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## **PERMISSION PRINCIPLES**

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1. **Permission requirement.**

A judicial review claim needs permission granted by the High Court (Supreme Court Act 1981 s.31(3)), as does a claim transferred to the Administrative Court (CPR 54.4). Such permission can be granted by the Court of Appeal (CPR 52.15(3)). Or the House of Lords (**R v Hammersmith and Fulham LBC, ex p Burkett** [2002] UKHL 23 [2002] 1 WLR 1593), but only if permission to appeal has been granted below (under CPR 52.15(1)). Permission acts as a filter to protect public authorities against weak and vexatious claims (**R v SS Trade and Industry, ex p Eastaway** [2000] 1 WLR 2222, 2227H); a public-interest sieve avoiding time and resources on points which are not arguable (**S v Knowsley BC** [2004] EWHC 491 (Fam) [2004] 2 FLR 716 at [72]).

2. **Arguable issue**

The Court should not grant permission unless satisfied that there is an identified and properly arguable issue (**R v Social Security Commissioner, ex p Pattni** (1993) 5 Admin LR 219, 223G). It is not enough that there are voluminous papers (**R v Local Government Commission, ex p North Yorks CC** 11<sup>th</sup> March 1994) or a large number of points raised (**R v London Docklands Development Corp, ex p Frost** (1997) 73 P&CR 199, 204). Permission is refused where there is no sensible prospect of success (**R v Legal Aid Board, ex p Megarry** [1994] PIQR 476). That includes no realistic prospect that a remedy would be granted as a matter of discretion (**R (Rhodes) v Kingston upon Hull CC** [2001] ELR 230), or no arguable public element (**R v Chief Rabbi, ex p Wachmann** [1992] 1 WLR 1036, 1037H).

3. **Alternative remedy**

Permission should not be granted when a suitable alternative remedy is available (**R (Sivasubramaniam) v Wandsworth County Court** [2002] EWCA Civ 1738 [2003] 1 WLR 475 at [46]-[47]). The permission stage is critical for addressing such an objection (**R v Falmouth and Truro Port Health Authority, ex p South West Water Ltd** [2001] QB 445, 472A), if necessary as a preliminary issue (**R (Balbo) v SSHD** [2001] EWHC Admin 195 [2001] 1 WLR 1556).

4. **Delay/promptness.**

In a case where a delay objection arises, it is for the permission judge to decide (a) whether the claim has been brought with sufficient promptness (CPR 54.5(1)) and if not (b) whether there is a good reason to extend time (CPR 3.1(2)(a)). These are not points to be reopened at a substantive hearing (**R v CICB, ex p A** [1999] 2 AC 330), where undue delay can only be reopened – cautiously (**R (Lichfield Securities Ltd) v Lichfield DC** [2001] EWCA Civ 304 [2001] 3 PLR 33 at [34]) – by reference to substantial hardship, prejudice or detriment to good administration (**Supreme Court Act 1981** s.31(6)(b)). By directing a rolled-up hearing, the permission judge can leave all delay issues open (**R v CICB, ex p A** [1999] 2 AC 330, 341B-F, 347F-

348A. In an urgent case the claim can be brought using form N463 and the special urgency procedure [2002] 1 All ER 633.

5. **Standing**

The Court should not grant permission unless it considers that the claimant has a sufficient interest (**Supreme Court Act 1981 s.31(3)**). The standing question at the permission stage is whether the claimant is a “*busybody*” with ‘*no interest whatsoever*’ (**R v Somerset CC, ex p Dixon** [1998] Env LR 111, 116-117, 330-331).

6. **Dispositive ruling**

The permission judge may consider it appropriate to resolve a question of jurisdiction as to whether the claim should proceed: eg. whether the claim constitutes “*charity proceedings*” (**Ex p Scott** [1998] 1 WLR 226, 229F), or whether the defendant body is amenable to review (**R v Parliamentary Commissioner for Standards, ex p Fayed** [1998] 1 WLR 669). The Court may also dispose of a point of law (**Al-Zagha v SSHD** [1994] Imm AR 20, 26 per Leggatt LJ) or construction (**R (Persimmon Homes) v North Herts DC** [2001] EWHC Admin 565 [2001] 1 WLR 2393 at [2]). In certain circumstances, a judicial review claim may be struck out as an abuse of process (eg. **R (Davies) v SS Environment, Food and Rural Affairs** [2002] EWHC 2762 (Admin) (claimant lacking authority to advance interests of moribund company allegedly denied of navigation rights). On granting permission, the Court may be invited by the relevant public authorities to quash the decision under review (**R v IAT, ex p Probakaran** [1996] Imm AR 606, 606).

7. **Preliminary issue**

The permission judge may direct the hearing of a preliminary issue (CPR 1.4(2)(d)), for example as to whether the defendant body’s function is amenable to judicial review (**R v Jockey Club, ex p Aga Khan** [1993] 1 WLR 909), or discrete questions of fairness (**R (Carvill) v IRC** [2002] EWHC 1488 (Ch) [2002] STC 1167) or rights-engagement (**R (Rose) v SS for Health** [2002] EWHC 1593 (Admin) [2002] 2 FLR 962). Permission may be limited to that issue, with permission on the remaining issues to await the outcome of that hearing (**R (Evans) v University of Cambridge** [2002] EWHC 1382 (Admin) [2003] ELR 8 at [3]).

8. **Partial/conditional permission**

The permission judge may give permission (i) subject to conditions or (ii) on certain grounds only (CPR 54.12(1)(B), CPR 54PD §9.1). If the paper judge so orders, the claimant can seek oral reconsideration (CPR 54.12(3)). Permission may be granted in respect of one challenged decision only (**R v Hammersmith LBC, ex p CPRE** [2000] Env LR 532), or on condition that the remedy be limited to a particular period of time (**R v East Sussex CC, ex p Ward** (2000) 3 CCLR 132 at [37]). Permission may be conditional on the claimant giving security for costs (CPR 25.12, **R v Westminster CC, ex p Residents Association of Mayfair** [1991] COD 182), or joinder of a co-

claimant to provide adequate costs protection (**R v MAFF, ex p British Pig Industry Support Group** [2000] EuLR 724 at [108]).

9. **Directions**

The grant of permission may be accompanied by directions. For example, there may be directions for expedition, and abridgment of time (CPR 3.1(2)(a)). Directions can be made as to: service of the claim form (CPR 54PD §8.1), and HRA-notification of the Crown (§8.2); hearing to be outside London or Cardiff (§8.3); cover extension of time for the defendant's detailed response (CPR 54.14); suitability for a Deputy High Court judge or Family judge (**R v Dover Magistrates Court, ex p Kidner** [1983] 1 All ER 475); or transfer out of the Administrative Court (CPR 54.20). Anonymity (CPR 39.2(4)) too should be dealt with at the outset (**R v Legal Aid Board, ex p Kaim Todner** [1999] QB 966, 975H-977G) and involves a strict test of real risk of the administration of justice being rendered impracticable (**In the Matter of D** (1998) CCLR 190, 196K-197K).

10. **Interim remedy**

The permission judge may grant a stay of the proceedings to which the claim relates (CPR 54.10(1)), or an interim injunction (CPR 25.1(1)(a)). In an urgent case, the order can precede any grant of permission (CPR 54.2(1)(a), **M v Home Office** [1994] 1 AC 377, 422A-B). In an appropriate case, the Court can grant an interim declaration (CPR 25.1(1)(b)). The Court can also use its inherent jurisdiction and grant bail (**R v SSHD, ex p Sezek** [2001] EWCA Civ 795 [2002] 1 WLR 348 at [16]).

11. **Paper-consideration**

Permission is considered first on paper (CPR 54PD §8.4), which enables the Court to dispose at the paper stage of many cases which are bound to fail (**Practice Statement** [2002] 1 All ER 633, 633g). The paper judge may (a) refuse permission, (b) grant permission, (c) grant it on some grounds only or on conditions or (d) adjourn the question of permission to open court (which the defendant may invite: **R v Middle Temple, ex p Bullock** [1996] ELR 349, 358H-359D).

12. **Reconsideration request**

Where permission has been refused on paper, or the paper judge has granted it on some grounds only or on conditions, the claimant is entitled to request (within 7 days) further consideration at an oral hearing (CPR 54.12(3)). Careful consideration is called for before renewing, and legal representatives of publicly funded clients should look very carefully at whether there really is a good ground for renewal where the paper judge has clearly indicated that the claim has little prospects of success (**R (Yildrim) v IAT** [2002] EWHC 1939 (Admin) [2002] ACD 7 at [13] per Scott Baker J). The renewal form should set out grounds for renewal in the light of the paper judge's reasons for refusing permission (**Practice Statement** [2002] 1 All ER 633, 636d). If the usual 30 minute time slot is inadequate a special time estimate must be given and fixture requested (**ACO Notes for Guidance** [2005] JR 5 at §10.4).

13. **Oral reconsideration**

Oral permission hearings should be short and not a full-scale dress-rehearsal of the substantive hearing (**R (Mount Cook) v Westminster CC** [2003] EWCA Civ 1346 [2004] 1 PLR 29 at [71] per Auld LJ). Judges must be astute, and Counsel fastidious in their choice of argument, to ensure that disproportionate time is not taken up (**R v North West Leicestershire DC, ex p Moses** [2000] Env LR 443, 459 per Simon Brown LJ). The Court may impose a high-arguability hurdle in circumstances of urgency or complete-argument (*Frost* at 203; also **R (Federation of Technological Industries) v CCE** [2004] EWHC 254 (Admin) at [8] per Lightman J). If refused at the oral hearing, permission can be appealed to the Court of Appeal (CPR 52.15(3)) and, with permission to appeal (CPR 52.15(1)), the Lords (**R v Hammersmith and Fulham LBC, ex p Burkett** [2002] UKHL 23 [2002] 1 WLR 1593).

14. **Set-aside**

Neither the defendant nor any person served with the claim form can apply to set aside an order granting permission (CPR 54.13). Permission could be set aside in exceptional circumstances: at the suit of a person not served (**R v CCE, ex p Eurotunnel Plc** [1995] CLC 392, 399A-400C); if granted before the time for a person served to lodge their acknowledgment of service (**R (Webb) v Bristol CC** [2001] EWHC Admin 696); if granted by mistake (**R (Tataw) v IAT** [2003] EWCA Civ 925 [2003] INLR 585 at [13]); or granted in ignorance of conclusive statutory provision or legal authority (**R v Chief Constable West Yorks, ex p Wilkinson** [2002] EWHC 2353 (Admin) at [43]).

15. **Informing the Court**

The Administrative Court Office will ensure that relevant correspondence received from the parties is placed before the permission judge (**Aaron v Law Society** [2003] EWHC 2271 (Admin) at [75]). The Court must be kept informed by the parties, for example, as to: circumstances warranting expedition (**R v SSHD, ex p Harrison** [2001] ACD 8); or the case being overtaken by events (**R (Tshikangu) v Newham LBC** [2001] EWHC Admin 92).

16. **Amendment**

The permission judge will consider whether, in all the circumstances, to allow reliance on grounds which have been amended since first lodged. If permission to amend is needed, it can presumably be granted (cf. RSC Ord 53 r.3(6)). The defendant's intention to take a fresh decision does not preclude continuation of the claim with a view to amendment to focus on that decision if adverse (**R v SSHD, ex p Alabi** [1997] JR 254).

17. **Rolled-up hearing**

The permission judge may direct a rolled-up hearing (permission with substantive to follow), for example: to leave all delay issues open (**R v CICB, ex p A** [1999] 2 AC 330, 341B-F, 347F-348A); in a situation of urgency (**R v SSHD, ex p Moon** (1996) 8 Admin LR 477, 479H); or to deal with a case efficiently (**R (Bedford) v Islington LBC** [2002] EWHC 2044 (Admin) [2003] Env LR 463). The permission hearing may be treated as the substantive hearing, notably by agreement (**R v SS Environment, ex p Challenger** [2001] Env LR 209), for example to deal with a point of construction (**R (Persimmon Homes (Thames Valley) Ltd) v North Hertfordshire DC** [2001] EWHC Admin 565 [2001] 1 WLR 2393 at [2]) or to preserve appeal rights (**R v Parliamentary Commissioner for Standards, ex p Fayed** [1998] 1 WLR 669).

18. **Costs**

Where permission is granted and the judge says nothing about costs, they are deemed to be costs in the cause (**Practice Statement (Judicial Review: Costs)** [2004] 2 All ER 994). In general, a defendant who successfully resists permission will recover costs of filing the Acknowledgment of Service but not costs of choosing to attend a '*further consideration*' hearing (**R (Mount Cook Land Ltd) v Westminster CC** [2003] EWCA Civ 1346 [2004] 1 PLR 29 at [76]). A successful interested party may secure a second costs order as a matter of discretion (**R v Cotswold DC, ex p Barrington** (1998) 75 P&CR 515). The permission judge can in an appropriate case order wasted costs (**R v IAT, ex p Gulsen** [1997] COD 430, **R (F) v Head Teacher of Addington High School** [2003] EWHC 228 (Admin)).

19. **Fresh application**

Where permission has been refused, there is no formal '*res judicata*' and the Court may entertain a fresh application, but should only grant permission where there has been a significant change of circumstances or significant and previously undiscoverable new facts (**R (Opoku) v Southwark College** [2002] EWHC 2092 (Admin) [2003] 1 All ER 272 at [16]).

20. **Later citation**

A permission-stage decision, applying an arguability test, can only later be cited as authoritative if such an express indication is given (**Practice Direction (Citation of Authorities)** [2001] 1 WLR 1001 at §6.1), releasing the judgment from the citation-prohibition (**R (Pharis) v SSHD** [2004] EWCA Civ 654 [2004] 3 All ER 310 at [22]).