §7 (those seeking to make use of the 'urgents' procedures are under a duty to the court to satisfy themselves that the application they are considering really is urgent and to adhere, to the letter, to the rules of court which protect the procedure from abuse ... any abuse of the 'urgents' procedures will not be tolerated by the court and will be met with appropriate sanction"); §16 (The completion of form N463 is an important discipline ... and practitioners must follow the correct procedures. It is not acceptable for litigants or practitioners to leave any of these sections blank or to side-step what the form requires them to do by cross-referring to other documents"); *Re An Application for Judicial Review* [2021] EWHC 1895 (Admin) [2021] 1 WLR 6121 at §§9, 20 (abuse of N463 to ask a judge to make an order directing a post-AOS timetable); <3.1.5> (procedural rigour: golden rules in urgent cases); <20.1.5> (procedural rigour and interim relief: information).

19.2.24 Application for abridgement of time for the AOS. *Re An Application for Judicial Review* [2021] EWHC 1895 (Admin) [2021] 1 WLR 6121 at §22 (Form N463 can be used to seek abridgement of the 21 days); *R (BG) v Medway Council* [2005] EWHC 1932 (Admin) [2006] 1 FLR 663 at §40 (in an urgent case, better to abridge time for AOS rather than deny defendant the opportunity to make representations regarding permission); *R (Aamer) v Secretary of State for Foreign Affairs* [2009] EWHC 3316 (Admin) at §22 (Court abridged time for AOS to 7 days), §25 (Court revoking the abridgement of time, in light of letter from Treasury Solicitor); <19.3.2> (urgent cases: timing of the AOS); <21.5.14> (directions for expedition/abridgement).

19.2.25 Whether immediate stay of protectively-issued claim. *R (Rafique-Aldawery) v St George's, University of London* [2018] EWCA Civ 2520 [2019] PTSR 658 (concerns about encouraging protectively commenced judicial review claims, stayed pending pursuit of alternative remedy); *R (Archer) v HMRC* [2019] EWCA Civ 1021 [2019] 1 WLR 6355 at §93 ("it is not a satisfactory solution ... to initiate judicial review proceedings ... and then ask for them to be stayed (either by agreement or court order) until the ... procedure has been completed"; "judicial review proceedings should not be begun on a precautionary basis, and then stayed, but ... should be held in reserve as a true remedy of last resort"); cf. *R (Cityhook Ltd) v Office of Fair Trading* [2009] EWHC 57 (Admin) at §3 (stay of "protective" judicial review, pending appeal to CAT where unclear whether CAT had jurisdiction); <26.3.4> (prior agreement not to take a time point: shield letter).

19.2.26 Application regarding access to court records. <21.5.5>

19.2.27 Serving the claim form. CPR 54.7 (within 7 days of date of issue); CPR PD54A §5 (service); CPR 6.3 (methods of service); CPR 6.10 (proceedings against the Crown); Form N215 (certificate of service); *R (ETM Contractors Ltd) v Bristol City Council* [2024] EWHC 2263 (Admin) at §§63-66 (serving claim form); *R (Good Law Project) v Secretary of State for Health and Social Care* [2022] EWCA Civ 355 [2022] 1 WLR 2339 at §24 (service in CPR 54.7 means "actual service"); *R (Certain Underwriters at Lloyds London) v HM Treasury* [2020] EWHC 2189 (Admin) [2021] 1 WLR 387 at §25 (difficulties with service of interested parties resolved by order dispensing with service on them); *Administrative Court: Judicial Review Guide* (2025 edition) at §7.9 (serving the claim form), Annex 3 (addresses for service of central Government departments).

19.2.28 Failure to serve claim form: validation/extension. CPR 6.15(2) (validating service by alternative means); CPR 3.1(2)(a) (extending time for compliance); CPR 7.6 (extension of time for serving claim form); *R (Westgaph) v National Museums Liverpool* [2025] EWHC 2321 (Admin) at §45 (refusing retrospective validation and extension of time); *R (ETM Contractors Ltd) v Bristol City Council* [2024] EWHC 2263 (Admin) at §§67-68, 71 (applicable principles); *R (London Fluid System Technologies Ltd) v HMRC* [2023] EWHC 2206 (Admin) at §63 (directing that good service took place); *R (Good Law Project) v Secretary of State for Health and Social Care* [2022] EWCA Civ 355 [2022] 1 WLR 2339 at §85 ("principles" of CPR 7.6 "are to be followed on an application to extend

under CPR 3.1(2)(a)"; ie. claimant must show "that it has taken all reasonable steps to serve the claim form within the relevant period" and "that an application for an extension of time made after the expiry of the relevant period has been made promptly"; *R (Willcob Care Ltd) v SSHD* [2025] EWHC 931 (Admin) (criteria not met); *R (Randall) v Clergy Discipline Commission* [2024] EWHC 2924 (Admin) at §22 (criteria not met), §27 (consequence is no jurisdiction); cf. *Whittle v HM Coroner for West Wales* [2025] EWHC 236 [2025] ACD 43 at §46 (extension of time and statutory review); *Rogers v Secretary of State for Levelling Up, Housing and Communities* [2024] EWCA Civ 1554 [2025] 1 WLR 2759 at §38 (planning statutory review).

19.3 Acknowledging the claim. Unless time is abridged or extended, defendants and interested parties served with the claim form then have 21 days to file an AOS (Acknowledgment of Service) with any SGR (summary grounds of resistance) and documents. Their duties of candour apply. The AOS/SGR should: (1) make clear whether permission for judicial review is opposed; (2) identify grounds of any resistance of permission; (3) include any costs application; and (4) identify any appropriate directions if the permission judge were to grant permission. If justified, the claimant can within 7 days file a concise reply.

19.3.1 Acknowledgment of service (AOS). Form N462; CPR 54.8; CPR 54.9 (failure to file AOS); CPR 22.1(1)(c) (statement of truth); *Administrative Court: Judicial Review Guide* (2025 edition) at §8 (the AOS), §8.1.4 (failure to file), §8.3.2 (evidence may accompany AOS).

19.3.2 Urgent cases: timing of the AOS. *R (Webb) v Bristol City Council* [2001] EWHC Admin 696 (permission for judicial review should not have been granted while defendant's AOS was awaited and time-limit unexpired; if an interim remedy was urgent, it should have been granted pre-permission).

19.3.3 Extension/abridgment of time for AOS. *Administrative Court: Judicial Review Guide* (2025 edition) at §8.2.2 (extension of time); <19.2.24> (application for abridgement of time for the AOS).

19.3.4 AOS: conceding arguability/permission unopposed. *R (K (A Child)) v SSHD* [2018] EWHC 1834 (Admin) [2018] 1 WLR 6000 at §105 ("Where a case is obviously arguable, albeit the defendant thinks it is wrong, what should be pleaded is that the defendant accepts that the point is arguable, though the defendant does not think it is right"); *Administrative Court: Judicial Review Guide* (2025 edition) at §8.3.4; *Streamlining Judicial Review in a Manner Consistent with the Rule of Law* (Bingham Centre, February 2014) at §4.1; <21.1.4> (cooperation: permission unopposed).

19.3.5 AOS: permission-stage candour/assurance. *R (Police Superintendents' Association) v Police Remuneration Review Body* [2023] EWHC 1838 (Admin) [2024] 1 WLR 166 at §19 (defendant's Counsel giving this "permission stage assurance": "Counsel ... have read and reviewed the ... undisclosed materials – and can assure the court that nothing within the undisclosed material would serve to assist the claim or give rise to any other ground for judicial review"); cf. *Streamlining Judicial Review in a Manner Consistent with the Rule of Law* (Bingham Centre, February 2014) at §4.3; <10.4.9> (defendant candour at/prior to the permission stage); <10.4.13> (interested party/intervener owing a duty of candour).

19.3.6 AOS: factual information from defendant court/tribunal. *R (Sumal) v Leicester Crown Court* [2024] EWHC 1982 (Admin) [2024] ACD 107 at §26 (Swift J: "If ... a defendant court ... wishes to make observations on matters of fact it would be preferable for those facts to be set out in Section C of Form N463"; "A defendant court may not wish to contest the claim as such, but simply provide information for this court's assistance"); *R (Coelho) v SSHD* [2025] EWHC 2293 (Admin) at §54 (district judge's order quashed by consent based on information he provided in a witness statement); *R (Guinee) v Merthyr Tydfil Crown Court* [2011] EWHC 2052 (Admin) at §§19, 34 (where claim for judicial review of refusal to state

a case, defendant court should provide copy of the reasons with the AOS, even where not making any submission); <10.2> (defendant courts/tribunals); <10.2.2> (defendant court/tribunal: appropriate participation); <10.4.3> (defendant's duty of candour: non-appearing defendant); <17.1.6> (evidence: need description/documents from defendant).

19.3.7 Purposes of the AOS stage. *Potanin v Potanina* [2024] UKSC 3 [2024] AC 1063 at §54 (Lord Leggatt: giving a defendant "a right to set out grounds of opposition before the decision whether to grant permission [for judicial review is] made" means "the practice [is] compliant with the fundamental principle of procedural justice"); *R (Khan) v SSHD* [2016] EWCA Civ 416 at §35 (aims of AOS process "to enable the court to give fuller consideration to the merits of an application and, by encouraging the respondent to review its decisions at an early stage, encourage earlier settlement of cases"), §44 ("The introduction of the [AOS] in applications for judicial review resulted in real benefits to the process").

19.3.8 Function of the AOS/SGR. CPR 54.8(4) and CPR PD54A §6.2 (contents of AOS; 30 page limit); *National Bank of Anguilla v Chief Minister of Anguilla* [2025] UKPC 14 at §92 ("What the court requires at the initial stage is sufficient information to be able to decide the [permission] application on an accurate basis"); *R (KA) v SSHD* [2021] EWCA Civ 1040 [2021] 1 WLR 6018 at §2 (AOS may "identify reasons why the grounds of claim are unarguable or ... a bar to judicial review, such as delay ... [or] an alternative remedy. It may also provide information about the existence of other interested parties who should be notified of the claim, or of the need for expedition, or other information relevant to the management of the claim if permission is granted"), §36 ("may contain factual information not known to the claimant, or may draw attention to legal provisions"); *R (Amalgamated Smart Metering Ltd) v Rotherham MBC* [2025] EWHC 97 (Admin) [2025] 1 WLR 3619 at §§26, 29 (importance of raising discretionary or jurisdictional bars in summary grounds); *R (Wilson) v Prime Minister* [2019] EWCA Civ 304 [2019] 1 WLR 4174 at §68 ("to explain its decision and any ... grounds of opposition in short form"); *R (Ministry of Defence v Wiltshire & Swindon Coroner)* [2005] EWHC 889 (Admin) [2006] 1 WLR 134 at §44 ("to assist the court in deciding whether permission should be granted or not"); *R (Mount Cook Land Ltd) v Westminster City Council* [2003] EWCA Civ 1346 [2017] PTSR 1166 at §71 ("to assist claimants with a speedy and relatively inexpensive determination by the court of the arguability of their claims" and "to prompt defendants – public authorities – to give early consideration to and, where appropriate, to fulfil their public duties"); *R (Caroopen) v SSHD* [2016] EWCA Civ 1307 [2017] 1 WLR 2339 at §97 ("to enable the court and the claimant to know the position of the [defendant]. In the court's case, this is to assist it before it considers whether to grant permission. In the claimant's case, it is because of the duty of a party to judicial review proceedings to reconsider the claim in the light of any defence"); *Administrative Court: Judicial Review Guide* (2025 edition) at §15.3.3.

19.3.9 Procedural rigour: contents of the summary grounds. *R (Davey) v Aylesbury Vale District Council* [2007] EWCA Civ 1166 [2008] 1 WLR 878 at §13 (where permission contested, proper defendant's course is generally "to explain its decision and any further grounds of opposition in short form" and wait and see whether permission granted), §32 (proper function of assisting judge as to grant of permission and terms), §33 (court should decline to look at anything going further), §33 (costs should be limited to proper function); *R (Ewing) v Office of the Deputy Prime Minister* [2005] EWCA Civ 1583 [2006] 1 WLR 1260 at §43 ("The purpose of the 'summary of grounds' is not to provide the basis for full argument of the substantive merits, but rather ... to assist the judge in deciding whether to grant permission, and if so on what terms"; "it may be appropriate simply to refer to [pre-action] letter"; "helpful to draw attention to any 'knock-out points' or procedural bars, or the practical or financial consequences for other parties (which may, for example, be relevant to directions for expedition)"); <26.1.10> (delay issues at the permission stage); <26.1.11> (delay: pre-permission-stage opportunity); <36.3.9> (alternative remedy as a permission-stage issue).

19.3.10 AOS: asking permission judge to address HL:NSD duty. Senior Courts Act 1981 s.31(3C)(b) (judge's duty "if the defendant asks"); CPR 54.8(4)(a)(ii); *Administrative Court:*

Judicial Review Guide (2025 edition) at §8.3.1.3; <4.1> (statutory materiality (highly likely; not substantially different)).

19.3.11 AOS: include permission-costs application. *R (Ewing) v Office of the Deputy Prime Minister* [2005] EWCA Civ 1583 [2006] 1 WLR 1260 at §47 (need to include any Mount Cook costs application and schedule with AOS); *Administrative Court: Judicial Review Guide* (2025 edition) at §8.4.1.

19.3.12 AOS: response to any costs capping application. *Green Lane Association Ltd v Central Bedfordshire Council* [2025] EWHC 2251 (Admin) at §20 (refusing to extend time for defendant to contest Aarhus applicability, where not raised in AOS); *R (Anti-Trafficking and Labour Exploitation Unit) v SSJ* [2022] EWHC 1962 (Admin) [2022] ACD 115 at §§38, 68 (defendant should respond in its AOS/SGR to any CCO application); <18.4.6> (Aarhus costs caps in environmental cases); <21.5.31> (costs capping order/Aarhus ruling).

19.3.13 AOS: include application for any directions. CPR 54.8(4)(b); *R (A (A Child)) v Chief Constable of Dorset Police* [2010] EWHC 1748 (Admin) [2011] 1 FLR 11 (interested party obtaining directions to protect sensitive information from disclosure by defendant to claimant); *Administrative Court: Judicial Review Guide* (2025 edition) at §8.4.

19.3.14 Procedural flexibility: failure to file an AOS. *R (A) v National Asylum Support Service* [2003] EWHC 1402 (Admin) at §13 (Secretary of State permitted to participate despite absence of detailed grounds, or earlier summary grounds, because no prejudice and in the interests of justice to receive informed submissions) (CA is [2003] EWCA Civ 1473); *R (Matthias Rath BV) v Advertising Standards Authority Ltd* [2001] HRLR 436 (allowing evidence lodged by defendant to count as acknowledgment).

19.3.15 Claimant's duty to re-evaluate after AOS. *R (Khan) v SSHD* [2016] EWCA Civ 416 at §48 (claimant's "duty of candour ... includes a duty to reassess the viability and propriety of a challenge in the light of the respondent's acknowledgment of service and summary grounds"); *Administrative Court: Judicial Review Guide* (2025 edition) at §15.2.4; <22.1.8> (claimant re-evaluation if circumstances change).

19.3.16 Claimant's permission stage reply. CPR 54.8A (7 days) and CPR PD54A §7 (5-page limit); *Administrative Court: Judicial Review Guide* (2025 edition) at §8.5.

P20 Interim remedy. The Court can order an interim remedy pending a claim's resolution.

- 20.1 Interim remedies in judicial review
- 20.2 The Court's approach to interim relief

20.1 Interim remedies in judicial review.⁶¹ The Court has the power to order an interim remedy, where appropriate in the interests of justice, pending the final resolution of a judicial review claim. This is also called interim relief.

20.1.1 Interim remedies: general. Form N461 (claim form); Form N244 (application notice); Senior Courts Act 1981 s.31 (judicial review), s.37 (injunctions); CPR 54.6(1)(c) (interim remedy within claim form); CPR 54.10(2)(a) (stay); CPR PD54B (urgent applications and interim relief); CPR 25 (interim remedies); *R (RRR Manufacturing Pty Ltd) v British Standards Institution* [2024] EWCA Civ 530 at §76 (interim relief analysed as an exercise of s.31 powers); *M v Home Office* [1994] 1 AC 377, 421F-422G (interim injunctions available in principle in judicial review, including against the Crown); *R v Licensing Authority Established by the Medicines Act 1968, ex p Rhone Poulenc Rorer Ltd* [1998] EuLR 127, 142C-F (no need for a "cause of action"); *R (Mohammad) v SSHD* [2021] EWHC 240 (Admin) [2021] ACD 44 at §23 (penal notice not necessary for interim injunction to be binding); *Administrative Court: Judicial Review Guide* (2025 edition) at §16 (interim relief); <22.2.12> (interim remedy sought against interested party).

20.1.2 Interim remedy: compliance and applying to set aside/vary. *R (Mohammad) v SSHD* [2021] EWHC 240 (Admin) [2021] ACD 44 at §24 (Chamberlain J: "when the court grants a mandatory injunction, it must be complied with by the time stipulated unless it is set aside before that time. If it is not complied with by the stipulated time, the obligation to comply remains. A pending application to discharge or vary it does not excuse a failure to comply. The obligation to comply remains unless and until the order is set aside by a judge"); *R (SK) v Royal Borough of Windsor and Maidenhead* [2025] EWHC 2186 (Admin) at §§66, 68 (defendant successfully applying to set aside interim remedy but ordered to file a formal explanation of non-compliance); *R (BAA) v Liverpool City Council* [2023] EWHC 252 (Admin) (defendant successfully applying to set aside interim remedy); *R (Morge) v Hampshire County Council* [2010] EWCA Civ 150 [2010] Env LR 546 (variation of interim relief).

20.1.3 Pre-claim/pre-permission interim remedies. CPR 25.2; *M v Home Office* [1994] 1 AC 377, 422A-B (pre-permission interim remedy available in urgent cases); *R (Ford) v Coventry Magistrates' Court* [2025] EWHC 843 (Admin) [2025] 4 WLR 55 at §11 (pre-permission suspension of a closure order); *White v Plymouth City Council* [2024] EWHC 2854 (Admin) [2025] PTSR 596 at §72 (injunction application in anticipation of judicial review is a claim within CPR 46.24 for Aarhus costs protection); *R (KMI) v SSHD* [2021] EWHC 477 (Admin) [2021] 1 WLR 3081 at §§59-60 (Court issuing directions for class of expedited interim relief applications without claim forms being issues); *R (LM) v SSHD* [2020] EWHC 1587 (Admin) at §25 (having granted interim relief on an urgent basis, permission should await the defendant's AOS); *Administrative Court: Judicial Review Guide* (2025 edition) at §16.2 (interim relief applications before starting proceedings).

20.1.4 Interim remedy: defendant/interested party's undertaking. *AB (Jamaica) v SSHD* [2007] EWCA Civ 1302 [2008] 1 WLR 1893 at §37 (Sedley LJ: "ministers of the Crown can and do give undertakings to the court in appropriate cases ... it is consonant with the dignity of the Crown that, where an interim measure of this kind is appropriate, its ministers should undertake rather than be ordered"); *Beggs v Scottish Ministers* [2007] UKHL 3 [2007] 1

⁶¹Corresponding paragraph relied on in *Tokaibai* [2005] FJHC 107.

WLR 455 at §18 (contempt for breach of undertaking given to judicial review Court in lieu of interim remedy); *R (Agyeman) v Secretary of State for Foreign and Commonwealth Affairs* [2010] EWHC 2180 (Admin) at §1 (undertaking to facilitate claimant's return to the UK); *R v Save Guana Cay Reef Association* [2009] UKPC 44 at §24 (developer giving undertaking to stop work); *R (Faisaltex Ltd) v Crown Court at Preston* [2008] EWHC 2832 (Admin) [2009] 1 WLR 1687 at §10 (undertaking not to access seized material); *R v Liverpool City Council, ex p May* [1994] COD 144 (undertaking to pay housing benefit); *R v Ministry of Agriculture Fisheries & Food, ex p Cox* (1994) 6 Admin LR 421, 425A (undertaking in lieu of a stay); *R v Monopolies & Mergers Commission, ex p Elders IXL Ltd* [1987] 1 WLR 1221, 1231D (MCC agreeing not to disclose information).

20.1.5 Procedural rigour and interim relief: information.⁶² *R (KMI) v SSHD* [2021] EWHC 477 (Admin) [2021] 1 WLR 3081 at §39 (beneficiaries must be clearly identified and what defendant is being required to do must be clear); *Administrative Court: Judicial Review Guide* (2025 edition) at §16 (interim relief), §17 (urgent cases); <3.1.5> (procedural rigour: golden rules in urgent cases); <19.2.21> (immediate sending: immigration removal claim documents).

20.1.6 Procedural rigour and interim relief: hear the other side. *R (DVP) v SSHD* [2021] EWHC 606 (Admin) [2021] 4 WLR 75 at §19 ("if possible, the court will want to know the defendant's position in relation to any urgent application"), §47 ("the court is always assisted on an urgent application if it has been informed by the defendant of its position. This is a matter that should be obvious to any legally qualified person conducting litigation"); *R (Jasseh) v SSHD* [2025] EWHC 47 (Admin) [2025] 1 WLR 1459 at §§16-17 (wrong for defendant to communicate without copying in the claimant), §23 (requirements for communications about removal decisions); *National Commercial Bank Ltd v Olint Corporation Ltd* [2009] UKPC 16 [2009] 1 WLR 1405 at §13 ("a judge should not entertain an application of which no notice has been given unless ... there has been literally no time to give notice before the injunction is required to prevent the threatened wrongful act"); *Potanin v Potanina* [2024] UKSC 3 [2024] AC 1063 at §§1-2 (Lord Leggatt: "Rule one for any judge ... is that, before you make an order requested by one party, you must give the other party a chance to object. Sometimes a decision needs to be made before it is practicable to do this. Then you must do the next best thing, which is – if you make the order sought – to give the other party an opportunity to argue that the order should be set aside or varied"); *Administrative Court: Judicial Review Guide* (2025 edition) at §13.12.1 (communications about removal decisions), §16 (interim relief), §17 (urgent cases).

20.1.7 Interim remedy: claimant's duty of candour. *R (Tota) v SSHD* [2024] EWHC 665 (Admin) [2024] ACD 60 at §5 (added significance of full and frank disclosure in out of hours applications); *R (Ncube) v Brighton and Hove City Council* [2020] EWHC 3646 (Admin) at §26 (breach of claimant's candour duty justifying refusal of interim relief); *Administrative Court: Judicial Review Guide* (2025 edition) at §15.2.3; <10.3.2> (claimant candour and urgent cases/interim relief); <20.1.9> (setting aside interim remedy for breach of claimant candour).

20.1.8 Interim remedy paper decision: open court renewal/application. CPR 3.3(5) (application where own-initiative order on the papers); *R (Oculus) v HMRC* [2024] EWHC 1102 (Admin) at §1 (renewed application for interim relief after refusal on the papers); *R (BAA) v Liverpool City Council* [2023] EWHC 252 (Admin) (defendant successfully applying to set aside interim remedy ordered without a hearing); *R (GVA) v SSHD* [2023] EWHC 2838 (Admin) at §3 (judge on the papers adjourning application for interim relief into open court); *R (Nolson) v Stevenage Borough Council* [2020] EWCA Civ 379 [2021] HLR 2 at §18 (describing renewal route); *MD (Afghanistan) v SSHD* [2012] EWCA Civ 194 at §21 (favouring renewal over immediate appeal to CA); *Administrative Court: Judicial Review Guide* (2025 edition) at §16.7.

⁶²Corresponding paragraph relied on in *Merlot* 73 [2013] EWHC 3416 (Admin) at §9.