

Duty of Candour

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What counts and will sway the court on the Duty of Candour?

Where are defendants now most vulnerable to judicial criticism? (*NB – all parties are subject to the duty)



Analysing compliance with the Duty of Candour: 'how to' (or how not to) guide

- Purpose, function and nature of the duty
- Updated Guidance in the Administrative Court Judicial Review Guide 2025
- Disputes / criticisms over compliance and what can be learned – avoiding pitfalls. Including concerning:
 - Redaction
 - Pre-permission stage candour
 - Reflecting the questions that the JR grounds raise for the court to determine
 - Other points a claimant would take if informed (even if by amendment/otherwise)

The Function of the Duty of Candour



- Duty of Candour for all

- Claimant
- Defendant
- Interested Parties connected with the challenged measure (*Belize Alliance of Conservation Non-Government Organisations v Department of the Environment* [2004] UKPC 6 at [87])





- Defining the duty of candour
- “process which falls to be conducted with all the **cards face upwards** on the table and the vast majority of the cards will start in the authority’s hands.”
 - *R v Lancashire County Council, ex parte Huddleston* [1986] 2 All ER 941 at p945
- A **very high duty** upon a public authority to assist the court with full and accurate explanations of all facts relevant to the issue the court must decide:
 - *R (Quark Fishing Ltd) v SSFCA* [2002] EWCA Civ 1409 at §50. (per Laws LJ)



Candour

- Underlying principle is that a public authority's objective should not be to win the case at all costs
 - but to assist the court in its role of ensuring the lawfulness of the decision under challenge,
 - with a view to upholding the rule of law and improving standards in public administration.
- Must therefore fairly and fully disclose all relevant information, including (especially) that which is harmful to its own case.
- NB- Though often described as a duty to the court, it applies throughout – even at the pre-action stage.

- *Belize Alliance of Conservation Non-Government Organisations v Department of the Environment* [2004] UKPC 6; [2004] Env. L.R. 38
 - Duty “to co-operate and to make candid disclosure by way of affidavit of the relevant facts and (so far as they are not apparent from contemporaneous documents which have been disclosed) the reasoning behind the decision challenged”: [86]
- The duty of candour encompasses “a duty owed by the defendant to give a full and accurate explanation of its decision-making process”
 - as described by the Lord Chief Justice’s *Discussion Paper on Candour and Disclosure* (2016) (drafted by Cranston and Lewis JJ, as the latter was).

Requests for information and documents at the pre-action stage - *Pre-Action Protocol for Judicial Review (Eng. & Wales)*

- “**13.** Requests for information and documents made at the pre-action stage **should be proportionate** and should be limited to **what is properly necessary** for the claimant to understand why the challenged decision has been taken **and/or to present the claim in a manner that will properly identify the issues.**
- The defendant should comply with any request which meets these requirements **unless there is good reason** for it **not to** do so.
- Where the court considers that a public body should have provided relevant documents and/or information, particularly where this failure is a breach of a statutory or common law requirement, it may impose costs sanctions.”

Pre-Action Protocol for Judicial Review - cont'd

- “23. If the claim is being conceded in part or not being conceded at all, the reply should say so in clear and unambiguous terms, and—
 - ...
 - (b) provide a fuller explanation for the decision, if considered appropriate to do so;
 - ...
 - (d) **enclose any relevant documentation** requested by the claimant, **or explain why** the documents are **not** being enclosed;
 - (e) where documents cannot be provided within the time scales required, then give a clear **timescale for provision**. The claimant should avoid making any formal application for the provision of documentation/information during this period unless there are good grounds to show that the timescale proposed is unreasonable
 - ...”

Civil Procedure Rules: Disclosure and Duty of Candour in JR

- CPR PD54A (6 April 2024), para.11.2: “Disclosure is not required **unless the court orders otherwise**”
 - Because the parties are obliged (without any order required) to comply with the duty of candour.
 - *NB.* Possible to make specific disclosure requests – exceptionally required
- PD54A para 11.1: “In accordance with the duty of candour, the defendant should, in its Detailed Grounds or evidence, identify any relevant facts, and the reasoning, underlying the measure in respect of which permission to apply for judicial review has been granted.”
- *NB.* Duty applies also to applications to intervene in JR: PD54A para. 13.4

Continuous duty: before and during

- TSol's 2010 Guidance (§1.2): duty applies as soon as the relevant body is aware that someone is likely to test a decision or action affecting them.
 - It applies "*to **every stage** of the proceedings including letters of response under the pre-action protocol, **summary grounds** of resistance, detailed grounds of resistance, witness statements and counsel's written and oral submissions*".
 - Ongoing duty and must therefore be kept under review as the case progresses:
 - "*For example, if **after** service of evidence, further relevant information comes to light, that information must be disclosed to the other parties to the proceedings and put before the Court at the **earliest possible opportunity***".

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/285368/Tsol_discharging_1_.pdf

Includes new possible bases for challenge too:

- Tsol (i.e. GLD) Guidance states that the duty extends to documents/information which will assist the claimant's case and/or give rise to **additional** (and otherwise unknown) grounds of challenge
- citing *R v Barnsley Metropolitan Borough Council, ex p Hook* [1976] 1 WLR 1052.
 - *Hook* in fact addressed a related but distinct point, namely that if the material filed by the defendant does happen to reveal additional grounds, “*the court can inquire into them without being bound by the grounds stated in the original statement [of grounds]*” (p.1058).

R (Bancoult) v S. Ste for Foreign and Commonwealth Affairs [2017] AC 300

- Lord Kerr JSC adopted the formulation in Fordham J's JR Handbook that:
 - "A defendant public authority and its lawyers owe **a vital duty** to make full and fair disclosure of relevant material. That **should include** (1) due diligence in investigating what material is available; (2) disclosure which is relevant or assists the claimant, including on some as yet unpleaded ground; and (3) disclosure at the permission stage if permission is resisted." [183] [see 7th edition para. 10.4]
- Baroness Hale JSC noted:
 - "It is a proud feature of the law of judicial review of administrative action in this country that the public authority whose actions or decisions are under challenge has a duty to make full and fair disclosure of all the relevant material. Only if this is done can the court perform its vital role of deciding whether or not those actions or decisions were lawful." [192]

Pro-active duty – cannot sit quietly to side

- Even if for financial reasons a public authority decides to take no active part defending a judicial review it nonetheless must “at least” consider whether it has complied with the duty of candour and co-operation by disclosing all relevant documents
- Per Singh J (as he was) in *R (Midcounties Co-Op) v Forest of Dean District Council* [2015] EWHC 1251 (Admin) at [151]

R v Secretary of State for the Home Department ex parte Hickey & Ors (No.2) [1995] 1 WLR 734, DC

Per Simon Brown LJ

- “The guiding principle should always be that sufficient disclosure should be given to enable the petitioner properly to present his best case. That can only be done if he adequately appreciates the nature and extent of the evidence elicited by the Secretary of State's inquiries.” (p746E)

(endorsed, e.g., in *Davis v Criminal Cases Review Commission and another* [2009] EWHC 1641 (Admin), DC)



The Administrative Court Judicial Review Guide 2025

AC JR GUIDE 2025

- The Guide does not have the force of law, but is “essential reading for all those who practice in the Administrative Court” (*R (DVP) v Secretary of State for the Home Department* [2021] EWHC 606 (Admin), [2021] 4 WLR 75 at [8]).
- Attention is drawn to the need for legal professionals “to comply rigorously with the duty of candour, at all times” [2.1.3.2]
- Duty emphasised to:
 - L.I.P.s [4.2.2.2]
 - Claimants [7.5]; [15.2]
 - Defendant considering adopting SGR as DGR [10.1.4.3]
 - Interested Parties [15.4.1]

AC JR Guide 2025 at 15.1: “The duty”

- 15.1.3 (*as amended in 2024 to reflect caselaw*) –
 - “Where a party **relies on a document**, and the **document is significant** to the decision under challenge, it will be **good practice to disclose the document** rather than merely summarise it, because the document is the **best evidence** of what it says.”: *Tweed v Parades Commission for Northern Ireland* [2006] UKHL 53, [2007] 1 AC 650, [4] and [39].
 - “The **same may be true in other situations**, for example where the **precise terms** of a document are **relevant to an issue** in the case. In such situations, it may in practice be difficult to comply with the duty of candour without disclosing the document”.

AC JR Guide 2025 at 15.1: “The duty” - *cont’d*

- 15.1.4 “However, this **may not be enough**. The duty of candour may also require the party in its statements of case to **identify and explain the significance of information and/or documents adverse to that party’s case**”:
 - *R (Hoareau) v Secretary of State for Foreign and Commonwealth Affairs* [2018] EWHC 1508 (Admin), DC at [19]-[20]
 - *R (Citizens UK) v Secretary of State for the Home Department* [2018] EWCA Civ 1812, [2018] 4 WLR 123, [105]-[106]
 - *R (Superintendent’s Association) v Remuneration Review Body* [2023] EWHC 1838 (Admin); [2024] 1 WLR 166, at [16]-[18].

AC JR Guide 2025: “15.3 The duty as it applies to defendant public authorities and their representatives”

- 15.3.1 “...There is a particular obligation on solicitors and barristers acting for public authorities to ensure that it is fulfilled. The duty arises because public authorities are engaged in a common enterprise with the Court to fulfil the public interest in upholding the rule of law...”
- 15.3.2 “The duty of candour is owed to the Court once judicial review proceedings have been commenced, although it is good practice to demonstrate candour at the pre-action stage” (citing *National Bank of Anguilla etc v Chief Minister of Anguilla* [2025] UKPC 14, at [91]).

AC JR Guide 2025: 15.3 - cont'd

- 15.3.2 “What is required to discharge the duty at the substantive stage **will** be more extensive than what is required before permission has been granted”; citing two cases:
 - *R (Terra Services Ltd) v National Crime Agency* [2019] EWHC 1933 (Admin), DC at [9], [14].
{NB. Where this suggestion was not in fact expressed; though the court did not need to order disclosure as there had been sufficient disclosure for permission [17]; noting the recent “additional 89 pages of disclosure” and agreement that a witness statement was to be provided in relation to two categories of material [12]. A PII hearing was directed [24]}

AC JR Guide 2025: 15.3 - cont'd

■ 15.3.2...

- *R (Batmanghelidjh) v Charity Commission* [2022] EWHC 3261 (Admin), approving this part of para 15.3.2 in the 2022 edition of the Guide. (Bourne J)

{Where permission was granted, and the suggestion of a “more extensive” requirement to be satisfied post-permission was relied upon to say that an application for disclosure upon permission grant was premature, as the parties had yet to discuss the question of disclosure as they had agreed to [48]; and

“If the interview records are capable of shedding light on the issues, and if there are internal communications which could help a Judge to decide the predetermination issue, then my provisional view is that it would be hard to see how the duty will not apply to them” [47]}

AC JR Guide 2025: 15.3 - cont'd – the AOS & SGR

- 15.3.3 “At the permission stage, the Summary Grounds should identify any **material facts**, highlight any material matters of factual dispute **and** provide a **brief summary of the reasoning** underlying the measures in respect of which permission to apply for judicial review is sought (unless the defendant gives reasons why the application for permission can be determined without that information)”
- citing CPR 54A PD para 6.2(2).
 - *NB.* That is simply to repeat the CPR requirements of an AOS (*not candour specific*)

AC JR Guide 2025: 15.3 - cont'd – the AOS & SGR

- 15.3.3 cont'd -
- “What the Court requires at the permission stage is sufficient information to be able to decide the application on an accurate basis” (citing *National Bank of Anguilla etc v Chief Minister of Anguilla* [2025] UKPC 14, at [92]).
- “The Court can take into account a lack of candour in deciding whether to grant permission” (citing *National Bank of Anguilla*, *ibid.* at [93])

AC JR Guide 2025: 15.3 - cont'd – the DGR

- 15.3.4 -
- “At the substantive stage, the duty requires a defendant in the detailed grounds of defence or evidence to identify **any relevant facts** and the **reasoning underlying the measure** in respect of which permission to apply for judicial review has been granted”: citing CPR 54A PD para 10.1 (*sic*).
 - NB. However it must mean to refer to para. 11.1.
 - Q. what, if any, difference between ‘material’ and ‘relevant’ facts? Is the real difference simply the threshold test that applies to resisting permission (and must not be misused by D)?
- “The duty of candour is a continuing one”: *R (Legard) v Royal London Borough of Kensington and Chelsea* [2018] EWHC 32 (Admin), at [174] (Dove J, as he was).
 - applies after detailed grounds and evidence have been filed and served.

AC JR Guide 2025: 15.3 - cont'd – what candour means

15.3.5 offers very practical clear guidance - “The duty of candour means that:

- 15.3.5.1 the process of preparing statements of case and evidence must be conducted “with all the **cards face upwards** on the table”;
 - public authorities must not be selective in their disclosure
- 15.3.5.2 pleadings and evidence must be drafted in **clear, unambiguous language**, must not deliberately or unintentionally obscure areas of central relevance and must not be ambiguous or economical with the truth or contain “**spin**”
- 15.3.5.3 “**pleadings** and **evidence** must **not mislead by omission**, for example by non-disclosure of a material document or fact or by failing to identify the significance of a document or fact”

Specific disclosure applications in JR

- The ultimate test identified by Lord Bingham in *Tweed v Parades Commission* [2007] 2 WLR 1 is:
 - “whether, in the given case, disclosure appears to be necessary in order to resolve the matter fairly and justly” [3].
- That has been endorsed many times, including in *R (Hoareau) v SoS for FCO* [2018] EWHC 1508 (Div. Ct) at [11]; *R (Coulthard) v SoS for Environment, Food and Rural Affairs* [2024] EWHC 2409 (Admin), at [3]; [2025] ACD 2.
- Procedure: CPR r.31.12(1); AC JR Guide 2025 at [7.6.2]; [13.7].
- *NB.* Can seek order to disclose documents, or order to carry out a search for documents.
- Alternative available also of CPR Part 18 request for further information.

AC JR Guide 2025: REDACTIONS

- 15.5.1 Parts of a document which otherwise fall to be disclosed under the duty of candour may be redacted if those parts:
 - 15.5.1.1 are **confidential and irrelevant** to the issues in the case;
 - 15.5.1.2 attract legal professional privilege;
 - 15.5.1.3 are subject to a statutory restriction on their disclosure; or
 - 15.5.1.4 attract public interest immunity (Chapter 19)

AC JR Guide 2025: REDACTIONS

- 15.5.2 – not to confuse FOIA 2000 disclosure regime with candour duty in legal proceedings
- 15.5.3 “Parties should consider carefully whether the text being redacted is **genuinely irrelevant**. Text which explains the **provenance and context of a document**, such as the name of the sender, recipients or copy recipients of a document (even if these are junior officials or external contractors), and should not be redacted as a matter of course”
- “**Without this information, it may be more difficult to understand the significance of the document**. It will usually be permissible to redact contact details (e.g. email addresses) if that is thought to be useful”
 - *R (IAB) v SSHD* [2024] EWCA Civ 66, at [24]-[28]

AC JR Guide 2025: REDACTIONS

- 15.5.4 “A party disclosing a redacted document should **explain the reason for that redaction** at the point of disclosure. The explanation need not be elaborate and should be such as to **afford the receiving party a sensible opportunity to decide whether to apply for disclosure of the unredacted document**.”
- The provision of **single word explanations**, such as “relevance” or “privilege” will **rarely be sufficient**
- When redacted documents are exhibited to a witness statement the reason for redaction may be given either in that statement or separate **witness statement**.
- If the redaction is made on grounds of legal professional privilege the explanation should be given in a witness statement made at the solicitor with conduct of the case”
 - *R (IAB) v SSHD* [2023] EWHC 2930 (Admin), [43]-[44]. (Swift J)

Caselaw in focus



Pre-permission stage: *Ramdass v Minister of Finance* [2025] UKPC 4 (per Lady Simler)

Suggest application of the duty informed by threshold for refusing permission.

Restatement of important principles as to threshold for permission:

- Permission is “**a low threshold**”, designed to protect against weak and vexatious claims [5]; [30]; [59].
- Wider questions of public interest may bear upon whether to grant permission [31]; [59]
- Permission threshold not “intended to afford an opportunity to a public body, such as the Minister, to resist full consideration of matters that are likely to be of importance both to the public and the executive itself” [30]; [59].
- Public body should be able to **demonstrate “a clear knockout blow” in a summary way** “without the need for extensive investigation of and argument on the knockout point relied on” [59]

Ramdass v Minister of Finance JCPC noted:

- “4... The appellants have yet to respond substantively to the judicial review claim and there has, as yet, been no duty of candour disclosure or, indeed, any disclosure at all.”
- “55. It is also significant that the respondent **relies on actual and apparent bias, together with improper purpose...** the appellants have no knockout blow in relation to a pleaded case of improper purpose. These are fact sensitive questions, and whether on the facts of this case, the Minister acted with bias and in that sense, an improper purpose, is a question that can only be determined at a full hearing, **with all relevant disclosure in accordance with the proper discharge of the Minister’s duty of candour.**”

National Bank of Anguilla v Chief Minister [2025] UKPC 14; [2026] 1 All ER 1097 (per Lord Reed and Lady Rose)

- Candour duty applies at permission stage [91] (*Peerless Ltd v Gambling Regulatory Authority* [2015] UKPC 29, §21; *Terra Services, ante.*)
- **Leave stage** is “**not intended to be** a full consideration” of the application for JR: its purpose is to filter out cases that were unarguable, or which on other grounds should not be permitted to proceed.
- “**Accordingly**, depending on the circumstances” what the duty of candour entails “at that stage **may** in consequence be less expansive than it would be at the stage of a full hearing after permission had been given” [92]

National Bank of Anguilla v Chief Minister – cont'd

- “What the court requires at the initial stage is **sufficient** information to be able to **decide the leave application on an accurate basis**. In broad terms, the claimant and the court are likely at that stage to require such information as was necessary to understand why the decision under challenge was made, and to identify the issues that might arise in relation to that decision”. [92]
- In a case where a number of public bodies and office-holders were involved in the decision-making process, and the roles which each of them played in that process were unclear, the claimant and the court also required information enabling them to identify the relevant decision-makers at each stage of the process. [92]

National Bank of Anguilla v Chief Minister – cont'd

- “The court can **take account of a lack of candour in deciding whether to grant permission**... the court will not permit public bodies to withhold crucial information or documents and then submit to the court, as the respondents did in the present case, that the applicant for judicial review has consequently failed to establish an arguable case”. [93] (and [102])
- “the normal approach to disclosure in judicial review proceedings reflects the practice of the parties in complying with their duty of candour. Where that duty has been complied with, orders for disclosure are not usually required, although they can and should be made where that is necessary for the fair and just disposal of the case. **Where such compliance is absent, on the other hand, the court may be much readier to make orders for disclosure, since they may be essential if justice is to be done**” [100]

National Bank of Anguilla v Chief Minister – cont'd

- Permission granted [139]
- “In the view of the Board, the **next step** in the proceedings should be **a hearing on disclosure**, if the respondents persist in refusing to make relevant information and documentation available.
- That may, however, be avoidable if they now provide affidavits giving a full and accurate account of what took place, together with all the relevant documents in their possession.
- In the meantime, all the respondents should remain party to the proceedings until the decision-making process has been clarified, and it becomes possible, at long last, for the appellants to identify the critical decisions and the individuals or institutions who made them.” [140]

R (Superintendents' Association) v The Remuneration Review Body & Home Secretary [2024] 1 WLR 166

Fordham J explained (by reference to several authorities) (at [15(7)] and [17]-[18]) both the “best evidence” rule and good practice mean that documents should be produced:

- since the document is the best evidence of what it says;
- and what a court or a claimant makes of it is frequently different to that a witness honestly makes of it.

At [18] his Lordship explained:

- “The principled ‘good practice’ identified in *Tweed* provides the answer. If documents matter, they should be provided. If they matter prior to or at the permission stage, that is when they should be provided. Not gists. Nor summaries. Not descriptions of contents or features of the document. Not selected quotations. Instead, the documents themselves. This is proper candid disclosure”.

R (Superintendents' Association) v The Remuneration Review Body & Home Secretary- cont'd

- Fordham J (at [15]) also summarised 10 principles from the existing jurisprudence concerning failures of candour where specific disclosure may be granted
- However not to be seen as a check-list nor replacement of the *Tweed* test
- E.g. of summarised points that may arise:
 - “**Just Disposal**” Principle i.e. a test of necessity to resolve the matter fairly and justly.
 - “**Information-Too**” Principle i.e. requires that relevant facts be identified in witness statement evidence, insofar as unapparent from disclosed contemporaneous documents.
 - “**Relevant Material**” Principle i.e. disclosure of materials reasonably required for the court to arrive at an accurate decision and full and accurate explanation of all facts relevant to issues court must decide.
 - The “**Unpleaded Grounds**” Principle.

Nature of the grounds – role of the Court/question it must answer e.g.

- Fairness of procedure?
 - Objective question for the Court itself to answer
 - (e.g. Lord Reed *Osborn v Parole Board* [2014] AC 1115 at [65])
- Proportionality?
 - Situation where Court is itself required to conduct a proportionality review
- Human rights?
- Consequence =
 - documentation and detail Court may need is heightened; even if asking whether arguable case challenging unfair process or disproportionate measure

(1) Human rights cases & (2) systemic challenges

- (1) *R (Al-Sweady) v SSt for Defence* [2010] HRLR 2 (Div. Court)
 - “The duty of disclosure on the Secretary of State in a case such as the present one is heightened by the fact that the allegations raised in this case concerned some of the most **important and basic rights** under the ECHR. [...]
 - it must be incumbent on this court to consider with great care and to apply intense scrutiny to any claim that any of these three basic human rights [*viz. ECHR Article 2, 3 and 5*] have been infringed.
 - This means that the duty of disclosure on the part of the defendant to a claim for an infringement of these rights is even more acute”. [26].
- (2) If the challenge is a **systemic** one it is incumbent upon the authority to supply evidence of the system: *R (Howard League) v LC* [2017] 4 WLR 92, CA at [52]

Shvidler v Secretary of State FCDA; Dalston Projects Ltd v SofS Transport [2026] AC 607; [2025] UKSC 30

- Principles 1st instance court should apply when reviewing a decision of the executive on grounds of **proportionality** (and the principles an appellate court should apply when reviewing a decision of the 1st instance court) are not as well understood as they need to be [8]-[9].
- Court's function is not merely secondary, reviewing function, dependent on establishing the decision-maker misdirected itself, acted irrationally or was guilty of procedural impropriety. It is **to decide a question of substance itself** [120].
- Further, the measure of respect to be accorded to the views of the Government will depend on the importance of the right, the degree of interference with that right, and the extent to which the courts are well placed to adjudicate the balance of various rights and interests engaged [123]-[124].

Chagossian resettlement/return

- *Bancoult (No 2) v SoS for Foreign and Commonwealth Affairs* [2008] UKHL 61; [2009] AC 453
- Defending decision not to allow right of abode relied on a 2002 study suggesting resettlement not realistically feasible due to cost and sustainability
- *R (Bancoult) v SoS Foreign and C.A. (No.4)* [2016] UKSC 35; [2017] AC 300
- Application to set aside judgment due to previously undisclosed draft of report and correspondence between FCO, consultants and scientific adviser
- 3:2 majority declined to set aside
- All members of Court acknowledged failure to disclose the documents was “culpable” or “reprehensible”

R (Hoareau) v Secretary of State for Foreign and Commonwealth Affairs [2018] EWHC 1508 (Admin), DC

- Another case in the Chagossian line (following 2009 failures in candour)
- CPR Pt 31 specific disclosure and Pt 18 further information applications
- Ahead of hearing parties reached agreement – but court considered helpful to express principles
- Per Singh LJ (and Carr J, as she was, in agreement):

R (Hoareau) v Secretary of State for Foreign and Commonwealth Affairs – cont'd

- [9]-[10] JR usually not fact-finding but issues of law; but may be fact finding for whether followed rules of procedural fairness; and
- “Cases under the Human Rights Act may call for a different approach to be taken for the resolution of factual disputes depending on the nature of the issue. Quite often the question of proportionality in a human rights case may require the court to engage in a judgment which calls for an evaluation of the facts to see, for example, whether a fair balance has been struck between the rights of the individual and the general interests of the community” [10]

R (Hoareau) v Secretary of State for Foreign and Commonwealth Affairs – cont'd

- [19] not just to supply a lot of documents to C: ““this may, in truth, overwhelm them and obfuscate what the true issues are”.
- [20] not to provide needle in haystack but “duty of candour and co-operation which falls on public authorities, in particular on HM Government, is to assist the court with full and accurate explanations of all the facts relevant to the issues which the court must decide”
- In public law proceedings duty to identify "the good, the bad and the ugly"
- [21] public authorities must not be selective in their disclosure
- [22] must be no spin: clear and unambiguous affidavits

R (Citizens UK) v Secretary of State for Home Dep't [2018] EWCA Civ 1812, [2018] 4 WLR 123

- Per Singh LJ (with whom Hickinbottom and Asplin LJJ agreed):
- [105] Adopts and incorporates *Hoareau* [2018]
- Must not either deliberately or unintentionally obscure areas of central relevance; and those drafting them should look carefully at the wording used to ensure that it does not contain any ambiguity or is economical with the truth. There can be no place in this context for “spin”. [106(4)]
- “pleadings and evidence must not mislead by omission, for example by non-disclosure of a material document or fact or by failing to identify the significance of a document or fact”: [106(5)]

R (Citizens UK) v Secretary of State for Home Dep't – cont'd

Findings

- there was a serious breach of the duty of candour and co-operation by SoS in this case [168]; [172]
- “An incomplete picture was left in the mind of the reasonable reader, including Soole J, as a result of the evidence that was filed below.” (not deliberate/bad faith; filed in another case; no deliberate attempt to suppress these matters). “Nevertheless, the effect, even if it was unintentional, was that significant evidence was not brought to the attention of the High Court” [168]
- [169] criticises time pressure explanation: D not act until by chance uncovered in other proceedings

R (Citizens UK) v Secretary of State for Home Dep't – cont'd

Findings cont'd

- “The most serious omission,.. reason why the reasons for an adverse decision in the expedited process were “sparse” ...was ...because the British authorities did not wish to give more reasons and that this was because of a perceived risk of legal challenge to the decisions” [170]

R (IAB) v SSHD [2024] EWCA Civ 66; [2024] 1 WLR 1916

- Bean, Males, Lewis LJ.
- Duty of candour & Redactions
- Appeal by SSHD
- served 500 pages of documents in which most of the names of civil servants in grades below the Senior Civil Service (SCS) were redacted. (junior civil servants comprise some 98%).
- Issue = whether C entitled to candid disclosure without those routine redactions

R (IAB) v SSHD – cont'd

- Duty of candour – being met by disclosure of relevant documents [22]
(cites Lewis LJ's book, as did Swift J below)
- Usually permissible to redact contact details if that is thought to be useful [28] (*i.e. exact email address – but immaterial if name means can be 'guessed'*)
- “parts of a document (for example a note of a meeting) concerned with wholly different subject matter from that in issue may properly be redacted” [29]

R (IAB) v SSHD – cont'd

- “It may also be justifiable to redact names, for example, for reasons of national security or where there is evidence of a real risk to the personal safety of the individual concerned” [29].
- But redaction of names is not justified as a matter of routine [29]. Must be appropriately justified and case-specific.
- The extent of such risks does not justify redaction of names as a matter of routine [29]
- The practice previously adopted by GLD “was inimical to open government and unsupported by authority” [36].

R (Montano) v London Borough of Lambeth [2024] EWHC 249 (Admin); [2024] HLR 28

- C requested the LA to backdate her entry on the housing register
- C brought a JR of the LA's refusal to do so

- Court considered candour failure [79]-[80]:
 - • Defendants must co-operate with requests for information
 - • Defendants must reflect on what is required in particular contexts
 - • Scarce resources is not an excuse for a breach of duty

R (Montano) v London Borough of Lambeth – cont'd

- In SGRs “D categorically asserted that it was a *"hard fact"* that there was no discretion to change the date of registration. It made no mention of cases where the date of registration had in fact been backdated.
- In response, C filed detailed evidence demonstrating that in a number of cases D had exercised a discretion to backdate the registration date.
- D's duty of candour and co-operation operated such that it should have filed evidence to assist the court with a *"full and accurate explanation"* in response. Instead, it responded simply by way of assertion in its Skeleton Argument.
- It did not answer any of the reasonable requests made by the C for clarification of the D's witness statement
- Equally unsatisfactorily, it failed to serve the Guidelines in timely fashion [79]

R (LLJ) v London Borough of Hackney [2026] EWHC 1145 (Admin) (Coppel J)

- After permission grant Council offered settlement on 16.3.26: withdrawal with costs, and “new review” [13]
- Council then filed DGDs on 27.3.26 defending the decision; but did not file any witness statement.
- Issue arose as to the lack of clarity whether the decision had been withdrawn or not; and on what basis
- Confusion/transparency not improved when formal witness evidence was filed upon the judge’s direction

R (LLJ) v London Borough of Hackney – cont'd

- The **duties of candour and cooperation with the Court apply as much to steps by a public body taken with the aim of settling proceedings as they do to any other stage** in the life of a judicial review claim [21]
- “It is the duty of a defendant to any threatened or issued judicial review claim to give careful consideration to the merits of their position at the pre-action stage and then again at the Acknowledgment of Service stage, and to act upon any “insurmountable difficulties” that come to light, rather than robustly defending the claim unless and until permission is granted” [23].

R (LLJ) v London Borough of Hackney – cont'd

- “once the Council had decided that the appeal decision faced “insurmountable difficulties” and would be withdrawn, **it should have proceeded to withdraw the appeal decision and to inform the Claimant and the Court why it had done so or at the very least to indicate unequivocally that the decision would be withdrawn and why**, rather than making withdrawal of the appeal decision conditional upon the withdrawal of the Claim” [24]
- “It was most certainly **not in accordance with the Council’s duty of candour and cooperation with the Court to mount, in the DGDs, a robust defence of a decision which it had already decided to withdraw because of having no properly arguable defence to the claim**” [24].

R (LLJ) v London Borough of Hackney – cont'd

- Council's tactical decision to make its offer without giving any indication that it accepted that the appeal decision was erroneous and on what basis was unfair [25]
- The Council's tactical approach also failed to show the necessary degree of cooperation with the Court, because (for one thing):
 - "... (c) it placed the Court in an invidious position when the Court was invited—in the Council's Skeleton Argument and at the oral hearing - not to determine the claim on its merits because of the offer to withdraw the decision.
 - The Court could not assess to what extent there remained live issues between the parties without understanding whether the Council accepted that the appeal decision was wrongly made and on what basis.

- *Cont'd*

R (LLJ) v London Borough of Hackney – cont'd

- “A defendant to a judicial review claim is not, of course, required to disclose its privileged legal advice, but if that advice leads to the making of a settlement offer whereby the decision in question will be withdrawn, the defendant does, in my judgment, have an **obligation to offer some explanation of why this is being done**.”
- An explanation would have to be provided to the Court in a case where the parties wish to settle proceedings on the basis of certain relief being granted by the Court (Administrative Court Guide (2025), §24.4).
- It is no more onerous to expect an explanation from a defendant where it is seeking to persuade a claimant to settle a claim without the grant of relief, because the challenged decision is to be withdrawn”. [26]



- Avoiding judicial comments recording failures:
- “lamentable”
- “trust and confidence... undermined”
- “culpable breach”
- “serious breach”
- “fallen short”
- “highly regrettable”
- “discreditable”
- “displays a troubling failure”

Duty of Candour

Presentation to Whitepaper Conference 25 June 2026

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