





How have recent cases changed existing thinking on the scope of the duty of candour, including a "staged" duty of candour as asserted in ongoing cases?

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Nicola Braganza KC
Garden Court Chambers



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 @gardencourtlaw

Outline

- What is the duty of candour?
- Some recent cases.
- A staged duty?
- Top tips.



What is the duty of candour?

- Practice Direction 54A - supplementing CPR 54.16 (Evidence)

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.

11.2 Disclosure is not required unless the court orders otherwise.



A “*special duty*”

- Administrative Court Guide (2023) [7.5, 7.6, 15]

“There is a **special duty** – the duty of candour and cooperation with the Court – which applies **to all parties to judicial review** claims. Parties are obliged to ensure that all relevant information and all material facts are put before the Court. This means that parties must disclose relevant information or material facts which either support or undermine their case. **The duty of candour may require a party to disclose a document rather than simply summarising it.**”

7.5.2 It is **very important** that parties comply with the duty of candour.
[15 sets out specific points, see below.]



A “vital duty”

R (ota Bancoult (No 2)) v Sec of State for Foreign & Commonwealth Affairs [2016]
UKSC 61 Lord Kerr cited *Fordham’s Judicial Review Handbook* (6th Ed. 2012)

“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. ... A main reason why disclosure is not ordered in judicial review is because **courts trust public authorities** to discharge this **self-policing duty**, which is why such anxious concern is expressed where it transpires that they have not done so.” [§183]



A “*very high duty*”

Lord Kerr went on to cite “*R (Quark Fishing Ltd) v SSF&CA* [2002] EWCA 1409 Laws LJ

“There is a ... **very high duty** on public authority respondents, not least central government, to assist the court with **full and accurate explanations of all the facts** relevant to the issue which the court must decide.” The duty extends to disclosure of “materials which are reasonably required for the court to arrive at an accurate decision” - *Graham v Police Service Commission* [2011] UKPC 46 §18. The purpose of disclosure is to “**explain the full facts and reasoning** underlying the decision challenged, and to disclose relevant documents, unless, in the particular circumstances of the case, other factors, including those which may fall short of public interest immunity, may exclude their disclosure *R (AHK) v SSHD (No 2)* [2012] EWHC 1117 §22. [§184]



What is the duty of candour?

Singh LJ R (ota Hoareau and Bancoult) v SSF&CA [2018] EWHC 1508 “The following principles seem to us to be uncontroversial”.

- Disclosure is not automatic in JR proceedings... JR differs from ordinary civil litigation (see PD 54A para.12, disclosure is not required .. unless the court orders otherwise). Generally concerned with issues of law not disputes of fact.
- Factual issues can arise eg
 - if a public authority failed to follow the rules of **procedural fairness**.
 - Cases under the **Human Rights** Act may call for a different approach ... 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, eg, whether a fair balance has been struck between the rights of the individual and the general interests of the community.



A “*very important duty*” – and specific disclosure?

- Test on whether to order specific disclosure, see HL in *Tweed v Parades Commission for Northern Ireland* [2006] UKHL 53 –
 - Does “disclosure appear to be necessary in order to resolve the matter fairly and justly“
 - No warrant even in such a context for “fishing expeditions“(Tweed §31)
- => “One of the reasons why the ordinary rules about disclosure do not apply ... is that there is a quite separate but **very important duty** which is imposed on public authorities which is not imposed on other litigants”
- = The duty of candour and co-operation with the court, **particularly after permission** to bring a claim for judicial review has been granted.
- *R v Lancashire County Council, ex p Huddleston* [1986] 2 All ER 941, cited with approval in *Belize Alliance Conservation of Non-governmental Organisations [BACONGO] v Dpt of the Environment* [2004] UKPC 6.



R v Lancashire County Council, ex p Huddleston [1986]

- "But in my judgment the position is quite different if and when the applicant can satisfy a judge of the public law court that **the facts** disclosed by her **are sufficient to entitle her to apply** for judicial review of the decision. Then it becomes the duty of the respondent to make **full and fair disclosure**."
- " ... the evolution of what is, in effect, a specialist administrative or public law court is a post-war development. This development has created **a new relationship** between the courts and those who derive their authority from the public law, **one of partnership based on a common aim, namely the maintenance of the highest standards of public administration**."
- " ... It is for the respondent to resist [the] application if he considers it to be unjustified but this is a 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**."

Sir John Donaldson, MR, cited in *Bancoult Singh* LJ



“co-operate” and “make candid disclosure”

Singh LJ referred to *BACONGO*, Lord Walker [§86]

- “.. It is now clear that proceedings for judicial review **should not be conducted** in the same manner **as hard-fought commercial litigation**. A respondent authority owes a **duty** to the court **to cooperate** and to make **candid disclosure**, by way of affidavit, [today ... a witness statement] 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 in the judicial review proceedings.“
- “As Fordham Judicial Review Handbook (6th Edn 2012) "a **self-policing duty**". A **particular obligation falls upon both solicitors and barristers acting for public authorities** to assist the court in ensuring that these high duties on public authorities are fulfilled”.



Not a duty to “*off-load*”

“One important aspect ... should be emphasised and is not always fully appreciated Simple disclosure of documents **might suggest** that all that the public authority has to do is **give a lot of documents** to the claimant's representatives but this may, in truth, **overwhelm them and obfuscate what the true issues** are.

“The 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.”

“It would **not**, therefore, be **appropriate**, for example, for a defendant **simply to off-load** a huge amount of documentation on the claimant and ask it, as it were, to find the “**needle in the haystack**”. Singh LJ *Hoareau* [2018] [§19-20]



“The good, the bad and the ugly”

“It is the function of the public authority itself to draw the court's attention to relevant matters ... to identify "**the good, the bad and the ugly**".

This is because the **underlying principle** is that public authorities are not engaged in ordinary litigation, trying to defend their own private interests. Rather, they are **engaged in a common enterprise** with the court to fulfil the **public interest** in **upholding the rule of law.**” Singh LJ *Hoareau* [2018] [§20]



Don't be selective

- There is a duty on public authorities not to be selective in their disclosure. Singh LJ *Hoareau* [2018] [§21], referring to :
- *Lancashire County Council v Taylor* [2005] 1 WLR 2668, para.60
- *R (On Application of National Association of Health Stores) v Sec of State for Health* [2005] EWCA 154 para.47).



In the matter of an Application by Brenda Downes for Judicial Review [2006] NIQB 77

"Before concluding this aspect of the case it is timely **to forcefully remind parties of their duties** of candour in relation to the provision of information to the court. The affidavits of all parties should be drafted **in clear unambiguous language**. The language must not deliberately or unintentionally obscure areas of central relevance, and draftsmen should look carefully at the wording used ... to ensure that **it does not contain any ambiguity or is economical with the truth** of the situation. There can be **no place** in affidavits in judicial review applications for what in modern parlance is called '**spin**'. Public bodies and central government agencies in particular are involved in the provision of fair and just public administration and **must present their cases dispassionately and in the public interest. Justice lies at the heart of public interest and can only be served by openness in assisting the court to arrive at a proper and just decision**. The judicial restraint on matters such as discovery [in England and Wales of course disclosure now] and cross-examination would not long survive if lack of frankness and openness were to become commonplace in judicial review applications."

Girvan J, cited with approval by Singh LJ in *Hoareau* [2018] [§22]



Duty not to mislead, including by omission

R (ota Mohammad Shahzad Khan) v SSHD [2016] EWCA Civ 416 on the related duty of candour on a claimant in JR proceedings. Per Ryder LJ:

"71 I agree with McCloskey J in *R (Bilal Mahmood) v SSHD* [2014] UKUT 00439 that the duty of candour which is a duty to disclose all material facts known to a party in judicial review proceedings **applies to all parties** in the proceedings. The duty is **not to mislead the court** which can occur by the **non-disclosure of a material document or fact** or by **failing to identify the significance** of a document or fact."

Singh LJ returned to the principles in his judgment in *Hoareau in (Citizens UK) v SSHD* [2018] EWCA Civ 1812



Redacted documents

- Parts of a document which otherwise fall to be disclosed under the duty of candour may be redacted if those parts:
 - are confidential and irrelevant to the issues in the case [Admin Guide 2023 15.5.1.1]
 - attract legal professional privilege [15.5.1.2]
 - are subject to a statutory restriction on their disclosure [15.5.1.3]
 - attract public interest immunity [15.5.1.4 and chapter 19]



Redacted documents

- If a document is exempt from disclosure under the Freedom of Information Act 2000, that does not, **in and of itself**, mean that the information is subject to a statutory restriction on its disclosure or can be properly withheld from disclosure in legal proceedings.
- Where a redacted or edited document is included in evidence, **the fact that redactions** have been made, and **the reasons** for them, **should be made clear**, preferably on the face of the redacted document.
- Documents should **never be filed or served** in an edited form **without making clear** that they have been edited.
- Parties should **consider carefully** whether the text being redacted is genuinely irrelevant.
- If a party wishes to redact such information from a disclosable document, an application should be made to the Court for permission to do so, explaining the reason for the redaction, where necessary with supporting evidence. [Admin Guide 15.5.2]



Recent cases?

R (Police Superintendants' Association) v The Police Remuneration Review Body & SSHD [2023]
EWHC 1838 19/7/23

- Permission stage decision
(certified as citable Practice Direction (Citation of Authorities) [2001] 1 WLR 1001)
- Facts - Remuneration Review Body's recommendation of a flat-rate pay increase and the Home Secretary's decision to accept it.
- Grounds – Breach of PSED/ Recommendation unreasonable.
- DoC Issue - SGD relied on two Ministerial Submissions, quoting but not disclosing them.
- C sought permission stage specific disclosure. SSHD relied on cases of *Gardner*, and case of *JM*
- Mr Justice Fordham set out the **10 Relevant Principles** on the “*duty of candid disclosure*”



R (Gardner) v SSHSC [2021] EWHC 2422

- Ds relied on *Gardner*, in a challenge to the legality of Covid measures relating to care homes.
- The Court decided that further disclosure was unnecessary to determine the claim fairly and justly, but directed a statement clarifying steps taken to comply with the duty of candour.
- “The duty of candour does not, however, give **rise to a duty to disclose documents per se**; although defendants may discharge their duty through the disclosure of documents (and may be encouraged to do so, where that is a means of ensuring the court is informed of the relevant facts underlying, and the reasons for, a decision), they are not ordinarily required to give **the sort of standard disclosure which might be required under CPR31**; disclosure, as opposed to compliance with a duty of candour, is not required in judicial review proceedings unless the court so orders. (See PD54A, para.10.2). That is so, even if the documents in question are referenced in witness statements filed in the proceedings ...” (Eady J)



R (JM) v SSHSC [2021] EWHC 2422

- Issue - whether the Home Secretary had discharged the duty to provide for the essential living needs of an accommodated asylum seeker.
- Ministerial Submissions disclosed, the day before the hearing.
- Farbey J decided not to treat that late disclosure as a breach of the duty of candour.

“There was no duty on the defendant to provide ... the ministerial submissions per se; but the substance of the information in the documents which shed light on the decision-making process in my judgment fell to be disclosed as a matter of candour.”



Fordham J's judgment on "Candid disclosure"

- Administrative Court Judicial Review Guide, 2022 edition (now 2023, 7.5, 15)
- R (Huddleston) v Lancashire County Council [1986] 2 All ER 941
- R (Quark Fishing Ltd) v SSF&CA [2002] EWCA Civ 1409
- Belize Alliance of Conservation Non-Gov. Organisations v Dpt of the Environment [2004]
- R (National Association of Health Stores) v SS for Health [2005] EWCA Civ 154
- Lancashire County Council v Taylor [2005] EWCA Civ 284
- Re Downes [2006] NIQB 77
- Tweed v Parades Commission for Northern Ireland [2006] UKHL 53
- Graham v Police Service Commission [2011] UKPC 46
- R (Bancoult) v SS for Foreign and Commonwealth Affairs (No.4) [2016] UKSC 35
- R (Hoareau) v SS for Foreign and Commonwealth Affairs [2018] EWHC 1508
- R (Citizens UK) v SSHD [2018] EWCA Civ 1812
- R (Terra Services Ltd) v National Crime Agency [2019] EWHC 1933 (Admin)



Fordham J's 10 Relevant Principles

- (1) **'Standard Disclosure'** Principle - In JR, unlike most civil claims (CPR31), the parties are not generally required to give standard disclosure of documents (CPR PD54A §10.2), which means **simply giving or offloading lots of documents is unnecessary and inappropriate** (Hoareau §§19- 20). (JR Guide 2022 §15.1.1; Gardner §22)
- (2) **'Just Disposal'** Principle. In JR, the test for ordering disclosure of specific documents or categories of documents (CPR31.12(1)) is **necessity to resolve the matter fairly and justly** (Tweed §3), a test **also governing requests** in judicial review for **further information** (CPR18.1: see R (Bredenkamp) v SSFCA [2013] EWHC 2480 (Admin) §19) and cross-examination. (JR Guide 2022 §§7.6.2, 11.2.2; Gardner §§25, 27, 29 and 35)
- (3) **'Candid Disclosure'** Principle. JR is conducted with **all cards face upwards on the table** (Huddleston 945F), meaning full and fair disclosure of all 'relevant material' so the court can decide whether the public authority acted lawfully (Bancourt §192), based on an **underlying principle** that public authorities are engaged **in a common enterprise** with the court to fulfil the public interest **in upholding the rule of law** (Hoareau §20). (JR Guide 2022 §15.3.5, Gardner at §20; JM §90)



Fordham J's 10 Relevant Principles

- (4) **'Information-Too'** Principle. Candid disclosure also requires that relevant facts be identified in **witness statement evidence**, insofar as **unapparent from disclosed** contemporaneous documents (Belize §86), which means **breach of the duty** can lie in **non-disclosure** of a material document or the omission or **obscuring** in a witness statement of a fact or identified significance of a fact or document (Citizens UK §106(4)). (JR Guide 2022 §15.3.5; Gardner §21)
- (5) **'Relevant Material'** Principle. Candid disclosure is required of (a) those **materials** reasonably required for the court to arrive at an accurate decision (Graham §18), (b) full and accurate **explanations** of all the facts relevant to the issue that the court must decide (Quark §50 Citizens UK §106(3); Hoareau §20) and (c) a **true and comprehensive account** of the way in which relevant decisions in the case were arrived at (Quark §50; Downes §21) including the **underlying reasoning** (CPR PD54A §10.1). (JR Guide 2022 §§15.3.1, 15.3.4; Gardner §20; JM §90)



Fordham J's 10 Relevant Principles

- (6) ‘**Non-Selectivity**’ Principle. Candid disclosure must **not be selective** but must include the **unwelcome along with the helpful** (Taylor §60; Graham §18; Hoareau §21). (JR Guide 2022 §15.3.5) (*the Good, the Bad and the Ugly principle*)
- (7) ‘**Best Evidence**’ Principle. Documents should be produced, **not gisted or a secondary** account given, since the document is the best evidence of what it says: Tweed §4; Hoareau §24; National Association §§47, 49). (JR Guide 2022 §15.1.3; Gardner §21)
- (8) ‘**Redaction**’ Principle. Documents need not be disclosed in their entirety but can be redacted (Tweed §33) for public interest immunity, confidentiality, legal professional privilege or statutory restriction. (JR Guide 2022 §15.5.1)



Fordham J's 10 Relevant Principles

- (9) '**Permission-Stage**' Principle. The duty of candour **applies prior to – and for –** the Court's consideration of whether to grant permission for judicial review, though what is required to discharge the duty at **the substantive stage** will be **more extensive** (Terra Services §§9, 14), and the limited nature of disclosed material could inform a decision to grant permission (R (Sky Blue Sports & Leisure Ltd) v Coventry City Council [2013] EWHC 3366 (Admin) [2014] ACD 48 §25). (JR Guide 2022 §15.3.2)
- (10) '**Unpleaded-Grounds**' Principle. The duty of candour extends to documents and information which **will assist** the claimant's case or **may give rise** to further grounds of challenge which might not otherwise occur to the claimant: De Smith's Judicial Review (9th edition) at §16-026; Treasury Solicitor's Guidance [2010] JR 177 at §1.2; R (K, A & B) v SSD [2014] EWHC 4343 (Admin) §11; after R v Barnsley Metropolitan Borough Council, ex p Hook [1976] 1 WLR 1052, 1058C-D (cited in Graham §18).



Fordham J's concluding remarks

“18. So, it needs to be appreciated that the observations in *Gardner* and *JM* were and are not judicial guidance endorsing the use of secondary evidence to communicate the “substance” of withheld documents. 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.** It is not the supply of material whose request would constitute ‘fishing’. It is not automatic disclosure of any document mentioned. It is to achieve ‘Candid Disclosure’ of ‘Relevant Material’ by ‘Best Evidence’ .., subject to the ‘Redaction Principle’... Disclosure, and candid disclosure, should not be replaced by ‘further information’: the Principle is ‘Information-Too’ .. not ‘Information-Instead’. **The “cards” themselves, and not a narrative description or a summary or quotation, are to be face upwards...** What are necessary for ‘Just Disposal’ ... are the documents. The duty of candour applies to ‘material’ ..., not information about the contents of ‘material’. **That is the position in principle.**”



Other recent cases?

(1) *SSHD* (2) *SS Levelling Up, Housing & Communities v R (ota IAB & Others)* [2024] EWCA Civ 66

- JR challenge to the lawfulness of regulations removing the requirement for houses in multiple occupation to be licensed if asylum seekers are to be placed there.
- Appeal concerned the evidence put forward by the Secretaries of State.
- Documents with most of the names of civil servants below Senior Civil Service redacted.
- Swift J ruled Claimants entitled to disclosure of the documents **without redactions**.
- Defendants disclosed four tranches of documents to more than 500 pages, with redacted documents and no explanation why the passages redacted.
- Ds referred to redaction of the names of "junior civil servants" in their grading.
- The Civil Service currently employs about half a million people, of whom approximately 2% are in the SCS. Ds asserting the right for the other 98% to remain anonymous, save in exceptional cases.



IAB continued

- Referred to *Quark Fishing Ltd and the* “... very high duty on public authority respondents”
- Agreed with *Re Downes’ Application for Judicial Review* – explain without ambiguity
- Referred to Lewis LJ textbook *Judicial Remedies in Public Law* (6th Ed, 2021), cited by Swift J, the duty of candour is **an obligation of explanation**, in witness statements, or by the disclosure of relevant documents, or both.
- Referred to the “most authoritative statements” in *Tweed* on specific disclosure
- Referred to the Treasury Solicitor’s Department “*Guidance on Discharging the Duty of Candour and Disclosure in Judicial Review Proceedings*”, dated January 2010 “*but (we were told) still in force*”
- Referred to Administrative Court Guide 2023 “*The Guide is not itself a source of law but is intended to reflect what its authors understand to be the present state of the law.*”
- Referred to Swift J’s similar observations in *FMA v SSHD* [2023] EWHC 1579



IAB continued

“I accept the submission on behalf of the Respondents to this appeal that defendants in judicial review proceedings **do not fulfil their duty of candour** if (save for good and specific reasons) they disclose documents **with redactions of the names of civil servants**. I am struck by the robustness with which both Swift J, a judge of almost unparalleled experience of public law litigation both as Treasury Counsel and later as a judge of the Administrative Court, and Fordham J, another judge with an encyclopaedic knowledge of judicial review, have rejected the arguments for routine redaction. I entirely agree with them. **The practice is inimical to open government and unsupported by authority**. If Parliament takes the view that members of the Civil Service have a general right to anonymity in judicial review litigation then it should enact a primary statute to that effect.” Bean LJ



Other recent cases? *XY v SSHD* [2024] EWHC 81 23/1/24

- “What is a Secretary of State able to do, faced with a judicial declaration on the interpretation of his or her published policy, if he or she does not agree with that interpretation?”
- *R (KTT) v SSHD* [2021] EWHC_2722 Linden J held that the defendant’s policy “overwhelmingly demonstrates a commitment to take decisions according to ECAT (European Convention against Trafficking)” requiring the grant of residence permits to confirmed victims of modern slavery.
- C’s case – D operated a secret policy to make decisions but not serve them. Breach of DoC
- D’s case – A pause on decision-making until no prospect of appeal pending SC pta.
- “The problem defendant was saying to the world, through the published policy (as interpreted by the declaration) that individuals falling within the ambit of the declaration could be granted discretionary leave to remain in the UK when, in reality, the defendant’s officials had been instructed not to issue decisions to those who had sought such leave (and, indeed, others who had claimed asylum on grounds other than a fear of re-trafficking.”



XY v SSHD

“The court’s concern to ensure compliance by parties with the duty of candour is not, however, to be equated with a desire to seek out and name any individual, whether they be an official, solicitor or counsel, and lay the blame at their door.

The duty is one owed by the parties themselves. In the present case, the most important breach of the duty of candour occurred far earlier. As the above chronology shows, **all the information which the claimant has had laboriously to drag out of the defendant should have** been disclosed by, at latest, the stage when the defendant first filed detailed grounds of defence.... It is an approach which, at almost every stage, involved revealing as little as possible, and only then in response to specific requests from the other party. The defendant’s approach in the present case is about as far from the requirement of **“laying one’s cards face up on the table”** as could be imagined....”



Other recent cases? *FH v SSHD* [2024] EWHC 1327 4/6/24

- Challenge to systemic and individual delay in the National Referral Mechanism deciding claims by victims of trafficking. C waited nearly 4 years for a Conclusive Grounds decision.
- During litigation unpublished “Priority List” disclosed by D.
- Mid 1st hearing, D sought adjournment for further disclosure. Trial halted.
- Between hearings D published the Priority List, amending the Statutory Guidance.
- C’s case unpublished and discriminatory policy (Albanians featured as top priority)
- D’s case – an internal administrative instruction, “unreservedly apologises for the failure to disclose the document you have referred to as the Priority List before 8 September 2023.”
- Court held D “made a mistake” and that D took steps to remedy it. The List was “a form of internal administrative guidance intended to inform the defendant’s approach to allocating cases and the sequence in which cases were to be addressed.”



A staged duty?

- “However, before doing so, the party should consider carefully whether the material in the Summary Grounds is sufficient to discharge the duty of candour and cooperation with the court. In this regard, it is important to note that **what is required to discharge that duty at the substantive stage may be more extensive than what is required before permission has been granted** (Admin court guide 10.1.4.3)
- The duty of candour has been recognised as applying at all stages of judicial review proceedings, including **when responding to the pre-action letter, in Summary Grounds, Detailed Grounds, witness statements and in counsel’s written and oral arguments.**
- However, what is required to discharge the duty at the substantive stage will be **more extensive** than what is required before permission has been granted.” [Admin Court Guide 2023, 15.3.2]
- *R (Terra Services Ltd) v National Crime Agency* [2019] EWHC 1933
- *R (Batmanghelidjh) v Charity Commission* [2022] EWHC 3261 (Admin), approving 15.3.2



(9) The Permission-stage Principle

- (9) ‘**Permission-Stage**’ Principle. The duty of candour **applies prior to – and for –** the Court’s consideration of whether to grant permission for judicial review, though what is required to discharge the duty at **the substantive stage** will be **more extensive** (Terra Services §§9, 14), and **the limited nature of disclosed material could inform a decision** to grant permission (R (Sky Blue Sports & Leisure Ltd) v Coventry City Council [2013] EWHC 3366 (Admin) [2014] ACD 48 §25). (JR Guide 2022 §15.3.2)



Top tips – Some context

- A concerning number of recent cases feature allegations of breaches of the duty of candour.
- *R (ota L) v Service Complaints Ombudsman for the Armed Forces, MoD (Interested Party)* [2024] EWHC 1094, disclosure days before substantive hearing, “regrettable”
- SAR - different versions HO (GCID) case-notes, sections edited out in later versions
- SAR - compared to disclosure by gov department introducing new evidence “*plugging the gaps*”.
- *FH* “Internal guidance” or policy, would not have been known about but for litigation.
- Litigation ongoing for 12 years and the Friday before the hearing, damning report disclosed.



Top tips

- Duty of Candour covers pre-action stage - ask early <-> respond early.
- Redactions/ extensive disclosure - ask for explanations <-> provide explanations.
- Crucial to keep pressing <-> it is a continuing duty.
- Remind the court of the nature and depth of the duty <-> cooperate with the court.

Most importantly, remember:-

The underlying principle is the common enterprise shared by public authorities and the court - which at times feels lost - to maintain the highest standards of public administration and to fulfil the public interest in upholding the rule of law.

“



Thank you

020 7993 7600

info@gclaw.co.uk

@gardencourtlaw



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