





How do you get the timing right in Judicial Review where one side is arguing prematurity and the other delay?

White Paper - Judicial Review Conference

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How do you get the timing right?

- The short answer
- Timing and delay
- Prematurity
- Concluding suggestions

The short answer

How do you get the timing right in Judicial Review where one side is arguing prematurity and the other delay?

- No complete answer
- Depends on the facts and the circumstances (and j?)
- But you can and should set out your stall at every stage - C and D alike.



Time and delay - S31(6) SCA 1981

S31(6) Senior Courts Act 1981 -

where the Court considers that there has been **undue delay** in applying for judicial review, it may refuse to grant permission or relief if it considers that the granting of the relief sought is likely to cause **substantial hardship** to, or **substantially prejudice** the rights of, any person, or be **detrimental to good administration**.



General rule

Time limit for filing claim form - CPR 54.5

- (1) The claim form must be filed –
 - (a) promptly; and
 - (b) in any event **not later than 3 months** after the grounds to make the claim first arose.
- (2) The time limits in this rule **may not be extended by agreement** between the parties.
- (3) This rule does not apply when any other enactment specifies a shorter time limit for making the claim for judicial review.



Exceptions

- Planning cases (CPR 54.5(5), Admin Court Guide 6.4.3.1) - **6 weeks**
- Procurement Act 2023 governs the procedure by which public bodies may outsource public services, under s106: **30 days** from the date when C first knew or ought to have known that grounds had arisen (6.4.3.3; 6.7 re no extension beyond 3 months)
- Utilities Contracts Regs 2016 or Concession Contracts Regs 2016 (6.4.3.4)
- Not later than **6 months** from the date by which response to a decision notice under 36(3) Environment Act 2021 (54.28)
- Statutory reviews and appeals (and some JR procedures) in planning cases (6.4.3.2)
- In some cases, the relevant legislation does not permit the period to be extended.
- “check provisions in relevant statutes with care”



Exceptions

- JR of a decision of the Upper Tribunal: CPR 54.7A(2); 6.4.3.5 - no later than **16 days** after the date notice of the UT's decision was sent (not the date it was made).
- JR of a decision of a Minister in relation to a public inquiry, or a member of an inquiry panel, S38(1) Inquiries Act 2005 - **14 days** unless extended by the Court.
- Not applicable to any challenge to the contents of the inquiry report, or to a decision of which C could not have become aware until publication of the report, S38(3) of the Inquiries Act 2005. 6.4.3.6



Administrative Court Guide 2025 – 6.4 Time Limits

- “**Primary requirement is to start the claim promptly.**” (6.4.1)
- Even if the claim has been commenced within 3 months from the date of the conduct challenged, it **may still be out of time if the claimant did not start the claim promptly.**
- *R v Cotswold District Council ex parte Barrington Parish Council* [1998] 75 P & CR 515.



Extending by agreement?

- May **not be extended by agreement** between the parties (CPR 54.5(2). 6.4.2.1)
- But can be extended by the Court in its discretion and *a prior agreement* not to take a time point -> can be relevant to the exercise of that discretion.
- *R (Zahid) v University Of Manchester* [2017] EWHC 188 (Admin), [73]-[78]
- *Armstrongs Aggregates Ltd v Natural England* [2022] EWHC 2009 (Admin), [18], citing CA authority on the use of “**shield letters**” (Ds agreeing not to take a point on time).



Why the need for promptness?

- “underlying reason for the stringent time limits in judicial review is that **good public administration requires finality**, and **public authorities need to have certainty** as to the validity of their decisions and actions” *Al Hashimi* [2026] EWHC 197 (Admin) Lang J.

See also Lady Justice Carr in *Good Law Project v SSHSC & Pharmaceuticals Direct Ltd & others* [2022] EWCA Civ 355 as to the procurement of the contract for supply of PPE equipment at the start of Covid:

“There are two broad contextual points to identify at the outset: first, the need for **promptness and speed in judicial review claims generally**, and procurement challenges in particular; and secondly, the importance of valid service of claim forms.”



Why the need for promptness?

39. The need for promptness in judicial review claims is well-known. **Good public administration requires finality. Public authorities need to have certainty** as to the validity of their decisions and actions (see for example *Law Society of England and Wales v Legal Services Commission and others* [2010] EWHC 2550 (Admin); [2011] Costs LR Online 57 at [116]). As for **the procurement context**, it is in the public interest that challenges to the tender process of a public service contract are made promptly. The tight time limits imposed are the result of **balancing two competing interests: the need to allow challenges to be made** to an unlawful tender process and the need to ensure that any such challenges are **made expeditiously** (see for example *Jobsin Co UK plc (trading as Internet Recruitment Solutions) v Department of Health* [2001] EWCA Civ 1241; [2002] 1 CMLR 44 at [33]).



What about delays with the PAP?

- Obligation to comply with the pre-action protocol by sending the letter before claim, giving D 14 days to reply **does not remove the obligation to bring the claim promptly**
- See *Finn-Kelcey v Milton Keynes* [2009] ENV LR 17 “*what satisfies the requirement of promptness will vary from case to case*”
- Lodge the claim in time and explain in the claim form why the need for urgency meant that it was not possible to comply with the PAP
- Or apply for stay and invite D to agree



What if you need an extension?

- Admin Court Guide paras 6.4.4 and 7.3.1.5
- Extensions of time under CPR 3.1(2)(a), which allows the Court to extend or shorten the time limit even if the time for compliance has already expired.
- 6.4.4.2 Court first determines the date from which the relevant time period started to run so that the period of delay can be calculated correctly (considered with permission).



What will the Court consider?

- all the circumstances
- whether an adequate explanation has been given for the delay
- the importance of the issues
- the prospects of success
- whether an extension will cause substantial hardship or prejudice to D or any other party or be detrimental to good administration



What will the Court consider?

- *Maharaj v National Energy Corporation of Trinidad and Tobago* [2019] UKPC 5, [2019] 1 WLR 983, [38]
- “Here it is important to emphasise that the statutory test is not one of good reason for delay but **the broader test of good reason for extending time**. This will be likely to bring in many considerations beyond those relevant to an objectively good reason for the delay, including the importance of the issues, the prospect of success, the presence or absence of prejudice or detriment to good administration, and the public interest.”
- See also *R (Dean Dobson) v Secretary of State for Justice* [2023] EWHC 50 (Admin), [31], approving para 6.4.4.2 in the 2022 edition of the Guide



Good reason?

- Errors by C's lawyers = not generally good reason for delay, *R v Secretary of State for Health ex parte Furneaux* [1994] 2 All E.R. 652
- Previously legal aid delays regarded as a sufficient justification *R v Stratford-upon-Avon DC ex parte Jackson* [1985] 1 WLR 1319.
- *R (Kigen) v SSHD* [2016] 1 WLR 723 (reconsideration of the refusal of permission) Moore-Bick LJ at [18]: ".... Moreover, the change in the climate of litigation which has come about since that case was decided makes it **no longer appropriate to treat delay in obtaining legal aid as a complete answer** to a failure to comply with procedural requirements. It may still be a factor that can be taken into account (see *R(Sacker) v West Yorkshire Coroner* [2003] 2 All ER 278), no more....."
- See also *AP v Tameside Metropolitan Borough Council* [2017] 1 WLR 2127
- See Lang J in *Al-Hashimi* [2026] EWHC 197 (Admin) for review of authorities.



Good reason?

- Good reason - **if C unaware** of the decision, provided that they applied **expeditiously** once they became aware of it (*R v SSHD ex p Ruddock* [1987] 1WLR 1482 *R v SSFCA ex p World Development Movement* [1995] 1 WLR 386 at 402, *Surrey County Council v R(BC)* [2025] EWCA Civ 719, [17]).
- C wanting to obtain **information in support** of the claim is **unlikely** to constitute a good reason *R v (BC) v Surrey County Council* [2025] EWCA Civ 719 [42]–[43]).
- The fact that the claim raises issues of **general public importance** may be a reason for extending the time-limit, *Ruddock, Re S (Application for Judicial Review)* [1998] 1 FLR 790



R (ota Al Hashimi) v SSHD [2026] EWHC 197

- Challenge to refusal to register as British Overseas Citizen (BNA 1981 discriminate in breach of Art 14 only allowing citizenship by descent through the paternal line)
- 1/7/21 C's previous solicitors applied for C's (and brother's) registration as a BOC
- Under cover of letter 16/3/22, decision letter **16/2/22** refused application
- Previous sols applied for a review but did not until 6/11/23
- 11/6/24 reminder letter sent
- **5/6/24** D maintained refusal.
- Prev sols said letter 5/6/24 not received until **9/7/24** – accepted by J (date stamp)
- No legal aid contract. Difficult to find a solicitor with a legal aid contract with suitable experience and not able to until 9/24.



Chronology in Al Hashimi

- 11/9/24 New sols found C and brother formally instructed them 6/10/24
- **16/9/24** PAP sent
- 25/9/24 Response: resisting the claim, and that out of time.
- 6/10/24 applied emergency LA, expected to be granted but refused, refusal upheld on review on 16/10/24.
- 23/10/24 substantive funding application
- 7/11/24 refused; 13/12/24 appeal with Counsel advice
- **23/12/24** LA funding granted without proceeding to an appeal.
- 6/1/25 Sols on leave and returned
- 8/1/25 instructed Counsel and sought statement from prev sols on delay
- **17/1/25** Claim filed



Extension granted

“Once Mr Vnuk had instructions to act, and was satisfied as to the Claimant's eligibility, he **took all necessary steps** to progress the application for legal aid. It was not his fault that legal aid was not granted until 23 December 2024. I have carefully considered whether Mr Vnuk ought to have advised the Claimant **to make a protective application** for judicial review to the Court, explaining the delay in obtaining legal aid and asking for a stay until the funding position was resolved. I accept Mr Vnuk's explanation that he could not properly advise the Claimant to file a protective claim without legal aid **as she would be exposed to the risk of an adverse costs order** which she would not be able to meet. In reaching this conclusion, I have taken into account that, before I raised this point at the hearing, the **Defendant did not suggest** that the Claimant **should have filed a protective** claim, nor did the Defendant suggest at any stage that she **would have consented to a stay and not pursued a claim** for costs. This is not a criticism of the Defendant, but it is **relevant** to the assessment of the risk of an adverse costs order.”



Legal aid difficulties

“the difficulty in obtaining legal aid funding was an **objectively good reason for the delay**. Whether it amounts to a sufficient reason for an extension of time depends upon the **overall assessment of the competing factors**... the delay of over 7 months between the date of the decision and the date of filing, is significant. I do not consider that the delay is the result of any fault on the part of the Claimant or her legal representatives. The **Defendant has not asserted any hardship, prejudice or detriment** as a result of the delay, and she was right not to do so.”



Continuing illegality

- C submitted that the discriminatory statutory provisions are a continuing illegality.
- = relevant factor *R (Fire Brigade Union) v South Yorkshire Fire and Rescue Authority* [2018] EWHC 1229 (Admin)
- Relied on *R (Johnson) v SSHD* [2017] AC 365 SC rejected CA's conclusion that the denial of automatic citizenship was a one-off event that happened at birth, before the HRA 1998 came into force, and therefore there was no violation of Convention rights.
- applied the Strasbourg concept of a "continuing situation which operates by continuous activities by or on the part of the state to render the applicant a victim"
- the denial of citizenship to *Johnson* "had a current and direct effect upon the claimant who is currently liable to action by the state, in the shape of deportation, as a result"



Position in domestic law

- Lang J referred to the position in domestic law per *CA R (Delve) v Secretary of State for Work and Pensions* [2020] EWCA Civ 1199 at [124]
- challenge to legislation which raised the pension age for a cohort of women
- "Unlawful legislation is not a continuing unlawful act in the sense that the time limit for challenging it by way of judicial review rolls forward for as long as the legislation continues to apply. .. The adoption of each Pensions Act affecting the Appellants' pension age was a single act which was completed for this purpose at the latest when the legislation was brought into effect."



Decision – extension granted

- C challenging a specific decision by D to refuse her application for citizenship
- Not precluded from making another application for registration at a later date
- “*it is important to bear in mind that the allegedly discriminatory legislative scheme **continues to have a significant impact** upon the Claimant, and upon others who are in a similar position.*”
- “In my view, the claim arguably has *merit* and there is a **public interest in determining the issues now**, rather than requiring a fresh claim to be issued at some later date.”



Can D go behind extension at substantive hearing?

- If permission granted to apply for JR and that claim brought promptly and within 3 months -> not open to D to later challenge that grant of permission on the basis that it is out of time at the substantive hearing (Admin Court Guide 6.4.4.3)
- But - D can argue relief should be refused because of delay under s31(6) SCA 1981, see *R (Karmakar) v Royal College of General Practitioners* [2024] EWHC 2211 (Admin), [38]-[39].



Can D go behind extension at substantive hearing?

- CA held D only be able to recanvas the question of undue delay at substantive:
 - (1) the judge hearing the initial application has expressly so indicated
 - (2) if new and relevant material is produced at the substantive hearing
 - (3) if, exceptionally, the issues as they have developed at the substantive hearing put a different aspect on the issue of promptness; or
 - (4) the judge has plainly overlooked a relevant matter or reached a decision per incuriam
- *R v Lichfield Securities Ltd v Lichfield DC* [2001] EWCA Civ 304
- See also *Dobson v SSJ* [2023] EWHC 50, Fordham J, “*number of different 'moving parts' which would inform the analysis*”, referring to a number of distinctions to be made.



When does time begin to run?

- Judgment, order or conviction, the time-limit runs from the date of that judgment, order or conviction (Practice Direction 54A para.3.1).
- On a particular decision or action, the time limit will usually run from the date when the decision or action was taken. C must challenge the substantive decision that is the real basis of their complaint.
- If C fails to bring a challenge to a particular decision, and then seeks to challenge some later ancillary or consequential decision or approval of the earlier decision on the ground that the later decision is unlawful as it is based on the original decision, which is also unlawful - courts may find that the time-limit begins to run from the date of the earlier decision.



When does time begin to run?

- where a local education authority published proposals to close a school and C claimed LEA acted unlawfully in publishing proposals (wrong committee within the LEA took the decision), the time limit ran from the date of the earlier decision, not the date of the decision of the school organisation committee approving the proposals to close the school.
- As C was out of time to challenge the earlier decision, the validity of that decision could not found a challenge to the lawfulness of the later decision of the school organisation committee
- *R (Louden) v Bury School Organisation Committee* [2002] EWHC 2749 (Admin)
- Correct approach to cases with multi-stage decision-making processes
- *R (Fylde Coast Farms Ltd) v Fylde BC* [2021] UKSC 18 [36]–[41] per Lord Briggs and Lord Sales.



When does time begin to run?

- Challenge to a general measure, eg rules or policies or secondary legislation, time begins to run for an individual challenging the measure from the date **when C is affected by the measure**
- *R (Badmus) v SSHD* [2020] EWCA Civ 657 (Admin) [78]
- *R (Hughes) v Board of the Pension Protection Fund* [2020] EWHC 1598 (Admin) [88]–[94]
- *R (All the Citizens) v SS for Digital, Culture, Media and Sport* [2022] EWHC 960 [155]–[156]
- *R (Delve) v SSWP* [2020] EWCA Civ 1199 [125]–[127] (time for challenge to compatibility of legislation with ECHR).



When is a claim premature?

- Where D **agrees to reconsider** the original decision challenged (thus effectively agreeing to withdraw the decision challenged without the intervention of the Court), may be more appropriate to end the claim, rather than to stay or seek to amend it
- One exception: where the case raises a point of general public importance and the point which was at issue in relation to the original decision remains an important issue in relation to the subsequent decision
- *R (Bhatti) v Bury Metropolitan Borough Council* [2013] EWHC 3093, relied on in
- *R (Dalton) v CPS* [2020] EWHC 2013
- *R (Yousuf) v SSHD* [2016] EWHC 663 (Admin). 7.11.3



New decision

- No hard and fast rule, it will usually be better for all parties if JR proceedings are not treated as “rolling” or “evolving”
- Admin Court Guide 7.11.4
- *R (Dolan) v Secretary of State for Health and Social Care* [2020] EWCA Civ 1605 (Lockdown Regs in Covid – held claim to orig regs academic)
- *R (Spahiu) v Secretary of State for the Home Department* [2018] EWCA Civ 2604 [62]-[63] (amend re decision after proceedings started, permission required to amend after service, procedural rigour but also flexibility to do justice).



Timing of new decision

- Exception to this rule:
- New decision is taken at a late stage of the proceedings and the public interest demands an authoritative determination of the legality of the new decision on an expedited basis
- *Al-Haq v Secretary of State for Business and Trade* [2025] EWHC 173 (Admin), [36]
- If an application is made to amend to challenge a later decision, see relevant matters to note, *R (Hussain) v Secretary of State for Justice* [2016] EWCA Civ 1111 (Cat A prisoner's challenge the escape risk classification decision – notice of amendment, no prejudice to D, no dispute on facts; overriding objective, or fresh claim, time limits)



EO v SSHD [AC-2024- LON 001699]

- C victim of trafficking, challenged decision not to reconsider her decision and challenge to the Modern Slavery Statutory Guidance on test imposed for reconsideration - exceptional circumstances if sought after 30 days
- Withdrew and remade positive decision, said would review policy, agreed stay
- Interim Guidance issued, referring to review, but original remained in place
- Court held academic and exceptional circumstances not made out
- *R (SSJ) and Parole Board E & W and (IP) Abdallah* [2025] EWHC 1472 (Edis LJ, Dove J) - s 31(2B) SCA 1981 “for reasons of exceptional public interest” , “the high hurdle ... To proceed to determine the case must not simply be in the public interest but an exceptional public interest must be demonstrated.”



R (ota Rhieni Dros Addysg Gymraeg) v Neath Port Talbot County Borough Council (1) Welsh Ministers (2) GB of Alltwn Primary School and others
[2022] EWHC 2674

- Schools in Wales known as Welsh-medium schools if they deliver education through the medium of the Welsh language; English-medium schools if through English.
- C a charitable body established in 1952, funded by the Welsh Government. Name translates to English as Parents for Welsh-Medium Education. Its work is to increase Welsh-medium education in Wales.
- Decision challenged - whether local authority lawfully decided 10/21 (consultation started in 2020; 1/22 issued) to close 3 English-medium primary schools in the Pontardawe area and establish 1 new English medium primary school at Parc Ynysderw, without including in the prior consultation exercise an assessment of the impact of the proposal on the Welsh language.



R (ota Rhieni Dros Addysg Gymraeg) v Neath Port Talbot County Borough Council (1) Welsh Ministers (2) GB of Alltwn Primary School and others
[2022] EWHC 2674

165. It is well known among practitioners that a claimant may be reproached with prematurity if they claim early and with tardiness if they claim late. The tension between the two approaches is shown in the cases. **There is no obvious temperate zone in between the Scylla of prematurity and the Charybdis of laches.** Some claimants seek to avoid litigation. Others, with deeper pockets or of a more litigious disposition, claim early. Some may claim early and then seek a stay, but the defendant may contest a stay and the court may not grant it. [Kerr J]



R (ota Rhieni Dros Addysg Gymraeg) v Neath Port Talbot County Borough Council (1) Welsh Ministers (2) GB of Alltwen Primary School and others
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166. In the present case, I have come to the conclusion that I should not refuse relief on the grounds of delay and prejudice, for the following brief reasons. **First**, an early challenge to the consultation process **would probably have been met with an allegation of prematurity**. The council would have had available to it the Divisional Court's decision in *ex p. Threapleton* and, closer to home, its decision in the Denbighshire case.



R (ota Rhieni Dros Addysg Gymraeg) v Neath Port Talbot County Borough Council (1) Welsh Ministers (2) GB of Alltwen Primary School and others
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167. The council could have deployed the converse arguments to those it now advances. It could have contended that the claimant had “**rushed off to court**” (in the familiar phrase): the challenge would be academic unless cabinet later decided to adopt the proposals; if they were published, objectors might then yet win the counter-argument and defeat them; Welsh Government funding was indispensable and far from guaranteed; and elections were due over two years before the distant implementation date (1 September 2024).



R (ota Rhieni Dros Addysg Gymraeg) v Neath Port Talbot County Borough Council (1) Welsh Ministers (2) GB of Alltwen Primary School and others
[2022] EWHC 2674

168. Next, the claimant is a respected charitable organisation without substantial financial resources. **It was appropriate for it to be cautious about litigating.** It needed and later obtained **a costs capping order.** It **made known its objections** to the absence of a WLIA during the process. The council recorded in the consultation report the objection from some consultees that the absence of a WLIA prevented them from giving intelligent consideration to the proposals.



R (ota Rhieni Dros Addysg Gymraeg) v Neath Port Talbot County Borough Council (1) Welsh Ministers (2) GB of Alltwen Primary School and others
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169. The council would have known from the Denbighshire and ex p. Threapleton decisions that the passing of three months from the start of the consultation did not immunise the consultation process completely from challenge. It decided to press ahead with publishing the proposals. If the claimant had sought to challenge the decision to publish them, taken in June 2021, it could have been met with the riposte that its timing was **“the worst of all worlds”: too late for the consultation, too early for the final decision yet some way off.**



R (ota Rhieni Dros Addysg Gymraeg) v Neath Port Talbot County Borough Council (1) Welsh Ministers (2) GB of Alltwn Primary School and others
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170. Furthermore, at that stage, the **proposals were still beset with uncertainty**. Litigation might well be unnecessary, from the perspective of the claimant at the time. The Welsh Government, which held the purse strings, had insisted on a WLIA; its content was known to the claimant when Ms Elin Maher wrote to the council on 14 June 2021, complaining that it had come too late. Its status and likely impact was unclear. The council interpreted it benevolently in the consultation report but it was far from clear that the proposals would proceed and the opening of the new school was still over 3½ years away.



R (ota Rhieni Dros Addysg Gymraeg) v Neath Port Talbot County Borough Council (1) Welsh Ministers (2) GB of Alltwn Primary School and others
[2022] EWHC 2674

171. **There are no clear rules for determining the right time to bring a challenge.** It is a **question of fact and degree** in each case. Practitioners know that defendant decision makers are likely to criticise the timing of a challenge whenever it is brought. I do not think that on the facts here, the claimant should be shut out because it chose to refrain from litigation in early and mid-2021. As Steyn J noted, the implementation dates in August and September 2024 are more distant than in many cases of this kind.



So how to navigate?

- Always act promptly, as far as you can at all stages (PAP/ Funding/ Issuing)
- Minimise risk of being treated as out of time; issue protectively when you can, seek agreement to a stay.
- Obtain a “shield letter” - agreement that no point will be taken.
- Show that all necessary and reasonable steps taken, support with a statement.
- Set out in correspondence your concerns – to show D or C on notice, and prejudice / or not, depending on which side raises which argument (delay/ prematurity).
- Avoid rolling JR.
- Consider belt and braces approach – new decision - amend and issue new claim?
Minimal additional work and when either dismissed (application/ new claim)
-> no risk to C.



Thank you

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