**Empowering Civil Society**
Using the Public Sector Equality Duty to Tackle Race Disparity in the Criminal Justice System

Find this guide and the rest of the toolkit at criminaljusticealliance.org/PSED-toolkit

GUIDE 2B

# The Judicial Review timeline

THIS GUIDE EXPLAINS:

The stages of a Judicial Review. The timeline begins when a public body develops a criminal justice policy or makes a decision, through to a Civil Society Organisation issuing a claim, ending in the final hearing and judgment.

Criminal Justice Alliance

# The Judicial Review timeline

**The public body makes its decision/ is developing its policy**

Sometimes policies are developed over time and so it can be difficult to decide precisely what is the decision that should be challenged.

In some cases legal challenges have been brought too early – either before the decision was finalised, or before there was evidence of the alleged impact of the decision.

However, because of the need to avoid any delay in bringing a claim for Judicial Review, it is best to get advice at an early stage. It is essential to act promptly. The need to avoid delay is particularly important if the decision is likely to have an impact on other people.

It is important to be making representations/lobbying at this stage. The PSED should be being considered by the public body while they are developing their policy so this is a good time to:

- argue that they need more evidence.
- that they should carry out a formal consultation.
- put forward examples of how the proposed policy may have an adverse impact on a protected group.

**The decision is made/policy is finalised**

The three-month deadline begins to run when the grounds for Judicial Review arise. This is not when you find out about the decision but when the decision is made, so it is important to keep informed.

## Negotiations following the decision

There are competing priorities at this stage. On the one hand, if a claim for Judicial Review needs to be made, there must be no delay and the claim must be commenced within three months. On the other hand, the courts do expect parties to try to resolve the issue without issuing a claim.

Also, because Judicial Review is a 'remedy of last resort' you need to consider whether there is an alternative way to resolve the issue. This could include a statutory appeal or review or a formal complaint – and ultimately a complaint to an Ombudsman. The alternative remedy must be an effective remedy.

If the decision is one affecting many people and you want the decision to be reversed (quashed by the court) avoiding any delay is essential.

If the decision only relates to one person, it is more likely that there will be an alternative remedy such as an appeal.

Complaints and Ombudsman investigations usually take a long time, almost always longer than three months. If an opponent is urging you to use the complaints procedure (or other remedy) make sure they agree to withdraw the decision pending the outcome of the complaints process before agreeing to do that.

An **ombudsman** is someone appointed to investigate complaints against an institution and seek resolutions to those complaints. Some have full authority to investigate and resolve issues, and some have limited capacity to only investigate and provide suggested resolutions to a governing authority or the institution subject to the complaint.

The Prisons and Probation Ombudsman (PPO) and the Independent Office for Police Conduct (IOPC) are the main criminal justice and policing related ombudsman and complaint bodies.

## The Judicial Review Pre-Action Protocol (PAP) letter

After the decision has been made and before the claim is issued you are at the Judicial Review Pre-Action Protocol stage. Sometimes it is appropriate to send a Pre-Action Protocol letter as soon as you become aware of the decision, because the letter gives you a formal opportunity to request any information and documents you may need before issuing a claim and the grounds of any claim. Also, in the correspondence the parties must consider whether alternative dispute resolution is appropriate: the Defendant may argue that an appeal or a complaint is appropriate and you will need to explain why it is not. It provides a framework for any agreement to pursue an alternative dispute method (including insisting on the decision being withdrawn).

If the pre-action correspondence commences early, it gives the Defendant more opportunity to consider the lawfulness of its decision and it may agree to withdraw the decision and/or to seek more information or to carry out a consultation before finalising any decision.

If a claim is made, any correspondence between the parties will be put before the court. So, it is important to be aware of this when drafting emails and letters – stick to the relevant issues and maintain a polite and professional tone.

It is usually best to get solicitors (who need to be ready and able to bring a claim) to send the Judicial Review Pre-Action Protocol letter but you may want to make representations before that stage. Just remember the three-month deadline and don't leave it too late to instruct solicitors.

You don't need to 'mimic' the Judicial Review Pre-Action Protocol letter but it is important to include key information: identify the decision or policy you are challenging (including the date of the decision), set out what you think is wrong with the decision (which may include just arguing that the public body does not have enough evidence or has not gathered enough evidence to comply with the PSED), say what you want the public body to do (for example, withdraw the decision and gather more evidence) and set a deadline for a reply (bearing in mind the three month deadline and the need to instruct solicitors if a claim is needed).

See for example the case about reducing the number of people in prison during the pandemic (page 3 of Guide 2a). The Howard League and the Prison Reform Trust were making representations to the government from an early stage and decided not to make a claim for Judicial Review after evidence and information was sent to them following the Pre-Action Protocol letter.

The formal Judicial Review Pre-Action Protocol letter will set out the legal grounds on which any claim will be based: 'the grounds of challenge'. Sometimes this will be drafted by the barrister who will be drafting the claim form.

## Reply to Judicial Review Pre-Action Protocol letter

If there is enough time, the Defendant will be given 14 days to reply. This can be shortened if the three-month deadline is looming.

In the reply, the Defendant should respond to the grounds of challenge and say whether it agrees or disagrees and set out its own legal arguments as to why the decision is lawful. It may also raise other arguments as to why the claim should not be made.

Sometimes this exchange of pre-action correspondence results in an agreement to withdraw a decision. If not, the intention is that the parties' positions will be made clearer, the issues narrowed down, and any relevant information and documents exchanged.

## Decision confirmed

## Issuing the claim

STEP 1

# Applying for permission

1

Application for permission is submitted by the Claimant. This must be within three months of the grounds arising. The claim form (and supporting bundle of documents) must be filed at court and served on (sent to) the Defendant.

2

Defendant responds by filing at court an Acknowledgment of Service form, containing 'summary grounds of defence'. This must be filed at court within 21 days of receiving the Claim form and sent to the Claimant within seven days of filing it at court.

3

A judge then considers permission on the papers and grants or refuses permission

**Permission refused** (on the papers)

Claimant can renew at an oral hearing within 7 days of receiving the order

**Permission refused** at an oral hearing – can appeal but only if grounds (must show the judge got it wrong legally) within 7 days of receiving the order

**Permission granted**

STEP 2

# After permission has been granted

1

Court will give directions for filing of further evidence/ legal argument – setting a timetable.

2

Substantive hearing of claim – this is in open court. No oral evidence or cross-examination, just legal argument.

3

Judgment – this may be given on the day or, in complex cases 'reserved' and delivered at a later date.

**Possible variations**

- In urgent cases the time limits may be shortened.
- 'Interim relief' may be applied for and granted at very short notice, on the papers, or at an oral hearing.
- Where the issues relevant to permission overlap with the substantive arguments, the court can order a 'rolled up' hearing when it will consider permission and the substantive arguments at the same time.

**The final hearing**

The parties and the court will agree on a time estimate for the hearing. Some hearings take only hours, some days or weeks. If the case takes longer than the estimate it is sometimes necessary for the final part of the hearing to be heard at a later date. However, because of the importance of avoiding any delay in reaching a final decision the court will usually make sure the hearing does not overrun.

**Judgment**

This is the reasoned decision of the court – it explains the how the court has interpreted and applied the law to the facts of the case. It is not the same as the Order which sets out such things as the remedy granted (for example, the quashing of a decision or the making of a declaration) and deals with costs – whether one party should pay the costs of the other.

Often, in complex cases, the court does not give judgment at the end of the hearing but 'reserves' its judgment to a later date. It will then circulate a draft judgment to the parties' lawyers before it is 'handed down' (made public).

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